

THIRD DIVISION

[G.R. No. 137174, July 10, 2000]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE
POLLUTION ADJUDICATION BOARD (DENR), PETITIONER, VS.
MARCOPPER MINING CORPORATION, RESPONDENT.**

D E C I S I O N

GONZAGA-REYES, J.:

In this petition for review on certiorari, petitioner REPUBLIC OF THE PHILIPPINES through the Pollution Adjudication Board of the Department of Environment and Natural Resources seeks to annul the Decision^[1] of the Court of Appeals^[2] in CA-G.R. SP No. 44656 setting aside the Order^[3] of the Pollution Adjudication Board^[4] in DENR-PAB Case No. 04-00597-96; as well as the Resolution^[5] denying reconsideration of said Decision.

The following antecedent facts are undisputed:

Respondent Marcopper Mining Corporation (MMC) was issued a temporary permit to operate a tailings^[6] sea disposal system under TPO No. POW-85-454-EJ for the period October 31, 1985 to October 21, 1986. Before it expired, MMC filed an application for the renewal thereof with the National Pollution Control Commission (NPCC). On September 20, 1986, MMC received a telegraphic order from the NPCC directing the former to "(i)mmediately cease and desist from discharging mine tailings into Calancan Bay." The directive was brought about through the efforts of certain religious groups which had been protesting MMC's tailings sea disposal system. MMC requested the NPCC to refrain from implementing the aforesaid directive until its adoption of an alternative tailings disposal system. The NPCC granted MMC's request and called a conference to discuss possible alternative disposal systems. Consequently, an Environmental Technical Committee, composed of representatives from the NPCC, the Bureau of Mines and Geo-Sciences, and MMC was created to study the feasibility of various tailings disposal systems that may be appropriate for utilization by MMC and to submit its findings and recommendations thereon.

Meanwhile, after the expiration of MMC's TPO No. POW-85-454-EJ on October 21, 1986, the NPCC issued to MMC a new temporary permit, TPO No. POW-86-454-EJ dated November 11, 1986, to expire on February 10, 1987, with the condition that "[t]he tailings disposal system shall be transferred to San Antonio Pond within two (2) months from the date of this permit." MMC moved for the deletion of the condition stating that it needed to develop and mine the ore deposits underneath the San Antonio pond for it to continue its mining operations. In a letter-manifestation dated February 5, 1987, MMC requested the NPCC for an extension of TPO No. POW-86-454-EJ and the indefinite suspension of the condition in said permit until such time that the NPCC shall have finally resolved the NPCC case

entitled "Msgr. Rolly Oliverio, et al. vs. Marcopper Mining Corporation."

In the meantime, the NPCC was abolished by Executive Order No. 192^[7] dated June 10, 1987, and its powers and functions were integrated into the Environmental Management Bureau and into the Pollution Adjudication Board (PAB).^[8]

On April 11, 1988, the Secretary of Environment and Natural Resources, in his capacity as Chairman of the PAB, issued an Order directing MMC to "cease and desist from discharging mine tailings into Calancan Bay." The order reads:

The Temporary Permit to Operate issued to Marcopper Mining Corporation expired on February 10, 1987.

Section 96 of the National Pollution Control Commission (NPCC) Rules and Regulations, which were adopted by the Board, provides that in no case can a permit be valid for more than one (1) year.

Records show that Marcopper Mining Corporation has not filed any application for renewal of the permit.

Marcopper Mining Corporation is hereby ordered to cease and desist from discharging mine tailings into Calancan Bay immediately upon receipt of this Order.

SO ORDERED."^[9]

Immediately thereafter, the DENR Undersecretary for Environment and Research issued a telegraphic order dated April 15, 1988, enjoining immediate compliance by MMC of the cease and desist order of April 11, 1988.

MMC appealed the above orders of April 11, 1988 and April 15, 1988 to the Office of the President, docketed as O.P. Case No. 3802. In an Order dated May 2, 1988, the Office of the President denied MMC's requests for issuance of restraining orders against the orders of the PAB. Consequently, MMC filed an "Urgent Ex-Parte Partial Motion for Reconsideration" dated May 6, 1988, seeking the reconsideration of the above Order. In an Order dated May 13, 1988, the Office of the President granted the above partial motion for reconsideration, thus:

"WHEREFORE, the instant "Urgent Ex-Parte Motion for Reconsideration" is hereby GRANTED, and the Order of this Office, dated May 2, 1988, is hereby set aside insofar as it denies respondent-appellant's requests for issuance of restraining orders.

