

SECOND DIVISION

[G.R. No. 155692, October 23, 2003]

**PHIVIDEC INDUSTRIAL AUTHORITY AND ATTY. CESILO ADAZA,
PETITIONERS, VS. CAPITOL STEEL CORPORATION AND CHENG
HAN SUI, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Before us is a *Petition for Review on Certiorari* filed by petitioner Phividec International Authority (PHIVIDEC) and Atty. Cesilo Adaza (Atty. Adaza) seeking to overturn the *Amended Decision* dated 28 May 2002 in CA-G.R. SP No. 60181 of the Former Sixth Division of the Court of Appeals.^[1] The respondents Capitol Steel Corporation and Cheng Han Sui had originally filed before the Court of Appeals a *Petition for Certiorari, Prohibition and Mandamus* with a prayer for the issuance of a Temporary Restraining Order and a Writ of Preliminary Injunction, assailing the orders of the Regional Trial Court^[2] of Misamis Oriental (RTC) denying the respondents' Motion to Dismiss.^[3] The Court of Appeals had initially affirmed the orders of the RTC in a *Decision*^[4] dated 23 November 2001, but acting upon the respondents' *Motion for Reconsideration*^[5] it reversed itself in the challenged *Amended Decision*. Hence, the current petition.

PHIVIDEC, through Atty. Adaza who is a private lawyer, filed a complaint^[6] for expropriation against the respondents on 24 August 1999. PHIVIDEC is a government-owned corporation which was created by Presidential Decree No. 538. Five (5) days later, or on 29 August 1999, PHIVIDEC, also through Atty. Adaza, filed an *Amended Complaint*,^[7] which however lacked the prescribed certification against forum shopping.

On 13 October 1999, respondents filed an *Omnibus Motion*,^[8] praying for the dismissal of the expropriation case on the grounds of absence of the certification against forum shopping and lack of authority of Atty. Adaza to represent PHIVIDEC. Along with its *Opposition*^[9] to the *Omnibus Motion*, PHIVIDEC filed a *Manifestation/Motion*, attaching thereto a "Certification of Non-Forum Shopping." In an *Order*^[10] dated 4 November 1999, the RTC denied the *Omnibus Motion*. Respondents moved for the reconsideration of the RTC's Order, but the motion for reconsideration was denied on 27 June 2000.

On 13 October 1999, respondents filed an *Omnibus Motion* praying for the dismissal of the expropriation case on the grounds of absence of the certification against forum shopping and the lack of authority of Atty. Adaza to represent PHIVIDEC. PHIVIDEC opposed the *Motion to Dismiss* and filed as well a *Manifestation/Motion*, attaching thereto the Certificate of Non-Forum Shopping. In an Order dated 4

November 1999, the RTC denied the *Omnibus Motion*. Respondents moved for the reconsideration of the RTC *Order*, but the motion was denied on 27 June 2000.

Respondents then elevated the RTC orders to the Court of Appeals, through their petition in CA-G.R. No. 60181. After denying respondents' application for a temporary restraining order,^[11] the appellate court promulgated its *Decision*^[12] dismissing respondents' petition for lack of merit. However, on *Motion for Reconsideration* of the respondents, the Court of Appeals came out with the assailed *Amended Decision*. Pointing out that under Section 3 of Memorandum Circular No. 9,^[13] and COA Circular No. 86-255^[14] the engagement of a private counsel of a government-owned or controlled corporation (GOCC) requires the prior written concurrence of the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA), respectively, the appellate court held that Atty. Adaza's representation of PHIVIDEC in the expropriation case was not valid. The dispositive portion of the *Amended Decision* reads:

"WHEREFORE, finding the Motion for Reconsideration to be of merit, the assailed Decision is hereby SET ASIDE, without prejudice to the filing of similar petition by PHIVIDEC though (sic) a proper legal officer or counsel."^[15]

In the petition, petitioners maintain that PHIVIDEC has secured the written concurrences of the COA and the OGCC to its engagement of Atty. Adaza as its counsel in the expropriation case, substantially complying with the requirements of COA Circular No. 86-255 and Memorandum Circular No. 9. Petitioners also argue that the subsequent filing of the certification of non-forum shopping before the RTC constituted substantial compliance with the law.

A review of the laws involving the role of the OGCC as official counsel of all GOCCs from the time the office was made separate and distinct from the Office of the Solicitor General is in order. This is necessary to determine the nature and extent of the OGCC's legal representation in behalf of GOCCs and the public policy, if any, as regards the engagement by GOCCs of the services of private lawyers.

