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SECOND DIVISION

[G.R. No. 179669, June 04, 2014]

SR METALS, INC., SAN R MINING AND CONSTRUCTION CORP. AND GALEO EQUIPMENT AND MINING COMPANY, INC., PETITIONERS, VS. THE HONORABLE ANGELO T. REYES, IN HIS CAPACITY AS SECRETARY OF DEPARTMENT ENVIRONMENT AND NATURAL RESOURCES (DENR), RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

In this Petition for Review on *Certiorari,* SR Metals, Inc., SAN R Mining and Construction Corp., and Galeo Equipment and Mining Co., Inc. (hereinafter referred to as 'mini corporations') assail the Decision[1] and Resolution[2] dated July 4, 2007 and September 14 respectively, of the Court of Appeals (CA), in CA-G.R SP No. 97127. The mining corporations fault the CA for (a) upholding the validity of the provision of Presidential Decree (PD) No. 1899[3] which limits the annual production/extraction of mineral ore in small-scale mining to 50,000 metric tons (MT) despite its being violative of the equal protection clause, and (b) adopting the Mines and Geosciences Bureau's (MGB) definition of 'ore,' which led the said court to conclude that the mining corporation had exceeded the aforesaid 50,000-MT limit.

Factual Antecedents

On March 9, 2006, each of the petitioners was awarded a 2-year Small-Scale Mining Permit[4] (SSMP) by the Provincial Mining Regulatory Board of Agusan del Norte; they were allowed to extract Nickel and Cobalt (Ni-Co) in a 20-hectare mining site in Sitio Bugnang, Brgy. La Fraternidad, Tubay, Agusan del Norte. These permits were granted after the Environmental Management Bureau (EMB), Region XIII of the Department of Environment and Natural Resources (DENR) issued on March 2, 2006 Environmental Compliance Certificates[5] with a validity period of one year.

The mining corporations' ECCs contain a restriction that the amount of Ni-Co ore they are allowed to extract annually should not exceed 50,000 MTs pursuant to Section 1 of PD 1899 which provides:

> Section 1. Small-scale mining refers to any single unit mining operation having an annual production of not more than 50,000 metric tons of ore x x x.

Subsequently, however, Agusan del Norte Governor, Erlpe John M. Amante (Governor Amante), questioned the quantity of ore that had been mined and shipped by the mining corporations. In reply, the mining corporations denied having

exceeded the extraction limit of 50,000 MTs.[6] They explained that an extracted mass contains only a limited amount/percentage of Ni-Co as the latter is lumped with gangue, *i.e.,* the unwanted rocks and minerals. And it is only after the Ni-Co is separated from the gangue by means of a scientific process should amount of the Ni-Co be measured and considered as 'ore.' Excluding the gangue, the mining corporations pegged the volume of Ni-Co ore they had extracted from the time they start shipping the same in August 2006 until they filed their Petition before the CA in December 2006 at 1,699.66 MTs of Ni-Co ore only.[7]

Having reservations with the mining corporations' interpretation of the 50,000-MT restriction, Governor Amante sought the opinion of the Department of Justice (DOJ) on the matter.

Meanwhile, the EMB sent the mining corporations a Notice of Violation[8] informing them that they had exceeded the allowed annual volume of 150,000 MTs combined production as their stockpile inventory of Nickeliferous ore had already total 177,297 dry metric tons (DMT). This was based on the August 10, 2006 Inspection Report[9] of the MGB Monitoring Team which conducted an inspection after the DENR received complaints of violations of small-scale mining laws and policies by the mining corporations. A technical conference was thereafter held to hear the side of the mining corporations anent their alleged over-extraction.

