

FIFTH DIVISION

[CA-G.R. SP No. 112732, March 16, 2015]

**CLARK DEVELOPMENT CORPORATION, PETITIONER, VS.
PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, JOINED
BY CIRIACO, CORP., RESPONDENTS.**

DECISION

TIJAM, J.:

Assailed in this *Petition for Review on Certiorari*^[1] is the Decision^[2] of the Office of the President (OP) dated January 5, 2010, in OP Case No. 09-E-2009 affirming the judgment of the Office of the Government Corporate Counsel (OGCC) Arbitration Panel.

The facts of the case are as follows:

On February 14, 1997, Philippine National Construction Corporation (PNCC) and Clark Development Corporation (CDC) entered into a *Memorandum of Agreement*^[3] for the design and construction of Sacobia Bridge ("Sacobia Project").

On February 28, 1997, a Supplemental Agreement No. 1^[4] (SA) was executed fixing the contract price for PNCC's services in the amount of Php 700 million. Par 4.5.6 of the said agreement states:

4.5.6 All unit prices stipulated in the Variation Orders/Bill of Quantities are at January 1997 level and are subject to escalation following the applicable provisions of P.D. 1954.

On August 8, 1997, PNCC engaged the services of Ciriaco Corporation (CIRIACO) as subcontractor for the Sacobia Project under a *Memorandum of Agreement Detailed Engineering Design and Construction of Three Lane Sacobia Bridge Province of Pampanga*.^[5] In Annex A of the said agreement, it was provided that insofar as the Sacobia Project is concerned, CIRIACO is to be treated as if it is PNCC. PNCC ordered Ciriaco to complete the construction of the bridge within 360 calendar days from July 5, 1997.^[6]

On December 15, 1997, PNCC sent a letter to CDC negotiating for a 30% upward price adjustment on the contract price. PNCC claimed that since the commencement of the Sacobia Project, the value of the Peso has fallen substantially. Hence, PNCC claimed that this translated to additional cost on the construction considering that the bulk of the construction materials were imported. ^[7] Attached in the said letter is a table of computation/breakdown of both PNCC and CIRIACO's claims for foreign currency adjustment.^[8] PNCC sent various letters to CDC containing the same request.

In its Board Resolution No. 197, Series of 1998^[9], CDC:

"RESOLVED THAT, the Board, fully cognizant of the effects of the foreign exchange currency crisis, is amenable to an adjustment of the Sacoba Project Contract Price at a rate to be determined by the Board after the necessary quantity survey on the said project has been conducted. (Emphasis supplied)

Aside from price adjustments, PNCC also sought to collect unpaid progress billings, in the amount of Php1,739,526.79 as stated in Progress Billing No. 8, and Php15,953,264.90 stated in Progress Billing No. 9.

On June 10, 1998, PNCC and CIRIACO completed the construction and turned over the Sacobia Project to CDC.^[10]

On March 15, 2006, CIRIACO, for itself and in behalf of PNCC sent, through its counsel, a final demand letter^[11] to CDC demanding payment of the following items within 30 days from notice, to wit:

1. PNCC Progress Billing No. 8 - Php1,739,526.79
2. PNCC Progress Billing No. 9 - Php15,953,264.90
3. Foreign Currency Price adjustment-Php153,011,677.60

Ciriaco likewise claimed for legal interest 6% per annum from the date of project turnover until full payment.

Since CDC failed to pay, CIRIACO and PNCC submitted the case for mediation/arbitration with the OGCC under par. 11 of the MOA^[12], P.D. No. 242 and Rule 12^[13] of the OGCC's Rules and Regulations.

During the proceedings before the OGCC, it appears that after PNCC and CIRIACO presented evidence, Petitioner requested for cancellation and resetting of the hearings on August 20 and September 3, 2008, respectively. Hence, the Arbitration Panel of the OGCC, warned Petitioner that in the event it still fails to present its evidence on the next scheduled hearing, its right to present evidence shall be considered waived and the case shall be deemed submitted for decision on the basis of the pleadings of both parties.^[14] Since Petitioner failed to appear in the next hearing, the Arbitration Panel, in its October 20, 2008 Order, stood by its earlier warning and submitted the case for decision. ^[15]

On December 18, 2008, the Arbitration Panel of the OGCC issued a Decision^[16], the dispositive portion of which, states:

"WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of petitioners PNCC and CIRIACO ordering respondent CDC to pay petitioners the following amounts:

1. Php1,739,526.79 representing the unpaid Progress Billing No. 8;
2. Php15,953,264.90, representing the unpaid Final Billing;
3. Php15,953,264.90, representing the foreign currency price adjustment; and

4. Legal interest on the afore-mentioned amounts at the rate of six percent (6%) per annum from the time of the filing of this petition or from November 7, 2006, until finality of the judgment and twelve (12%) thereafter until full satisfaction.

SO ORDERED.”

After the OGCC's decision, Petitioner filed a Motion to Suspend Transmittal of Decision^[17] dated 18 December 2008 where Petitioner alleged that on January 6, 2009, Government Corporate Counsel Justice Alberto C. Agra called the parties to a conciliation conference; that Petitioner agreed to present Respondents' claims before its Board; that Petitioner *"has until January 20, 2009 within which to inform respondents and Justice Agra when payment can be finally effected"*, that in the meantime, the parties agreed to continue discussions on how to arrive at an amicable settlement of the remaining issues; and that due to such attempts at settlement, the transmittal of the OGCC's Decision should be held in abeyance.

