

SECOND DIVISION

[G.R. NO. 127925, February 23, 2007]

**ENRIQUE T. GARCIA, PETITIONER, VS. J.G. SUMMIT
PETROCHEMICAL CORPORATION,* RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Petitioner Enrique T. Garcia comes to this Court a third time on a matter involving the establishment of a petrochemical plant in the country.

On the first occasion,^[1] in G.R. No. 88637, *Garcia v. Board of Investments*, he was sustained by this Court that the amended application for registration of the Bataan Petrochemical Corporation (BPC) must be published so that those opposing it might be given an opportunity to be heard, and that access to the amended application and its supporting papers be allowed by the Board of Investments (BOI or the Board), subject to limitations, in line with the constitutionally guaranteed right to information on matters of national concern.

In the subsequent case, G.R. No. 92024, similarly entitled *Garcia v. Board of Investments*,^[2] this Court affirmed that the BOI's approval of the amended certificate of registration of the Luzon Petrochemical Corporation (LPC, formerly the BPC) should be nullified, by virtue of which the original certificate of registration with Bataan as the plant site, and with naphtha as the feedstock, was ordered maintained.

Petitioner now asks this Court to declare whether Presidential Decree (P.D.) Nos. 949^[3] and 1803,^[4] the laws creating a petrochemical complex in Limay, Bataan, prohibit the establishment of a petrochemical facility outside of it.

Respondent J.G. Summit Petrochemical Corporation was registered by the BOI as a new domestic producer of polyethylene and polypropylene resins, for which it was issued on May 24, 1994 BOI Certificate of Registration No. DP-94-001. As a pre-registration condition, it was required to submit to the BOI the exact location of its plant within ninety (90) days from the date of the approval of its application.

By letter of May 11, 1994, respondent informed the BOI that its plant would be located in barangay Alangilanan, Manjuyod, Negros Oriental. On January 29, 1996, however, it advised the Board in writing that its plant site would be located in barangay Simlong, Batangas City, instead of Negros Oriental.

On February 4, 1996, the BOI caused the publication of respondent's amended application for registration in a newspaper of general publication to enable interested persons to file their sworn objections within one (1) week from said

publication. In due time, petitioner and concerned residents of barangay Simlong, Batangas submitted separate letters of opposition.

Petitioner objected to the Batangas plant site, citing as basis the 1990 decision of this Court in G.R. No. 92024,^[5] which annulled the Board's approval of the change of plant site from Bataan to Batangas, and of feedstock from naphtha only to naphtha and/or liquefied petroleum gas (LPG). He argued that by the said decision, this Court declared the Bataan petrochemical zone as the only possible site for petrochemical plants as provided for under P.D. Nos. 949 and 1803.

As agreed upon during the pre-hearing conference on respondent's amended application for registration conducted on March 14, 1996, the parties, except for the residents of barangay Simlong, submitted their respective position papers, replies and rejoinders, after which the matter was submitted for resolution.

On May 24, 1996, the BOI dismissed petitioner's opposition, reconfirmed respondent's registration, and approved the amendment of the latter's certificate, with Batangas as the plant site. It ruled, among other things, that this Court's Resolution of October 24, 1989 in the first *Garcia*^[6] case clarified that the establishment of a petrochemical plant in Batangas does not violate P.D. Nos. 949 and 1803; that in evaluating herein respondent's choice of Batangas as plant site, the Board considered other important factors such as project viability and costs as well as the government's effort towards industrialization and development in the various regions; and that locating a petrochemical project in Batangas would be to the national interest as shown by a 1995 report of the Stanford Research Institute (SRI), which was commissioned by the BOI to undertake a study of the petrochemical industry in the country.

With regard to the BOI's purported choice of Bataan as a petrochemical plant site, the Board held that the preference of said site which was previously expressed by former BOI vice-chairperson and managing head Tomas I. Alcantara about 10 years ago should not be considered as its present stand especially in light of new developments and conditions.

For failure to file a timely report of its intended change of plant site, which delay was considered a violation of the Rules and Regulations to Implement Executive Order No. 226^[7] or the Omnibus Investments Code, the BOI fined respondent.

