

FIRST DIVISION

[G.R. No. 208383, June 08, 2016]

FIRST MEGA HOLDINGS CORP., PETITIONER, VS. GUIGUINTO WATER DISTRICT, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

Assailed in this petition for review on *certiorari*^[1] are the Decision^[2] dated March 20, 2013 and the Resolution^[3] dated July 25, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122971, which denied petitioned First Mega Holdings Corp.'s (petitioner) petition for review of the Resolutions dated September 2, 2010^[4] and December 2, 2011^[5] of the National Water Resources Board (NWRB) in Water Use Conflict Case No. 2009-045 denying petitioner's application for a water permit.

The Facts

On February 26, 2009, petitioner filed with the NWRB Water Permit Application No. III-BUL-2009-02-068^[6] (WPA) for the installation of a deep well that would supply the water resources requirements of its gasoline station and commercial complex in Barangay Malis, Guiguinto, Bulacan (subject premises).^[7]

On May 19, 2009, respondent Guiguinto Water District (respondent) filed its Protest^[8] against petitioner's WPA, averring that: (a) the water level in Guiguinto, Bulacan (Guiguinto) is at a critical level and the water exploration to be conducted by petitioner would hamper the water requirements of the said municipality and be detrimental to its water service; (b) petitioner disregarded and violated existing laws, rules, and regulations because it had already started drilling operations before it sought the NWRB's approval; and (c) respondent has the capacity to supply the petitioner's water requirements.^[9]

Petitioner filed its answer,^[10] praying for the dismissal of the protest on the grounds that the same was belatedly filed,^[11] and that respondent failed to substantiate its claim that the water level in Guiguinto is at a critical level.^[12] It averred that: (a) its water requirements would only be minimal, which could not possibly affect the water level in Guiguinto; and (b) it would not be cost-effective to source water from respondent since there is no existing water pipeline available within a one-kilometer radius where petitioner could connect.^[13] It further denied having started drilling operations and consequently moved for the issuance of a provisional authority to do so in order to cope with the timetable for its construction activities.^[14]

The NWRB Proceedings

On September 14, 2009, respondent filed an Omnibus Motion for the issuance of a Cease and Desist Order^[15] (CDO) and to hold petitioner in contempt, alleging, among others, that the latter had already finished its drilling operations without the necessary permit, which petitioner denied. Ocular inspection of the subject premises revealed that a deep well was already in place; thus, on November 3, 2009, the NWRB issued a CDO^[16] against petitioner to refrain from operating a water pump. Notwithstanding the CDO, a second ocular inspection revealed that petitioner operated the deep well in question starting April 25, 2010.^[17]

Hence, on September 2, 2010, the NWRB issued a Resolution^[18] (September 2, 2010 Resolution) denying petitioner's WPA on account of: (a) petitioner's violation of Presidential Decree No. (PD) 1067,^[19] otherwise known as the "Water Code of the Philippines" (Water Code); and (b) petitioner's open defiance of its lawful order. It further observed that the area subject of the WPA is among the eight (8) identified critical areas in Metro Manila in need of urgent attention as identified in NWRB Resolution No. 001-0904,^[20] and that respondent can provide the water supply requirement of petitioner. It ordered petitioner to cease and desist from operating and utilizing the deep well, and directed its Monitoring and Enforcement Division to pull out the pump and motor, and seal the deep well.^[21]

Aggrieved, petitioner filed a Petition for Reconsideration/ Reinvestigation,^[22] contending that: (a) the entire proceedings should be nullified on the ground that respondent was represented by a private firm, Dennis C. Pangan & Associates, instead of the Office of the Government Corporate Counsel (OGCC), in violation of Administrative Order No. 130^[23] dated May 19, 1994 (AO No. 130, s. 1994);^[24] and (b) the denial of the WPA was based on alleged violation of the Water Code and not on the merits.^[25]

For its part, respondent (a) moved to implement^[26] the September 2, 2010 Resolution; and (b) opposed^[27] the Petition for Reconsideration/ Reinvestigation, averring that AO No. 130, s. 1994 does not apply to it, considering that the business of distributing water to the Municipality of Guiguinto has been given to Hiyas Water Resources, Inc. (Hiyas Water) under a Joint Venture Agreement (JVA) between the parties, and that the latter pays for the fees of the private firm.^[28]

