

## SECOND DIVISION

[ G.R. No. 148318, November 22, 2004 ]

**NATIONAL POWER CORPORATION, PETITIONER, VS. HON. ROSE MARIE ALONZO-LEGASTO, AS PRESIDING JUDGE, RTC OF QUEZON CITY, BRANCH 99, JOSE MARTINEZ, DEPUTY SHERIFF, RTC OF QUEZON CITY, CARMELO V. SISON, CHAIRMAN, ARBITRATION BOARD, AND FIRST UNITED CONSTRUCTORS CORPORATION, RESPONDENTS.**

### DECISION

**TINGA, J,:**

National Power Corporation (NPC) filed the instant *Petition for Review*<sup>[1]</sup> dated July 19, 2001, assailing the Decision<sup>[2]</sup> of the Court of Appeals dated May 28, 2001 which affirmed with modification the Order<sup>[3]</sup> and *Writ of Execution*<sup>[4]</sup> respectively dated May 22, 2000 and June 9, 2000 issued by the Regional Trial Court. In its assailed *Decision*, the appellate court declared respondent First United Constructors Corporation (FUCC) entitled to just compensation for blasting works it undertook in relation to a contract for the construction of power facilities it entered into with petitioner. The Court of Appeals, however, deleted the award for attorney's fees having found no basis therefor.

The facts culled from the *Decision* of the Court of Appeals are undisputed:

On April 14, 1992, NPC and FUCC entered into a contract for the construction of power facilities (civil works) – Schedule 1 – 1x20 MW Bacon-Manito II Modular Geothermal Power Plant (Cawayan area) and Schedule 1A – 1x20 MW Bacon-Manito II Modular Geothermal Power Plant (Botong area) in Bacon, Sorsogon (BACMAN II). The total contract price for the two schedules is P108,493,966.30, broken down as follows:

SCHEDULE	
1 –	P52,081,421.00
Cawayan	
area	
1A –	<u>P56,412,545.30</u>
Botong	
area	
	P108,493,966.30

Appended with the Contract is the contract price schedule which was submitted by the respondent FUCC during the bidding. The price for grading excavation was P76.00 per cubic meter.

Construction activities commenced in August 1992. In the latter part of September 1992 and after excavating 5.0 meters above the plant

elevation, FUCC requested NPC that it be allowed to blast to the design grade of 495 meters above sea level as its dozers and rippers could no longer excavate. It further requested that it be paid P1,346.00 per cubic meter similar to the rate of NPC's project in Palinpinon.

While blasting commenced on October 6, 1992, NPC and FUCC were discussing the propriety of an extra work order and if such is in order, at what price should FUCC be paid.

Sometime in March 1993, NPC Vice President for Engineering Construction, Hector Campos, created a task force to review FUCC's blasting works. The technical task force recommended that FUCC be paid P458.07 per cubic meter as such being the price agreed upon by FUCC.

The matter was further referred to the Department of Public [W]orks and Highways (DPWH), which in a letter dated May 19, 1993, recommended the price range of P500.00 to P600.00 per cubic meter as reasonable. It further opined that the price of P983.75 per cubic meter proposed by Lauro R. Umali, Project Manager of BACMAN II was high. A copy of the DPWH letter is attached as Annex "C", FUCC's Exhibit EEE-Arbitration.

In a letter dated June 28, 1993, FUCC formally informed NPC that it is accepting the proposed price of P458.07 per cubic meter. A copy of the said letter is attached as Annex "D", FUCC's Exhibit L Arbitration.

In the meantime, by March 1993, the works in Botong area were in considerable delay. By May 1993, civil works in Botong were kept at a minimum until on November 1, 1993, the entire operation in the area completely ceased and FUCC abandoned the project.

Several written and verbal warnings were given by NPC to FUCC. On March 14, 1994, NPC's Board of Directors passed Resolution No. 94-63 approving the recommendation of President Francisco L. Viray to take over the contract. President Viray's recommendation to take over the project was compelled by the need to stave-off huge pecuniary and non-monetary losses, namely:

- (a) Generation loss estimated to be at P26,546,400/month;
- (b) Payment of steam penalties to PNOC-EDC the amount estimated to be at P10,206,048.00/month;
- (c) Payment of liquidated damages due to the standby of electromechanical contractor;
- (d) Loss of guaranteed protection (warranties) of all delivered plant equipment and accessories as Mitsubishi Corporation, electromechanical contractor, will not be liable after six months of delivery.

To prevent NPC from taking over the project, on March 28, 1994, FUCC filed an action for Specific Performance and Damages with Preliminary

Injunction and Temporary Restraining Order before Branch 99, Regional Trial Court, Quezon City.

Under paragraph 19 of its Complaint, FUCC admitted that it agreed to pay the price of P458.07 per cubic meter.

On April 5, 1994, Judge de Guzman issued a temporary restraining order and on April 21, 1994, the trial court resolved to grant the application for issuance of a writ of preliminary injunction.

On July 7, 1994, NPC filed a Petition for Certiorari with Prayer for Temporary Restraining Order and Preliminary Injunction before the First Division of the Court of Appeals asserting that no injunction may issue against any government projects pursuant to Presidential Decree 1818.

On July 8, 1994, the Court of Appeals through then Associate Justice Bernardo Pardo issued a temporary restraining order and on October 20, 1994, the said court rendered a Decision granting NPC's Petition for Certiorari and setting aside the lower court's Order dated April 21, 1994 and the Writ of Preliminary Injunction dated May 5, 1994.

