

EN BANC

[G.R. No. 207257, February 03, 2015]

HON. RAMON JESUS P. PAJE, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR), PETITIONER, VS. HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES, RESPONDENTS.

[G.R. NO. 207257]

REDONDO PENINSULA ENERGY, INC., PETITIONER, VS. HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN CARLO DELOS REYES, RAMON JESUS P. PAJE, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND SUBIC BAY METROPOLITAN AUTHORITY, RESPONDENTS.

[G.R. NO. 207276]

HON. TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON. EMERENCIANA A. DE JESUS, CLEMENTE G. BAUTISTA, JR., HON. RAFAEL V. MARIANO, HON. ROLEN C. PAULINO, HON. EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA, NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA ESPINOS, CHARO SIMONS, GREGORIO LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS HERMOSA, RODOLFO SAMBAJON, ET AL., PETITIONERS,

[G.R. NO. 207282]

**RAMON JESUS P. PAJE IN HIS CAPACITY AS SECRETARY OF THE
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,
SUBIC BAY METROPOLITAN AUTHORITY, AND REDONDO
PENINSULA ENERGY, INC., RESPONDENTS.**

[G.R. NO. 207366]

**SUBIC BAY METROPOLITAN AUTHORITY, PETITIONER, VS. HON.
TEODORO A. CASIÑO, HON. RAYMOND V. PALATINO, HON.
RAFAEL V. MARIANO, HON. EMERENCIANA A. DE JESUS,
CLEMENTE G. BAUTISTA, JR., HON. ROLEN C. PAULINO, HON.
EDUARDO PIANO, HON. JAMES DE LOS REYES, HON. AQUILINO
Y. CORTEZ, JR., HON. SARAH LUGERNA LIPUMANO-GARCIA,
NORAIDA VELARMINO, BIANCA CHRISTINE GAMBOA, GREGORIO
LLORCA MAGDARAOG, RUBELH PERALTA, ALEX CORPUS
HERMOSO, RODOLFO SAMBAJON, REV. FR. GERARDO GREGORIO
P. JORGE, CARLITO A. BALOY, OFELIA D. PABLO, MARIO
ESQUILLO, ELLE LATINAZO, EVANGELINE Q. RODRIGUEZ, JOHN
CARLO DELOS REYES, HON. RAMON JESUS P. PAJE, IN HIS
CAPACITY AS SECRETARY OF THE DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES AND REDONDO
PENINSULA ENERGY, INC., RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

Before this Court are consolidated Petitions for Review on *Certiorari*^[1] assailing the Decision^[2] dated January 30, 2013 and the Resolution^[3] dated May 22, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 00015, entitled "*Hon. Teodoro A. Casiño, et al. v. Hon. Ramon Jesus P. Paje, et al.*"

Factual Antecedents

In February 2006, Subic Bay Metropolitan Authority (SBMA), a government agency organized and established under Republic Act No. (RA) 7227,^[4] and Taiwan Cogeneration Corporation (TCC) entered into a Memorandum of Understanding (MOU) expressing their intention to build a power plant in Subic Bay which would supply reliable and affordable power to Subic Bay Industrial Park (SBIP).^[5]

On July 28, 2006, SBMA and TCC entered into another MOU, whereby TCC undertook to build and operate a coal-fired power plant.^[6] In the said MOU, TCC identified 20 hectares of land at *Sitio* Naglatore, Mt. Redondo, Subic Bay Freeport Zone (SBFZ) as the suitable area for the project and another site of approximately 10 hectares to be used as an ash pond.^[7] TCC intends to lease the property from SBMA for a term of 50 years with rent fixed at \$3.50 per square meter, payable in 10 equal 5-year installments.^[8]

On April 4, 2007, the SBMA Ecology Center issued SBFZ Environmental Compliance Certificate (ECC) No. EC-SBFZ-ECC-69-21-500 in favor of Taiwan Cogeneration International Corporation (TCIC), a subsidiary of TCC,^[9] for the construction, installation, and operation of 2x150-MW Circulating Fluidized Bed (CFB) Coal-Fired Thermal Power Plant at *Sitio* Naglatore.^[10]

