Alvarez V. Picop Resources, Inc.: Upholding the Judicial Policy of Nurturing the Prosperity of Our People

The Facts

In 1952, Bislig Bay Lumber Co., Inc. (BBLCI), the predecessor of Paper Industries Corporation of the Philippines (Picop) was granted Timber License Agreement (TLA) No. 43. The Agreement covered an area of 75,545 hectares in Surigao del Sur, Agusan del Sur, Compostela Valley, and Davao Oriental.

The late President Ferdinand E. Marcos allegedly issued, sometime in 1969, a Presidential Warranty confirming that TLA No. 43 "definitely establishes the boundary lines of [BBLCI's] concession area." Upon its expiry in 1977, this Agreement -- as amended -- was renewed for another 25 years, to "terminate on April 25, 2002."

On December 23, 1999, the Department of Environment and Natural Resources (DENR) promulgated DENR Administrative Order (DAO) No. 99-53 or the "Regulations Governing the Integrated Forest Management Program (IFMP)."

In a letter dated August 28 2000, Picop signified its intention to convert TLA No. 43 into an Integrated Forest Management Agreement (IFMA), pursuant to DAO No. 99-53.

During the performance evaluation of Picop, the DENR found that respondent had violated the rules and regulations governing TLA No. 43. Some of these violations were the non-submission of a five-year forest protection plan and a seven-year reforestation plan; nonpayment of overdue forest and other charges in the total amount of ₱167,592,440.90 as of August 30, 2002; and failure to secure a clearance from the National Commission on Indigenous Peoples (NCIP), considering the presence of indigenous peoples in the area, as well as a Certificate of Ancestral Domain Claims covering part of the area.

Meanwhile, Picop received from the DENR secretary a letter, which reads thus:

25 October 2001

MR. TEODORO G. BERNARDINO
President
PICOP Resources Incorporated
2nd Flr, Moredel Building
2280 Pasong Tamo Extension
Makati City

Dear Mr. Bernardino:

Consistent with our attached Memorandum to Her Excellency, the President,

dated 17 October 2001 and in response to your Letter of Intent dated 25 February 2001, we wish to inform you that, pursuant to DENR Administrative Order No. 99-53, we have cleared the conversion of PICOP's Timber License Agreement (TLA) No. 43 to Integrated Forest Management Agreement (IFMA) effective from the expiration of said TLA on April 26, 2002.

In this regard, you are hereby requested to designate PICOP's representative(s) to discuss with the DENR Team, created under Special Order No. 2001-638, the conditions and details of the said IFMA, including the production sharing agreement between PICOP and the government.

For your information and guidance.

Very truly yours,

(sgd)
HEHERSON T. ALVAREZ
Secretary

By virtue of this letter, Picop claimed that "the TLA has been converted." The DENR believed, however, that respondent's application for an IFMA should undergo the process as provided in DAO No. 99-53. Thus, petitioner required Picop to submit the following to the DENR:

1. Certificate of Filing of Amended Articles of Incorporation issued on 12 August 2002 that extended PICOP's corporate term for another fifty (50) years;
2. Proof of Payment of forest charges;
3. Proof of Payment of Reforestation Deposit;
4. Response to social issues, particularly clearance from the NCIP; and
5. Map showing reforestation activities on an annual basis.

Upon evaluation of the documents subsequently submitted, the DENR noted as follows:

a) PICOP did not submit the required NCIP clearance;

b) The proof of payments for forest charges covers only the production period from 1 July 2001 to 21 September 2001;

c) The proof of payment of reforestation deposits covers only the period from the first quarter of CY 1999 to the second quarter of CY 2001;

d) The map of the areas planted through supplemental planting and social forestry is not sufficient compliance per Performance Evaluation Team's 11 July 2001 report on PICOP's performance on its TLA No. 43, pursuant to Section 6.6 of DAO 79-87; and

e) PICOP failed to respond completely to all the social issues raised.

