

FIRST DIVISION

[G.R. No. 202877, December 09, 2015]

**NARRA NICKEL MINING AND DEVELOPMENT CORPORATION,
TESORO MINING AND DEVELOPMENT, INC., AND MCARTHUR
MINING, INC., PETITIONERS, VS. REDMONT CONSOLIDATED
MINES CORPORATION, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated February 23, 2012 and the Resolution^[3] dated July 27, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 120409, which affirmed the Decision^[4] dated April 6, 2011 and the Resolution^[5] dated July 6, 2011 of the Office of the President (OP) in O.P. Case No. 10-E-229 and, among others, ordered the cancellation and/or revocation of the Financial or Technical Assistance Agreement^[6] (FTAA) executed between the Republic of the Philippines (Republic) and herein petitioners Narra Nickel Mining and Development Corporation, Tesoro Mining and Development, Inc., and Me Arthur Mining, Inc.

The Facts

On November 8, 2006, respondent Redmont Consolidated Mines Corporation (Redmont) filed an Application for an Exploration Permit^[7] (EP) over mining areas located in the Municipalities of Rizal, Bataraza, and Narra, Palawan. After an inquiry with the Department of Environment and Natural Resources (DENR), Redmont learned that said areas were already covered by existing Mineral Production Sharing Agreements (MPSA) and an EP, which were initially applied for by petitioners' respective predecessors-in-interest with the Mines and Geosciences Bureau (MGB), Region IV-B, Office of the DENR.^[8]

In particular, petitioner Narra Nickel Mining and Development Corporation (Narra Nickel) acquired the application of MPSA-IV-I-12, covering an area of 3,277 hectares (ha.) in Barangays Calategas and San Isidro, Narra, Palawan, from Alpha Resources and Development Corporation and Patricia Louise Mining and Development Corporation. On March 30, 2006, or prior to Redmont's EP application, Narra Nickel had converted its MPSA into an FTAA application, denominated as AFTA-IVB-07.^[9]

For its part, petitioner Tesoro Mining and Development, Inc. (Tesoro) acquired the application of MPSA-AMA-IVB-154 (formerly EPA-IVB-47), covering an area of 3,402 has. in Barangays Malinao and Princesa Urduja, Narra, Palawan, from Sara Marie Mining, Inc. (SMMI). Similar to Narra Nickel, Tesoro sought the conversion of its MPSA into an FTAA, but its application therefor, denominated as AFTA-IVB-08, was filed subsequent to Redmont's EP application, or sometime in May 2007.^[10]

In the same vein, petitioner McArthur Mining, Inc. (McArthur) acquired the application of MPSA-AMA-IVB-153, as well as EPA-IVB-44, covering the areas of 1,782 has. and 3,720 has. in Barangays Sumbiling and Malatagao, Bataraza, Palawan, respectively, from Madridejos Mining Corporation, an SMMI assignee. McArthur also filed an application for FTAA conversion in May 2007, denominated as AFTA-IVB-09.^[11]

Upon the recommendation of then DENR Secretary Jose L. Atienza, Jr., through a memorandum^[12] dated November 9, 2009, petitioners' FTAA applications were all approved on April 5, 2010. Consequently, on April 12, 2010, the Republic - represented by then Executive Secretary Leandro R. Mendoza, acting by authority of then President Gloria Macapagal-Arroyo - and petitioners executed an FTAA^[13] covering the subject areas, denominated as FTAA No. 05-2010-IVB (MIMAROPA).^[14]

Prior to the grant of petitioners' applications for FTAA conversion, and the execution of the above-stated FTAA, Redmont filed on January 2, 2007 three (3) separate petitions^[15] for the denial of petitioners' respective MPSA and/or EP applications before the Panel of Arbitrators (POA) of the DENR-MGB, docketed as DENR Case Nos. 2007-01,^[16] 2007-02,^[17] and 2007-03.^[18] Redmont's primary argument was that petitioners were all controlled by their common majority stockholder, MBMI Resources, Inc. (MBMI) - a 100% Canadian-owned corporation^[19] - and, thus, disqualified from being grantees of MPSAs and/or EPs. The matter essentially concerning the propriety of denying petitioners' MPSAs and/or EPs in view of their nationality had made it all the way to this Court, and was docketed as G.R. No. 195580.^[20] In the Court's April 21, 2014 Decision,^[21] petitioners were declared to be foreign corporations under the application of the "Grandfather Rule." Petitioners moved for the reconsideration of the said Decision, which was, however, denied in the Court's Resolution dated January 28, 2015.

Meanwhile, Redmont separately sought the cancellation and/or revocation of the executed FTAA through a Petition^[22] dated May 7, 2010 (May 7, 2010 Petition) filed before the Office of the President (OP), docketed as O.P. Case No. 10-E-229. Redmont asserted, among others, that the FTAA was highly anomalous and irregular, considering that petitioners and their mother company, MBMI, have a long history of violating and circumventing the Constitution and other laws, due to their questionable activities in the Philippines and abroad.^[23]

Petitioners opposed Redmont's petition through a motion to dismiss, contending that: (a) there is no rule or law which grants an appeal from a memorandum of a department secretary; (b) the appeal was filed beyond the reglementary period; (c) the appeal was not perfected because copies of the appeal were not properly served on them; and (d) Redmont is not a real party-in-interest.^[24]

