

SECOND DIVISION

[G.R. No. 184295, July 30, 2014]

NATIONAL TRANSMISSION CORPORATION, PETITIONER, VS. ALPHAOMEGA INTEGRATED CORPORATION, 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 April 8, 2008 and the Resolution^[3] dated August 27, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 99454 affirming with modification the Final Award^[4] of the Construction Industry Arbitration Commission (CIAC) Arbitral Tribunal in favor of respondent Alphaomega Integrated Corporation (AIC) by increasing petitioner National Transmission Corporation's (TRANSCO) liability from P17,495,117.44 to P18,896,673.31.

The Facts

AIC, a duly licensed transmission line contractor, participated in the public biddings conducted by TRANSCO and was awarded six (6) government construction projects, namely: (a) Contract for the Construction & Erection of Batangas Transmission Reinforcement Project Schedule III (BTRP Schedule III Project); (b) Contract for the Construction & Erection of Batangas Transmission Reinforcement Project Schedule I (BTRP Schedule I Project); (c) Contract for the Construction, Erection & Installation of 230 KV and 69 KV S/S Equipment and Various Facilities for Makban Substation under the Batangas Transmission Reinforcement Project (Schedule II) (Makban Substation Project); (d) Contract for the Construction, Erection & Installation of 138 & 69 KV S/S Equipment for Bacolod Substation under the Negros III-Panay III Substation Projects (Schedule II) (Bacolod Substation Project); (e) Contract for the Construction, Erection & Installation of 138 & 69 KV Substation Equipment for the New Bunawan Switching Station Project (Bunawan Substation Project); and (f) Contract for the Construction, Erection & Installation of 138 and 69 KV Substation Equipment for Quiot Substation Project (Quiot Substation Project).^[5]

In the course of the performance of the contracts, AIC encountered difficulties and incurred losses allegedly due to TRANSCO's breach of their contracts, prompting it to surrender the projects to TRANSCO under protest. In accordance with an express stipulation in the contracts that disagreements shall be settled by the parties through arbitration before the CIAC, AIC submitted a request for arbitration before the CIAC on August 28, 2006, and, thereafter, filed an Amended Complaint against TRANSCO alleging that the latter breached the contracts by its failure to: (a) furnish the required Detailed Engineering; (b) arrange a well-established right-of-way to the project areas; (c) secure the necessary permits and clearances from the concerned local government units (LGUs); (d) ensure a continuous supply of construction materials; and (e) carry out AIC's requests for power shut down. The

aforementioned transgressions resulted in protracted delays and contract suspensions for each project,^[6] as follows:

| Contract | Original Contract Duration | Duration of Transco-Approved Suspension and/or Extensions | Percentage (%) of Original Contract Duration |
|-----------------------|----------------------------|---|--|
| 1) BTRP Schedule III | 560 days | 711 days | 127% |
| 2) BTRP Schedule I | 270 days | 406 days | 170% |
| 3) Makban Substation | 365 days | 452 days | 124% |
| 4) Bacolod Substation | 360 days | 289 days | 80% |
| 5) Bunawan Substation | 330 days | 130 days | 39% |
| 6) Quiot Substation | 300 days | <u>131 days</u> 2119 days ^[7] | 44% |

AIC prayed for judgment declaring all six (6) contracts rescinded and ordering TRANSCO to pay, in addition to what had already been paid under the contracts, moral damages, exemplary damages, and attorney's fees at P100,000.00 each, and a total of P40,201,467.19 as actual and compensatory damages.^[8]

TRANSCO, for its part, contended that: (a) it had conducted Detailed Engineering prior to the conduct of the bidding; and (b) it had obtained the necessary government permits and endorsements from the affected LGUs. It asserted that AIC was guilty of front loading – that is, collecting the bulk of the contract price for work accomplished at the early stages of the project and then abandoning the later stages of the project which has a lower contract price^[9] – and that it disregarded the workable portions of the projects not affected by the lack of supplies and drawings. TRANSCO further argued that AIC was estopped from asking for standby fees to cover its overhead expenses during project suspensions considering that the delays, such as the unresolved right-of-way issues and non-availability of materials, were factors already covered by the time extensions and suspensions of work allowed under the contracts.^[10]

