

# FIRST DIVISION

[ G.R. No. 219927, October 03, 2018 ]

**BOARD OF INVESTMENTS, PETITIONER, VS. SR METALS, INC.,  
RESPONDENT.**

## D E C I S I O N

**DEL CASTILLO, J.:**

"The cardinal rule is that any decision or ruling promulgated by an administrative body must have something to support itself."<sup>[1]</sup>

Before the Court is a Petition for Review on *Certiorari*<sup>[2]</sup> filed under Rule 45 of the Rules of Court assailing the December 4, 2014 Decision<sup>[3]</sup> and the August 11, 2015 Resolution<sup>[4]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 131511.

### ***Factual Antecedents***

Petitioner Board of Investments (BOI) is a government agency created under Republic Act (RA) No. 5186.<sup>[5]</sup> It is an attached agency of the Department of Trade and Industry (DTI) and is the lead government agency responsible for the promotion of investments in the Philippines.<sup>[6]</sup> Respondent SR Metals, Inc., on the other hand, is a corporation engaged in the business of mining in Tubay, Agusan Del Norte.<sup>[7]</sup>

On April 3, 2008, respondent filed with petitioner an Application for Registration<sup>[8]</sup> as a new producer of beneficiated nickel ore on a non-pioneer status in relation to its proposed Nickel Project.<sup>[9]</sup>

On June 4, 2008, petitioner approved the application and issued Certificate of Registration No. 2008-113<sup>[10]</sup> in favor of respondent as a new producer of beneficiated nickel silicate ore/lateritic nickel ore on a non-pioneer status. Accordingly, respondent was granted an Income Tax Holiday (ITH) incentive under the Omnibus Investment Code for the period 2008 to 2012.<sup>[11]</sup>

On August 31, 2010, the *Sangguniang Bayan* of the Municipality of Tubay issued Resolution No. 2010-090,<sup>[12]</sup> requesting the cancellation of respondent's BOI registration on the following grounds:

- (1) [that respondent was] not a manufacturer or product processor or a beneficiation plant;
- (2) [that respondent] was engaged in the direct shipping of unprocessed ore which employed the method of open-cut mining contrary to what [was] stated in its [Certificate of] Registration as a new producer of

beneficiated nickel silicate ore/lateritic nickel ore; and

(3) [that respondent] applied for tax exemption x x x without informing or consulting the [M]unicipality of Tubay and the immediate stakeholders.

[13]

To prove its claims, the *Sangguniang Bayan* submitted to petitioner Certifications<sup>[14]</sup> from the Municipal Engineer's Office, the Municipal Assessor's Office, and the Municipal Planning and Development Office attesting that respondent had no industrial building or processing plant declared under its name.<sup>[15]</sup>

On April 11, 2011, petitioner issued a letter<sup>[16]</sup> to respondent informing it of the *Sangguniang Bayan's* Resolution requesting for the cancellation of respondent's BOI registration. In the same letter, petitioner directed respondent to submit a reply within 15 days from receipt of the said letter.

In its Reply,<sup>[17]</sup> respondent explained that it was a producer of beneficiated nickel/lateritic nickel ore; that it was registered as a new producer of beneficiated nickel silicate ore/lateritic nickel ore, and not as a beneficiation plant; and that consultation with the concerned local government was not required under the 2007 Investment Properties Plan (IPP).

### ***Ruling of the Board of Investments***

On May 24, 2012, petitioner issued a letter<sup>[18]</sup> informing respondent that, during the February 12, 2012 Board Meeting, the Board resolved to withdraw respondent's ITH incentive for failure to comply with:

(1) the requirements on new projects under the 2007 IPP, specifically the establishment of another line (beneficiation plant) and the infusion of new investment in fixed assets; and

(2) the Specific Terms and Conditions attached to respondent's Project Approval Sheet and Certificate of Registration, requiring respondent to submit a progress report on the implementation of the registered project and to adhere to a project timetable on the acquisition of machinery/equipment.

