

## EN BANC

[ G.R. No. 170867, January 21, 2020 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY RAPHAEL P.M. LOTILLA, SECRETARY, DEPARTMENT OF ENERGY (DOE), MARGARITO B. TEVES, SECRETARY, DEPARTMENT OF FINANCE (DOF), AND ROMULO L. NERI, SECRETARY, DEPARTMENT OF BUDGET AND MANAGEMENT (DBM), PETITIONERS, VS. PROVINCIAL GOVERNMENT OF PALAWAN, REPRESENTED BY GOVERNOR ABRAHAM KAHLIL B. MITRA, RESPONDENT.**

[G.R. No. 185941, January 21, 2020]

**BISHOP PEDRO DULAY ARIGO, CESAR N. SARINO, DR. JOSE ANTONIO N. SOCRATES, AND PROF. H. HARRY L. ROQUE, JR., PETITIONERS, VS. HON. EXECUTIVE SECRETARY EDUARDO R. ERMITA, HON. ENERGY SECRETARY ANGELO T. REYES, HON. FINANCE SECRETARY MARGARITO B. TEVES, HON. BUDGET AND MANAGEMENT SECRETARY ROLANDO D. ANDAYA, JR., HON. PALAWAN GOVERNOR JOEL T. REYES, HON. REPRESENTATIVE ANTONIO C. ALVAREZ (1<sup>ST</sup> DISTRICT), HON. REPRESENTATIVE ABRAHAM MITRA (2<sup>ND</sup> DISTRICT), AND RAFAEL E. DEL PILAR, PRESIDENT AND CEO, PNOC EXPLORATION CORPORATION, RESPONDENTS.**

### R E S O L U T I O N

**LEONEN, J.:**

For this Court's resolution are the Motion for Reconsideration<sup>[1]</sup> and Supplemental Motion for Reconsideration<sup>[2]</sup> filed by respondents in G.R. No. 170867, as well as the Motion for Reconsideration<sup>[3]</sup> of petitioners in G.R. No. 185941. The parties ask this Court to reconsider its December 4, 2018 Decision<sup>[4]</sup> in which it declared, among others, that the Province of Palawan was not entitled to an equitable share in the proceeds of the Camago-Malampaya Natural Gas Project (Natural Gas Project).

To recall, the Republic, through the Department of Energy, entered into Service Contract No. 38 dated December 11, 1990 with Shell Philippines Exploration B.V. and Occidental Philippines. The 20-year contract was made for the drilling of the natural gas reservoirs in the Camago-Malampaya area, about 80 kilometers from mainland Palawan.<sup>[5]</sup>

Service Contract No. 38 provided a 60-40 production sharing scheme for the sale of petroleum, where the national government would receive 60% of the net proceeds, while Shell Philippines Exploration B.V. and Occidental Philippines, as service contractors, would receive 40%. Later, the service contractors were replaced by a

consortium of Shell B.V., Shell Philippines LLC, Chevron Malampaya LLC, and PNO Exploration Corporation (Shell Consortium).<sup>[6]</sup>

On February 17, 1998, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 381,<sup>[7]</sup> which provided that per the Local Government Code, part of the national government's 60% share would be given to the concerned local government units.<sup>[8]</sup> It further provided that the Province of Palawan was "expected to receive about US\$2.1 billion from the total government share of US\$8.1 billion"<sup>[9]</sup> throughout the contract's 20-year period.<sup>[10]</sup>

On June 10, 1998, then Energy Secretary Francisco L. Viray (Energy Secretary Viray) wrote to then Palawan Governor Salvador P. Socrates (Governor Socrates), requesting that the payment of half of Palawan's expected share be "spread over the initial seven years of operations"<sup>[11]</sup> in order to pay for the National Power Corporation's obligations in its Gas Sales and Purchase Agreements with the Shell Consortium.<sup>[12]</sup>

Later, in a July 30, 2001 letter, then Finance Secretary Jose Isidro N. Camacho sought the legal opinion of then Justice Secretary Hernando B. Perez on whether the Province of Palawan had a share in the national wealth from the proceeds of the Natural Gas Project. The Department of Finance had taken the position that the province did not, as a local government unit's territorial jurisdiction was only within its land area and excludes marine waters more than 15 kilometers from its coastline.<sup>[13]</sup>

The Natural Gas Project in the Camago-Malampaya area was inaugurated on October 16, 2001.<sup>[14]</sup>

Negotiations were held between the Departments of Energy, Finance, and Budget and Management, and the Province of Palawan to determine the province's expected share in the net proceeds of the Natural Gas Project.<sup>[15]</sup> However, since the national government would not grant the province's expected US\$2.1 billion share, the Sangguniang Panlalawigan of Palawan on February 11, 2003 called off further negotiations and instead authorized the Palawan Governor to file the appropriate judicial action.<sup>[16]</sup>