However, notwithstanding the dissolution by the Court of Appeals of the said injunction, on July 15, 1995, FUCC filed a Complaint before the Office of the Ombudsman against several NPC employees for alleged violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. Together with the complaint was an Urgent Ex-Parte Motion for the issuance of a cease and [d]esist [o]rder to restrain NPC and other NPC officials involved in the BACMAN II project from canceling and/or from taking over FUCC's contract for civil works of said project.

Then on November 16, 1994, FUCC filed before the Supreme Court a Petition for Review assailing the Decision of the Court of [A]ppeals dated October 20, 1994. In its Comment, NPC raised the issue that FUCC resorted to forum shopping as it applied for a cease and desist order before the National Ombudsman despite the dissolution of the injunction by the Court of Appeals.

Pending the petition filed by FUCC before the Supreme Court, on April 20, 1995 the NPC and FUCC entered into a Compromise Agreement.

Under the Compromise Agreement, the parties agreed on the following:

1. Defendant shall process and pay the undisputed unpaid billings of Plaintiff in connection with the entire project fifteen (15) days after a reconciliation of accounts by both Plaintiff and Defendant or thirty (30) days from the date of approval of this Compromise Agreement by the Court whichever comes first. Both parties agree to submit and include those accounts which could not be reconciled among the issues to be arbitrated as hereunder provided;

2. Plaintiff accepts and acknowledges that Defendant shall have the right to proceed with the works by re-bidding or negotiating the project immediately upon the signing of herein Compromise Agreement;
3. This Compromise Agreement shall serve as the Supplemental Agreement for payment of plaintiff's blasting works at the Botong site;
4. Upon approval of this Compromise Agreement by the Court or Plaintiff's receipt of payment of this undisputed unpaid billings from Defendant whichever comes first, the parties shall immediately file a Joint Manifestation and Motion for the withdrawal of the following Plaintiff's petition from the Supreme Court, Plaintiff's Complaint from the National Ombudsman, the Complaint and Amended Complaint from the RTC, Br. 99 of Quezon City;
5. Upon final resolution of the Arbitration, as hereunder prescribed, the parties shall immediately execute the proper documents mutually terminating Plaintiff's contract for the civil works of the BACMAN II Project (Contract No. Sp90DLM-918 (I & A));
6. Such mutual termination of Plaintiff's contract shall have the following effects and/or consequences: (a) the construction works of Plaintiff at the Kawayan and Bolong sites, at its present stage of completion, shall be accepted and/or deemed to have been accepted by defendant; (b) Plaintiff shall have no more obligation to Defendant in respect of the BACMAN II Project except as provided in clause (e) below; (c) Defendant shall release all retention moneys of plaintiff within a maximum period of thirty (30) days from the date of final Resolution of the Arbitration; (d) no retention money shall thenceforth be withheld by Defendant in its payment to Plaintiff under this Compromise Agreement, and (e) Plaintiff shall put up a one-year guaranty bond for its completed civil works at the Kawayan site, retroactive to the date of actual use of the plant by defendant;
7. Plaintiff's blasting works claims and other unresolved claims, as well as the claims of damages of both parties shall be settled through a two stage process to wit:

#### STAGE 1

- 7.1 Plaintiff and Defendant shall execute and sign this Compromise Agreement which they will submit for approval by this Court. Under this Compromise Agreement both parties agree that:

xxx                      xxx

#### STAGE 2

- 7.1 The parties shall submit for arbitration to settle: (a)

the price of blasting, (b) both parties' claims for damages, delays, interests, and (c) all other unresolved claims of both parties, including the exact volume of blasted rocks;

7.2 The arbitration shall be through a three-member commission to be appointed by the Honorable Court. Each party shall nominate one member. The Chairman of the Arbitration Board shall be [a] person mutually acceptable to both parties, preferably from the academe;

7.3 The parties shall likewise agree upon the terms under which the arbitrable issues shall be referred to the Arbitration Board. The terms of reference shall form part of the Compromise Agreement and shall be submitted by the parties to the Honorable Court within a period of seven (7) days from the signing of the Compromise Agreement;

7.4 The Arbitration Board shall have a non-extendible period of three (3) months within which to complete the arbitration process and submit its Decision to the Honorable Court;

7.5 The parties agree that the Decision of the Arbitration Board shall be final and executory;

7.6 By virtue of this Compromise Agreement, except as herein provided, the parties shall mutually waive, forgo and dismiss all of their other claims and/or counterclaim in this case. Plaintiff and defendant warrant that after approval by the Court of this Compromise Agreement neither party shall file Criminal or Administrative cases or suits against each other or its Board or member of its officials on grounds arising from the case.

The Compromise Agreement was subsequently approved by the Court on May 24, 1995.

The case was subsequently referred by the parties to the arbitration board pursuant to their Compromise Agreement. On December 9, 1999 the Arbitration Board rendered its ruling the dispositive portion of which states:

WHEREFORE, claimant is hereby declared entitled to an award of P118,681,328.28 as just compensation for blasting works, plus ten percent (10%) thereof for attorney's fees and expenses of litigation.

Considering that payment in the total amount of P36,550,000.00 had previously been made, respondent is hereby ordered to pay claimant the remaining sum of