In 1959, Republic Act No. 2327, which declared the position of Government Corporate Counsel separate and distinct from that of the Solicitor General, was enacted. Four years later, it was amended by Republic Act No. 3838. The amendatory law made the Government Corporate Counsel the principal law officer of GOCCs. It also imposed the prohibition on GOCCs from hiring private counsels. The full text of the amendments reads:

"Section 1. x x x [**The Government Corporate Counsel**] shall be the principal law office of all government-owned or controlled corporations. To enable him to discharge, his functions as such, it shall be the duty of all said corporations to refer to him all important legal questions for opinion, advice and determination, all proposed contracts, and all important court cases for his services. He shall, moreover, exercise control and supervision over all the legal divisions maintained separately by said corporations. **No government-owned or controlled corporation shall hire a private law practitioner to handle any of its legal cases without the written consent of the Government**

Corporate Counsel or of the Secretary of Justice." (Emphasis supplied)

Thus, beginning with the year 1963, the general rule disallowing GOCCs from hiring private lawyers was put in place, subject to the exception that the GOCC may do so with the written consent of the Government Corporate Counsel or the Secretary of Justice.

Republic Act No. 2327 was further amended by Republic Act No. 6000,^[16] but it did not change the general rule and the exception thereto.

Then, in 1978, President Marcos in the exercise of his legislative powers^[17] promulgated Presidential Decree No. 1415 (P.D. No. 1415), which further delineated the powers and functions of the Office of the Government Corporate Counsel. This time, the previously established exception to the rule prohibiting the hiring of private lawyers was deleted, and a more stringent policy adopted. Section 1 of P.D. No. 1415 reads:

"Section 1. The Office of the Government Corporate Counsel shall be the principal law office of all government-owned or controlled corporations, **without exception**, including their subsidiaries." (Emphasis supplied)

Clearly, the OGCC was ordained to serve as the exclusive law office of all GOCCs. While P.D. No. 1415 did not contain a repealing clause, the new policy it established was patently inconsistent with what had been provided by Republic Act No. 2327, as amended. Thus the prior laws were effectively repealed.^[18]

In 1987, the President Aquino issued Executive Order No. 292 (E.O. No. 292), otherwise known as the Administrative Code of 1987, in the exercise of her transitory legislative powers under the aegis of the 1987 Constitution.^[19] This Code remains to this day as the governing law on the role and functions of the OGCC in relation to GOCCs. Section 10, Book IV, Title III, Chapter 3 thereof provides:

"Section 10. *Office of the Government Corporate Counsel.* -- The Office of the Government Corporate Counsel (OGCC) shall act as the **principal law office** of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall **exercise control and supervision over all legal departments or divisions** maintained separately and such powers and functions as are now or may hereafter be provided by law. xxx" (Emphasis supplied)

Noteworthy in the law is the deletion of the phrase "without exception" employed in P.D. No. 1415 which theretofore rendered exclusive and absolute the authority of the OGCC to represent GOCCs. So, it should be asked: What is the significance of the elimination of the phrase?

Certainly, the amendatory deletion did not alter the mandate of the OGCC to handle the cases of the GOCCs nor did it signal the abandonment of the policy not to engage private lawyers for the GOCCs. Not only has the aforementioned Section 10 retained the explicit key provision that the OGCC "shall act as not principal law office of all government-owned or controlled corporations", it has even expanded the

reach of the OGCC by conferring on it "control and supervision over all legal departments or divisions" of the GOCCs, as well as their "subsidiaries, other corporate offsprings and government acquired asset corporations."

With the change it effected, however, the new Administrative Code has made the powers of the President come into play as regards the inter-relationship between the GOCCs and the OGCC. Under the Constitution, it is the President who exercises both executive^[20] and administrative powers.^[21] As administrative head, the President's duty is to see that every government office is managed and maintained properly by the persons in charge of it in accordance with pertinent laws and regulations.^[22] Corollary to these powers is the power to promulgate rules and issuances that would ensure a more efficient management of the executive branch, for so long as such issuances are not contrary to law.

President Aquino, however, did not promulgate any issuance on the matter. It was President Fidel V. Ramos who did so, through Administrative Order No. 130 which he issued in 1994. Section 1 thereof reads:

"Section 1. All legal matters pertaining to government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations (hereinafter collectively referred to as "GOCCs") **shall be exclusively referred to and handled by the Office of the Government Corporate Counsel** (hereinafter referred to as "OGCC"), unless their respective charters expressly name the Office of the Solicitor General (hereinafter referred to as "OSG") as their legal counsel. When authorized by the President, or by the head of the office concerned and approved by the President, the OSG shall also represent GOCCs." (emphasis supplied)

The above-quoted provision not only reaffirmed but strengthened the exclusive mandate of the OGCC. Moreover, it effectively removed from the GOCCs the opportunity to engage the services of private lawyers. Under its terms, the President may authorize only the Office of the Solicitor General to represent the GOCCs in place of or in addition to the OGCC.

Then came Memorandum Circular No. 9 issued by President Joseph Estrada on 27 August 1998. Section 3 thereof states:

"GOCCs are likewise enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm." (Emphasis supplied)

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,