538 Phil. 587

FIRST DIVISION

[G. R. NO. 129820, November 30, 2006]

PNOC-ENERGY DEVELOPMENT CORPORATION (PNOC-EDC), PETITIONER, VS. EMILIANO G. VENERACION, JR., RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

This is a Petition for Review on *Certiorari,* under Rule 45 of the Rules of Court, seeking to set aside the Order, dated 21 May 1997 issued by the Mines Adjudication Board (MAB) of the Department of Environmental and Natural Resources (DENR),[1] declaring that the respondent Emiliano Veneracion has a preferential right over the contested Block 159.

This case involves the conflicting claims of the petitioner Philippine National Oil Corporation-Energy Development Corporation and the respondent over the mining rights over Block 159 of the Malangas Coal Reservation, Alicia, Zamboanga del Sur.

On 31 January 1989, respondent applied with the Mines and Geo-Sciences Development Services, DENR, Region IX, Zamboanga City for a Declaration of Location (DOL) over Block 159 of the Malangas Coal Reservation, situated at Barangays Payongan and Kauswagan, Alicia, Zamboanga del Sur. On 18 May 1989, the Office of the Regional Executive Director (RED) of the DENR informed the respondent that his DOL cannot be registered since Block 159 was part of the Malangas Coal Reservation, as provided under Proclamation No. 284, issued by the President on 19 July 1938.[2] With the endorsement of the Office of Energy Affairs (OEA) and the DENR Secretary, the respondent petitioned the Office of the President for the withdrawal of Block 159 from the coal reservation and its conversion into a mineral reservation.[3]

The petitioner applied for a mineral prospecting permit over Block 159 (and Blocks 120 and 160) with the OEA, which the latter granted on 4 September 1989. The Malangas Coal Reservation was, at that time, under the administration of the OEA.[4] When it had initially applied for a mineral prospecting permit over lands within the Malangas Coal Reservation, the OEA advised it to obtain the permission of the Bureau of Mines and Geo-Sciences (BMGS).[5]

On 18 October 1991, petitioner submitted to the DENR an application/proposal for a Mineral Production Sharing Agreement (MPSA) over Blocks 120, 159 and 160 of the Malangas Coal Reservation.[6]

On 21 February 1992, the Officer-In-Charge Regional Technical Director Dario R. Miñoza of the Mines and Geo-Sciences Developmental Service (MGDS) advised the petitioner to amend its application for MPSA by excluding Block 159 as the same is

covered by the application of the respondent.[7] Nevertheless, the petitioner did not exclude Block 159 from its MPSA. Records also show that it had not applied for nor was it able to obtain an Exploration Permit from the BMGS over Block 159.

On 13 April 1992, Presidential Proclamation No. 890 was issued, which effectively excluded Block 159 from the operation of Proclamation No. 284, and declared Block No. 159 as government mineral reservation open for disposition to qualified mining applicants, pursuant to Executive Order No. 279.[8]

On 26 May 1992, petitioner's application for MPSA covering Coal Block Nos. 120, 159 and 160 was accepted for filing.[9] Respondent immediately filed, on 28 May 1992, a protest to the petitioner's inclusion of Block 159 in its application for MPSA before the RED of the DENR Office in Zamboanga City.[10]

After the parties were heard, the RED, in an Order, dated 12 April 1993, ruled in favor of the respondent and ordered the petitioner to amend its MPSA by excluding therefrom Block 159.[11] On 18 May 1993, petitioner filed a Motion for Reconsideration of the Order dated 12 April 1993,[12] which the RED denied in an Order dated 5 July 1993.[13]

On 30 July 1993, petitioner filed an appeal with the DENR Secretary questioning the Orders issued by the RED.[14]

While the case was pending, respondent applied for a MPSA. On 31 July 1992, he paid the processing fee for a MPSA covering Block 159 and was able to comply with all other requirements of the MPSA application.[15]

On 4 October 1994, the Office of the Secretary dismissed the appeal on the ground that petitioner's right to appeal had already prescribed.[16] Section 50 of Presidential Decree No. 463 provides therefore for a five-day reglementary period from the receipt of the order or decision of the Director.[17] Petitioner received its copy of the assailed Order dated 12 April 1993 on 7 May 1993, but filed its Motion for Reconsideration only on 18 May 1993, or eleven days after its receipt thereof. Thereafter, petitioner received a copy of the Order dated 5 July 1993 on 16 July 1993, but filed its appeal only on 30 July 1993 or nine days after the allowable period to appeal.