On April 18, 2007, the CIAC Arbitral Tribunal rendered its Final Award^[11] in CIAC Case No. 21-2006 ordering the payment of actual and compensatory damages which AIC would not have suffered had it not been for the project delays attributable to TRANSCO. It found ample evidence to support the claim for the increase in subcontract cost in BTRP Schedule I, as well as such items of cost as house and yard rentals, electric bills, water bills, and maintained personnel, but disallowed the claims for communications bills, maintenance costs for idle equipment, finance charges, and materials cost increases.^[12] According to the Arbitral Tribunal, even if AIC itself made the requests for contract time extensions, this did not bar its claim for damages as a result of project delays since a contrary ruling would allow TRANSCO to profit from its own negligence and leave AIC to suffer serious material

prejudice as a direct consequence of that negligence leaving it without any remedy at law.^[13] The Arbitral Tribunal upheld AIC's right to rescind the contracts in accordance with Resolution No. 018-2004 of the Government Procurement Policy Board (GPPB), which explicitly gives the contractor the right to terminate the contract if the works are completely stopped for a continuous period of at least 60 calendar days, through no fault of its own, due to the failure of the procuring entity to deliver within a reasonable time, supplied materials, right-of-way, or other items that it is obligated to furnish under the terms of the contract, among others.^[14] The dispositive portion of the Arbitral Tribunal's Final Award reads:

WHEREFORE, Respondent, National Transmission Corporation [TRANSCO] is hereby ordered to pay Claimant, Alphaomega Integrated Corporation, the following sums:

| | | |
|----------------------------|---|------------------------------|
| (a) For BTRP Schedule III | - | P6,423,496.67 |
| (b) For BTRP Schedule I | - | 5,214,202.30 |
| (c) For Makban Substation | - | 3,075,870.95 |
| (d) For Bacolod Substation | - | 1,362,936.77 |
| (e) For Bunawan Substation | - | 820,481.72 |
| (f) For Quiot Substation | - | 598,129.03 |
| TOTAL | | <u>P17,495,117.44</u> |

Each Party shall shoulder its own cost of arbitration.

The foregoing amount of P17,495,117.44 shall earn interest at the rate of six percent (6%) per annum from the date of promulgation of this Final Award until it becomes final and executory. Thereafter, the Final Award, including accrued interest, shall earn interest at the rate of 12% per annum until the entire amount due is fully paid.^[15] (Emphasis supplied)

Unconvinced, TRANSCO instituted a petition for review^[16] with the CA.

Before filing its comment^[17] to the petition, **AIC moved for the issuance of awrit of execution,**^[18] **not for the amount of P17,495,117.44 awarded in the Final Award, but for the increased amount of P18,967,318.49.**^[19] It sought correction of the discrepancies between the amount of the award appearing in the dispositive portion^[20] and the body of the Final Award.^[21] The Arbitral Tribunal, however, denied AIC's motion, holding that while the CIAC Revised Rules of Procedure Governing Construction Arbitration (CIAC Rules) would have allowed the correction of the Final Award for evident miscalculation of figures, typographical or arithmetical errors, **AIC failed to file its motion for the purpose within the time limitation of 15 days from its receipt of the Final Award.**^[22]

The CA Ruling

In the Decision^[23] dated April 8, 2008, the CA affirmed the Arbitral Tribunal's factual findings that TRANSCO failed to exercise due diligence in resolving the problems regarding the right-of-way and the lack of materials before undertaking

the bidding process and entering into the contracts with AIC.^[24] It found no merit in TRANSCO's allegation that AIC refused to perform the remaining workable portions of the projects not affected by problems of right-of-way, shutdowns, supplies and drawings, firstly, because the certificates of accomplishments issued by TRANSCO in the course of project implementation signifying its satisfaction with AIC's performance negate such claim and, secondly, because all the orders issued by TRANSCO suspended the contracts not only in part but in their entirety, thus, permitting no work activity at all during such periods.^[25]

