

## THIRD DIVISION

[ G.R. No. 172438, July 04, 2012 ]

**METROPOLITAN CEBU WATER DISTRICT, PETITIONER, VS.  
MACTAN ROCK INDUSTRIES, INC., RESPONDENT.**

### DECISION

**MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 assailing the February 20, 2006 Decision<sup>[1]</sup> and the March 30, 2006 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CEB SP. No. 00623.

#### THE FACTS

Petitioner Metropolitan Cebu Water District (*MCWD*) is a government-owned and controlled corporation (*GOCC*) created pursuant to Presidential Decree (*PD*) No. 198,<sup>[3]</sup> as amended, with its principal office address at the MCWD Building, Magallanes corner Lapu-Lapu Streets, Cebu City.<sup>[4]</sup> It is mandated to supply water within its service area in the cities of Cebu, Talisay, Mandaue, and Lapu-Lapu and the municipalities of Compostela, Liloan, Consolacion, and Cordova in the Province of Cebu.<sup>[5]</sup>

Respondent Metro Rock Industries, Inc. (*MRII*) is a domestic corporation with principal office address at the 2nd Level of the Waterfront Cebu Hotel and Casino, Lahug, Cebu City.<sup>[6]</sup>

On May 19, 1997, MCWD entered into a Water Supply Contract<sup>[7]</sup> (*the Contract*) with MRII wherein it was agreed that the latter would supply MCWD with potable water, in accordance with the World Health Organization (*WHO*) standard or the Philippine national standard, with a minimum guaranteed annual volume.<sup>[8]</sup>

On March 15, 2004, MRII filed a Complaint<sup>[9]</sup> against MCWD with the Construction Industry Arbitration Commission (*CIAC*), citing the arbitration clause (Clause 18)<sup>[10]</sup> of the Contract. The case was docketed as CIAC Case No. 12-2004. In the said complaint, MRII sought the reformation of Clause 17 of the Contract, or the Price Escalation/De-Escalation Clause, in order to include Capital Cost Recovery in the price escalation formula, and to have such revised formula applied from 1996 when the bidding was conducted, instead of from the first day when MRII started selling water to MCWD. It also sought the payment of the unpaid price escalation/adjustment, and the payment of unpaid variation/extra work order and interest/cost of money up to December 31, 2003.<sup>[11]</sup>

On May 7, 2002, MCWD filed its Answer<sup>[12]</sup> dated April 27, 2004, which included a

motion to dismiss the complaint on the ground that the CIAC had no jurisdiction over the case, as the Contract was not one for construction or infrastructure.

The CIAC thereafter issued an order<sup>[13]</sup> denying MCWD's motion to dismiss, and calling the parties to a preliminary conference for the review and signing of the Terms of Reference.<sup>[14]</sup>

MCWD, thus, filed a petition for certiorari<sup>[15]</sup> under Rule 65 with the CA, questioning the jurisdiction of the CIAC. The petition was docketed as CA-G.R. SP. No. 85579 (First Petition).

Meanwhile, the CIAC proceeded with the preliminary conference scheduled on June 10 and July 22, 2004 which MWCD opted not to attend. MR II and the CIAC both signed the Terms of Reference. Pursuant to the Terms of Reference and the CIAC Order dated July 22, 2004, MR II submitted its documentary evidence and affidavits of its witnesses.<sup>[16]</sup>

On August 27, 2004, MR II submitted its Formal Offer of Evidence and its memorandum of arguments in the form of a proposed/draft decision. MCWD did not attend the hearings. It did not submit evidence other than those annexed to its Answer. Neither did it file a formal offer of evidence, or a memorandum of legal arguments.<sup>[17]</sup>

### **Decision of the CIAC**

The CIAC promulgated its Decision<sup>[18]</sup> on April 14, 2005, the dispositive portion of which reads:

**WHEREFORE**[,] premises considered, judgment is hereby rendered as follows:

1. Ordering the reformation of Clause 17 of the Water Supply Contract to read:

17[.] Price Escalation and/or De-Escalation shall be based on the parametric formula:

17.1 Power Rate Price Adjustment/Power Cost Adjustment

Current Power Rate - Base Power Rate x 30% of base selling price of water

Base Power Rate

17.2 Consumer Price Index (CPI) Adjustment/Operating Cost Adjustment:

Current CPI - Base CPI x 40% of base selling price of water

Base CPI

### 17.3 Capital Cost Recovery Adjustment:

Current Peso to Base Peso to US\$

US\$ Exchange Rate – Exchange Rate x 30% of base selling price of water

Base Peso to US \$ Exchange Rate

Price escalation shall be reckoned from January 1999 when the water was first delivered by Mactan Rock Industries, Inc. to the MCWD facilities in Mactan. The base CPI, base US\$ Exchange Rate and the Base Power Rate shall be the prevailing rate in January 1999, while the Base Selling Price of water shall mean the 1996 rate per cubic meter of water as provided for in the Water Supply Contract.

2. Ordering Respondent Metropolitan Cebu Water District to pay Claimant, Mactan Rock Industries, Inc[.] under the reformed Clause 17 of the Water Supply Contract, the net amount of Php12,126,296.70 plus legal interest of six percent (6%) per annum from the (sic) March 15, 2004, the date of filing (sic) of the case with the Construction Industry Arbitration Commission, the rate increased to twelve percent (12%) per annum from the date the herein Decision have (sic) become final and executory until the foregoing amounts shall have been fully paid[.]
3. Claimant Mactan Rock Industries, Inc. and Metropolitan Cebu Water District shall share equally the cost of arbitration.

**SO ORDERED.**<sup>[19]</sup>

**Decision of the CA in CA-G.R. SP No. 85579 -**

*Petition for certiorari under Rule 65 with the Court of Appeals questioning the jurisdiction of the CIAC*

Meanwhile, on October 28, 2005, the CA in its decision<sup>[20]</sup> in the First Petition upheld the jurisdiction of the CIAC over the case. The CA held that when parties agree to settle their disputes arising from or connected with construction contracts, the CIAC acquires primary jurisdiction.<sup>[21]</sup> Citing *Philrock Inc. v. Construction Industry Arbitration Commission*,<sup>[22]</sup> the CA stated that the CIAC may resolve not only the merits of such controversies, but may also award damages, interest, attorney's fees, and expenses of litigation, when appropriate.<sup>[23]</sup>

Second, the CA held that the claims in question fall under the jurisdiction of the CIAC. Thus:

Xxx Section 4 of Executive Order No. 1008, otherwise known as the Construction Industry Arbitration Law delineates CIAC's jurisdiction as

“original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arise before or after the completion of the contract, or after abandonment thereof.” Moreover, Section 5 (k) of Republic Act No. 9184 otherwise known as [the] Government Procurement Reform Act expressly defines “infrastructure project” as including “water supply[,]” construction, rehabilitation[,] demolition, repair, restoration and maintenance.

Consistent with the above-mentioned policy of encouraging alternative dispute resolution methods, courts should liberally construe arbitration clauses. Provided such clause is susceptible of an interpretation that covers the asserted dispute, an order to arbitrate should be granted. Any doubt should be resolved in favor of arbitration. It is to be highlighted that the dispute in the case at bar arose from the parties’ incongruent positions with regard to clause 17 of the Water Supply Contract[,] specifically the price escalation/adjustment. The instant case involves technical discrepancies that are better left to an arbitral body that has expertise in those areas. Nevertheless, in any event, the inclusion of an arbitration clause in a contract does not ipso facto divest the courts of jurisdiction to pass upon the findings of arbitral bodies, because the awards are still judicially reviewable under certain conditions.<sup>[24]</sup> (Citations omitted.)