In a Resolution^[29] dated December 2, 2011, the NWRB denied the petition for reconsideration/reinvestigation, ruling that the fact that respondent was not represented by the OGCC will not render the proceedings null and void because requiring a reinvestigation on such legal technicality would not serve the interest of justice. Besides, since petitioner did not question the appearance of a private law firm in respondent's behalf during the hearing, the NWRB had the right to presume that such representation was properly authorized in the absence of proof to the contrary. It further pointed out that the denial of petitioner's WPA was not based on the grounds raised in respondent's protest but on petitioner's blatant disregard and open defiance of the NWRB's lawful orders, and on the fact that the area where the proposed water source is located is within an identified critical area in need of urgent attention.^[30] Consequently, it directed its Monitoring and Enforcement Division to impose against petitioner, for appropriating water without permit, a fine

in the amount of P1,000.00 per day reckoned from April 25, 2010 when the deep well became operational until the same is fully sealed,^[31] pursuant to Section 82 (L)^[32] of the Water Code of the Philippines Amended Implementing Rules and Regulations^[33] (IRR).

On the other hand, the NWRB granted respondent's motion to implement the September 2, 2010 Resolution on the basis of paragraph 2,^[34] Article 88, Chapter VII of the Water Code.^[35]

Unperturbed, petitioner filed a petition for review^[36] before the CA, docketed as CA-G.R. SP No. 122971.

The CA Ruling

In a Decision^[37] dated March 20, 2013, the CA denied the petition,^[38] thereby upholding the NWRB's September 2, 2010 and December 2, 2011 Resolutions. It ruled that while the private law firm which appeared as respondent's counsel failed to secure the written conformity and acquiescence of the OGCC in violation of AO No. 130, s. 1994, it would be more beneficial to confer legitimacy to its appearance rather than declare the entire proceedings null and void, as no substantial prejudice was caused to the interest of petitioner, respondent, and the State.^[39]

The CA likewise upheld the denial of petitioner's WPA, holding that aside from petitioner's violation of the Water Code requirement of a water permit prior to the appropriation of water, the NWRB had substantial basis to deny its WPA. Considering that in the water resources assessment, Guiguinto was identified as one of the critical areas in Metro Manila and its adjacent areas due to over-extraction of ground water, such predicament prompted NWRB to take the necessary measures to prevent further ground water level decline and water quality deterioration in Guiguinto. Having the duty to control and regulate the utilization, exploitation, development, conservation, and protection of water resources of the State, it was, therefore, within its power to deny petitioner a water permit to pursue a water right which is merely a privilege.^[40]

Undaunted, petitioner sought reconsideration,^[41] which was, however, denied in a Resolution^[42] dated July 25, 2013; hence, this petition.

The Issue Before The Court

The essential issue for the Court's resolution is whether or not the CA correctly upheld the NWRB's denial of petitioner's WPA.

The Court's Ruling

As a general rule, government-owned or controlled corporations, their subsidiaries, other corporate off springs, and government acquired asset corporations (collectively referred to as GOCCs) are not allowed to engage the legal services of private counsels.^[43] Section 10,^[44] Chapter 3, Title III, Book IV of Executive Order No. (EO) 292,^[45] otherwise known as the "Administrative Code of 1987," is clear

that the OGCC shall act as the principal law office of GOCCs. Accordingly, Section 1 of AO No. 130, s. 1994 enjoined GOCCs to exclusively refer all legal matters pertaining to them to the OGCC, unless their respective charters expressly name the Office of the Solicitor General (OSG) as their legal counsel. Nonetheless, **in exceptional cases, private counsel can be hired with the prior written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, and the prior written concurrence of the Commission on Audit (COA).**^[46] Case law holds that the lack of authority on the part of a private lawyer to file a suit in behalf of any GOCC shall be a sufficient ground to dismiss the action filed by the said lawyer.^[47]

In the present case, respondent failed to comply with the requirements concerning the engagement of private counsel before it hired the services of Dennis C. Pangan & Associates, which filed, on its behalf, a protest against petitioner's WPA. *First*, it failed to secure the prior conformity and acquiescence of the OGCC and the written concurrence of the COA, in accordance with existing rules and regulations. And *second*, it failed to establish the presence of extraordinary or exceptional circumstances that would warrant a deviation from the above-mentioned general rule, or that the case was of a complicated or peculiar nature that would be beyond the range of reasonable competence expected from the OGCC.