On June 6, 2008, TCC assigned all its rights and interests under the MOU dated July 28, 2006 to Redondo Peninsula Energy, Inc. (RP Energy),^[11] a corporation duly organized and existing under the laws of the Philippines with the primary purpose of building, owning, and operating power plants in the Philippines, among others.^[12] Accordingly, an Addendum to the said MOU was executed by SBMA and RP Energy.^[13]

RP Energy then contracted GHD Pty, Ltd. (GHD) to prepare an Environmental Impact Statement (EIS) for the proposed coal-fired power plant and to assist RP Energy in applying for the issuance of an ECC from the Department of Environment and Natural Resources (DENR).^[14]

On August 27, 2008, the *Sangguniang Panglungsod* of Olongapo City issued Resolution No. 131, Series of 2008, expressing the city government's objection to the coal-fired power plant as an energy source and urging the proponent to consider safer alternative sources of energy for Subic Bay.^[15]

On December 22, 2008, the DENR, through former Secretary Jose L. Atienza, Jr., issued an ECC for the proposed 2x150-MW coal-fired power plant.^[16]

Sometime thereafter, RP Energy decided to include additional components in its proposed coal-fired power plant. Due to the changes in the project design, which involved the inclusion of a barge wharf, seawater intake breakwater, subsea discharge pipeline, raw water collection system, drainage channel improvement, and a 230kV double-circuit transmission line,^[17] RP Energy requested the DENR Environmental Management Bureau (DENR-EMB) to amend its ECC.^[18] In support of its request, RP Energy submitted to the DENR-EMB an Environmental Performance Report and Management Plan (EPRMP), which was prepared by GHD.^[19]

On June 8, 2010, RP Energy and SBMA entered into a Lease and Development Agreement (LDA) over a 380,004.456-square meter parcel of land to be used for building and operating the coal-fired power plant.^[20]

On July 8, 2010, the DENR-EMB issued an amended ECC (first amendment) allowing the inclusion of additional components, among others.^[21]

Several months later, RP Energy again requested the DENR-EMB to amend the ECC.^[22] Instead of constructing a 2x150-MW coal-fired power plant, as originally planned, it now sought to construct a 1x300-MW coal-fired power plant.^[23] In support of its request, RP Energy submitted a Project Description Report (PDR) to the DENR-EMB.^[24]

On May 26, 2011, the DENR-EMB granted the request and further amended the ECC (second amendment).^[25]

On August 1, 2011, the *Sangguniang Panglalawigan* of Zambales issued Resolution No. 2011-149, opposing the establishment of a coal-fired thermal power plant at *Sitio Naglatore*, Brgy. Cawag, Subic, Zambales.^[26]

On August 11, 2011, the *Liga ng mga Barangay* of Olongapo City issued Resolution No. 12, Series of 2011, expressing its strong objection to the coal-fired power plant as an energy source.^[27]

On July 20, 2012, Hon. Teodoro A. Casiño, Hon. Raymond V. Palatino, Hon. Rafael V. Mariano, Hon. Emerenciana A. De Jesus, Clemente G. Bautista, Jr., Hon. Rolen C. Paulino, Hon. Eduardo Piano, Hon. James de los Reyes, Hon. Aquilino Y. Cortez, Jr., Hon. Sarah Lugerna Lipumano-Garcia, Noraida Velarmino, Bianca Christine Gamboa Espinos, Charo Simons, Gregorio Llorca Magdaraog, Rubelh Peralta, Alex Corpus Hermoso, Rodolfo Sambajon, Rev. Fr. Gerardo Gregorio P. Jorge, Carlito A. Baloy, Ofelia D. Pablo, Mario Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, and John Carlo delos Reyes (Casiño Group) filed before this Court a Petition for Writ of *kalikasan* against RP Energy, SBMA, and Hon. Ramon Jesus P. Paje, in his capacity as Secretary of the DENR.^[28]