On 25 October 1994, petitioner, through a letter addressed to the DENR Secretary, sought the reconsideration of the Decision, dated 4 October 1994.[18] In a Resolution, dated 21 December 1994, the then DENR Secretary Angel C. Alcala reversed the Decision, dated 4 October 1994, and gave due course to the MPSA of the petitioner.[19]

On 1 February 1995, respondent filed a Motion for Reconsideration of the Resolution, dated 21 December 1994.[20] The now DENR Secretary Victor O. Ramos issued an Order, dated 5 August 1996, reversing the Resolution, dated 21 December 1994 and reinstating the Decision, dated 4 October 1994. It ruled that the Orders issued by the RED have already become final and executory when the petitioner failed to file its appeal five days after it had received the Orders. As a result, the

DENR Secretary no longer had the jurisdiction to issue the assailed Resolution, dated 21 December 1994. It added that after looking into the merits of the case, the Orders of the RED were in accordance with the evidence on record and the pertinent laws on the matter.[21]

On 20 August 1996, petitioner filed a Motion for Reconsideration of the Order, dated 5 August 1996. On 21 May 1997, the MAB resolved the motion in favor of the respondent and affirmed the assailed Order, dated 5 August 1996.[22] It took cognizance of the appeal filed by petitioner, in accordance with Section 78 of Republic Act No 7942, otherwise known as The Philippine Mining Act of 1995.[23] The MAB ruled that the petitioner filed its appeal beyond the five-day prescriptive period provided under Presidential Decree No. 463, which was then the governing law on the matter.

The MAB also decreed that the respondent had preferential mining rights over Block 159. It ruled that the proper procedure with respect to the mining rights application over Block 159 when it was still part of the Malangas Coal Reservation required the following: (1) application for prospecting permit with the OEA or other office having jurisdiction over said reservation; (2) application for exploration permit; (3) application for exclusion of the land from such reservation; (4) Presidential Declaration on exclusion as recommended by the Secretary; and (5) application for Lease thereof with priority given to holder of exploration Permit.

The MAB noted that petitioner did not file for an exploration permit nor applied for the exclusion of Block 159. Moreover, petitioner filed a MPSA on 18 October 1991, or almost six (6) months prior to the issuance of Proclamation No. 890 excluding Block 159 from the Malangas Coal Reservation and allowing its disposition. Thus, the application for a MPSA over Block 159, while it was still part of a government reservation other than a mineral reservation, was erroneous and improper and could not have been legally accepted. And, since the records show that only one MPSA was filed after the issuance of Proclamation 890 – that of the respondent's, the preferential right over Block 159 was acquired by the respondent. The MAB, nevertheless, pointed out that the said preferential right does not necessarily lead to the granting of the respondent's MPSA, but merely consists of the right to have his application evaluated and the prohibition against accepting other mining applications over Block 159 pending the processing of his MPSA.

Hence, this Petition for Review on *Certiorari.*

The correct mode of appeal would have been to file a petition for review under Rule 43, before the Court of Appeals. Petitioner's reliance on Section 79 of the Philippine Mining Act of 1995 is misplaced.[24] Republic Act No. 7902 expanded the appellate jurisdiction of the Court of Appeals to include:

> Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions x x x except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and

> of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

With the enactment of Republic Act No. 7902, this Court issued Circular No. 1-95 dated 16 May 1995 governing appeals from all quasi-judicial bodies to the Court of Appeals by petition for review, regardless of the nature of the question raised. Said circular was incorporated in Rule 43 of the Rules of Civil Procedure.[25] In addition, this Court held in a line of cases that appeals from judgments and final orders of quasi-judicial bodies are required to be brought to the Court of Appeals, under the requirements and conditions set forth in Rule 43 of the Rules of Civil Procedure.[26] Nevertheless, this Court has taken into account the fact that these cases were promulgated after the petitioner filed this appeal on 4 August 1997, and decided to take cognizance of the present case.

There are two main issues that need to be resolved in this case: (1) whether or not the petitioner has already lost its right to appeal the RED's Order dated 12 April 1993; and (2) whether or not the petitioner acquired a preferential right on mining rights over Block 159.

