

## EN BANC

**[ G.R. No. 162243, December 03, 2009 ]**

**HON. HEHERSON ALVAREZ SUBSTITUTED BY HON. ELISEA G. GOZUN, IN HER CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, PETITIONER, VS. PICOP RESOURCES, INC., RESPONDENT.**

**[G.R. NO. 164516]**

**PICOP RESOURCES, INC., PETITIONER, VS. HON. HEHERSON ALVAREZ SUBSTITUTED BY HON. ELISEA G. GOZUN, IN HER CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES RESPONDENT.**

**[G.R. NO. 171875]**

**THE HON. ANGELO T. REYES (FORMERLY HON. ELISEA G. GOZUN), IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), PETITIONER, VS. PAPER INDUSTRIES CORP. OF THE PHILIPPINES (PICOP), RESPONDENT.**

## RESOLUTION

**CHICO-NAZARIO, J.:**

The cause of action of PICOP Resources, Inc. (PICOP) in its Petition for Mandamus with the trial court is clear: the government is bound by contract, a 1969 Document signed by then President Ferdinand Marcos, to enter into an Integrated Forest Management Agreement (IFMA) with PICOP. Since the remedy of mandamus lies only to compel an officer to perform a *ministerial* duty, and since the 1969 Document itself has a proviso requiring compliance with the laws and the Constitution, the issues in this Motion for Reconsideration are the following: (1) firstly, is the 1969 Document a *contract* enforceable under the Non-Impairment Clause of the Constitution, so as to make the signing of the IFMA a ministerial duty? (2) secondly, did PICOP comply with all the legal and constitutional requirements for the issuance of an IFMA?

To recall, PICOP filed with the Department of Environment and Natural Resources (DENR) an application to have its Timber License Agreement (TLA) No. 43 converted into an IFMA. In the middle of the processing of PICOP's application, however, PICOP refused to attend further meetings with the DENR. Instead, on 2 September 2002, PICOP filed before the Regional Trial Court (RTC) of Quezon City a Petition for Mandamus<sup>[1]</sup> against then DENR Secretary Heherson T. Alvarez. PICOP seeks the issuance of a privileged writ of mandamus to compel the DENR Secretary to sign,

execute and deliver an IFMA to PICOP, as well as to -

[I]ssue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended; b) to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and c) to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, [1969] between the government and PICOP's predecessor-in-interest. x x x.<sup>[2]</sup>

On 11 October 2002, the RTC rendered a Decision granting PICOP's Petition for Mandamus, thus:

WHEREFORE, premises considered, the Petition for Mandamus is hereby GRANTED.

The Respondent DENR Secretary Hon. Heherson Alvarez is hereby ordered:

1. to sign, execute and deliver the IFMA contract and/or documents to PICOP and issue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended;
2. to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and
3. to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, 1999 (sic) between the government and PICOP's predecessor-in-interest (Exhibits "H", "H-1" to "H-5", particularly the following:
  - a) the area coverage of TLA No. 43, which forms part and parcel of the government warranties;
  - b) PICOP tenure over the said area of TLA No. 43 and exclusive right to cut, collect and remove sawtimber and pulpwood for the period ending on April 26, 1977; and said period to be renewable for [an]other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions; and
  - c) The peaceful and adequate enjoyment by PICOP of the area as

described and specified in the aforesaid amended Timber License Agreement No. 43.

The Respondent Secretary Alvarez is likewise ordered to pay petitioner the sum of P10 million a month beginning May 2002 until the conversion of TLA No. 43, as amended, to IFMA is formally effected and the harvesting from the said area is granted.<sup>[3]</sup>

On 25 October 2002, the DENR Secretary filed a Motion for Reconsideration.<sup>[4]</sup> In a 10 February 2003 Order, the RTC denied the DENR Secretary's Motion for Reconsideration and granted PICOP's Motion for the Issuance of Writ of Mandamus and/or Writ of Mandatory Injunction.<sup>[5]</sup> The *fallo* of the 11 October 2002 Decision was practically copied in the 10 February 2003 Order, although there was no mention of the damages imposed against then DENR Secretary Alvarez.<sup>[6]</sup> The DENR Secretary filed a Notice of Appeal<sup>[7]</sup> from the 11 October 2002 Decision and the 10 February 2003 Order.

On 19 February 2004, the Seventh Division of the Court of Appeals affirmed<sup>[8]</sup> the Decision of the RTC, to wit:

WHEREFORE, the appealed Decision is hereby AFFIRMED with modification that the order directing then DENR Secretary Alvarez "to pay petitioner-appellee the sum of P10 million a month beginning May, 2002 until the conversion to IFMA of TLA No. 43, as amended, is formally effected and the harvesting from the said area is granted" is hereby deleted. <sup>[9]</sup>

Challenging the deletion of the damages awarded to it, PICOP filed a Motion for Partial Reconsideration<sup>[10]</sup> of this Decision, which was denied by the Court of Appeals in a 20 July 2004 Resolution.<sup>[11]</sup>

The DENR Secretary and PICOP filed with this Court separate Petitions for Review of the 19 February 2004 Court of Appeals Decision. These Petitions were docketed as G.R. No. 162243 and No. 164516, respectively. These cases were consolidated with G.R. No. 171875, which relates to the lifting of a Writ of Preliminary Injunction enjoining the execution pending appeal of the foregoing Decision.