Pursuant to Sec. 12.25 of the OGCC's IRR^[18], the Decision of the OGCC's Panel of Arbitrators was elevated to the Department of Justice. On April 24, 2009, the Secretary of Justice affirmed the decision of the OGCC's Panel of Arbitrators.^[19] Upon appeal to the OP, the latter likewise affirmed the ruling of the OGCC's Panel of Arbitrators in its assailed Decision dated January 5, 2010.^[20]

On April 22, 2010, Petitioner filed an *Urgent Motion for Issuance of Preliminary Injunction and/or Temporary Restraining Order*^[21] seeking to forestall the execution of the September 18, 2008 Decision of the OGCC. We denied the said motion of Petitioner in Our May 7, 2010 Resolution, it appearing that Petitioner has already been served the writ of execution^[22] anent the OGCC's September 18, 2008 Decision.^[23] We likewise referred the case to mediation and ordered respondents to submit their comment to the petition.

On July 19, 2010, the Appellate Court Mediator Retired Court of Appeals Justice Oswaldo D. Agcaoli submitted a *Mediator's Report*^[24] attesting that the parties failed to reach any settlement. In Our November 19, 2010 Resolution, We deemed the instant case submitted for decision.^[25]

This *Petition* raises the following issues:

“I

WHETHER OR NOT THE ASSAILED DECISION OF THE OFFICE OF THE PRESIDENT ARE IN CONFORMITY WITH THE EXISTING LAW AND JURISPRUDENCE

II

WHETHER OR NOT THERE ARE LEGAL AND FACTUAL BASIS FOR THE GRANT OF MONETARY AWARDS REPRESENTING FOREIGN CURRENCY ADJUSTMENT, PROGRESS AND FINAL BILLINGS AND LEGAL INTEREST”

It is settled that findings of fact of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the Court of Appeals. In particular, the general rule is that factual findings of construction arbitrators are final and conclusive and not reviewable by courts on appeal. The exceptions to such rule are as follows:

1. the award was procured by corruption, fraud or other undue means;
2. there was evident partiality or corruption of the arbitrators or any of them;
3. the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy;
4. one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced;
5. the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the Construction Industry Arbitration Commission (CIAC), and (3) when a party is deprived of administrative due process. [26]

In this case, the parties, through Par. 11 of their Supplemental Agreement agreed to submit any dispute, claim or any other matter arising therefrom for settlement under P.D. 242. Sec. 5 thereof provides that:

Section 5. The decisions of the Secretary of Justice, as well as those of the Solicitor General or the Government Corporate Counsel, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may be taken to and entertained by the Office of the President only in cases wherein the amount of the claim or value of the property exceeds P1 million. The decisions of the Office of the President on appeal cases shall be final.

In this case, the OGCC's Panel of Arbitrators, in its December 18, 2008 Decision found that Private Respondents' claims for unpaid progress billings and foreign currency price adjustments were supported by substantial evidence. This findings have been affirmed by both the Secretary of Justice and the Office of the President.

- Its Board Resolution No. 197, Series of 199827, CDC clearly:

“RESOLVED THAT, the Board, fully cognizant of the effects of the foreign exchange currency crisis, **is amenable to an adjustment of the Sacoba Project Contract Price at a rate to be determined by the Board after the necessary**

quantity survey on the said project has been conducted.
(Emphasis supplied)

- In the conciliation proceedings before Hon. Alberto Agra after the issuance of its Assailed Decision dated December 18, 2008, Petitioner agreed to its liability on the said progress billings. Such admission was clearly stated in the OGCC's February 13, 2009 Order²⁸, as follows:

" All the parties confirmed the 6 January 2009 meeting with the Government Corporate Counsel (OGCC), to explore the possibility of an amicable settlement. In the said meeting, petitioner PNCC and respondent CDC were both represented by their respective Presidents **wherein the following matters were both agreed upon**, to wit:

1. **Respondent shall pay the unpaid Progress Billing No. 8** in the amount of Php1,739,526.79, and the unpaid Final Billing in the amount of Php15,953,264.90, together with the corresponding interests; and,
2. **Respondent shall submit a written proposal/computation on how it would settle** the award of foreign currency adjustment in the amount of Php153,011,677.60. (Emphasis supplied)

Considering the following undertakings by Petitioner before the OGCC, We see no merit to Petitioner's insistence that it is merely "amenable" to the foreign currency price adjustment and it did not agree to pay the same when it issued Board Resolution No. 197, Series of 1998.

Indeed, in Our May 7, 2010 Resolution^[29] where We referred the case to mediation, We noted that:

"Considering that the parties to this case are both government entities and it appearing that **the contentious issue in this case merely refer to the actual amount of liability and no longer with the issue of whether petitioner is liable to respondents or not**, this Court is convinced that the referral of this case to a court-appointed mediation is the more practical and sound solution to put an end to the dispute."

Thus, We proceed to limit the issue of the instant Petition to the actual amount of liability of Petitioner to respondents.

Indeed, P.D. 1594 allows price escalation in all contracts involving government projects including contracts entered into by government entities and instrumentalities and Government Owned or Controlled Corporations (GOCCs). It is a basic rule in contracts that law is deemed written into the contract between the parties. And when there is no prohibitory clause on price escalation, the Court will allow payment therefor.^[30]