On July 31, 2012, this Court resolved, among others, to: (1) issue a Writ of *kalikasan*; and (2) refer the case to the CA for hearing and reception of evidence and rendition of judgment.^[29]

While the case was pending, RP Energy applied for another amendment to its ECC (third amendment) and submitted another EPRMP to the DENR-EMB, proposing the construction and operation of a 2x300-MW coal-fired power plant.^[30]

On September 11, 2012, the Petition for Writ of *kalikasan* was docketed as CA-G.R. SP No. 00015 and raffled to the Fifteenth Division of the CA.^[31] In the Petition, the Casiño Group alleged, among others, that the power plant project would cause grave environmental damage;^[32] that it would adversely affect the health of the residents of the municipalities of Subic, Zambales, Morong, Hermosa, and the City of Olongapo;^[33] that the ECC was issued and the LDA entered into without the prior approval of the concerned *sanggunians* as required under Sections 26 and 27 of the Local Government Code (LGC);^[34] that the LDA was entered into without securing a prior certification from the National Commission on Indigenous Peoples (NCIP) as required under Section 59 of RA 8371 or the Indigenous Peoples' Rights Act of 1997 (IPRA Law);^[35] that Section 8.3 of DENR Administrative Order No. 2003-30 (DAO 2003-30) which allows amendments of ECCs is *ultra vires* because the DENR has no authority to decide on requests for amendments of previously issued ECCs in the absence of a new EIS;^[36] and that due to the nullity of Section 8.3 of DAO 2003-30, all amendments to RP Energy's ECC are null and void.^[37]

On October 29, 2012, the CA conducted a preliminary conference wherein the parties, with their respective counsels, appeared except for Hon. Teodoro A. Casiño, Hon. Rafael V. Mariano, Hon. Emerencia A. De Jesus, Clemente G. Bautista, Mario

Esquillo, Elle Latinazo, Evangeline Q. Rodriguez, and the SBMA.^[38] The matters taken up during the preliminary conference were embodied in the CA's Resolution dated November 5, 2012, to wit:

I. ISSUES

A. Petitioners (Casiño Group)

1. Whether x x x the DENR Environmental Compliance Certificate ('ECC' x x x) in favor of RP Energy for a 2x150 MW Coal-Fired Thermal Power Plant Project ('Power Plant,' x x x) and its amendment to 1x300 MW Power Plant, and the Lease and Development Agreement between SBMA and RP Energy complied with the Certification Precondition as required under Section 59 of Republic Act No. 8371 or the Indigenous People's Rights Act of 1997 ('IPRA Law,' x x x);
2. Whether x x x RP Energy can proceed with the construction and operation of the 1x300 MW Power Plant without prior consultation with and approval of the concerned local government units ('LGUs,' x x x), pursuant to Sections 26 and 27 of Republic Act No. 7160 or the Local Government Code;
3. Whether x x x Section 8.3 of DENR Administrative Order No. 2003-30 ('DAO No. 2003-30,' x x x) providing for the amendment of an ECC is null and void for being *ultra vires*; and
4. Whether x x x the amendment of RP Energy's ECC under Section 8.3 of DAO No. 2003-30 is null and void.

B. Respondent RP Energy

1. Whether x x x Section 8.3 of DAO No. 2003-30 can be collaterally attacked;
 - 1.1 Whether x x x the same is valid until annulled;
2. Whether x x x petitioners exhausted their administrative remedies with respect to the amended ECC for the 1x300 MW Power Plant;
 - 2.1 Whether x x x the instant Petition is proper;
3. Whether x x x RP Energy complied with all the procedures/requirements for the issuance of the DENR ECC and its amendment;
 - 3.1 Whether x x x a Certificate of Non-Overlap from the National Commission on Indigenous Peoples is applicable in the instant case;
4. Whether x x x the LGU's approval under Sections 26 and 27 of the Local Government Code is necessary for the issuance of the