On November 26, 2004, DENR Secretary Angelo T. Reyes issued a Cease and Desist Order[10] (CDO) against the mining corporations suspending their operations for their operations for the following reasons:

> 1. The excess in 1) annual production of SR Metals, Inc., 2) maximum capitalization, and, 3) labor cost to equipment utilization of 1:1 is, by itself, a violation of existing laws.
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> 2. The ECCs issued in favor of San R Construction Corporation and Galeo Equipment Corporation have no legal basis and [are] therefore considered null and void from the beginning. Similarly, the small scale mining permits that were issued by reason of such ECCs are likewise null and void.[11]

A few days later or on November 30, 2006, DOJ Secretary Raul M. Gonzalez replied to Governor Amante citing DOJ Opinion No. 74, Series of 2006.[12] By comparing PD 1899 to Republic Act (RA) No. 7076,[13] a subsequent law that likewise defines small-scale mining, the DOJ opined that Section 1 of PD 1899 is deemed to have been impliedly repealed by RA 7076 as nothing from the provisions of the latter law mentions anything pertaining to an annual production quota for small-scale mining. It explained:

> The definition of "small scale mining" under R.A. No. 7076 is clear and categorical. Any mining activity that relies heavily on manual labor without use of explosives or heavy mining equipment falls under said definition. It does not mention any annual production quota or limitation.

> On the contrary, Section 12 thereof is explicit that the contractor, or, specifically, in this case, permit holders or permitees, are entitled not only to the right to [mine], but also to "extract and dispose of mineral ores (found therein) for commercial purposes" without specific limitation as to the nature of the mineral extracted or the quantity thereof.
>
> Moreover, while Section 13 of the law imposes certain duties and obligations upon the contractor or permitee, nothing therein refers directly or otherwise to production quota limitation. Additionally, even Section 10 thereof, which provides for the extent [of] the mining area, does not limit production but only the mining area and depth of the tunnel or adit which, as stated in the law shall "not (exceed) that recommended by the (EMB) director taking into account the "quantity of mineral deposits", among others. It is, however, silent on the extent of the mining's annual quota production. Thus, anything that is not in the law cannot be interpreted as included in the law x x x[14]

Even assuming that the 50,000-MT ore limit in PD 1899 is still in force, the DOJ categorically concluded that the term 'ore' should be confined only to Ni-Co, that is, excluding soil and other materials that are of no economic value to the mining corporations. This is considering that their ECCs explicitly specified '50,000 MTs of Ni-Co ore.'

The mining corporations then filed before the CA a Petition for *Certiorari* with prayer for Temporary Restraining Order and/or Preliminary Injunction, imputing grave abuse of discretion on the part of DENR in issuing the CDO. Relying on the rationalizations on the rationalization made by the DOJ in its November 30, 2006 Opinion, they vehemently denied having over-extracted Ni-Co.

The Office of the Solicitor General (OSG), for its part, claimed that the CDO was issued for ecological and health reasons and is a preventive measure against disaster arising from multiple acts of over-extraction such as landslides, mudslides and flooding. Also to be respected is the DENR's finding of the mining corporations' over-extraction because being the agency mandated to implement the laws affecting the country's natural resources, the DENR possesses the necessary expertise to come up with such determination. For the same reason, the DENR's definition of small-scale mining particularly that under Mines Administrative Order (MAO) No. MRD-41 series of 1984,[15] must also be sustained.

Furthermore, the OSG averred that the mining corporations' concept of how to measure NI-CO ore is flawed as this contradicts Section 2 of MAO No. MRD-41 which confines the 50,000-MT limit to run-of-mine ore, *viz.*:

> SECTION 2 - Who May Qualify for the Issuance of a Small Scale Mining Permit - Any qualified person as defined in Sec. 1 of these Regulations, preferably claim owners and applicants for or holders of quarry permits and/or licenses may be issued a small scale mining permit provided that their mining operations, whether newly-opened, existing or rehabilitated, involve:

> (a) a single mining unit having an annual production not exceeding 50,0000 metric tons of run-of-mine ore, either an open cast mine working or a subsurface mine working which is driven to such distance as safety conditions and pracatices will allow;
>
> x x x x