On 29 November 2006, this Court rendered the assailed Decision on the Consolidated Petitions:

**WHEREFORE**, the Petition in G.R. No. 162243 is **GRANTED**. The Decision of the Court of Appeals insofar as it affirmed the RTC Decision granting the Petition for Mandamus filed by Paper Industries Corp. of the Philippines (PICOP) is hereby **REVERSED** and **SET ASIDE**. The Petition in G.R. No. 164516 seeking the reversal of the same Decision insofar as it nullified the award of damages in favor of PICOP is **DENIED** for lack of merit. The Petition in G.R. No. 171875, assailing the lifting of the

Preliminary Mandatory Injunction in favor of the Secretary of Environment and Natural Resources is **DISMISSED** on the ground of mootness.<sup>[12]</sup>

On 18 January 2006, PICOP filed the instant Motion for Reconsideration, based on the following grounds:

I.

THE HONORABLE COURT ERRED IN HOLDING THAT THE CONTRACT WITH PRESIDENTIAL WARRANTY SIGNED BY THE PRESIDENT OF THE REPUBLIC ON 29 JUNE 1969 ISSUED TO PICOP IS A MERE PERMIT OR LICENSE AND IS NOT A CONTRACT, PROPERTY OR PROPERTY RIGHT PROTECTED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION

II.

THE EVALUATION OF PICOP'S MANAGEMENT OF THE TLA 43 NATURAL FOREST CLEARLY SHOWED SATISFACTORY PERFORMANCE FOR KEEPING THE NATURAL FOREST GENERALLY INTACT AFTER 50 YEARS OF FOREST OPERATIONS. THIS COMPLETES THE REQUIREMENT FOR AUTOMATIC CONVERSION UNDER SECTION 9 OF DAO 99-53.

III.

WITH DUE RESPECT, THE HONORABLE COURT, IN REVERSING THE FINDINGS OF FACTS OF THE TRIAL COURT AND THE COURT OF APPEALS, MISAPPRECIATED THE EVIDENCE, TESTIMONIAL AND DOCUMENTARY, WHEN IT RULED THAT:

i.

PICOP FAILED TO SUBMIT A FIVE-YEAR FOREST PROTECTION PLAN AND A SEVEN-YEAR REFORESTATION PLAN FOR THE YEARS UNDER REVIEW.

ii.

PICOP FAILED TO COMPLY WITH THE PAYMENT OF FOREST CHARGES.

iii.

PICOP DID NOT COMPLY WITH THE REQUIREMENT FOR A CERTIFICATION FROM THE NCIP THAT THE AREA OF TLA 43 DOES NOT OVERLAP WITH ANY ANCESTRAL DOMAIN.

iv.

PICOP FAILED TO HAVE PRIOR CONSULTATION WITH AND APPROVAL FROM THE SANGUNIAN CONCERNED, AS REQUIRED BY SECTION 27 OF THE REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991.

v.

PCIOP FAILED TO SECURE SOCIAL ACCEPTABILITY UNDER PRESIDENTIAL DECREE NO. 1586.

#### IV

THE MOTIVATION OF ALVAREZ IN RECALLING THE CLEARANCE FOR AUTOMATIC CONVERSION HE ISSUED ON 25 OCTOBER 2001 WAS NOT DUE TO ANY SHORTCOMING FROM PICOP BUT DUE TO HIS DETERMINATION TO EXCLUDE 28,125 HECTARES FROM THE CONVERSION AND OTHER THINGS.

On 15 December 2008, on Motion by PICOP, the Third Division of this Court resolved to refer the consolidated cases at bar to the Court *en banc*. On 16 December 2008, this Court sitting *en banc* resolved to accept the said cases and set them for oral arguments. Oral arguments were conducted on 10 February 2009.

#### **PICOP's Cause of Action: Matters PICOP Should Have Proven to Be Entitled to a Writ of Mandamus**

In seeking a writ of mandamus to compel the issuance of an IFMA in its favor, PICOP relied on a 29 July 1969 Document, the so-called Presidential Warranty approved by then President Ferdinand E. Marcos in favor of PICOP's predecessor-in-interest, Bislig Bay Lumber Company, Inc. (BBLCI). PICOP's cause of action is summarized in paragraphs 1.6 and 4.19 of its Petition for Mandamus:

1.6 Respondent Secretary impaired the obligation of contract under the said Warranty and Agreement of 29 July 1969 by refusing to respect the tenure; and its renewal for another twenty five (25) years, of PICOP over the area covered by the said Agreement which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable and disposable lands with an aggregate area of approximately 21,580 hectares, and petitioner's exclusive right to cut, collect and remove sawtimber and pulpwood therein and the peaceful and adequate enjoyment of the said area as described and specified in petitioner's Timber License Agreement (TLA) No. 43 guaranteed by the Government, under the Warranty and Agreement of 29 July 1969.<sup>[13]</sup>

4.19 Respondent is in violation of the Constitution and has impaired the obligation of contract by his refusal to respect: a) the tenurial rights of PICOP over the forest area covered by TLA No. 43, as amended and its