

## THIRD DIVISION

[ G.R. No. 144302, May 22, 2004 ]

### PHILIPPINE GEOTHERMAL INC., PETITIONER, VS. NATIONAL POWER CORPORATION, RESPONDENT.

#### D E C I S I O N

#### CARPIO MORALES, J.:

Before this Court is a petition for review on certiorari seeking to set aside and nullify the March 24, 2000 Decision and August 2, 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 43853, "*Philippine Geothermal Incorporated v. Hon. Teodoro P. Regino as Presiding Judge of the Regional Trial Court of Quezon City, Branch 84, and the National Power Corp.*"

The antecedent facts of the case are as follows:

On September 10, 1971, the National Power Corporation (NPC) entered into a service contract<sup>[1]</sup> with Philippine Geothermal, Inc. (PGI), a corporation organized and existing under the laws of California, United States of America, for the exploration and exploitation of geothermal resources covering the Tiwi and Mak-Ban Geothermal Fields. Section 3.1 of said contract provides:

#### Section 3 – Term

3.1 The term of this contract shall be twenty-five (25) years renewable for another twenty-five (25) years upon the option of PGI under the same terms and conditions set forth herein.

Albeit the service contract was to expire in 1996, the negotiations for its renewal started as early as 1994.

NPC, however, was doubtful whether a renewal would be constitutional in light of Section 2, Article XII of the 1987 Constitution reading:

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the state. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the state.** The state may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty *per centum* of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five

years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

x x x (Emphasis supplied)

As the service contract contained an arbitral clause, PGI filed on July 8, 1996 a request for arbitration<sup>[2]</sup> with the International Court of Arbitration (ICA) of the International Chamber of Commerce (ICC).

On August 21, 1996, the NPC filed before the Regional Trial Court (RTC) of Quezon City a petition for declaratory relief<sup>[3]</sup> against PGI praying for the determination of the constitutionality of Section 3 of the service contract, specifically the above-quoted provision thereof on the renewal of the contract at the option of PGI.

On October 2, 1996, PGI filed a motion to dismiss<sup>[4]</sup> the petition for declaratory relief alleging, among other things, that the trial court has no jurisdiction over it in light of the pending arbitration proceedings it instituted.

By Order<sup>[5]</sup> of December 3, 1996, Branch 84 of the Quezon City RTC denied the motion to dismiss on the ground that the legality or constitutionality of the renewal of the service contract is an issue which only a regular court of justice may resolve or settle.

PGI filed a motion for reconsideration<sup>[6]</sup> which was denied by Order<sup>[7]</sup> of March 6, 1997.

PGI thus assailed the denial by the trial court of its motion to dismiss by certiorari and prohibition before the Court of Appeals, alleging that:

I. RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF ITS JURISDICTION IN NOT GRANTING THE MOTION TO DISMISS RESPONDENT NPC'S PETITION FOR DECLARATORY RELIEF FILED BY PGI FOR THE REASONS THAT:

(A) BY ESTABLISHED JURISPRUDENCE, THE CASE BELOW SHOULD BE DISMISSED IN VIEW OF THE PENDING ARBITRATION PROCEEDING OVER THE SAME SUBJECT MATTER BECAUSE (i) RESPONDENT JUDGE DOES NOT HAVE JURISDICTION TO TAKE COGNIZANCE OF THE CASE; (ii) THERE IS ANOTHER ACTION PENDING BETWEEN THE PARTIES FOR THE SAME CAUSE; AND (iii) THE PETITION BELOW STATES NO CAUSE OF ACTION.

(B) CONSTITUTIONAL AND PUBLIC POLICY ISSUES, IF ANY, SHOULD BE RAISED FIRST IN THE ARBITRATION PROCEEDING, AND SUBSEQUENTLY, IF WARRANTED, IN THE PROCEEDING FOR THE ENFORCEMENT OF THE ARBITRAL AWARD.

(C) RESPONDENT NPC HAS ENGAGED IN FORUM SHOPPING.

(D) THE REMEDY OF DECLARATORY RELIEF IS BOTH PREMATURE