



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

**DEPARTMENT OF PUBLIC
WORKS AND HIGHWAYS,**
Petitioner,

G.R. No. 235853

Present:

- versus -

PERALTA, C.J., Chairperson,
CAGUIOA,
REYES, J. JR.,
LAZARO-JAVIER, and
LOPEZ, JJ.

**ITALIAN-THAI DEVELOPMENT
PUBLIC COMPANY, LTD. and
KATAHIRA & ENGINEERS
INTERNATIONAL,**
Respondents.

Promulgated:

JUL 13 2020

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DECISION

REYES, J. JR., J.:

This resolves the Petition for Review¹ under Rule 45 of the Rules of Court, seeking the reversal of the Decision² dated November 27, 2017 issued by the Court of Appeals (CA) in CA-G.R. SP No. 133771.

The Facts

On March 15, 2002, petitioner Department of Public Works and Highways (DPWH) and the Joint Venture of Katahira & Engineers International (KEI), Pertconsult International, Techniks Group Corporation, Multi-Infra Konsult, Inc. and E.H. Sison Engineers Co. entered into an

¹ Rollo, pp. 12-170

² Penned by Associate Justice Myra V. Garcia-Fernandez, with Associate Justices Ramon A. Cruz and Maria Elisa Sempio Diy, concurring; id. at 177-196.

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“Agreement for Consultancy Services for the Detailed Engineering Design and Construction Supervision of the Patapat Viaduct, Suyo-Cervantes-Mankayan-Abatan, Cervantes Sabangan, and Ligao-Pio Duran Road Improvement Project under the Arterial Road Links Development Project V, PH-217 (Consultancy Agreement).” DPWH appointed the Joint Venture to be its engineering consulting firm, which carries out, among others, the following: a) detailed engineering design of the project; b) bidding assistance to DPWH; c) construction supervision; d) monitoring of Environmental Compliance Certificate (ECC) requirements; e) assistance to DPWH in land acquisition; f) assistance to DPWH in coordinating with concerned Local Government Units; and g) other technical services deemed relevant to the Contract Package IV-A, Suyo-Cervantes Road Section of the Arterial Road Links Development Project, Phase V (the Project).

In 2003, DPWH and KEI expanded the scope of work under the Consultancy Agreement under Realignment No. 1 and caused the preparation of the Engineering Geological and Geohazard Assessment Report (EGGAR), which contains a thorough analysis of the geological characteristics and engineering properties of the project site. Specifically, the EGGAR was conducted in order for KEI to gather information necessary for the planning and design of the Project and to investigate its geological condition.

As Project Consultant and Project Engineer, KEI created the original sloping design (.20:1 to .50:1, II:V) and a road width of 4.0 to 5.0 meters. The original sloping design was included in the Bid documents, formed part of the Contract documents and became the design of the Project. Subsequently, however, KEI, with agreement of DPWH, abandoned the original sloping design, and created and imposed the Overhang Design.

The civil works for the Patapat Viaduct, Suyo-Cervantes-Mankayan-Abatan, Cervantes-Sabangan, and Ligao-Pio Duran Roads were divided into different sections. Separate biddings were then conducted for the construction of these sections.

Italian-Thai Development Public Company, Ltd. (ITD) submitted the lowest bid for the rehabilitation and/or widening of the existing road of the Suyo-Cervantes Road Section. On March 27, 2006, the parties entered into a Contract Agreement for the implementation of civil works for the Project. The Project consisted of: 1) construction of 45.01 kilometers of concrete road; 2) improvement of drainage system; 3) construction of slope protection structures and countermeasure works against floods; 4) construction and replacement of nine bridges, one multi-barrel RCBC spillway type and three special-type RCBC; and 5) rehabilitation and repair of one existing bridge.

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Under the Contract Agreement, DPWH undertakes to pay ITD the amount of ₱1,164,622,570.23. After the approval of Variation Order No. 4, the contract amount increased to ₱1,184,169,948.20.

The Contract Agreement consists of two parts: Part I – General Conditions (Conditions of Contracts for Works of Civil Engineering Constructions [FIDIC], Fourth Edition 1987), and 1988 with Editorial Amendments and 1992 with further Amendments (FIDIC Conditions); and Part II – Conditions of Particular Application (COPA).

On December 17, 2006, ITD was instructed by KEI's Senior Highway Engineer Hideki Yasuyama, to widen the carriageway of the road to a uniform width of 6.10 m instead of the original 4.0 m to 5.0 m and to limit the height of the stone masonry to 1.0 m.

Subsequently, several Variation Orders were issued, with approval of DPWH. On February 22, 2007, DPWH approved the Variation Order No. 1 which provided for a shift from Asphalt Cement Pavement (ACP) to Portland Cement Concrete Pavement (PCCP). On the other hand, the standardization of the road width from the original width of 4.0 m to 5.0 m to a uniform road width of 6.10 m with overhang design was reflected in Variation Order No. 2, which was approved by DPWH on June 5, 2008. On February 20, 2009, Variation Order No. 3 was also approved, which provided for the addition of the Butac Slope Protection. Subsequently, Variation Order No. 4 was likewise approved, providing for additional slope protection for both sides of the road and reinstatement of a catch fence.

In July 2010, ITD submitted its claim for overrun earthwork quantities to DPWH and KEI. KEI, however, submitted to DPWH a technical evaluation report, where it outlined the reasons why ITD's claims should be denied. Consequently, a joint survey was conducted by the parties on the 314 cross-sections with overhang design of the Suyo-Cervantes Road Section, which is the subject of ITD's claim.