The OSG emphasized that in measuring an extraction, the only deduction allowed from an extracted mass of ore is the weight of water, not the soil. It quoted a letter[16] Horacio C. Ramos of the MGB Central Office dated April 30, 2007 addressed to the OSG, which explained the definition of the phrase "50,000-metric ton extraction limit," to wit:

- 50,000 metric tons of run-of-mine per year;
- the run[-]of[-]mine can either be wet or dry;
- traditionally, the production rate for nickel is based on dry since the water or moisture content has no value; and
- thus, if the ore is wet, the weight of water is deducted from the total weight of ores in the determination of the production rate, or for shipment purposes.[17]

Ruling of the Court of Appeals

The CA denied the mining corporations' Petition, not only because the ECCs have been mooted by their expiration, but also due to its recognition of the power of the DENR to issue the CDO as the agency reposed with the duty of managing and conserving the country's resources under Executive Order 192.[18] Anent the issue of whether the imposed limit under PD 1899 should be upheld and whether there was over extraction, the CA had this to say:

> We agree with the OSG's argument that the 50,000[-]metric ton limit pertains to the mined ore in its unprocessed form, including the soil and dirt. The OSG argued that the DOJ Opinion is not binding upon the court and that the agency which is tasked to implement the mining laws is the DENR. Citing the MGB letter-reply, the OSG contended that the limit provided in RA 1899 subsists and RA 7076 did not impliedly repeal the latter. The provisions in both laws are not inconsistent with each other, both recognizing the DENR's authority to promulgate rules and regulations for the implementation of mining laws.[19]

Furthermore, the said court gave credence to the MGB's April 30, 2007 opinion on the definition of the 50,000-MT limit. Rejecting the claims of the mining corporations, it said:

> x x x Thus, the MAO not only buttresses the OSG's arguments as to what the extraction limit pertains to, x x x it also contravenes [the mining corporations'] assertion that the extraction limit no longer exists and

> that, even if the limit subsists, they [had] not exceeded the same because they [had] only extracted around 1,600 metric tons. Indeed, for purposes of determining whether the extraction is still within the allowable limits, only the weight of water is deducted from the run-of-mine ore.[20]

The mining corporations moved for partial reconsideration where they again relied heavily on the DOJ Opinion.[21] They also attacked the validity of Section 1(1) of PD 1899 that sets the annual production limit of 50,000-MT on small-scale mining by arguing that it violates the equal protection clause of the Constitution and that it is already repealed by RA 7076. Even granting that the said limit is still in force, the mining corporations asserted the gangue should not be included in measuring the extraction, since their ECCs clearly provide that 50,000 MTs of Ni-Co ore, not 50,000 MTs of ore, can be extracted.

Ignoring their arguments, the CA stressed that the DENR is the primary government agency responsible for the conservation, management, development, and proper use of the country's mineral resources. It reiterated:

> This Court likewise declared that the MAO adopted the definition of *small scale mining* in PD 1899, including the requirement of observing the extraction limit. Together with the MGB's interpretation of the term "run-of-mine ore", the MAO supports the arguments of the OSG as to the extraction limit and controverts [the mining corporations'] assertion that no extraction limit exists and, if the same subsists, they [had] not exceeded it.[22]

Hence, this Petition.

Issues

Two questions are posed before us. The first deals with the constitutionality of Section 1, PD 1899 which, according to the mining corporations violates the equal protection clause. They argue that there is no substantial distinction between the miners covered under RA 7076, who can extract as much ore as they can, and those covered under PD 1899 who were imposed an extraction limit.

Another issue concerns the correct interpretation of the 50,000-MT limit. The mining corporation insist on their version of how to compute the extraction.

To them, the computation of Ni-Co ore should be confined strictly to Ni-Co component from which they derive economic value.

Our Ruling

Petitioners are governed by the annual production limit under PD 1899.

Two different laws governing small-scale mining co-exist: PD 1899 and RA 7076.[23]