Insisting that the conversion of its TLA No. 43 had been completed, Picop filed a Petition for Mandamus ("mandamus case") against then DENR Secretary Heherson T. Alvarez before the Regional Trial Court (RTC) of Quezon City. The RTC granted the Petition in its October 11, 2002 Decision, which was later affirmed by the Court of Appeals (CA).

Meanwhile, on November 25, 2002, President Gloria Macapagal-Arroyo issued Proclamation No. 297, "Excluding a Certain Area from the Operation of Proclamation No. 369 Dated February 27, 1931, and Declaring the Same as Mineral Reservation and as Environmentally Critical Area." The excluded area consisted of about 8,100 hectares of respondent's TLA No. 43.

On January 21, 2003, Picop filed a Petition for the Declaration of Nullity of the

aforesaid presidential proclamation, as well as of the implementing order, DAO No. 2002-35 ("nullity case"). Initially, the RTC issued a Temporary Restraining Order (TRO) enjoining respondents in that case from implementing the questioned issuances. Subsequently, however, it dismissed Picop's Petition for not stating a cause of action. On reconsideration, it set for hearing respondent's application for preliminary injunction.

Thus, these consolidated Petitions have been brought before the Court, assailing (1) the grant of a writ of mandamus to compel the DENR to issue an IFMA in favor of Picop; (2) the immediate execution of the writ; and (3) the non-dismissal of the nullity case.

Issues

Briefly, the following main issues were considered:

1. Whether the mandamus case should be dismissed, because (1) it lacked a cause of action; and (2) its subject matter pertained to the exclusive administrative domain of the DENR secretary
2. Whether the presidential warranty was a contract, by virtue of which Picop acquired a vested right over its forest concession area

3. Whether Picop had complied with all the administrative and statutory requirements entitling it to an IFMA conversion

4. Whether it was proper to determine the constitutionality of Proclamation No. 297

The Court's Ruling

Whether Outright Dismissal Was Proper

The Petition filed before the trial court was one for mandamus with a prayer for the issuance of a writ of preliminary prohibitory and mandatory injunction, with damages. Specifically, the Petition sought to compel the DENR secretary to (1) sign, execute and deliver the IFMA documents to Picop; (2) issue the corresponding IFMA number assignment; and (3) approve respondent's harvesting of timber from the area of TLA No. 43. Petitioner contended that these acts related to the licensing, regulation and management of forest resources, a task that belonged exclusively to the exclusive administrative domain of the DENR.

Picop, however, alleged grave abuse of discretion on the part of the DENR secretary. Thus, it behooved the Court to determine whether the department head had indeed gravely abused his discretion. An outright dismissal of the case would

have prevented the Court's resolution of the issue.

For the same reason, the Petition could not be dismissed outright on the ground of lack of cause of action. A motion to dismiss on that basis would hypothetically admit the truth of the allegations in the Complaint. In ruling upon the DENR secretary's Motion to Dismiss, the allegation of respondent that it had a contract with the government should thus be hypothetically admitted. Necessarily, petitioner's argument that there was no such contract should be considered in the trial of the case.

Petitioner countered that he had not yet exercised his exclusive jurisdiction over the subject matter of the case -- either to approve or to disapprove Picop's application for IFMA conversion. Hence, he argued that respondent's immediate resort to the trial court was precipitate, in violation of the doctrine of exhaustion of administrative remedies.

The Court of Appeals ruled that the doctrine of exhaustion of administrative remedies could be disregarded when there were circumstances indicating the urgency of judicial intervention. In this case, it cited the employment by Picop of a sizeable number of workers and respondent's payment of millions in taxes to the government.

The issue of whether there was indeed an urgency of judicial intervention (as to

warrant the issuance of a writ of mandamus despite the exclusive jurisdiction of the DENR) was ultimately connected to the truth of Picop's assertions, which were hypothetically admitted in the Motion to Dismiss filed by the DENR. In other words, the issue still boiled down to whether petitioner had committed grave abuse of discretion in not executing the IFMA documents and in not approving respondent's harvesting of timber from the area of TLA No. 43. Hence, the mandamus case could not have been subjected to outright dismissal.