On May 7, 2003, the Province of Palawan filed before the Regional Trial Court a Petition for Declaratory Relief,<sup>[17]</sup> docketed as Special Civil Action No. 3779, seeking a judicial determination of its rights under Administrative Order No. 381, Republic Act No. 7611, Section 290 of the Local Government Code, and Palawan Provincial Ordinance No. 474, series of 2000. In particular, the Province of Palawan sought a judicial declaration that it has territorial jurisdiction over the Camago-Malampaya natural gas reservoirs, entitling it to an equitable share in the proceeds from the Natural Gas Project.<sup>[18]</sup>

On February 9, 2005, while the declaratory relief case was still pending, then Energy Secretary Vincent S. Perez, Jr., then Budget and Management Secretary Mario L. Relampagos, and then Finance Secretary Juanita D. Amatong executed an Interim Agreement<sup>[19]</sup> with then Palawan Governor Joel T. Reyes.

Under the agreement, half of the 40% revenue share being claimed by the Province of Palawan, to be called the "Palawan Share," would be used in its development and infrastructure projects, environment protection and conservation, electrification of 431 barangays, and establishment of facilities to enhance the exclusive economic zone's security.<sup>[20]</sup>

The Interim Agreement likewise stated that the release of funds would be without prejudice to the outcome of Special Civil Action No. 3779. Once the case is decided with finality in favor of either party, the shares already received would be treated as financial assistance. The parties further agreed that the P600 million already released to the Province of Palawan would be deducted from the initial release of the province's 50% share of 40% of the remitted funds.<sup>[21]</sup>

On December 16, 2005, the Regional Trial Court rendered a Decision<sup>[22]</sup> in the Province of Palawan's favor. It found that, under Article X, Section 7 of the Constitution and the Local Government Code, the province was entitled to a 40% share of the revenues generated from the Natural Gas Project since October 16, 2001.<sup>[23]</sup>

On February 16, 2006, the Republic filed before this Court a Petition for Review,<sup>[24]</sup> docketed as G.R. No. 170867, assailing the trial court's December 16, 2005 Decision and its January 16, 2006 Amended Order. <sup>[25]</sup>

On July 25, 2007, while the Petition was pending, the national government executed a Provisional Implementation Agreement<sup>[26]</sup> with the Province of Palawan, in conformity with the representatives of its legislative districts. Per the agreement, half of the disputed 40% share was allowed to be used for development projects in Palawan.

On December 1, 2007, then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) issued Executive Order No. 683, which authorized the release of funds pursuant to the Provisional Implementation Agreement. Notably, it provided that the funds' release would be without prejudice to this Court's final resolution in G.R. No. 170867.<sup>[27]</sup>

Subsequently, Bishop Pedro Dulay Arigo, Cesar N. Sarino, Jose Antonio N. Socrates, and H. Harry L. Roque, Jr. (Arigo, et al.), as taxpayers, filed a Petition for Certiorari, Prohibition, and Mandamus<sup>[28]</sup> before the Court of Appeals against the Executive Secretary, the Department Secretaries of Energy, Finance, and Budget and Management, the Palawan Governor, the First District Representative of Palawan, and PNOC Exploration Corporation's President and Chief Executive Officer. In their Petition, Arigo, et al. assailed Executive Order No. 683 and the Provisional Implementation Agreement for violating the Constitution and the Local Government Code.<sup>[29]</sup> They also sought the release of the Province of Palawan's full 40% share in the proceeds of the Natural Gas Project.<sup>[30]</sup>

In a May 29, 2008 Resolution,<sup>[31]</sup> the Court of Appeals dismissed outright Arigo, et al.'s Petition for their failure to submit the documents necessary to substantiate their allegations.<sup>[32]</sup> It likewise noted that the Petition was prematurely filed since the implementation of the Provisional Implementation Agreement was contingent on the final adjudication of G.R. No. 170867, the case pending before this Court.<sup>[33]</sup>

Arigo, et al. filed a Motion for Reconsideration,<sup>[34]</sup> which was denied by the Court of Appeals in a December 16, 2008 Resolution.<sup>[35]</sup>

Subsequently, Arigo, et al. filed before this Court a Petition for Review on Certiorari,<sup>[36]</sup> docketed as G.R. No. 185941. They essentially reiterated their argument before the Court of Appeals that Executive Order No. 683 and the Provisional Implementation Agreement were invalid for being unconstitutional and for violating the Local Government Code.<sup>[37]</sup>

On June 23, 2009, this Court consolidated G.R. No. 170867 and G.R. No. 185941.<sup>[38]</sup> Oral arguments were held on September 1, 2009<sup>[39]</sup> and November 24, 2009.<sup>[40]</sup>