Without moving for a reconsideration of the May 24, 1996 BOI decision, petitioner filed a petition for review before the Court of Appeals (CA or the appellate court), assailing the Board's alleged reliance on the report of the SRI that "the country can actually accommodate at least four (4) naphtha cracker plants" while failing to mention the report's qualification that the second naphtha plant would be viable only in the year 2005. And he decried the failure to make known to the parties the SRI report before or during the hearings, he adding that during the 15-day reglementary period for the filing of a motion for reconsideration, he had tried to secure a copy of the report but to no avail.

In its Comment^[8] to the petition, respondent challenged petitioner's standing to file the case, absent any constitutional question therein. At any rate, it contended that the decision in the second *Garcia*^[9] case did not rule that petrochemical plants must

be established in Bataan exclusively.

On its part, the BOI debunked petitioner's claim that he was not aware of the SRI report, having himself actively participated in one of the meetings convened under the auspices of the ad hoc committee on petrochemicals in which the report was discussed.^[10] It likewise stated that petitioner could have easily obtained an abstract of the pertinent portions of the SRI report before the lapse of the time to file a motion for reconsideration of its decision had he or his counsel been minded to secure the same from the BOI Records Division, the Legal Department, or the Basic Industries Department.

By Decision of January 21, 1997, the CA dismissed the petition for lack of merit, thereby affirming the BOI decision.

In affirming the BOI decision, the appellate court held it was "replete with details on why respondent should be allowed to build its naphtha cracker facility in Batangas City."^[11]

As regards petitioner's contention that no petrochemical plant should be allowed outside of the Bataan petrochemical complex, the appellate court noted that even this Court, acting on petitioner's motion for reconsideration in G.R. No. 88637, "then ruled against the exclusivity of Limay, Bataan, as the site of the only petrochemical plant in the country."^[12]

A copy of the SRI Report having already been sent and received by petitioner on July 5, 1996, the CA no longer passed upon his claim that he was not furnished any such copy.

Hence, this Petition.

As a preliminary matter, this Court notes that the instant Petition is brought not only as an appeal of the January 21, 1997 CA Decision, but also as a certiorari petition against the May 24, 1996 Decision of the BOI which, under the Rules, must be filed not later than sixty (60) days from notice (on May 29, 1996^[13]) of the Board's judgment^[14] or until July 29, 1996. Having been filed out of time on February 27, 1997, the certiorari petition against the BOI must be dismissed.

Respecting petitioner's opposition to its amended application for the establishment of its petrochemical plant in Batangas, respondent maintains that petitioner does not stand to suffer any injury from the approval of the application, hence, he is not a real party in interest;^[15] and neither does petitioner have standing to question its amended application because he is not challenging the same on the ground that it violates the Constitution.^[16]

Petitioner submits, on the other hand, that he has a legal interest in determining the legality of locating respondent's plant site in Batangas in light of P.D. Nos. 949 and 1803. He adds that this Court has recognized his standing in the two previous *Garcia* cases, which are similar in nature to the present petition. Alternatively, he claims that respondent is itself raising a constitutional issue, *i.e.*, that it would be deprived of its right to use its property in Batangas should it be compelled to locate

its plant in Bataan.

Petitioner's legal interest to oppose the amended application for registration of the LPC was recognized in G.R. No. 88637 amidst the circumstances surrounding that case. Thus this Court declared:

There is no merit in the public respondents' [referring to the BOI and Department of Trade and Industry] contention that the petitioner has 'no legal interest' in the matter of the transfer of the BPC petrochemical plant from the province of Bataan to the province of Batangas. **The provision in the Investments Code requiring publication of the investor's application for registration in the BOI is implicit recognition that the proposed investment or new industry is a matter of public concern on which the public has a right to be heard.** And, when the BOI approved BPC's application to establish its petrochemical plant in Limay, Bataan, the inhabitants of that province, particularly the affected community in Limay, and **the petitioner herein as the duly elected represent[tative] of the Second District of Bataan acquired an interest in the project which they have a right to protect. Their interest in the establishment of the petrochemical plant in their midst is actual, real, and vital because it will affect not only their economic life but even the air they will breathe.**^[17] (Emphasis supplied)

It can not be gainsaid that the provision in the Omnibus Investment Code of 1987 requiring publication of the investor's application for registration remains to be a source of petitioner's legal interest to oppose herein respondent's amended application.