This Court finds no merit in this Petition.

Petitioner alleges that Section 61 of Commonwealth Act No. 137[27] governs the petitioner's appeal of the Orders, dated 12 April 1993 and 5 July 1993, and not Section 50 of Presidential Decree No. 463. He further adds that even if Presidential Decree No. 463 was applicable in this case, his appeal should have been allowed on grounds of substantial justice.

When Presidential Decree No. 463 was enacted in 1974, Section 50 of the law had clearly intended to repeal the corresponding provision found in Section 61 of Commonwealth Act No. 137, and to shorten the 30-day period within which to file an appeal from the Decision of the Director of Mines and Geo-Sciences to five days. Section 61 of Commonwealth Act No. 137, as amended, provides that:

> SEC. 61. - Conflicts and disputes arising out of mining locations shall be submitted to the Director of Mines for decision: Provided, That the decision or order of the Director of Mines may be appealed to the Secretary of Agriculture and Natural Resources within thirty days from receipt of such decision or order. In case any one of the parties should disagree from the decision or order of the Secretary of Agriculture and Natural Resources, the matter may be taken to the Court of Appeals or the Supreme Court, as the case may be, within thirty days from the receipt of such decision or order, otherwise the said decision or order shall be final and binding upon the parties concerned. x x x.

Section 50 of Presidential Decree No. 463 reads:

> Sec. 50. Appeals. - Any party not satisfied with the decision or order of the Director, may, within five (5) days from receipt thereof, appeal to the Minister [now Secretary]. Decisions of the Minister [now Secretary] are likewise appealable within five (5) days from receipt thereof by the affected party to the President whose decision shall be final and executory.

Petitioner's insistence that the 30-day reglementary period provided by Section 61 of Commonwealth Act No. 137, as amended, applies, cannot be sustained by this Court. By providing a five-day period within which to file an appeal on the decisions of the Director of Mines and Geo-Sciences, Presidential Decree No. 463 unquestionably repealed Section 61 of Commonwealth Act No. 137.

In *Pearson v. Intermediate Appellate Court,*[28] this Court extensively discussed the development of the law on the adjudication of mining claims, as seen in the provisions of Commonwealth Act No. 137, Presidential Decree No. 463, until its present state under Republic Act No. 7942. It was noted that there was a clear effort to modernize the system of administration and disposition of mineral lands and that the procedure of adjudicating mining claims had become increasingly administrative in character.

> [W]ith the issuance of Presidential Decree Nos. 99-A, 309, and 463, the procedure of adjudicating conflicting mining claims has been made completely administrative in character, with the President as the final appeal authority. Section 50 of P.D. 463, providing for a modernized system of administration and disposition of mineral lands, to promote and encourage the development and exploitation thereof, mandates on the matter of "Protests, Adverse Claims and Appeals," the following procedure:
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> > **Appeals — Any party not satisfied with the decision or order of the Director may, within five (5) days from receipt thereof appeal, to the Secretary. Decisions of the Secretary are likewise appealable within five (5) days from receipt thereof by the affected party to the President of the Philippines whose decision shall be final and executory.**
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> It should be noted that before its amendment, the Mining Law (C.A. No. 137) required that after the filing of adverse claim with the Bureau of Mines, the adverse claimant had to go to a court of competent jurisdiction for the settlement of the claim. With the amendment seeking to expedite the resolution of mining conflicts, the Director of Mines became the mandatory adjudicator of adverse claims, instead of the Court of First instance. Thus, it cannot escape notice that under Section 61 of the Mining Law, as amended by Republic Act Nos. 746 and 4388, appeals from the decision of the Secretary of Agriculture and Natural Resources (then Minister of Natural Resources) on conflicts and disputes arising out of mining locations may be made to the Court of Appeals or the Supreme Court as the case may be. In contrast, under the decrees issued at the onset of martial law, it has been expressly provided that the decisions of the same Secretary in mining cases are appealable to the President of the Philippines under Section 50 of the Mineral Resources Development Decree of 1974 (P.D. No. 463) and Section 7 of P.D. No. 1281 in relation to P.D. No. 309.
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> The trend at present is to make the adjudication of mining cases a purely administrative matter. This does not mean that administrative bodies have complete rein over mining disputes. The very terms of Section 73 of