Another issue raised by the DENR concerned Section 1 of Presidential Decree (PD) No. 605 which, according to the CA, had been partly repealed by Republic Act 8975.

Republic Act 8975 was not intended to set forth in full all laws concerning the prohibition on temporary restraining orders, preliminary injunctions and preliminary mandatory injunctions. This law prohibited lower courts from issuing such orders in connection with the implementation of government infrastructure projects. On the other hand, PD 605 prohibited the issuance of these orders in any case involving licenses, concessions and the like, in connection with the natural resources of the Philippines. When the licenses, concessions and the like *also* entailed government infrastructure projects, however, the provisions of Republic Act 8975 were deemed to apply. Thus, PD 605 was modified in this sense.

In *Datiles and Co. v. Sucaldito*, the Court held that the prohibition in PD 605 "pertains to the issuance of injunctions or restraining orders by courts against **administrative acts in controversies involving facts or the exercise of discretion in technical cases**, because to allow courts to judge these matters could disturb the smooth functioning of the administrative machinery. But on **issues definitely outside of this dimension and involving questions of law**, courts are not prevented by Presidential Decree No. 605 from exercising their power to restrain or prohibit administrative acts."

While there were indeed questions of fact in the present Petitions, the overriding controversy involved was one of law: whether the Presidential Warranty issued by former President Marcos was a contract within the purview of the Constitution's Non-Impairment Clause. Accordingly, the prohibition in PD 605 against the issuance of preliminary injunction in cases involving permits for the exploitation of natural resources was inapplicable to this case.

Moreover, as the Court held in *Republic v. Nolasco*,[1] statutes such as PD 605, PD 1818 and Republic Act 8975 merely proscribed the issuance of temporary restraining orders and writs of preliminary injunction and preliminary mandatory injunction. They could not, under pain of violating the Constitution, deprive the courts of

authority to take cognizance of issues raised in the principal action, as long as that action and the relief sought were within their jurisdiction.

Whether the Presidential Warranty Was a Contract

The Court had consistently held that licenses concerning the harvesting of timber in the country's forests could not be considered contracts that would bind the government regardless of changes in policy and the demands of public interest and welfare.

Thus, the argument that the Presidential Warranty was a contract because there were mutual considerations taken into account consisting of investments on Picop's part was considered preposterous. All licensees put up investments in pursuing their businesses. To construe these investments as consideration in a contract would be to stealthily render ineffective the settled jurisprudence that "a license or a permit is not a contract between the sovereignty and the licensee or permittee, and is not a property in the constitutional sense, as to which the constitutional proscription against the impairment of contracts may extend." Neither should a circumvention of the doctrine be allowed by terming the permit a "warranty."

Whether Picop Had Complied with the Requirements for the Conversion of TLA

No. 43 into an IFMA

Under DAO No. 99-53, the following are the requisites for the automatic conversion of a TLA into an IFMA:

1. The TLA holder had signified its intent to convert its TLA into an IFMA prior to the expiration of its TLA
2. Proper evaluation was conducted on the application, and
3. The TLA holder has satisfactorily performed and complied with the terms and conditions of the TLA and the pertinent rules and regulations

Upon close scrutiny of the evidence on record, the Court observed that Picop had failed to comply with the above requirements. As stated earlier, the Performance Evaluation Team tasked to review the application of respondent found that it had violated existing DENR rules and regulations.

On the statutory requirement of procuring a clearance from the NCIP, the Court of Appeals held that Picop did not need to comply. According to the CA, respondent had acquired property rights over the TLA No. 43 areas, as the latter was in exclusive, continuous and uninterrupted possession and occupation of the areas from 1952 up to the present.

This ruling defied the settled jurisprudence mentioned earlier, including that of *Oposa* and *Tan,* which held that "[a] license is merely a permit or privilege to do what otherwise would be unlawful, and is not a contract between the authority, federal, state

or municipal, granting it and the person to whom it is granted; ***neither is it property or a property right, nor does it create a vested right***; x x x."

