

THIRD DIVISION

[G.R. No. 188364, February 11, 2015]

K & G MINING CORPORATION, PETITIONER, VS. ACOJE MINING COMPANY, INCORPORATED AND ZAMBALES CHROMITE MINING COMPANY, INCORPORATED, RESPONDENTS.

DECISION

REYES, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court seeks to annul and set aside the Resolutions dated March 16, 2009^[2] and June 5, 2009^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 107700 dismissing K & G Mining Corporation's (KGMC) petition for *certiorari*^[4] for being an improper remedy for the review of the Decision^[5] dated July 14, 2005 and Resolution^[6] dated December 18, 2008 of the Mines Adjudication Board (MAB) in MAB Case No. 0133-02.

The Facts

Petitioner KGMC and respondents Acoje Mining Company Incorporated (AMCI) and Zambales Chromite Mining Company Incorporated (ZCMCI) are mining corporations organized and existing by virtue of Philippine laws.^[7]

In 1970, ZCMCI acquired the 60 mining claims of Spouses Gonzalo and Purificacion Nava located in Sta. Cruz, Zambales. These mining claims were registered under Act of Congress of July 1, 1902.^[8]

ZCMCI thereafter filed its application for patent and availment of rights and privileges over the mining claims pursuant to Presidential Decree (P.D.) No. 463.^[9] On July 13, 1977, ZCMCI's application for availment of rights and privileges was approved by the Bureau of Mines.^[10]

On October 14, 1977, P.D. No. 1214^[11] was promulgated requiring "[h]olders of subsisting and valid patentable mining claims, lode or placer, located under the provisions of the Act of Congress of July 1, 1902, as amended, [to] file a mining lease application therefor with the Mines Regional office concerned within a period of one (1) year x x x."

ZCMCI complied with the new law by filing on October 11, 1978 a lease application (under protest) covering its 60 mining claims. ZCMCI also questioned the constitutionality of P.D. No. 1214 before the Court and prayed that the Minister (now Secretary) of the Department of Environment and Natural Resources (DENR) be enjoined from implementing the same. In G.R. No. 49143 promulgated on August 21, 1989, the Court upheld the constitutionality of P.D. No. 1214.^[12]

In the interim or on July 25, 1987, Executive Order (E.O) No. 279^[13] was issued authorizing the Secretary of the DENR to negotiate and conclude joint venture, co-production or production-sharing agreements for the exploration, development and utilization of mineral resources.

On June 11, 1988, ZCMCI entered into an operating agreement with AMCI over the former's 60 mining claims.^[14]

On October 24, 1988 and January 10, 1989, a certain Dominador Ilagan registered with the DENR Region III his mining claims denominated as "Bong 1 to Bong 4" and "Bong 5 to Bong 6" all located at Sta. Cruz, Zambales. On May 29, 1989 and August 17, 1989, he assigned these mining claims to KGMC.^[15]

On October 5, 1989, the Mines and Geo-Sciences Bureau (MGB) informed ZCMCI that its application for mining lease should be converted into a Mineral Production Sharing Agreement (MPSA) in accordance with E.O. No. 279.^[16]

On June 1, 1990, KGMC filed its letter of intent to avail for itself an MPSA before the MGB of Region III over its mining claims denominated as "Bong 1 to Bong 6" with an approximate area of 1,620 hectares.^[17]

On June 19, 1990, the DENR Secretary issued DENR Special Order No. 580, series of 1990, creating a technical committee that will review the status of ZCMCI. Three months thereafter, ZCMCI submitted documents in support of an MPSA application. On October 9, 1990, the technical committee submitted its Memorandum recommending that ZCMCI be allowed to apply for an MPSA in lieu of a mining lease because it had substantially complied with the requirements of applicable laws.^[18]

On November 20, 1990, the DENR Secretary issued Department Administrative Order No. 82, series of 1990^[19] (DAO 1990-82), providing the procedural guidelines on the award of MPSA through negotiation. The order took effect on January 5, 1991 and it provided, among others, that an application for MPSA shall be accepted upon payment to the Regional Office concerned of filing and processing fees and that mining applicants with unperfected application shall submit a letter of intent and MPSA application/proposal within two years from the effectivity of DAO 1989-57^[20] or until July 17, 1991.^[21]

