

[G.R. No. 180462, February 09, 2011]

**SOUTH PACIFIC SUGAR CORPORATION AND SOUTH EAST ASIA
SUGAR MILL CORPORATION, PETITIONERS, VS. COURT OF
APPEALS AND SUGAR REGULATORY ADMINISTRATION,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review on certiorari^[1] of the 6 November 2007 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 100571, which set aside the 26 June 2007, 6 August 2007, and 31 August 2007 Orders^[3] as well as the 6 September 2007 Writ of Execution and the 12 September 2007 Amended Writ of Execution of the Regional Trial Court (Branch 77) of Quezon City in Civil Case No. Q-02-46236.

The Facts

In 1999, the government projected a shortage of some 500,000 metric tons of sugar due to the effects of El Niño and La Niña phenomena. To fill the expected shortage and to ensure stable sugar prices, then President Joseph Ejercito Estrada issued Executive Order No. 87, Series of 1999 (EO 87),^[4] facilitating sugar importation by the private sector.

Section 2 of EO 87 created a Committee on Sugar Conversion/Auction to determine procedures for sugar importation as well as for collection and remittance of conversion fee.

Under Section 3 of EO 87, sugar conversion is by auction and is subject to conversion fee to be remitted by respondent Sugar Regulatory Administration (SRA) to the Bureau of Treasury.

On 3 May 1999, the Committee on Sugar Conversion/Auction issued the Bidding Rules providing guidelines for sugar importation. Under the Bidding Rules, the importer pays 25% of the conversion fee within three working days from receipt of notice of the bid award and the 75% balance upon arrival of the imported sugar.

The Bidding Rules also provide that if the importer fails to make the importation or if the imported sugar fails to arrive on or before the set arrival date, 25% of the conversion fee is forfeited in favor of the SRA, to wit:

G. Forfeiture of Conversion Fee

G.1 In case of failure of the importer to make the importation or

for the imported sugar to arrive in the Philippines on or before the Arrival Date, the 25% of Conversion Fee Bid already paid shall be forfeited in favor of the SRA and the imported sugar shall not be classified as "B" (domestic sugar) unless, upon application with the SRA and without objection of the Committee, the SRA allows such conversion after payment by the importer of 100% of the Conversion Fee applicable to the shipment.^[5] (Emphasis supplied)

The SRA forthwith authorized the importation of 300,000 metric tons of sugar, to be made in three tranches, as follows:

Tranche	Volume	Arrival Date
1 st	100,000MT	15 May-15 June 1999
2 nd	100,000MT	15 June-July 15 1999
3 rd	100,000MT	15 July-15 August 1999 ^[6]

The Committee on Sugar Conversion/Auction caused the publication of the invitation to bid. Several sugar importers submitted sealed bid tenders. Petitioners Southeast Asia Sugar Mill Corporation (Sugar Mill) and South Pacific Sugar Corporation (Pacific Sugar) emerged as winning bidders for the 1st, 2nd, and 3rd tranches.

For the 3rd tranche, Sugar Mill submitted the winning bid of P286.80 per 50 kilogram for 10,000 metric tons of sugar, while Pacific Sugar submitted the winning bid of P285.99 per 50 kilogram for 20,000 metric tons of sugar, for a combined total volume of 30,000 metric tons of sugar.

Pursuant to the Bidding Rules, Sugar Mill paid 25% of the conversion fee amounting to P14,340,000.00, while Pacific Sugar paid 25% of the conversion fee amounting to P28,599,000.00.

As it turned out, Sugar Mill and Pacific Sugar (sugar corporations) delivered only 10% of their sugar import allocation, or a total of only 3,000 metric tons of sugar. They requested the SRA to cancel the remaining 27,000 metric tons of sugar import allocation blaming sharp decline in sugar prices. The sugar corporations sought immediate reimbursement of the corresponding 25% of the conversion fee amounting to P38,637,000.00.

The SRA informed the sugar corporations that the conversion fee would be forfeited pursuant to paragraph G.1 of the Bidding Rules. The SRA also notified the sugar corporations that the authority to reconsider their request for reimbursement was vested with the Committee on Sugar Conversion/Auction.

On 26 February 2002, the sugar corporations filed a complaint for breach of contract and damages in the Regional Trial Court (Branch 77) of Quezon City, docketed as Civil Case No. Q-02-46236.

In its notice of appearance,^[7] the Office of the Solicitor General (OSG) deputized

Atty. Raul Labay of the SRA's legal department to assist the OSG in this case, thus:

Please be informed that Atty. Raul M. Labay has been authorized to appear in this case, and therefore, should also be furnished with notices of hearings, orders, resolutions, decisions, and other processes. However, as the Solicitor General retains supervision and control of the representation in this case and has to approve withdrawal of the case, non-appeal, or other actions which appear to compromise the interests of the Government, only notices of orders, resolutions, and decisions served on him will bind the party represented.^[8]

The Ruling of the RTC

The RTC held that paragraph G.1 of the Bidding Rules contemplated delay in the arrival of imported sugar, not cancellation of sugar importation. It concluded that the forfeiture provision did not apply to the sugar corporations which merely cancelled the sugar importation. In its 19 December 2006 Decision,^[9] the RTC ruled, thus:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs, ORDERING the defendant Sugar Regulatory Administration to pay plaintiffs the amount of P38,637,000.00 as reimbursement of 25% of the conversion fee they paid in 1999. The claim for legal interests, compensatory damages, exemplary damages, and attorney's fees is hereby DENIED.