Accordingly, the Pollution Adjudication Board, its agents, deputies or representatives are hereby enjoined from enforcing its cease and desist order of April 15, 1988 pending resolution by this Office of respondent-appellant's appeal from said orders.

It is further directed that the status quo obtaining prior to the issuance of said cease and desist order be maintained until further orders from this Office.

It is understood, however, that during the efficacy of this restraining order, respondent-appellant shall immediately undertake, at a cost of not less than P30,000.00 a day, the building of artificial reefs and planting of sea grass, mangroves and vegetation on the causeway of Calanacan Bay under the supervision of the Pollution Adjudication Board and subject to such guidelines as the Board may impose.

SO ORDERED."^[10]

In line with the directive from the Office of the President, the Calanacan Bay Rehabilitation Project (CBRP) was created, and MMC remitted the amount of P30,000.00 a day, starting from May 13, 1988 to the Ecology Trust Fund (ETF) thereof. However, on June 30, 1991, MMC stopped discharging its tailings in the Bay, hence, it likewise ceased from making further deposits to the ETF.

From the issuance of the Order on May 13, 1988 until the cessation of the tailings disposal on June 30, 1991, MMC made its contribution to the ETF in the total amount of Thirty-Two Million Nine Hundred and Seventy-Five Thousand Pesos (P32,975,000.00). Thereafter, MMC filed a Motion dated July 9, 1991 manifesting that it would discontinue its contributions/deposits to the ETF since it had stopped dumping tailings in the Bay. MMC prayed that the Order issued by the Office of the President on May 13, 1988 be lifted.

On February 5, 1993, the Office of the President rendered a decision in O.P. Case No. 3802 dismissing the appeal; affirming the cease and desist Order issued by the PAB; and lifting the TRO dated May 13, 1988. The Office of the President resolved the appeal in this wise:

"This brings to the fore the primordial issue of whether or not the Secretary of Environment and Natural Resources gravely erred in declaring the TPO No. POW-86-454-EJ issued to respondent-appellant MMC expired on February 10, 1987, and in ordering the latter to cease and desist from discharging mine tailings into Calanacan Bay.

Respondent-appellant argues that the cease and desist orders were issued by the PAB ex-parte, in violation of its procedural and substantive rights provided for under Section 7 (a) of P.D. No. 984 requiring a public hearing before any order or decision for the discontinuance of discharge of a sewage or industrial wastes into the water, air or land could be issued by the PAB.

We are not persuaded.

Section 7(a) of P.D. No. 984, reads in part:

"Sec. 7(a) Public Hearing. - Public hearing shall be conducted by the Commissioner, Deputy Commissioner or any senior official duly designated by the Commissioner prior to issuance or promulgation of any order or decision by the Commissioner requiring the discontinuance of discharge of sewage, industrial wastes and other wastes into the water, air or land resources of the Philippines as provided in the Decree: provided, that

whenever the Commission finds a prima facie evidence that the discharged sewage or wastes are of immediate threat to life, public health, safety or welfare, or to animal or plant life, or exceeds the allowable standards set by the Commission, the Commissioner may issue an ex-parte order directing the discontinuance of the same or the temporary suspension or cessation of operation of the establishment or person generating such sewage or wastes without the necessity of a prior public hearing. x x x . (underscoring supplied).

Clearly then, it is self-indulgent nonsense to assume that the DENR Secretary, acting as PAB Chairman, is absolutely without authority to issue an ex-parte order requiring the discontinuance of discharge of sewage or other industrial wastes without public hearing. As can be gleaned from the afroequoted proviso, this authority to issue an ex-parte order suspending the discharge of industrial wastes is postulated upon his finding of prima-facie evidence of an imminent "threat to life, public health, safety or welfare, to animal or plant life or exceeds the allowable standards set by the Commission."^[11]

In a letter dated January 22, 1997^[12], Municipal Mayor Wilfredo A. Red of Sta. Cruz, Marinduque informed the PAB that MMC stopped remitting the amount of 30,000.00 per day as of July 1, 1991 to the ETF of the CBRP. This letter-complaint of Mayor Red was docketed as DENR-PAB Case No. 04-00597-96, for violation of P.D. 984^[13] and its implementing Rules and Regulations.