DAO 1989-57 contains the general guidelines on MPSA under E.O. No. 279 stating, among others, that:

The award of production sharing agreement shall be by bidding in areas previously explored and determined to be economically viable for Mining Operations. In all other cases and in case of failure of bidding, the award shall be by negotiation.

x x x x

b. Negotiation — Proposals for a negotiated Agreement shall be

submitted to the Office of the Secretary, DENR, through the appropriate Regional Office. x x x.^[22]

On May 21, 1991, ZCMCI, AMCI and the government, represented by the DENR Secretary, executed an MPSA covering ZCMCI's 60 mining claims with an approximate area of 540 ha.^[23] The MPSA was approved by the Office of the President (OP) on September 5, 1991.^[24]

Claiming that the issuance and approval of the above MPSA was highly irregular, KGMC filed a letter/protest with the OP.^[25] The matter was referred to the DENR Secretary on October 22, 1991.^[26]

KGMC claimed that the MPSA was irregularly executed because AMCI and ZCMCI did not file their application before the appropriate DENR Regional Office. There is also no record with the MGB-DENR Region III that AMCI and/or ZCMCI filed a proposal for a negotiated agreement with the said office. ZCMCI and AMCI also failed to comply with the documentary requirements and payments mandated in DAOs 1989-57 and 1990-82.

KGMC further alleged that the area covered by the subject MPSA is not available pursuant to paragraph 3.3, Article 3^[27] of DAO 1989-57 since 540 ha thereof is in conflict with KGMC's Prospecting Permit Application covering a total area of 486 ha. No clearance was issued by the Regional Technical Secretariat of the MGB-DENR Region III. KGMC claimed to have been denied of due process because no publication of ZCMCI and AMCI's MPSA was ever made thus depriving it an opportunity to file an adverse claim.

KGMC sought the disapproval of the subject MPSA and its remand to the concerned DENR Regional Office so that its protest and adverse claim can be resolved.^[28]

On December 1, 1991, ZCMCI wrote to the DENR Secretary stating that the MPSA has already become final and executory upon its approval by the President.^[29]

On December 4, 1991, ZCMCI and AMCI paid with the MGB-DENR Region III of San Fernando, Pampanga the filing, processing, registration and other regulatory fees in connection with their MPSA.^[30]

KGMC's letter-protest was eventually forwarded to the DENR Panel of Arbitrators in Region III, San Fernando, Pampanga on November 25, 1996.^[31]

In their Position Paper, ZCMCI and AMCI reiterated that the MPSA has already been approved by the President on September 5, 1991 and has thus become final and executory. KGMC can no longer validly oppose the MPSA and its protest thereto is already moot and academic. KGMC was given an opportunity to submit its application with the MGB but it was ZCMCI and AMCI's application that was recommended being the more qualified applicant. ZCMCI asserted that it filed its mining claim way back in 1934 while KGMC figured in the picture only in 1989.^[32]

Ruling of the Panel of Arbitrators

In an Order^[33] dated April 23, 2002, the Panel of Arbitrators of the MGB ruled in favor of KGMC. They found that ZCMCI's failure to file its MPSA proposal with the MGB-DENR Region III as required in DAOs 1989-57 and 1990-82 made the approval of its MPSA highly irregular. Had the application of ZCMCI for an MPSA been duly filed with the MGB-DENR Region III in the same way that KGMC had so filed pursuant to DAOs 1989-57 and 1990-82, the overlapping of claims should have been avoided and the mining claims of KGMC should not have been included in the area covered by the questioned MPSA of ZCMCI and AMCI. Accordingly, the decretal portion of the order read:

WHEREFORE, the Panel of Arbitrators finds the Mineral Production Sharing Agreement of [r]espondents Acoje Mining Company, Inc., and the Zambales Chromite Mining Company, Inc. irregularly issued and its cancellation is recommended. The MPSA application of [petitioner] K & G Mining Corporation that was duly filed in accordance with the rules should be given due course subject to compliance with the documentation requirements under R.A. No. 7942 and its implementing guidelines, DAO No. 96-40, as amended.

