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SECOND DIVISION

[G.R. No. 163101, February 13, 2008]

BENGUET CORPORATION, Petitioner, vs. DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES-MINES ADJUDICATION BOARD and J.G. REALTY AND MINING CORPORATION, Respondents.

D E C I S I O N

VELASCO JR., J.:

The instant petition under Rule 65 of the Rules of Court seeks the annulment of the December 2, 2002 Decision[1] and March 17, 2004 Resolution[2] of the Department of Environment and Natural Resources-Mining Adjudication Board (DENR-MAB) in MAB Case No. 0124-01 (Mines Administrative Case No. R-M-2000-01) entitled *Benguet Corporation* (*Benguet*) *v. J.G. Realty and Mining Corporation* (*J.G. Realty*). The December 2, 2002 Decision upheld the March 19, 2001 Decision[3] of the MAB Panel of Arbitrators (POA) which canceled the Royalty Agreement with Option to Purchase (RAWOP) dated June 1, 1987[4] between Benguet and J.G. Realty, and excluded Benguet from the joint Mineral Production Sharing Agreement (MPSA) application over four mining claims. The March 17, 2004 Resolution denied Benguet's Motion for Reconsideration.

The Facts

On June 1, 1987, Benguet and J.G. Realty entered into a RAWOP, wherein J.G. Realty was acknowledged as the owner of four mining claims respectively named as Bonito-I, Bonito-II, Bonito-III, and Bonito-IV, with a total area of 288.8656 hectares, situated in Barangay Luklukam, Sitio Bagong Bayan, Municipality of Jose Panganiban, Camarines Norte. The parties also executed a Supplemental Agreement[5] dated June 1, 1987. The mining claims were covered by MPSA Application No. APSA-V-0009 jointly filed by J.G. Realty as claimowner and Benguet as operator.

In the RAWOP, Benguet obligated itself to perfect the rights to the mining claims and/or otherwise acquire the mining rights to the mineral claims. Within 24 months from the execution of the RAWOP, Benguet should also cause the examination of the mining claims for the purpose of determining whether or not they are worth developing with reasonable probability of profitable production. Benguet undertook also to furnish J.G. Realty with a report on the examination, within a reasonable time after the completion of the examination. Moreover, also within the examination period, Benguet shall conduct all necessary exploration in accordance with a prepared exploration program. If it chooses to do so and before the expiration of the examination period, Benguet may undertake to develop the mining claims upon written notice to J.G. Realty. Benguet must then place the mining claims into

commercial productive stage within 24 months from the written notice.[6] It is also provided in the RAWOP that if the mining claims were placed in commercial production by Benguet, J.G. Realty should be entitled to a royalty of five percent (5%) of net realizable value, and to royalty for any production done by Benguet whether during the examination or development periods.

Thus, on August 9, 1989, the Executive Vice-President of Benguet, Antonio N. Tachuling, issued a letter informing J.G. Realty of its intention to develop the mining claims. However, on February 9, 1999, J.G. Realty, through its President, Johnny L. Tan, then sent a letter to the President of Benguet informing the latter that it was terminating the RAWOP on the following grounds:

> a. The fact that your company has failed to perform the obligations set forth in the RAWOP, i.e., to undertake development works within 2 years from the execution of the Agreement;
>
> b. Violation of the Contract by allowing high graders to operate on our claim.
>
> c. No stipulation was provided with respect to the term limit of the RAWOP.
>
> d. Non-payment of the royalties thereon as provided in the RAWOP.[7]

