

THIRD DIVISION

[G.R. No. 147465, January 30, 2002]

**METROPOLITAN MANILA DEVELOPMENT AUTHORITY,
PETITIONER, VS. JANCOM ENVIRONMENTAL CORPORATION AND
JANCOM INTERNATIONAL DEVELOPMENT PROJECTS PTY.
LIMITED OF AUSTRALIA, RESPONDENTS.**

D E C I S I O N

MELO, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Civil Procedure filed by petitioner Metropolitan Manila Development Authority (MMDA), seeking to reverse and set aside the November 13, 2000 decision of the Court of Appeals declaring valid and perfected the waste management contract entered into by the Republic of the Philippines, represented by the Secretary of National Resources and the Executive Committee to oversee the build-operate-transfer implementation of solid waste management projects, and JANCOM Environmental Corporation.

The pertinent facts are as follows:

In 1994, then President Fidel V. Ramos issued Presidential Memorandum Order No. 202 creating the Executive Committee (EXECOM) to oversee the BOT implementation of solid waste management projects, headed by the Chairman of the MMDA and the Cabinet Officer for Regional Development-National Capital Region (CORD-NCR). The EXECOM was to oversee and develop waste-to-energy projects for the waste disposal sites in San Mateo, Rizal and Carmona, Cavite under the build-operate-transfer (BOT) scheme. The terms of reference for the waste-to-energy projects provided that its proponents should have the capability to establish municipal solid waste thermal plants using incineration technology. This type of technology was selected because of its alleged advantages of greatly reduced waste volume, prolongation of the service life of the disposal site, and generation of electricity.

While eleven (11) proponents submitted their pre-qualification documents, most failed to comply with the requirements under Section 5.4 of the Implementing Rules and Regulations (IRR) of Republic Act No. 6957, otherwise known as the Build-Operate-Transfer Law. On July 21, 1995, the Pre-qualification, Bids and Awards Committee (PBAC) recommended the pre-qualification of three proponents, namely: i) JANCOM International Pty. Ltd.; ii) First Philippine International W-E Managers; and iii) PACTECH Development Corporation. On July 26, 1995, the EXECOM approved the recommendation of the PBAC. On July 27, 1995, MMDA forwarded to the Investment Coordinating Committee (ICC) Secretariat the pre-feasibility study on the privatization of the Carmona and San Mateo landfill sites. The project was later presented to the ICC-Technical Board (ICC-TB) and then endorsed to the ICC-

Cabinet Committee (ICC-CC).

On May 2, 1996, the PBAC conducted a pre-bid conference where it required the three pre-qualified bidders to submit, within ninety (90) days, their bid proposals. On August 2, 1996, JANCOM and First Philippines requested for an extension of time to submit their bids. PACTECH, on the other hand, withdrew from the bidding.

Subsequently, JANCOM entered into a partnership with Asea Brown Boveri (ABB) to form JANCOM Environmental Corporation while First Philippines formed a partnership with OGDEN. Due to the change in the composition of the proponents, particularly in their technology partners and contractors, the PBAC conducted a post pre-qualification evaluation.

During the second bid conference, the bid proposals of First Philippines for the Carmona site and JANCOM for the San Mateo site were found to be complete and responsive. Consequently, on February 12, 1997, JANCOM and First Philippines were declared the winning bidders, respectively, for the San Mateo and the Carmona projects.

In a letter dated February 27, 1997, then MMDA Chairman Prospero I. Oreta informed JANCOM's Chief Executive Officer Jay Alparslan that the EXECOM had approved the PBAC recommendation to award to JANCOM the San Mateo Waste-to-Energy Project on the basis of the final Evaluation Report declaring JANCOM International Ltd., Pty., together with Asea Brown Boveri (ABB), as the sole complying (winning) bidder for the San Mateo Waste Disposal site, subject to negotiation and mutual approval of the terms and conditions of the contract of award. The letter also notified Alparslan that the EXECOM had created a negotiating team — composed of Secretary General Antonio Hidalgo of the Housing and Urban Development Coordinating Council, Director Ronald G. Fontamillas, General Manager Roberto Nacianceno of MMDA, and Atty. Eduardo Torres of the host local government unit — to work out and finalize the contract award. Chairman Oreta requested JANCOM to submit to the EXECOM the composition of its own negotiating team.