The CA upheld the Arbitral Tribunal's Final Award as having been sufficiently established by evidence **but modified the total amount of the award after noting a supposed mathematical error in the computation.** Setting aside TRANSCO's objections, it ruled that when a case is brought to a superior court on appeal every aspect of the case is thrown open for review,^[26] hence, the subject error could be rectified. The CA held that the correct amount of the award should be P18,896,673.31, and not P17,495,117.44 as stated in the Arbitral Tribunal's Final Award. ^[27]

Dissatisfied, TRANSCO moved for reconsideration^[28] but was, however, denied by the CA in a Resolution^[29] dated August 27, 2008, hence, the instant petition.

The Issues Before the Court

The essential issues for the Court's consideration are whether or not the CA erred (a) in affirming the CIAC Arbitral Tribunal's findings that AIC was entitled to its claims for damages as a result of project delays, and (b) in increasing the total amount of compensation awarded in favor of AIC despite the latter's failure to raise the allegedly erroneous computation of the award before the CIAC in a timely manner, that is, within fifteen (15) days from receipt of the Final Award as provided under Section 17.1 of the CIAC Rules.

The Court's Ruling

TRANSCO seeks through this petition a **recalibration of the evidence** presented before the CIAC Arbitral Tribunal, insisting that AIC is not entitled to any damages not only because it had previously waived all claims for standby fees in case of project delays but had eventually failed to perform the workable portions of the projects. This is evidently a factual question which cannot be the proper subject of the present petition. Section 1, Rule 45 of the Rules of Court provides that a petition for review on *certiorari* under the said rule, as in this case, "shall raise only questions of law which must be distinctly set forth." Thus, absent any of the existing exceptions impelling the contrary, the Court is, as a general rule, precluded from delving on factual determinations, as what TRANSCO essentially seeks in this case. Similar to the foregoing is the Court's ruling in *Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*,^[30] the pertinent portions of which are hereunder quoted:

Dynamic maintains that the issues Hanjin raised in its petitions are factual in nature and are, therefore, not proper subject of review under Section 1 of Rule 45, prescribing that a petition under the said rule, like

the one at bench, "shall raise only questions of law which must be distinctly set forth."

Dynamic's contention is valid to point as, indeed, the matters raised by Hanjin are factual, revolving as they do on the entitlement of Dynamic to the awards granted and computed by the CIAC and the CA. Generally, this would be **a question of fact that this Court would not delve upon.** *Imperial v. Jaucian* suggests as much. There, the Court ruled that the computation of outstanding obligation is a question of fact:

Arguing that she had already fully paid the loan xxx, petitioner alleges that the two lower courts misappreciated the facts when they ruled that she still had an outstanding balance of P208,430.

This issue involves a question of fact. Such question exists when a doubt or difference arises as to the truth or the falsehood of alleged facts; and when there is need for a calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.(G.R. No. 149004, April 14, 2004, 427 SCRA 517, 523-524.)

The rule, however, precluding the Court from delving on the factual determinations of the CA, admits of several exceptions. In *Fuentes v. Court of Appeals*, we held that the findings of facts of the CA, which are generally deemed conclusive, may admit review by the Court in any of the following instances, among others:

- (1) when the factual findings of the [CA] and the trial court are contradictory;
- (2) when the findings are grounded entirely on speculation, surmises, or conjectures;
- (3) when the inference made by the [CA] from its findings of fact is manifestly mistaken, absurd, or impossible;
- (4) when there is grave abuse of discretion in the appreciation of facts;
- (5) when the [CA], in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;
- (6) when the judgment of the [CA] is premised on a misapprehension of facts;
- (7) when the [CA] fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;
- (8) when the findings of fact are themselves conflicting;