In a December 4, 2018 Decision,<sup>[41]</sup> this Court granted the Petition in G.R. No. 170867 but denied the Petition in G.R. No. 185941. It held that since no law grants the Province of Palawan territorial jurisdiction over the area where the Natural Gas Project was located, the province was not entitled to an equitable share in the project's proceeds.<sup>[42]</sup> It likewise held that a local government unit's territorial jurisdiction requires contiguity and is limited only to land area or land mass.<sup>[43]</sup> Since the Camago-Malampaya gas reservoirs were located in the continental shelf, this territory would be beyond the Province of Palawan's territorial jurisdiction.<sup>[44]</sup>

This Court pointed out that the Constitution did not apportion the territories of the Philippines among the local government units.<sup>[45]</sup> It also ruled that the United Nations Convention on the Law of the Sea conferred no continental shelves on local government units.<sup>[46]</sup>

This Court further ruled that the State could not be estopped by the acts of its officials, as in this case, when the executive branch issued pronouncements recognizing the Province of Palawan's equitable share.<sup>[47]</sup> It also found that the Province of Palawan's share could not be granted based on equity.<sup>[48]</sup>

The dispositive portion of the Decision read:

**WHEREFORE**, the Petition in G.R. No. 170867 is **GRANTED**.

The Decision dated December 16, 2005 of the Regional Trial Court of the Province of Palawan, Branch 95 in Civil Case No. 3779 is **REVERSED** and **SET ASIDE**. The Court declares that under existing law, the Province of Palawan is not entitled to share in the proceeds of the Camago-Malampaya natural gas project. The Petition in GR. No. 185941 is **DENIED**.

**SO ORDERED.**<sup>[49]</sup> (Emphasis in the original)

In its Motion for Reconsideration,<sup>[50]</sup> the Province of Palawan insists that the Camago-Malampaya gas reservoirs are within its territorial jurisdiction. This is because, it argues, the area is located within the continental shelf of the Municipality of Kalayaan, over which the province exercises territorial jurisdiction under Presidential Decree No. 1596.<sup>[51]</sup> The Province of Palawan also maintains that the State can be estopped when it promulgated issuances recognizing Camago-

Malampaya as part of the Province of Palawan and granting it its 40% share in the proceeds of the Natural Gas Project.<sup>[52]</sup>

In its Supplemental Motion for Reconsideration,<sup>[53]</sup> the Province of Palawan adds that since the Municipality of Kalayaan has territorial jurisdiction over its continental shelf, which goes up to 200 nautical miles, its territorial jurisdiction necessarily extends to the Camago-Malampaya area, which is barely 51 nautical miles from the municipality.<sup>[54]</sup>

The Province of Palawan likewise adds that it is entitled to its 40% share on the basis of equity, since it is the nearest local government unit that "is capable of rendering the necessary and immediate assistance and services regarding any issue or concern within the area[.]"<sup>[55]</sup>

For their part, Arigo, et al. argue in their Motion for Reconsideration<sup>[56]</sup> that the doctrine on the continental shelf has been "constitutionalized," and its "constitutionalization" means "recognizing that the natural prolongation of the landmass of the Province of Palawan leading to a Continental Shelf, as defined under the [United Nations Convention on the Law of the Sea], is an area that is appurtenant to it and fall[s] within its jurisdiction but is nevertheless part and parcel of the unitary state that is the Republic of the Philippines."<sup>[57]</sup>

Since the oil and gas wells in Camago-Malampaya are "within the natural prolongation" of the Province of Palawan's land mass, Arigo, et al. argue that the province is entitled to the Natural Gas Project's proceeds.<sup>[58]</sup> They also point out that both Republic Act No. 7611 and Administrative Order No. 381 recognize Malampaya as part of Palawan 's continental shelf.<sup>[59]</sup>

Moreover, Arigo, et al. argue that since the Republic has used the island of Palawan as the reference point to mark its maritime entitlements in the South China Sea dispute, it has already recognized the province's unique geological features as comprised of islands.<sup>[60]</sup> They contend that this Court made "a fundamental and irreconcilable contradiction"<sup>[61]</sup> in declaring that international law was inapplicable while still referring to the United Nations Convention on the Law of the Sea to conclude that the Province of Palawan had no territorial jurisdiction over Camago-Malampaya.<sup>[62]</sup>

Arigo, et al. further point out that by declaring that the Province of Palawan cannot generate its own continental shelf, this Court "stands to erase all that remains of the legal gains the Philippines achieved"<sup>[63]</sup> in the arbitral case on the South China Sea dispute. If not reversed, its ruling "may become binding as a sovereign admission . . . under the principle of estoppel under international law."<sup>[64]</sup>

The Republic, represented by the Office of the Solicitor General, counters in its Consolidated Comment<sup>[65]</sup> that while the Municipality of Kalayaan is indeed within the Province of Palawan's territory, there is nonetheless no law granting the province territorial jurisdiction over the continental shelf between these areas, where Camago-Malampaya is located. As such, it argues, the Province of Palawan is not entitled to an equitable share in the proceeds of the Natural Gas Project.<sup>[66]</sup>