Thereafter, after a series of meetings and consultations between the negotiating teams of EXECOM and JANCOM, a draft BOT contract was prepared and presented to the Presidential Task Force on Solid Waste Management.

On December 19, 1997, the BOT Contract for the waste-to-energy project was signed between JANCOM and the Philippine Government, represented by the Presidential Task Force on Solid Waste Management through DENR Secretary Victor Ramos, CORD-NCR Chairman Dionisio dela Serna, and MMDA Chairman Prospero Oreta.

On March 5, 1998, the BOT contract was submitted to President Ramos for approval but this was too close to the end of his term which expired without him signing the contract. President Ramos, however, endorsed the contract to incoming President Joseph E. Estrada.

With the change of administration, the composition of the EXECOM also changed. Memorandum Order No. 19 appointed the Chairman of the Presidential Committee on Flagship Programs and Project to be the EXECOM chairman. Too, Republic Act No. 8749, otherwise known as the Clean Air Act of 1999, was passed by Congress.

And due to the clamor of residents of Rizal province, President Estrada had, in the interim, also ordered the closure of the San Mateo landfill. Due to these circumstances, the Greater Manila Solid Waste Management Committee adopted a resolution not to pursue the BOT contract with JANCOM. Subsequently, in a letter dated November 4, 1999, Roberto Aventajado, Chairman of the Presidential Committee on Flagship Programs and Project informed Mr. Jay Alparslan, Chairman of JANCOM, that due to changes in policy and economic environment (Clean Air Act and non-availability of the San Mateo landfill), the implementation of the BOT contract executed and signed between JANCOM and the Philippine Government would no longer be pursued. The letter stated that other alternative implementation arrangements for solid waste management for Metro Manila would be considered instead.

JANCOM appealed to President Joseph Estrada the position taken by the EXECOM not to pursue the BOT Contract executed and signed between JANCOM and the Philippine Government, refuting the cited reasons for non-implementation. Despite the pendency of the appeal, MMDA, on February 22, 2000, caused the publication in a newspaper of an invitation to pre-qualify and to submit proposals for solid waste management projects for Metro Manila. JANCOM thus filed with the Regional Trial Court of Pasig a petition for *certiorari* to declare i) the resolution of the Greater Metropolitan Manila Solid Waste Management Committee disregarding the BOT Contract and ii) the acts of MMDA calling for bids and authorizing a new contract for Metro Manila waste management, as illegal, unconstitutional, and void; and for prohibition to enjoin the Greater Metropolitan Manila Solid Waste Management Committee and MMDA from implementing the assailed resolution and disregarding the Award to, and the BOT contract with, JANCOM, and from making another award in its place. On May 29, 2000, the trial court rendered a decision, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of petitioners JANCOM ENVIRONMENTAL CORPORATION, and JANCOM INTERNATIONAL DEVELOPMENT PROJECTS PTY., LIMITED OF AUSTRALIA, and against respondent GREATER METROPOLITAN MANILA SOLID WASTE MANAGEMENT COMM., and HON. ROBERTO N. AVENTAJADO, in his Capacity as Chairman of the said Committee, METRO MANILA DEVELOPMENT AUTHORITY and HON. JEJOMAR C. BINAY, in his capacity as Chairman of said Authority, declaring the Resolution of respondent Greater Metropolitan Manila Solid Waste Management Committee disregarding petitioners' BOT Award Contract and calling for bids for and authorizing a new contract for the Metro Manila waste management ILLEGAL and VOID.

Moreover, respondents and their agents are hereby PROHIBITED and ENJOINED from implementing the aforesaid Resolution and disregarding petitioners' BOT Award Contract and from making another award in its place.

Let it be emphasized that this Court is not preventing or stopping the government from implementing infrastructure projects as it is aware of the proscription under PD 1818. On the contrary, the Court is paving the way for the necessary and modern solution to the perennial garbage problem that has been the major headache of the government and in the

process would serve to attract more investors in the country.

(Rollo,p. 159.)

