

FIRST DIVISION

[G.R. NO. 162243, November 29, 2006]

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.

D E C I S I O N

CHICO-NAZARIO, J.:

On the line are three consolidated Petitions, all arising from the 11 October 2002 Quezon City Regional Trial Court (RTC) Decision^[1] granting the Petition for Mandamus filed by Paper Industries Corporation of the Philippines (PICOP). The Court of Appeals affirmed the 11 October 2002 RTC Decision, with modification, in a 19 February 2004 Decision.^[2]

In G.R. No. 162243, then Department of Environment and Natural Resources (DENR) Secretary Heherson T. Alvarez, who was later successively substituted by subsequent DENR Secretaries Elisea G. Gozun and Angelo T. Reyes, assails the 19 February 2004 Decision insofar as it granted the Petition for Mandamus. In G.R. No. 164516, PICOP assails the same Decision insofar as it deleted the imposition of damages against then Secretary Alvarez. Secretary Reyes filed a third Petition docketed as G.R. No. 171875, assailing the 16 December 2004 Amended Decision^[3] of the Court of Appeals lifting the Writ of Preliminary Injunction that enjoined the enforcement of the 11 October 2002 Decision and 10 February 2003 Orders of the RTC.

FACTS

The facts, culled from the records of the three consolidated petitions, are as follows:

On 24 May 1952, PICOP's predecessor, Bislig Bay Lumber Co., Inc. (BBLCI) was granted Timber License Agreement (TLA) No. 43.^[4] The TLA was amended on 26 April 1953 and 4 March 1959. As amended, TLA No. 43 covers an area of 75,545 hectares in Surigao del Sur, Agusan del Sur, Compostela Valley, and Davao Oriental.

Allegedly sometime in 1969, the late President Ferdinand E. Marcos issued a presidential warranty to BBLCI, confirming that TLA No. 43 "definitely establishes the boundary lines of [BBLCI's] concession area."^[5]

TLA No. 43, as amended, expired on 26 April 1977. It was renewed on 7 October 1977 for another 25 years to "terminate on April 25, 2002."^[6]

On 23 December 1999, then DENR Secretary Antonio H. Cerilles promulgated DENR Administrative Order (DAO) No. 99-53 which had for its subject, the "Regulations Governing the Integrated Forest Management Program (IFMP)."^[7]

In a 28 August 2000 letter to the Community Environment and Natural Resources Office (CENRO), DENR-Region XIII-D4, Bislig, Surigao del Sur, PICOP signified its intention to convert its TLA No. 43 into an Integrated Forest Management Agreement (IFMA) invoking the provisions of Section 9, Chapter III of DAO No. 99-53.^[8]

Acting on the said letter, Forester III Trifino M. Peregrino, In-Charge, Office of the CENRO, wrote a letter dated 1 September 2000 to PICOP's resident manager in Tabon, Bislig, Surigao del Sur, informing PICOP "that we will consider said letter as an advance notice considering that it is yet premature to act on your request since we are yet in CY 2000."^[9]

In a 24 January 2001 letter, Neolito Frondoza, Group Manager, Forest Operations Manager of PICOP, requested for a favorable indorsement of their letter of intent from the CENRO of the DENR, Region XIII-D4 in Bislig City. This was followed up by another letter dated 25 January 2001 of Wilfredo D. Fuentes, Vice President and Resident Manager of PICOP, to the Regional Executive Director (RED), DENR, Caraga Region XIII in Ambago, Butuan City, likewise, requesting for a favorable indorsement of their letter of intent to the DENR Secretary.^[10]

The Officer-In-Charge (OIC), Regional Executive Director Constantino A. Paye, Jr., in a 6 March 2001 Memorandum, forwarded PICOP's letter of intent dated 28 August 2000 to the DENR Secretary informing the latter that the DENR Caraga Region XIII in Ambago, Butuan City, had created a team tasked to conduct a performance evaluation on PICOP on the said TLA pursuant to DAO No. 99-53.^[11]