Respondent sought reconsideration, submitting a summary of the major equipment composing the beneficiation plant as well as a summary of machineries and equipment and the individual proofs of ownership of the machineries and equipment it had acquired.<sup>[19]</sup>

On August 12, 2013, petitioner issued a letter<sup>[20]</sup> informing respondent that the Board, during its July 30, 2013 Meeting, resolved to deny respondent's motion for reconsideration for the following reasons:

(1) late filing;

(2) failure to raise new grounds or information that would warrant a reversal of the Board's Resolution withdrawing respondent's ITH incentive; and

(3) absence of another line and new investment in fixed assets.

Unfazed, respondent elevated the matter before the CA *via* a Petition under Rule 43 of the Rules of Court.

### ***Ruling of the Court of Appeals***

On December 4, 2014, the CA rendered the assailed Decision finding respondent entitled to the ITH incentive under the Omnibus Investment Code. The CA ruled that there was nothing in the 2007 IPP requiring respondent to construct a beneficiation plant in order to avail of the ITH incentive.<sup>[21]</sup> The CA also found that, contrary to the findings of petitioner, respondent infused new investments in fixed assets, submitted progress reports, and complied with the project timetable.<sup>[22]</sup> Thus, there was no reason for petitioner to withdraw the ITH incentive in favor of respondent. The CA further said that respondent was denied due process when petitioner (1) failed to inform respondent that a formal administrative investigation had already been initiated against it; (2) withdrew respondent's ITH incentive on grounds other than those raised in the Resolution issued by the *Sangguniang Bayan*; and (3) denied respondent's motion for reconsideration for late filing.<sup>[23]</sup> The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the instant Petition for Review is Granted. The assailed resolutions of the [BOI] embodied in its letters dated May 24, 2012 and August 12, 2013 withdrawing the ITH entitlement of [respondent] are hereby ANNULLED and SET ASIDE.

SO ORDERED.<sup>[24]</sup>

Petitioner moved for reconsideration but the CA denied the same in its August 11, 2015 Resolution.<sup>[25]</sup>

Hence, petitioner filed the instant Petition, interposing the following issues:

#### I.

WHETHER X X X THE TERMS AND CONDITIONS OF RESPONDENT'S X X X PROJECT APPROVAL SHEET AND BOI [CERTIFICATE OF REGISTRATION] INCLUDE THE COMMITMENT TO ESTABLISH A BENEFICIATION PLANT.

#### II.

WHETHER X X X THE GRANT OF [ITH] INCENTIVE IS A MATTER OF RIGHT UPON APPROVAL OF RESPONDENT'S X X X [APPLICATION FOR] REGISTRATION AND DESPITE ITS FAILURE TO ABIDE BY THE TERMS AND CONDITIONS OF ITS [CERTIFICATE OF] REGISTRATION

#### III.

WHETHER X X X PETITIONER OBSERVED DUE PROCESS IN WITHDRAWING RESPONDENT'S X X X [ITH] INCENTIVE.<sup>[26]</sup>

### ***Petitioner's Arguments***

Petitioner contends that the grant of ITH incentive is not a right but a privilege and that it is premised on the enterprise's compliance with the requirements of the 2007 IPP.<sup>[27]</sup> In this case, petitioner claims that, upon evaluation of respondent's compliance with the terms and condition of its ITH incentive entitlement, it found that respondent was not entitled to an ITH incentive as it failed to fulfill its commitment to infuse huge capital investments and construct a beneficiation plant.<sup>[28]</sup> Petitioner likewise points out that the ore processing activity of respondent was different from what was described in its application for registration as a new producer.<sup>[29]</sup> Thus, petitioner maintains that it did not err in cancelling respondent's entitlement to an ITH incentive.

As to the issue of due process, petitioner avers that respondent was accorded due process as it was informed of its violations and was given ample opportunity to explain its side and present evidence.<sup>[30]</sup>

### ***Respondent's Arguments***

Respondent, on the other hand, puts in issue the lack of authority of the Officer-in-Charge (OIC), BOI Managing Head, Ma. Corazon Halili-Dichosa (OIC Halili-Dichosa), to sign the verification and certification of non-form shopping<sup>[31]</sup> as well as the failure of petitioner to attach material portions of the records of the case.<sup>[32]</sup> Respondent argues that there was nothing in Memorandum Order No. 2015-080, series of 2015, dated October 9, 2015 to indicate that the OIC is authorized to sign the verification and certification of non-forum shopping as it is not among the list of official documents mentioned in Department Order No. 14-39, series of 2014.<sup>[33]</sup>