The OP Ruling

In a Decision^[25] dated April 6, 2011, the OP granted Redmont's petition. It declared that the OP has the authority to cancel the FTAA because the grant of exclusive power to the President of the Philippines to enter into agreements, including FTAA's

under Republic Act No. (RA) 7942,^[26] or the "Philippine Mining Act of 1995," carries with it the authority to cancel the same.^[27] Thus, finding, *inter alia*, that petitioners misrepresented that they were Filipino corporations qualified to engage in mining activities,^[28] the OP cancelled and/or revoked the said FTAA, and, in turn, gave due course to Redmont's EP application.^[29]

Dissatisfied, petitioners appealed to the CA.^[30]

The CA Ruling

In a Decision^[31] dated February 23, 2012, the CA affirmed the OP Ruling. It found no procedural error in the OP's action on the FTAA, holding that it was done in accordance with the President's power of control over the executive departments.^[32] As to its merits, the CA ruled that the Republic, as represented by the OP, had the right to cancel the FTAA, even without judicial permission, because paragraph a (iii), Section 17.2^[33] thereof provides that such agreement may be cancelled by either party on the ground of "any intentional and materially false statement or omission of facts by a [p]arty."^[34] Accordingly, it sustained the OP's finding that petitioners committed misrepresentations which warranted the cancellation and/or revocation of the FTAA.^[35]

Unperturbed, petitioners filed on March 14, 2012 a motion for reconsideration,^[36] which was denied in a Resolution^[37] dated July 27, 2012; hence, this petition.

The Issue Before the Court

The main issue for the Court's resolution is whether or not the CA correctly affirmed on appeal the OP's cancellation and/or revocation of the FTAA.

The Court's Ruling

The petition is meritorious.

I. ON JURISDICTION.

It is a fundamental rule that the question of jurisdiction may be tackled *motu proprio* on appeal even if none of the parties raised the same.^[38] The reason for the rule is that a court without jurisdiction cannot render a valid judgment.^[39]

Cast against this light, the Court finds that the CA improperly took cognizance of the case on appeal under Rule 43 of the Rules of Court for the reason that the OP's cancellation and/or revocation of the FTAA was not one which could be classified as an exercise of its quasi-judicial authority, thus negating the CA's jurisdiction over the case. The **jurisdictional parameter** that the appeal be taken against a judgment, final order, resolution or award of a "quasi-judicial agency **in the exercise of its quasi-judicial functions**" is explicitly stated in Section 1 of the said Rule:

Rule 43

Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals

Section 1. *Scope.* — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by **any quasi-judicial agency in the exercise of its quasi-judicial functions**. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, **Office of the President**, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphases and underscoring supplied)

Quasi-judicial or **administrative adjudicatory power** is the power of the administrative agency to **adjudicate the rights of persons before it**. The administrative body exercises its quasi-judicial power when it performs **in a judicial manner** an act which is essentially executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted to it.^[40]

"*Adjudicate*' as commonly or popularly understood, means to adjudge, arbitrate, judge, decide, determine, resolve, rule on, or settle. The dictionary defines the term as 'to settle finally (the rights and duties of parties to a court case) on the merits of issues raised: x x x to pass judgment on: settle judicially: x x x act as judge.'^[41] "In the legal sense, 'adjudicate' means: '[t]o settle in the exercise of judicial authority. To determine finally. Synonymous with *adjudge* in its strictest sense;' and 'adjudge' means: '[t]o pass on judicially, to decide, settle, or decree, or to sentence or condemn, x x x. Implies a judicial determination of a fact, and the entry of a judgment.'^[42]

The OP's cancellation and/or revocation of the FTAA is obviously not an "adjudication" in the sense above-described. It cannot be likened to the judicial function of a court of justice, or even a quasi-judicial agency or office. The OP - at the instance of Redmont at that - was exercising an administrative function pursuant to the President's authority^[43] to invoke the Republic's right under paragraph a (iii), Section 17.2 of the FTAA which reads:

17.2 Termination

- a. Grounds. This Agreement may be terminated, after due process, for any of the following causes:

x x x x

iii. any intentional and materially false statement or omission of facts by a Party;^[44]

To contextualize the exercise, a brief discussion on the nature and legal parameters of an FTAA is apropos.

The basis for the State, through the President, to enter into an FTAA with another contracting party is found in the fourth paragraph of Section 2, Article XII of the 1987 Constitution:

Section 2. x x x.

x x x x

The President may enter into **agreements** with foreign-owned corporations involving either **technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils** according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources. (Emphases supplied)

An FTAA is explicitly characterized as **a contract** in Section 3 (r) of RA 7942:

Section 3. Definition of Terms. - As used in and for purposes of this Act, the following terms, whether in singular or plural, shall mean: :

x x x x

(r) "Financial or technical assistance agreement" means **a contract** involving financial or technical assistance for large-scale exploration, development, and utilization of mineral resources. (Emphasis and underscoring supplied)

Since an FTAA is entered into by the President on the State's behalf, and it involves a matter of public concern in that it covers the large-scale exploration, development, and utilization of mineral resources, it is properly classified as a **government or public contract**, which is, according to jurisprudence, "generally subject to the same laws and regulations which govern the validity and sufficiency of contracts between private individuals."^[45] In *Sargasso Construction & Development Corporation v. Philippine Ports Authority*:^[46]

A government or public contract has been defined as a contract entered into by state officers acting on behalf of the state, and in which the entire people of the state are directly interested. It relates wholly to matter of public concern, and affects private rights only so far as the statute confers such rights when its provisions are carried out by the officer to whom it is confided to perform.

A government contract is essentially similar to a private contract