Subsequently, Elias R. Seraspi, Jr., RED, DENR, Caraga Region XIII in Ambago, Butuan City, submitted a 31 July 2001 Memorandum to the DENR Secretary on the performance evaluation of PICOP on its TLA No. 43. Paragraph 11 of the same Memorandum reads:

Hence, it is imperative to chart a good forest policy direction for the management, development and protection of TLA No. 43 after it expires

on April 26, 2002 for the purpose of sustainable forest management of the area in support of national development. With this vision, the proper evaluation to consider the request for automatic conversion of TLA No. 43 to IFMA pursuant to Section 9, DENR A.O. No. 99-53, upon its expiration on April 26, 2002 is hereby recommended.^[12]

Attached to said Memorandum, *inter alia*, were the 11 July 2001 Report and 27 July 2001 Supplemental Report of the Performance Evaluation Team created to conduct such performance evaluation indicating violations by PICOP of existing DENR Rules and Regulations governing TLA No. 43, such as the non-submission of its five-year forest protection plan and seven-year reforestation plan as required by the DENR rules and regulations. The said 31 July 2001 Memorandum was forwarded to the Forest Management Bureau (FMB) for appropriate action and recommendation.^[13]

Sometime in September 2001, the DENR Secretary was furnished a copy of Forest Management Specialist II (FMS II) Teofila L. Orlanes' 24 September 2001 Memorandum concerning alleged unpaid and overdue forest charges of respondent on TLA No. 43. Attached thereto was a 19 September 2001 Memorandum of Amelia D. Arayan, Bill Collector of the DENR R13-14, Bislig City, likewise indicating purported unpaid and overdue forest charges by PICOP on its TLA No. 43.^[14]

Said Memorandum was referred to FMB Director Romeo T. Acosta, who directed FMB Senior Forest Management Specialist (SFMS) Ignacio Evangelista to proceed to Region 13 to gather forestry-related data and validate the report contained in the respective Memoranda of Orlanes and Arayan.^[15] SFMS Evangelista found that the 8 May 2001 to 7 July 2001 forest charges adverted to in the Orlanes and Arayan Memoranda was belatedly filed. He also found that PICOP had not paid its regular forest charges covering the period of 22 September 2001 to 26 April 2002 in the total amount of P15,056,054.05.^[16] Moreso, he discovered that from 1996 to 30 August 2002, PICOP was late in paying some of its forest charges in 1996, and was consistently late in paying all its forestry charges from 1997 onwards.^[17]

The overdue and unpaid forest charges (including penalties, interests and surcharges) of PICOP total P150,169,485.02. Its silvicultural fees amount to P2,366,901.00 from 1996 up to 30 August 2002. In all, PICOP has an outstanding and overdue total obligation on its forest charges in the amount of P167,592,440.90 as of 30 August 2002.^[18]

Thus, FMB Director Acosta submitted a 5 October 2001 Memorandum to the DENR Secretary concerning PICOP's application for conversion of its TLA No. 43 into an IFMA, *viz*:

RECOMMENDATION

The conversion of the TLA into IFMA is primarily aimed at sustaining the raw materials for the continuous operation of the integrated wood processing plant of the company. However, the very complex issues presented cannot just be ignored and have to be fully addressed to before further appropriate action is taken on the application for conversion. In the absence of categorical comments and recommendation

of the regional office to resolve the issue, it is recommended that a transition team composed of the following be created: x x x.^[19]

In lieu of a transition team, the DENR Secretary constituted a negotiating team by virtue of Special Order No. 2001-698 dated 23 October 2001 composed of Undersecretary Ramon J.P. Paje as chairman, with the following as members: Undersecretary Gregorio V. Cabantac and FMB Assistant Director Neria A. Andin. The team was authorized to negotiate for such terms and conditions as are advantageous to the Government.^[20]

The DENR Secretary sent a 25 October 2001 letter to PICOP, through its president, requesting him to designate its representative/s to discuss with the DENR negotiating team "the conditions and details of the said IFMA including the production sharing arrangement between PICOP and the government."^[21]