In response, Benguet's Manager for Legal Services, Reynaldo P. Mendoza, wrote J.G. Realty a letter dated March 8, 1999,[8] therein alleging that Benguet complied with its obligations under the RAWOP by investing PhP 42.4 million to rehabilitate the mines, and that the commercial operation was hampered by the non-issuance of a Mines Temporary Permit by the Mines and Geosciences Bureau (MGB) which must be considered as *force majeure*, entitling Benguet to an extension of time to prosecute such permit. Benguet further claimed that the high graders mentioned by J.G. Realty were already operating prior to Benguet's taking over of the premises, and that J.G. Realty had the obligation of ejecting such small scale miners. Benguet also alleged that the nature of the mining business made it difficult to specify a time limit for the RAWOP. Benguet then argued that the royalties due to J.G. Realty were in fact in its office and ready to be picked up at any time. It appeared that, previously, the practice by J.G. Realty was to pick-up checks from Benguet representing such royalties. However, starting August 1994, J.G. Realty allegedly refused to collect such checks from Benguet. Thus, Benguet posited that there was no valid ground for the termination of the RAWOP. It also reminded J.G. Realty that it should submit the disagreement to arbitration rather than unilaterally terminating the RAWOP.

On June 7, 2000, J.G. Realty filed a Petition for Declaration of Nullity/Cancellation of the RAWOP[9] with the Legaspi City POA, Region V, docketed as DENR Case No. 2000-01 and entitled *J.G. Realty v. Benguet*.

On March 19, 2001, the POA issued a Decision,[10] dwelling upon the issues of (1) whether the arbitrators had jurisdiction over the case; and (2) whether Benguet violated the RAWOP justifying the unilateral cancellation of the RAWOP by J.G. Realty. The dispositive portion stated:

> WHEREFORE, premises considered, the June 01, 1987 [RAWOP] and its Supplemental Agreement is hereby declared cancelled and without effect. BENGUET is hereby excluded from the joint MPSA Application over the mineral claims denominated as "BONITO-I", "BONITO-II", "BONITO-III" and "BONITO-IV".
>
> SO ORDERED.

Therefrom, Benguet filed a Notice of Appeal[11] with the MAB on April 23, 2001, docketed as Mines Administrative Case No. R-M-2000-01. Thereafter, the MAB issued the assailed December 2, 2002 Decision. Benguet then filed a Motion for Reconsideration of the assailed Decision which was denied in the March 17, 2004 Resolution of the MAB. Hence, Benguet filed the instant petition.

The Issues

> 1. There was serious and palpable error when the Honorable Board failed to rule that the contractual obligation of the parties to arbitrate under the Royalty Agreement is mandatory.
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> 2. The Honorable Board exceeded its jurisdiction when it sustained the cancellation of the Royalty Agreement for alleged breach of contract despite the absence of evidence.
>
> 3. The Questioned Decision of the Honorable Board in cancelling the RAWOP prejudice[d] the substantial rights of Benguet under the contract to the unjust enrichment of JG Realty.[12]

Restated, the issues are: (1) Should the controversy have first been submitted to arbitration before the POA took cognizance of the case?; (2) Was the cancellation of the RAWOP supported by evidence?; and (3) Did the cancellation of the RAWOP amount to unjust enrichment of J.G. Realty at the expense of Benguet?

The Court's Ruling

Before we dwell on the substantive issues, we find that the instant petition can be denied outright as Benguet resorted to an improper remedy.

The last paragraph of Section 79 of Republic Act No. (RA) 7942 or the "Philippine Mining Act of 1995" states, "A petition for review by certiorari and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the [MAB]."

However, this Court has already invalidated such provision in *Carpio v. Sulu Resources Development Corp.*,[13] ruling that a decision of the MAB must first be appealed to the Court of Appeals (CA) under Rule 43 of the Rules of Court, before recourse to this Court may be had. We held, thus:

> To summarize, there are sufficient legal footings authorizing a review of the MAB Decision under Rule 43 of the Rules of Court. *First*, Section 30 of Article VI of the 1987 Constitution, mandates that "[n]o law shall be passed increasing the appellate jurisdiction of the Supreme Court as

provided in this Constitution without its advice and consent." On the other hand, Section 79 of RA No. 7942 provides that decisions of the MAB may be reviewed by this Court on a "petition for review by certiorari." This provision is obviously an expansion of the Court's appellate jurisdiction, an expansion to which this Court has not consented. Indiscriminate enactment of legislation enlarging the appellate jurisdiction of this Court would unnecessarily burden it.