Section 59 of Republic Act 8371 is clear and unambiguous:

> SEC. 59. *Certification Precondition.* – All departments and other governmental agencies shall henceforth be strictly enjoined from issuing, renewing or granting any concession, license or lease, or entering into any production-sharing agreement, without prior certification from the NCIP that the area affected does not overlap with any ancestral domain. x x x.

Ancestral domains remain as such, even when possession or occupation of the area has been interrupted by causes provided under the law, such as voluntary dealings entered into by the government and private individuals or corporations. Therefore, the issuance of TLA No. 43 in 1952 did not cause the indigenous cultural communities or indigenous peoples to lose their possession or occupation of the area covered by TLA No. 43.

Furthermore, under Sections 26 and 27 of the Local Government Code, the prior approval of local government units affected by the proposed conversion of a TLA into an IFMA was necessary before any project or program could be implemented by government authorities in a way that would cause "depletion of non-renewable resources, loss of crop land, rangeland or forest cover, and extinction of animal or plant species."

Finally, the DENR's factual findings that PICOP had not yet complied with the requirements for the conversion should be accorded great respect, if not finality, by the courts, because of the agency's special knowledge and expertise over matters falling under its jurisdiction. The finality of the DENR's findings of fact, supported as they were by substantial evidence, could be overcome only by a grave abuse of discretion amounting to lack or excess of jurisdiction.

Whether There Had Already Been a Conversion of TLA No. 43 into an IFMA

Former DENR Secretary Alvarez's October 25, 2001 letter merely gave clearance for the conversion of Picop's TLA into an IFMA. He did not, by any stretch of imagination, grant the conversion itself. The letter was clear that the "conversion" could not have been final, since the conditions and details still had to be discussed.

Likewise, then DENR Secretary Alvarez's April 26, 2002 letter approving Picop's Transition Development and Management Plan (TDMP) could not be considered as an approval of Picop's application for IFMA conversion. The letter itself stated that respondent's application was **still pending approval,** as petitioner had yet to **"submit/comply with all the necessary requisites for final conversion of TLA**

No. 43 into IFMA."

Whether It Was Proper to Determine the Constitutionality of Proclamation No. 297

Settled is the rule that the Court will not touch the issue of unconstitutionality, unless it is the very *lis mota*. A court should not pass upon a constitutional question and decide a law to be unconstitutional or invalid, unless the parties raise that question. But even when it is raised, if the record also presents some other ground upon which the court may base its judgment, the latter course would be adopted, and the constitutional question left for consideration until it becomes unavoidable.

The constitutional question presented by Picop was not the very *lis mota* in the consolidated cases, as the preceding discussions very well gave the Court adequate grounds to resolve the controversy.

In sum, the DENR secretary adequately proved that Picop had failed to comply with the administrative and statutory requirements for the conversion of TLA No. 43 into an IFMA. On the other hand, as respondent was not yet entitled to the conversion, petitioner was correct in withholding that course of action and could not be held liable for damages.

In closing, the Court noted that the noncompliance of Picop with the requirements for the conversion of the latter's TLA was so glaring. The noncompliance of respondent almost amounted to a reluctance to uphold the law, just because of its sizeable investments in its business, a fact it repeatedly stressed in its pleadings. In applying the judicial policy of nurturing prosperity, the Court took into consideration the long-term effects of the judicial evaluations involved, particularly to our nation's greatest wealth -- our vast natural resources.

Picop was fortunate to have been awarded an enormous concession area, and thus a huge chunk of the benefits of the country's natural resources. Attached to this fortune was the responsibility to comply with the laws and regulations implementing the stated legislative policies of environmental preservation and benefit distribution.

These laws and regulations should not be ignored. The courts should not condone their blatant disregard by those who believe they are above the law, simply because of their sizeable investments and significant numbers of employees.

The present respondent had only itself to blame for the withholding of the conversion of its TLA. But while another chance to comply with the foregoing requirements was conferred on the DENR secretary by the Court's disposition, he

could rightfully grow weary if the persistent noncompliance continued. The judicial policy of nurturing prosperity would be better served by granting concessions to those who would abide by the law.

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[1] G.R. No. 155108, 27 April 2005, 457 SCRA 400, 420-421.