Since PICOP failed to send a representative, and considering that TLA No. 43 was about to expire, DENR Undersecretary Paje called for a meeting on 21 March 2002. It was only then, or almost five months from the receipt of the 25 October 2001 letter from the DENR Secretary, that PICOP sent its representatives to the DENR.^[22]

On 9 April 2002, the DENR Negotiating Team issued Resolution No. 1, series of 2002, creating a Technical Working Committee (TWC) to provide technical assistance to the negotiating team composed of representatives from both DENR and PICOP.^[23] On 10 April 2002, the members of the TWC met and discussed the findings of the Performance Evaluation Team that PICOP has neither submitted its Five-Year Forest Protection Plan nor presented its Seven-Year Reforestation Plan, both being required by DENR rules and regulations. In the same meeting, PICOP agreed to secure and submit a clearance from the National Commission on Indigenous Peoples (NCIP) as required by Section 59 of the Indigenous Peoples' Rights Act (IPRA).^[24]

On 15 April 2002, another TWC meeting was conducted, wherein the proposed validation of PICOP's overall performance "as part of the evaluation process for the conversion of the TLA into an IFMA" was discussed with PICOP representatives being given copies of the performance evaluation of PICOP on its TLA No. 43.^[25] PICOP's representatives were subsequently requested to prepare a map showing by categories the area planted with trees in compliance with PICOP's reforestation requirements.^[26]

In the next TWC meeting on 19 April 2002, PICOP's representatives were asked of their compliance with their agreement during the 10 April 2002 meeting that they should have submitted a list of stockholders on 15 April 2002. The PICOP representatives did not submit such list and instead inquired on the TWC's interpretation of the 25 October 2001 letter of the DENR Secretary to PICOP, which provides in full, thus:

25 October 2001

MR. TEODORO G. BERNARDINO
President
PICOP Resources Incorporated
2nd Flr, Moredel Building

2280 Pasong Tamo Extension
Makati City

Dear Mr. Bernardino:

Consistent with our attached Memorandum to Her Excellency, the President, dated 17 October 2001 and in response to your Letter of Intent dated 25 February 2001, we wish to inform you that, pursuant to DENR Administrative Order No. 99-53, we have cleared the conversion of PICOP's Timber License Agreement (TLA) No. 43 to Integrated Forest Management Agreement (IFMA) effective from the expiration of said TLA on April 26, 2002.

In this regard, you are hereby requested to designate PICOP's representative(s) to discuss with the DENR Team, created under Special Order No. 2001-638, the conditions and details of the said IFMA, including the production sharing agreement between PICOP and the government.

For your information and guidance.

Very truly yours,

(sgd)

HEHERSON T. ALVAREZ

Secretary^[27]

It was the position of the DENR members of the TWC that PICOP's application for the IFMA conversion should undergo the process as provided in DAO No. 99-53. PICOP representative Atty. Caingat, however, claimed that "the TLA has been converted" and suggested the suspension of the meeting as they would submit a written position on the matter the following day.^[28]

On 22 April 2002, the TWC members of the DENR received a letter from PICOP dated 18 April 2002 insisting that "the conversion of TLA No. 43 into IFMA has already been completed" and indicated that they had "no choice except to decline participation in the ongoing meeting and bring our issues to the proper public and legal forum."^[29]

On 24 April 2002, the TWC submitted a Memorandum dated 22 April 2002 to the Undersecretary for Operations and Undersecretary for Legal, Lands and International Affairs of the DENR, enumerating the salient points taken up during the TWC meetings. This includes the performance evaluation report of the DENR Regional Office covering the period from 24 June 1999 to 23 June 2000. The report states that PICOP has not submitted its 5-Year Forest Protection Plan and 7-Year Reforestation Plan; that it has unpaid and overdue forest charges; and its failure to secure a clearance from the Regional Office of the NCIP considering the presence of Indigenous Peoples (IPs) in the area and Certificate of Ancestral Domain Claims issued within the area.

The DENR Secretary instructed the RED, Caraga Region, to coordinate with PICOP