Second, when the Supreme Court, in the exercise of its rule-making power, transfers to the CA pending cases involving a review of a quasi-judicial body's decisions, such transfer relates only to procedure; hence, it does not impair the substantive and vested rights of the parties. The aggrieved party's right to appeal is preserved; what is changed is only the procedure by which the appeal is to be made or decided. The parties still have a remedy and a competent tribunal to grant this remedy.

Third, the Revised Rules of Civil Procedure included Rule 43 to provide a uniform rule on appeals from quasi-judicial agencies. Under the rule, appeals from their judgments and final orders are now required to be brought to the CA on a verified petition for review. A quasi-judicial agency or body has been defined as an organ of government, other than a court or legislature, which affects the rights of private parties through either adjudication or rule-making. MAB falls under this definition; hence, it is no different from the other quasi-judicial bodies enumerated under Rule 43. Besides, the introductory words in Section 1 of Circular No. 1-91 ––"among these agencies are"––indicate that the enumeration is not exclusive or conclusive and acknowledge the existence of other quasi-judicial agencies which, though not expressly listed, should be deemed included therein.

Fourth, the Court realizes that under Batas Pambansa (BP) Blg. 129 as amended by RA No. 7902, factual controversies are usually involved in decisions of quasi-judicial bodies; and the CA, which is likewise tasked to resolve questions of fact, has more elbow room to resolve them. By including questions of fact among the issues that may be raised in an appeal from quasi-judicial agencies to the CA, Section 3 of Revised Administrative Circular No. 1-95 and Section 3 of Rule 43 explicitly expanded the list of such issues.

According to Section 3 of Rule 43, "[a]n appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided whether the appeal involves questions of fact, of law, or mixed questions of fact and law." Hence, appeals from quasi-judicial agencies even only on questions of law may be brought to the CA.

Fifth, the judicial policy of observing the hierarchy of courts dictates that direct resort from administrative agencies to this Court will not be entertained, unless the redress desired cannot be obtained from the appropriate lower tribunals, or unless exceptional and compelling circumstances justify availment of a remedy falling within and calling for the exercise of our primary jurisdiction.[14]

The above principle was reiterated in *Asaphil Construction and Development Corporation v. Tuason, Jr.* (*Asaphil*).[15] However, the *Carpio* ruling was not applied to Asaphil as the petition in the latter case was filed in 1999 or three years before the promulgation of *Carpio* in 2002. Here, the petition was filed on April 28, 2004 when the *Carpio* decision was already applicable, thus Benguet should have filed the appeal with the CA.

Petitioner having failed to properly appeal to the CA under Rule 43, the decision of the MAB has become final and executory. On this ground alone, the instant petition must be denied.

Even if we entertain the petition although Benguet skirted the appeal to the CA via Rule 43, still, the December 2, 2002 Decision and March 17, 2004 Resolution of the DENR-MAB in MAB Case No. 0124-01 should be maintained.

First Issue: The case should have first been brought to voluntary arbitration before the POA

Secs. 11.01 and 11.02 of the RAWOP pertinently provide:

> 11.01 Arbitration
>
> Any disputes, differences or disagreements between BENGUET and the OWNER with reference to anything whatsoever pertaining to this Agreement that cannot be amicably settled by them shall not be cause of any action of any kind whatsoever in any court or administrative agency but shall, upon notice of one party to the other, be referred to a Board of Arbitrators consisting of three (3) members, one to be selected by BENGUET, another to be selected by the OWNER and the third to be selected by the aforementioned two arbitrators so appointed.
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> x x x x
>
> 11.02 Court Action
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> No action shall be instituted in court as to any matter in dispute as hereinabove stated, except to enforce the decision of the majority of the Arbitrators.[16]

Thus, Benguet argues that the POA should have first referred the case to voluntary arbitration before taking cognizance of the case, citing Sec. 2 of RA 876 on persons and matters subject to arbitration.

On the other hand, in denying such argument, the POA ruled that:

> While the parties may establish such stipulations clauses, terms and conditions as they may deem convenient, the same must not be contrary to law and public policy. At a glance, there is nothing wrong with the terms and conditions of the agreement. But to state that an aggrieved party cannot initiate an action without going to arbitration would be tying one's hand even if there is a law which allows him to do so.[17]