MCWD’s motion for reconsideration of the decision in the First Petition was still pending when it filed the petition for review<sup>[25]</sup> under Rule 43 (*Second Petition*) appealing the decision of the CIAC. The motion for reconsideration was eventually denied in a Resolution<sup>[26]</sup> dated May 3, 2006. MCWD did not appeal from the denial of the motion. It, thus, became final and executory.<sup>[27]</sup>

**Decision of the CA in CA-G.R. CEB SP.**

**No. 00623** – *Petition for review under Rule 43 appealing the decision of the CIAC*

Aggrieved by the CIAC Decision, MCWD filed a petition for review under Rule 43 with the CA which was docketed as CA-G.R. CEB SP. No. 00623.

The CA, however, dismissed the petition in its Decision dated February 20, 2006. The Court therein stated that the issue of jurisdiction had already been resolved by the 18th Division in the First Petition, where the CA upheld the jurisdiction of the CIAC over Arbitration Case No. 12-2004.

Citing jurisprudence, the CA also ruled that there being an arbitration clause in the Contract, the action for reformation of contract instituted by MR II in this case fell squarely within the jurisdiction of the CIAC, not the courts. In relation to this, the CA noted that the present rule is that courts will look with favor upon amicable agreements to settle disputes through arbitration, and will only interfere with great reluctance to anticipate or nullify the action of the arbitrator. MCWD being a signatory and a party to the Water Supply Contract, it cannot escape its obligation under the arbitration clause. <sup>[28]</sup>

The CA also held that the CIAC did not err in finding that the Water Supply Contract is clear on the matter of the reckoning period for the computation of the escalation cost from January 9, 1999, or the first day of delivery of water. Moreover, the CA found that the CIAC did not err in ruling that the contract be reformed to include Capital Cost Recovery in the parametric formula for price escalation. Neither did it err in holding that the Capital Cost Recovery shall be 30% of the Base Selling Price of water as a consequence of the reformation of Clause 17.

Finally, the CA stressed that "factual findings of administrative agencies which are deemed to have acquired expertise in matters within their respective jurisdictions are generally accorded not only respect but even finality when supported by substantial evidence."<sup>[29]</sup>

MCWD filed a motion for reconsideration but it was denied in the CA Resolution dated March 30, 2006.

Thus, this petition.

### **ISSUES**

MCWD raises the following issues in its petition for review:

**MAY THE CONSTRUCTION INDUSTRY [ARBITRATION] COMMISSION EXERCISE JURISDICTION OVER DISPUTES ARISING FROM A WATER SUPPLY CONTRACT?**

**MAY A PARTY, WHO IS A SIGNATORY TO THE WATER SUPPLY CONTRACT[,] IN EFFECT SUBMITTING ITSELF TO THE JURISDICTION OF THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION, QUESTION THE JURISDICTION OF [THE] CIAC?**

**DOES THE CONSTRUCTION INDUSTRY ARBITRATION COMMISSION HAVE THE (SIC) JURISDICTION OVER A COMPLAINT PRAYING FOR A REFORMATION OF A WATER SUPPLY CONTRACT?**

**MAY THE COURT OF APPEALS REFUSE TO RENDER A [SIC] JUDGMENT ON AN ISSUE BECAUSE THIS HAS BEEN ALREADY SETTLED IN A DECISION RENDERED BY ANOTHER DIVISION OF THE COURT OF APPEALS IN A PETITION FOR CERTIORARI, EVEN IF THE SAID DECISION HAS NOT YET BEEN (SIC) FINAL DUE TO A TIMELY FILING OF A MOTION FOR RECONSIDERATION?<sup>[30]</sup>**

### **RULING OF THE COURT**

#### **Creation of the CIAC**

The Construction Industry Arbitration Commission (CIAC) was created in 1985 under Executive Order (E.O.) No. 1008 (Creating an Arbitration Machinery for the