SO ORDERED.^[10]

On 5 January 2007, the OSG received its copy of the RTC Decision.^[11] On 24 January 2007, the deputized SRA counsel, Atty. Raul Labay, received his own copy of the Decision and filed a notice of appeal on 7 February 2007.^[12]

The sugar corporations moved to expunge the notice of appeal on the ground that only the OSG, as the principal counsel, can decide whether an appeal should be made. The sugar corporations stressed that a lawyer deputized by the OSG has no authority to decide whether an appeal should be made.

The OSG filed its opposition^[13] to the motion to expunge the notice of appeal. The OSG pointed out that in its notice of appearance,^[14] it authorized SRA counsel Atty. Labay to assist the OSG in this case.

In its 26 June 2007 Order, the RTC granted the motion to expunge the notice of appeal. The OSG moved for reconsideration stressing that the OSG ratified Atty. Labay's filing of a notice of appeal. The RTC, in its 6 August 2007 Order, denied the OSG's motion for reconsideration.

In its 31 August 2007 Order, the RTC granted the sugar corporations' motion for

execution, to wit:

WHEREFORE, premises considered, the plaintiffs' motion for execution is hereby granted. Accordingly, issue a writ of execution for the enforcement of the decision rendered in this case.

SO ORDERED.^[15]

Accordingly, the RTC issued on 6 September 2007 a Writ of Execution and on 12 September 2007 an Amended Writ of Execution.

Aggrieved, the SRA filed in the Court of Appeals a petition for certiorari under Rule 65 seeking to set aside the RTC's 26 June 2007, 6 August 2007, and 31 August 2007 Orders as well as the 6 September 2007 Writ of Execution and the 12 September 2007 Amended Writ of Execution.

The Ruling of the Court of Appeals

The Court of Appeals held that the deputized SRA counsel had authority to file a notice of appeal. The appellate court thus directed the RTC to give due course to the appeal that Atty. Labay timely filed. The decretal part of its 6 November 2007 Decision reads:

WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The Orders dated June 26, 2007, August 6, 2007, and August 31, 2007, as well as the Writ of Execution dated September 6, 2007 and Amended Writ of Execution dated September 12, 2007 issued in Civil Case No. Q-02-46236 of the Regional Trial Court of Quezon City, Branch 77 are hereby all ANNULLED and SET ASIDE. Said court is hereby DIRECTED to GIVE DUE COURSE to the Notice of Appeal dated February 7, 2007 filed by Atty. Raul M. Labay in behalf of petitioner Sugar Regulatory Administration.

No pronouncement as to costs.

SO ORDERED.^[16]

Dissatisfied with the decision of the Court of Appeals, the sugar corporations filed in this Court a petition for review on certiorari.

The Issues

The issues are (1) whether a deputized SRA counsel may file a notice of appeal and (2) whether the sugar corporations are entitled to reimbursement of P38,637,000.00 in conversion fee.

The Court's Ruling

The petition lacks merit.

The sugar corporations contend that the deputized SRA counsel, Atty. Labay, was not authorized to file a notice of appeal; that the OSG, as the principal counsel, had the sole authority to file a notice of appeal; that certiorari may not be interposed as a substitute for the lost remedy of appeal; and that the subject conversion fee amounting to P38,637,000.00 remained as private funds in view of its summary forfeiture and as such, it could not be deemed part of public funds.

The OSG counters that assuming Atty. Labay had no authority to file the notice of appeal, the defect was cured when the OSG subsequently filed its opposition to the sugar corporations' motion to expunge the notice of appeal. The OSG claims that if the denial of the appeal is sustained, the SRA would no longer have a remedy to assail the RTC decision adjudging it liable to reimburse the sugar corporations P38,637,000.00 in conversion fee despite the admitted failure of the sugar corporations to comply with their contractual undertaking to import sugar.

The deputized SRA counsel may file a notice of appeal.

Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987^[17] authorizes the OSG to represent the SRA, a government agency established pursuant to Executive Order No. 18, Series of 1986,^[18] in any litigation, proceeding, investigation, or matter requiring the services of lawyers. It provides:

SEC. 35. Powers and Functions. - The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. (Emphasis supplied)

The OSG is empowered to deputize legal officers of government departments, bureaus, agencies, and offices in cases involving their respective offices. Paragraph 8 of the same section reads:

(8) Deputize legal officers of government departments, bureaus, agencies, and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases. (Emphasis supplied)

In *National Power Corporation v. Vine Development Corporation*,^[19] this Court ruled