As to the merits of the case, respondent insists that the CA correctly ruled that the withdrawal of respondent's ITH incentive was without any basis since respondent was able to comply with the requirements under the 2007 IPP by making substantial investments in fixed assets and by submitting progress reports on the implementation of its new project.<sup>[34]</sup> Respondent also echoes the view of the CA that there was nothing in the 2007 IPP to suggest that an actual physical structure or building must be erected to be registered as a new project as the same could refer to an equipment such as a conveyor belt.<sup>[35]</sup> In fact, respondent was registered as a new project because of its newly adopted beneficiation process, not because of any alleged representation to construct a beneficiation plant.<sup>[36]</sup> In any case, respondent claims that it has an assemblage of equipment and machineries which comprise its beneficiation plant.<sup>[37]</sup> Finally, respondent likewise asserts that the withdrawal of its ITH incentive was without due process as petitioner failed to comply with the procedure laid down in the 2004 Revised Rules of Procedure on the Cancellation of Registration under Republic Act No. 5135, Presidential Decree No. 1789, *Batas Pambansa Blg.* 391 and Executive Order No. 226 (2004 BOI Revised Rules).<sup>[38]</sup>

### **The Court's Ruling**

The Petition must be denied.

***The Officer-in-Charge is authorized to sign the verification and certification of non-forum shopping.***

Respondent questions the authority of OIC Halili-Dichosa to sign the verification and certification of non-forum shopping. Respondent claims that Memorandum Order No. 2015-080 only authorized OIC Halili-Dichosa to sign and approve vouchers, contracts, orders, and other official documents included in Department Order No. 14-39. And since the verification and certification of non-forum shopping of the instant Petition is not included in the list of official documents, OIC Halili-Dichosa had no authority to file the instant Petition and sign the verification and certification of non-forum shopping of the same.

Although it appears that the verification and certification of non-forum shopping was not among the list of official documents mentioned in Department Order No. 14-39, series of 2014, the Court is still inclined to uphold the authority of OIC Halili-Dichosa to sign the same. In Memorandum Order No. 2015-080, Supervising Director Halili-Dichosa was designated OIC of petitioner **in the interest of service** as the Undersecretary/Managing Head was on an official trip. Considering the rationale of the said Memorandum, the Court finds that any doubt as to the authority of OIC Halili-Dichosa to file the instant case and to sign the verification and certification of non-forum shopping should be resolved in favor of the government. Obviously, OIC Halili-Dichosa caused the filing of the instant Petition in the performance of her duties and in order to protect the interests of the government. Thus, it is more prudent for the Court to decide the instant Petition on the merits rather than to dismiss it on a mere technicality.

Besides, in recent cases, the Court has allowed certain officials and employees to sign the verification and certification of non-forum shopping on behalf of the company without need of a board resolution. These are the chairperson of the board of directors, the president of a corporation, the general manager or acting general manager, the personnel officer, the employment specialist in a labor case, and other officials and employees who are "in a position to verify the truthfulness and correctness of the allegations in the petition."<sup>[39]</sup> In this case, the Court considers OIC Halili-Dichosa to be in a position to verify the truthfulness and correctness of the allegations stated in the instant Petition.<sup>[40]</sup>

***Petitioner attached the material portions of the records as would support the Petition.***

Respondent contends that the failure of petitioner to attach copies of the pleadings filed before the CA, namely: (1) respondent's Petition for Review; (2) petitioner's Comment; (3) respondent's Reply to Comment; (4) the Memoranda of the parties; (5) petitioner's Motion for Reconsideration; and (6) respondent's Comment/Opposition, is a ground for the dismissal of the instant case under Sections 4(d)<sup>[41]</sup> and 5,<sup>[42]</sup> of Rule 45 of the Rules of Court.

The Court does not agree.

The determination of what pleadings are material to the Petition is up to the Court.<sup>[43]</sup> In this case, the Court finds that the pleadings filed before the CA were not