To be sure, the Court cannot allow the invocation^[48] of the existence of a JVA with Hiyas Water as an excepting circumstance because it would render nugatory the role of the OGCC as the principal law office of all GOCCs. Neither can the representation^[49] that Hiyas Water shall shoulder the lawyer's fees be considered an excepting circumstance because the case was filed in the name of respondent, not in the name of Hiyas Water. Besides, even assuming that the extant circumstances in the case are enough to qualify it as an exceptional case where the hiring of private counsel may be allowed, the requirements of securing the prior written conformity and acquiescence of the Government Corporate Counsel and the prior written concurrence of the COA must still be complied with before a GOCC may hire a private lawyer.

Public policy considerations are behind the imposition of the requirements relative to the engagement by GOCCs of private counsel. In *Phividec Industrial Authority v. Capitol Steel Corporation*,^[50] the Court held:

It was only with the enactment of Memorandum Circular No. 9 in 1998 that an exception to the general prohibition was allowed for the first time since P.D. No. 1415 was enacted in 1978. However, indispensable conditions precedent were imposed before any hiring of private lawyer could be effected. First, private counsel can be hired only in **exceptional cases**. Second, the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, before any hiring can be done. And third, the written concurrence of the COA must also be secured prior to the hiring.

There are strong reasons behind this public policy. One is the need of the government to curtail unnecessary public expenditures, such as

the legal fees charged by private lawyers against GOCCs. x x x:

x x x x

The other factor is anchored on the perceived strong ties of the OGCC lawyers to their client government corporations. Thus, compared to outside lawyers the OGCC lawyers are expected to be imbued with a deeper sense of fidelity to the government's cause and more attuned to the need to preserve the confidentiality of sensitive information.

Evidently, OGCC is tasked by law to serve as the law office of GOCCs to the exclusion of private lawyers. Evidently again, there is a strong policy bias against the hiring by GOCCs of private counsel.^[51]

(Emphases and underscoring supplied)

In *Land Bank of the Philippines v. Luciano*,^[52] the Court explained the exercise of the OGCC's mandate as the principal law office of GOCCs in this wise:

It may strike as disruptive to the flow of a GOCCs daily grind to require the participation of the OGCC as its principal law office, or the exercise of control and supervision by the OGCC over the acts of the GOCCs legal departments. For reasons such as proximity and comfort, the GOCC may find it convenient to rely instead on its in-house legal departments, or more irregularly, on private practitioners. Yet **the statutory role of the OGCC as principal law office of GOCCs is one of long-standing, and we have to recognize such function as part of public policy.** Since the jurisdiction of the OGCC includes all GOCCs, its perspective is less myopic than that maintained by a particular legal department of a GOCC. It is not inconceivable that left to its own devices, the legal department of a given GOCC may adopt a legal position inconsistent with or detrimental to other GOCCs. **Since GOCCs fall within the same governmental framework, it would be detrimental to have GOCCs foisted into adversarial positions by their respective legal departments. Hence, there is indubitable wisdom in having one overseer over all these legal departments which would ensure that the legal positions adopted by the GOCCs would not conflict with each other or the government.**^[53] (Emphases supplied)

Hence, the protest filed by respondent against petitioner's WPA should have been dismissed outright for lack of authority of Dennis C. Pangan & Associates to represent respondent considering that, at the outset, respondent had already identified itself as a government corporation.^[54]

This notwithstanding, the NWRB, as the chief coordinating and regulating agency for all water resources management development activities,^[55] was authorized to act upon petitioner's WPA.