

## ELEVENTH DIVISION

[ CA-G.R. SP No. 128859, May 26, 2014 ]

**NAYONG PILIPINO FOUNDATION, PETITIONER, VS. BSP &  
COMPANY, INC., RESPONDENTS.**

### D E C I S I O N

**LANTION, J.A.C., J.:**

This *Petition for Review*<sup>[1]</sup> under Rule 43 of the Rules of Court seeks to annul and set aside the *Decision*<sup>[2]</sup> dated 28 January 2013 of the Construction Industry Arbitration Commission (**CIAC**), in CIAC Case No. 24-2012, the dispositive portion of which reads:

**"WHEREFORE**, judgment is hereby rendered in favor of Claimant BSP and against Respondent NPF the total/net amount of **P1,489,204.00, as follows:**

In favor of Claimant BSP:

**Description**

Unpaid Outstanding Balance	-----
P1,489,204.00	--
	P1,489,204.00

In favor of Respondent NPF:

**Description**

Cost of Locational/Zoning Clearance P0.00	-----
	--
	P 0.00

Respondent NPF is further assessed the CIAC fees corresponding its permissive counterclaim above-mentioned in the amount of P79,893.39.

Upon this Final Award becoming final, interest at 12% per annum shall be further paid on the outstanding amount until payment thereof shall have been made, "this interim period being deemed to be at that time already a forbearance of credit" (*Eastern Shipping Lines, Inc. vs Court of Appeals*, 243 SCRA 78 [1994]).

SO ORDERED."

### **THE FACTS** **(As culled from the Records)**

Petitioner Nayong Pilipino Foundation (**NPF**) is a government owned and controlled corporation created pursuant to Presidential Decree No. 37,<sup>[3]</sup> engaged in the promotion of Philippine culture and history.<sup>[4]</sup>

Respondent BSP & Company (**BSPCI**) on the other hand is a domestic corporation engaged in construction services.<sup>[5]</sup>

In 2007, NPF conducted a public bidding for the construction and development of the Bagong Nayong Pilipino Project (**project**) to be located at the Public Estate Authority Site of the Manila Bay Reclamation Area. BSPCI participated in the said bidding and won the same.<sup>[6]</sup>

On 4 December 2007, NPF awarded to BSPCI the construction and development of the said project for a total contract price of P23,567,157.09.<sup>[7]</sup>

On 30 September 2008, in view of the changes in the original design of the project's perimeter fence, the parties executed a *Supplemental Agreement for Construction Services*, increasing the project's total contract price of P23,567,157.09 to P138,059,698.29. Of the said total amount of P138,059,698.29, NPF was able to pay BSPCI a total sum of P123,681,817.29, leaving an unpaid balance of P14,377,881.00.<sup>[8]</sup>

On 29 July 2010, the Local Government of Parañaque City ordered<sup>[9]</sup> NPF to pay the project's *Locational Clearance* amounting to **P1,489,204.00**. However, NPF refused to pay the same, explaining that it is BSPCI's duty, as the contractor, to pay for the said clearance.

As BSPCI also declined to secure and pay the project's *Locational Clearance*, NPF refused to pay BSPCI the remaining balance (P14,377,881) of the contract price.<sup>[10]</sup>

On 16 July 2012, BSPCI filed a *Complaint*<sup>[11]</sup> with the CIAC for the collection of the amount of P14,377,881.00. Pending resolution of the case, NPF paid BSPCI the sum of P12,888,677.00, leaving an unpaid balance of **P1,489,204.00**, representing the cost of the project's *Locational Clearance*.<sup>[12]</sup>

During the Preliminary Conference on 18 December 2012, NPF and BSPCI formulated and signed the *Terms of Reference*<sup>[13]</sup> of the case, embodying, among others, their stipulation of facts.

On 28 January 2013, CIAC rendered the assailed *Decision*, holding NPF liable to pay BSPCI the remaining balance (**P1,489,204.00**) of the contract price on the ground that NPF admitted being liable thereof under the *Terms of Reference*.<sup>[14]</sup> Moreover, CIAC held that a *Locational Clearance* is "an imposition on the owner of the project or business."<sup>[15]</sup> Hence, NPF is the one liable to pay the same.

Hence, this *Petition for Review*.

### **ISSUES**

## I

WHETHER OR NOT THE CIAC GRAVELY ERRED IN DECLARING THAT IT IS NOT BSPCI'S RESPONSIBILITY TO OBTAIN OR PAY THE COST OF LOCATIONAL/ZONING CLEARANCE FOR THE PROJECT.

## II

WHETHER OR NOT THE CIAC GRAVELY ERRED IN DECLARING THAT THE LOCATIONAL/ZONING CLEARANCE FEES SHOULD BE INCLUDED AS A SEPARATE ITEM IN THE BILL OF QUANTITIES.

## III

WHETHER OR NOT THE CIAC GRAVELY ERRED WHEN IT RULED THAT THE PHP1,489,204.00 THAT NPF REFUSED TO PAY TO BSPCI IS A FORM OF COUNTERCLAIM TO WHICH PAYMENT OF DOCKET FEE IS REQUIRED.

## IV

WHETHER OR NOT THE CIAC GRAVELY ERRED WHEN IT RULED THAT NPF IS LIABLE TO PAY THE CIAC FEES OF PHP79,893.39.<sup>[16]</sup>

### THIS COURT'S RULING

NPF imputes error on the part of the CIAC for holding it (NPF) liable, under the *Terms of Reference*, to pay BSPCI the remaining balance of the contract price amounting to **P1,489,204.00**. NPF explains that since BSPCI refused to secure and pay for the project's *Locational Clearance*, it (NPF) has the right to withhold payment of the amount of P1,489,204.00 from the total contract price of P138,059,698.29 to answer for the amount of the *Locational Clearance*.

The Petition fails.

*Terms of Reference* is a document which embodies the parties' stipulation as to the circumstances leading to the dispute.<sup>[17]</sup> It outlines the parties' respective admissions, positions, issues and claims and identifies the composition of the tribunal of arbitrators.<sup>[18]</sup> The *Terms of Reference* is formulated with the active participation of the parties and their respective counsels, and is required to be signed by them and by all the members of the Arbitral Tribunal.<sup>[19]</sup>

In holding NPF liable to pay BSPCI the remaining balance of the contract price of **P1,489,204.00**, the CIAC referred to the *Terms of Reference*, the pertinent portion of which reads:

### II. ADMITTED FACTS

x x x

9. On 30 September 2008, **the parties entered into a Supplemental Agreement for Construction Services** wherein the previous agreed amount of P123,567,157.09 was increased to P138,059,698.29 x x x

x x x