Instead of appealing the decision, MMDA filed a special civil action for *certiorari* with prayer for a temporary restraining order with the Court of Appeals which was later docketed therein as CA-G.R. SP No. 59021. The appellate court not only required JANCOM to comment on the petition, it also granted MMDA's prayer for a temporary restraining order. During the pendency of the petition for *certiorari*, JANCOM moved for the execution of the RTC decision, which was opposed by MMDA. However, the RTC granted the motion for execution on the ground that its decision had become final since MMDA had not appealed the same to the Court of Appeals. MMDA moved to declare respondents and the RTC judge in contempt of court, alleging that the RTC's grant of execution was abuse of and interference with judicial rules and processes.

On November 13, 2001, the Court of Appeals dismissed the petition in CA-G.R. SP No. 59021 and a companion case, CA-G.R. SP No. 60303.

MMDA's motion for reconsideration of said decision having been denied, MMDA filed the instant petition, alleging that the Court of Appeals gravely erred in finding that:

- 1) There is a valid and binding contract between the Republic of the Philippines and JANCOM given that: a) the contract does not bear the signature of the President of the Philippines; b) the conditions precedent specified in the contract were not complied with; and c) there was no valid notice of award.
- 2) The MMDA had not seasonably appealed the Decision of the lower court via a petition for *certiorari*.

Before taking up the substantive issue in question, we shall first dispose of the question as to whether it is fatal to petitioner's cause, that rather than appealing the trial court's decision to the Court of Appeals, it instead filed a petition for *certiorari*. While petitioner claims that the trial court's decision never became final by virtue of its having appealed by *certiorari* to the Court of Appeals, the trial court ruled that petitioner's failure to file an appeal has made its decision final and executory. At bottom, the question involves a determination of the propriety of petitioner's choice of the remedy of *certiorari* in questioning the decision of the trial court.

Section 1, Rule 65 of the 1997 Rules of Civil Procedure provides:

Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, **and there is no appeal**, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The petition shall be accompanied by a certified true copy of the

judgment, order, or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

Plain it is from a reading of the above provision that *certiorari* will lie only where a court has acted without or in excess of jurisdiction or with grave abuse of discretion. If the court has jurisdiction over the subject matter and of the person, its rulings upon all questions involved are within its jurisdiction, however irregular or erroneous these may be, they cannot be corrected by *certiorari*. Correction may be obtained only by an appeal from the final decision.

Verily, Section 1, Rule 41 of the 1997 Rules of Civil Procedure provides:

SEC. 1. *Subject of appeal.*— An appeal may be taken from a judgment or final order that completely disposes of the case or of a particular matter therein when declared by these Rules to be appealable.

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In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

There can be no dispute that the trial court's May 29, 2000 decision was a final order or judgment which MMDA should have appealed, had it been so minded. In its decision, the trial court disposed of the main controversy by "declaring the Resolution of respondent Greater Metropolitan Manila Solid Waste Management Committee disregarding petitioner's BOT Award Contract and calling for bids for and authorizing a new contract for the Metro Manila waste management ILLEGAL and VOID." This ruling completely disposed of the controversy between MMDA and JANCOM. In *BA Finance Corporation vs. CA* (229 SCRA 5667 [1994]), we held that a "final" order or judgment is one which "disposes of the whole subject matter or terminates a particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." An order or judgment is deemed final when it finally disposes of the pending action so that nothing more can be done with it in the trial court. In other words, a final order is that which gives an end to the litigation. A final order or judgment finally disposes of, adjudicates, or determines the rights, or some right or rights of the parties, either on the entire controversy or on some definite and separate branch thereof, and concludes them until it is reversed or set aside. Where no issue is left for future consideration, except the fact of compliance or non-compliance with the terms of the judgment or order, such judgment or order is final and appealable (*Investments, Inc. vs. Court of Appeals*, 147 SCRA 334 [1987]).

However, instead of appealing the decision, MMDA resorted to the extraordinary remedy of *certiorari*, as a mode of obtaining reversal of the judgment. This cannot be done. The judgment was not in any sense null and void *ab initio*, incapable of producing any legal effects whatever, which could be resisted at any time and in any court it was attempted. It was a judgment which could or may have suffered from some substantial error in procedure or in findings of fact or of law, and on that account, it could have been reversed or modified on appeal. But since it was not appealed, it became final and has thus gone beyond the reach of any court to