SO ORDERED.^[34]

Ruling of the MAB

On appeal, however, the MAB reversed the ruling of the Panel of Arbitrators of the MGB. According to the MAB, Article 3, paragraph 3.5(b)^[35] of DAO 1989-57 did not expressly prohibit the direct filing of an MPSA proposal before the MGB Central Office. The role of the Regional Office is only to facilitate the receipt and submission of the MPSA proposal to the Office of the Secretary for evaluation. The Panel of Arbitrators was held to have gravely abused its discretion in recommending the cancellation of the subject MPSA because such power is vested only on the Secretary being the one who has the authority to grant an MPSA. Thus, the MAB Decision^[36] dated July 14, 2005 disposed as follows:

WHEREFORE, premises considered, the appealed Orders of the Panel of Arbitrators, DENR Region III, dated April 23, 2002 and June 27, 2002 are hereby **VACATED**. The Mineral Production Sharing Agreement executed by Zambales Chromite Mining Corporation and Acoje Mining Co., Inc.[.] with the Government, through the DENR Secretary, is hereby declared valid.

SO ORDERED.^[37]

KGMC moved for reconsideration^[38] but its motion was denied in the MAB Resolution^[39] dated December 18, 2008.

Ruling of the CA

On March 9, 2009, KGMC, through its previous counsel, filed before the CA a *Petition for Extension of Time to File Petition for Certiorari*.^[40] In a Resolution^[41] dated March 16, 2009, the CA denied extension for the reason that decisions of the MAB are appealable via a petition for review under Rule 43 and not by way of a petition for *certiorari* under Rule 65. Even assuming that *certiorari* is an available remedy, the reglementary period for its filing has already prescribed.

KGMC thereafter filed a *Motion for Reconsideration and to Admit Petition*^[42] explaining that its failure to file a petition for certiorari within the period allowed in Rule 65 was due to the non-availability of some of the annexes thereto which it still had to secure from the MAB. Attached to the motion was the intended petition for certiorari.^[43]

In a Resolution^[44] dated June 5, 2009, the CA denied reconsideration. Hence, the present recourse praying that the foregoing issuances be annulled and the orders of the Panel of Arbitrators be reinstated on the following grounds:

I. THE [CA] GRAVELY ERRED AND DECIDED THE ISSUES OF THE INSTANT CASE IN A MANNER CONTRARY TO ESTABLISHED LAW AND JURISPRUDENCE WHEN IT FAILED TO GRANT DUE COURSE TO THE PETITION OF [KGMC]:

- A. THEREBY VALIDATING A PATENTLY ERRONEOUS DECISION BY THE [MAB] OF THE [DENR] WHICH APPROVED THE [MPSA] PERMITS OF [AMCI] AND [ZCMCI] DESPITE THEIR FAILURE TO FILE [THEIR] MPSA PROPOSAL WITH THE DENR-MINES SECTOR OF DENR REGION III AS REQUIRED BY LAW AND SUBMIT OTHER DOCUMENTARY REQUIREMENTS IN SUPPORT OF [THEIR] MPSA PURSUANT TO THE PROVISIONS OF [DAO] NOS. 57 AND 82;
- B. THEREBY VALIDATING A[N] [MPSA] AWARDED TO [AMCI] AND [ZCMCI] IN LIEU OF A MINING LEASE APPLICATION DESPITE THE FACT THAT NO LESS THAN THE HONORABLE SUPREME COURT HAD RULED THAT THE MINING CLAIMS OF ZCMCI IS DEEMED ABANDONED FOR FAILURE TO MAINTAIN AND INTRODUCE THE MANDATED IMPROVEMENTS ON THE MINING CLAIMS;
- C. THEREBY VALIDATING A[N] [MPSA] AWARDED TO [AMCI] AND [ZCMCI] EVEN THOUGH BOTH [AMCI] AND ZCMCI HAVE DEFAULTED AND BREACHED THE TERMS AND CONDITIONS OF THE MPSA AND HAVE ABANDONED THEIR MINING OPERATION;
- D. EVEN THOUGH THE ERROR OF COUNSEL IS NOT BINDING ON THE CLIENT UNDER THE CIRCUMSTANCES