In G.R. No. 88637, this Court ruled that an amended application was "in effect a new application" which must be published "so that whoever may have any objection to the transfer may be heard."^[18]

Article 7, subparagraph 3 of the Omnibus Investments Code, as amended, provides that among the powers and duties of the BOI is to "[p]rocess and approve applications for registration with the Board, imposing such terms and conditions as it may deem necessary to promote the objectives of this Code, including . . . payment of application, registration, *publication* and other necessary fees . . ." Consonant with this provision, Section 4 of Rule III of the Rules Implementing the Code provides:

SECTION 4. Publication of Application - Upon the official acceptance of the application, notice thereof shall be published once in a newspaper of general circulation or in any manner that the Board may require, at applicant's expense, in a format indicating the name of the applicant, the area of investment, the capacity applied for and the plant site, if any.

At the time respondent's amended application was filed, petitioner, as representative of Bataan, had as much interest as in the previous cases to ensure the viability of the petrochemical complex in Bataan. Certainly, the successful operation of the Bataan petrochemical complex would mean tremendous economic gains and employment opportunities for the province. Conversely, its non-viability and failure would spell economic hardships for the people there. For this reason, petitioner's

pleadings have invariably stressed that any petrochemical plant outside of Bataan would make the Philippine National Oil Corporation (PNOC) project less viable, because the market could not absorb the output of more than one petrochemical complex.

That the petrochemical industry has been declared a preferred area of investment and conferred a pioneer status in the country's 1994-1996 Investments Priorities Plan (IPP)^[19] underscores its importance to the economy. As this Court aptly observed in G.R. No. 92024, "[a] petrochemical industry is not an ordinary investment opportunity" and is "essential to the national interest . . ."^[20]

This Court has brushed aside technicalities of procedure and relaxed the rules of standing in cases of transcendental significance, especially where the issue or issues involved have important ramifications to the nation.^[21] Thus, granting that petitioner has no right to oppose respondent's amended application, the transcendental importance of the case and the significance of the issues raised herein are considered sufficient to clothe him with legal interest.

The alleged constitutional question raised by respondent, meanwhile, need not detain this Court any longer considering that it is not central to the resolution of the main issue. Courts will not touch the issue of constitutionality unless it is truly unavoidable to settle the controversy.^[22]

And on to the crux of the present controversy, which is the legality of the establishment of respondent's petrochemical plant in barangay Simlong, Batangas City.

In the main, petitioner posits that the CA erred in sustaining the BOI Decision, because the laws creating the 576-hectare Bataan petrochemical zone in Limay, Bataan prohibit the establishment of respondent's petrochemical plant outside of the zone.^[23] He specifically assails the CA decision for affirming the BOI's rulings that (1) the country can accommodate four naphtha cracker facilities by 1996, (2) the Board's refusal to grant him access to the SRI report did not violate the constitutional guarantee of due process and access to information on matters of public concern, and (3) the national interest would be served by allowing respondent to locate its plant in Batangas, instead of Bataan.^[24]

The question of whether P.D. Nos. 949 and 1803 had intended the petrochemical complex in Limay, Bataan to be the exclusive site of any and all petrochemical plants has previously been placed squarely before this Court in G.R. No. 88637. The question was distinctly set forth by petitioner in his certiorari petition^[25] when he argued that the BOI and the Department of Trade and Industry gravely abused their discretion in approving the BPC's amended certificate of registration transferring the plant site from Bataan to Batangas and changing the feedstock from naphtha only to naphtha and/or LPG. And he reiterated his argument in his motion for partial reconsideration of this Court's September 7, 1989 Decision amid the alleged omission to rule on it in the first instance. By Resolution of October 24, 1989, this Court declared:

The petitioner's motion for partial reconsideration asks this Court to rule on his contention that the transfer of the Bataan (now Luzon)