In an order dated April 23, 1997, the PAB ruled that the obligation of MMC to deposit P30,000.00 per day to the ETF of the CBRP subsists, as provided for in the Order of the Office of the President dated May 13, 1988, during the "efficacy of said order restraining the PAB from enforcing its cease and desist order against MMC". Since the Order was lifted only on February 5, 1993, the obligation of MMC to remit was likewise extinguished only on said date and not earlier as contended by MMC from the time it ceased dumping tailings into the Bay on July 1, 1991. We quote in part:

"The issue before this Board is whether Marcopper Mining Corporation is still obliged to remit the amount of P30,000.00 to the CBRP. The answer by the Order from the Office of the President dated 13 May 1988, which states that the obligation on the part of Marcopper Mining to pay the amount of P30,000.00 per day for the rehabilitation of Calancan Bay is binding only during the efficacy of the said Order.

The record further shows that on 05 February 1993, the Office of the President lifted its Order dated 13 May 1988. This means that as of the date of the lifting, Marcopper Mining Corporation no longer had any obligation to remit the amount of P30,000.00 to the CBRP. Thus, Marcopper's obligation only runs from 13 May 1988 to 05 February 1993. Beyond the cut-off date of 05 February 1993, Marcopper is no longer obligated to remit the amount of P30,000.00 per day to the CBRP.

It does not matter whether Marcopper was no longer dumping its tail minings into the sea even before the cut-off date of 05 February 1993.

The obligation of Marcopper to pay the amount of P30,000.00 to the CBRP arises from the Office of the President Order dated 13 May 1988, not from its dumping of mine tailings.

WHEREFORE, Marcopper Mining Corporation is hereby ordered to pay the CBRP the amount of P30,000.00 per day, computed from the date Marcopper Mining Corporation stopped paying on 01 July 1991, up to the formal lifting of the subject Order from the Office of the President on 05 February 1993.

SO ORDERED."^[14]

MMC assailed the aforequoted Order dated April 23, 1997 of the PAB as null and void for having been issued without jurisdiction or with grave abuse of discretion in a petition for Certiorari and Prohibition (with prayer for temporary restraining order and preliminary injunction) before the Court of Appeals which was docketed as CA-G.R. No. SP-44656. In a Resolution dated July 15, 1997, the Court of Appeals required the PAB and its members to comment on said petition.

On November 19, 1997, the Office of the Solicitor General, on behalf of the PAB and its members, filed with the Court of Appeals the required comment.

On September 15, 1997, for purposes of determining whether or not to grant MMC's prayer for a temporary restraining order and preliminary injunction, the Court of Appeals conducted a hearing where counsel for the parties were heard on oral arguments.

In a Resolution dated September 19, 1997, the Court of Appeals issued a writ of preliminary injunction, conditioned upon the filing of a bond by MMC in the amount of P500,000.00 enjoining the PAB and its members to cease and desist from enforcing the assailed Order dated April 23, 1997, until it had made a full determination on the merits of the case.

On January 7, 1998, the Court of Appeals promulgated a Decision in CA-G.R. SP No. 44656, the dispositive portion of which reads:

"In view of the foregoing, the instant petition is hereby GRANTED and, accordingly, the questioned Order of respondent Pollution Adjudication Board dated 23 April 1997 is hereby SET ASIDE. Respondents are ordered to REFRAIN and DESIST from enforcing aforesaid Order. The injunctive bond filed by the petitioner in the amount of Five Hundred Thousand (P500,000.00) is hereby RELEASED."

The motion for reconsideration of the above decision was denied in a Resolution dated January 13, 1999 of the Court of Appeals.

Hence, the instant petition on the following grounds:

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The Court of Appeals erred in ruling that Republic Act No. 7942 (otherwise known as the Philippine Mining Act of 1995) repealed the provisions of Republic Act No. 3931, as amended by Presidential Decree