On August 23, 2011, KEI informed ITD that its claim for additional compensation on the overrun earthwork quantities could not be allowed. Thus, in September 2011, ITD informed DPWH of its intention to commence arbitration proceedings with the Construction Industry Arbitration Commission (CIAC) in order to resolve the dispute.

The matter was subsequently referred to CIAC, where ITD claimed for overrun earthwork quantities due to: 1) overhang design in the amount of ₱184,957,341.20; 2) road realignment in the amount of ₱115,616,592.15; 3) road improvement in the amount of ₱12,138,852.37. ITD also claimed for

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miscellaneous works in the amount of ₱7,226,406.07 and legal expenses including the expert's fees and expenses in the amount of ₱5,000,000.00.

On the other hand, the DPWH has counterclaims against ITD for temperate damages, exemplary damages and litigation expenses, while KEI claimed for attorney's fees, litigation expenses, moral damages, and exemplary damages.

Ruling of the CIAC

In the Final Award dated January 14, 2014, CIAC found that the DPWH was liable for ITD's claim for overrun earthwork quantities, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of **Claimant Italian-Thai Development Company, Ltd. ("ITD")** and against **Respondent Department of Public Works and Highways (DPWH)** in the total amount of **One Hundred Six Million Five Hundred Nine Thousand Seven Hundred Twenty-Four & 49/100 (P106,509,724.49) Pesos only**, broken down as follows:

In favor of Claimant Italian-Thai Development Public Company, Ltd. ("ITD"):

Claims on Respondents DPWH and KEI:

Overrun earthwork quantities due to overhang design

Overrun earthwork quantities due to road alignment

Overrun earthwork quantities due to road improvement

Miscellaneous works

Total **₱116,755,596.96**

Legal expenses including the expert's fees and expenses

0.00

Total **₱116,755,596.96**

Less: Deduction for payment of FVO to ITD

10,245,872.47

Net **₱106,509,724.49**

In favor of Respondent Department of Public Werks and Highways (DPWH):

Counterclaims on Claimant ITD:

Temperate damages

₱ 0.00

Exemplary damages

0.00

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Litigation expenses		0.00
	Total ₱	0.00

Cross[-]claims on Co-Respondent KEI

Overrun earthwork quantities due to overhang design
 Overrun earthwork quantities due to road alignment
 Overrun earthwork quantities due to road improvement
 Legal expenses including the expert's fees and expenses

Total ₱ 0.00

In favor of Respondent Katahira & Engineers International (KEI):

Counterclaim[s] on Claimant ITD:

Attorney's fees	₱	0.00
Litigation expenses		0.00
Moral damages		0.00
Exemplary damages		0.00
	Total ₱	0.00

Upon the award becoming final and executory, interest of **Six (6%) Percent** per annum shall be further paid to Claimant ITD on the outstanding amount until full payment thereof shall have been made (BSP Circular No. 799 Series of 2013).³ (Emphases in the original)

With regard to ITD's claim for overrun earthwork quantities due to overhang design, the CIAC ruled that the change from the original sloping design to overhang design resulted to the overrun earthwork quantities as evidenced by rock collapse, slope failures, collapse of overhang portion and side slopes, and landslides and cliff edge collapse. According to the CIAC, ITD, during its blasting activities, consistently experienced collapses at the mountain side of the Project area even beyond the intended area of the blasting, collapses from the overhang portion and side slopes, and landslides. For CIAC, these prove that the overhang design is inappropriate as the nature of the rocks and their composition are too unstable to support this design.

On ITD's claim for overrun earthwork quantities due to road realignment, CIAC held that KEI's instruction to widen the carriageway of the road to a uniform width of 6.10 m instead of the original 4.0 m to 5.0 m, and to limit the height of the stone masonry to 1.0 m, constrained ITD to realign the road and excavate into the mountain in order to maintain the required road width. Moreover, in order to reduce the height of the stone masonry to 1.0 m, ITD also excavated into the mountains to construct it on more stable ground.

³ *Rollo*, pp. 356-357.

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CIAC also held that ITD is entitled to its claim for additional earthwork quantities due to road improvements amounting to ₱9,119,385.91. According to CIAC, ITD was only paid of its miscellaneous works and overrun earthwork quantities for the Bessang Pass, the Bessang Bridge and the two ends of the High Slope of Sta. 362, while the middle portion of the road improvement for the High Slope of Sta. 362 remained unpaid.

While CIAC found ITD entitled to its claims for overrun earthwork quantities, it ruled that ITD is only entitled to temperate damages in the amount of ₱116,755,596.96 instead of actual damages as the latter could not be determined because the joint survey was not completed by the parties.

According to CIAC, ITD's claims are not barred by waiver, abandonment or estoppel despite its failure to comply with the notice requirement under the FIDIC and COPA. CIAC reasoned that ITD's non-compliance with the notice requirement is mooted by the express provision under FIDIC which allows claims decided under arbitration even though a party failed to comply with timely notice and submission of contemporary records requirement. Moreover, when DPWH, through Undersecretary Romeo S. Momo, decided to conduct a joint survey to evaluate and resolve ITD's claims, DPWH is estopped from raising this issue. Finally, CIAC held that there can be no waiver because ITD officially notified DPWH and KEI of its intention to be paid for its claims for overrun earthwork quantities.

CIAC, however, found no basis for the grant of attorney's fees/legal fees, including expert's fees expenses. CIAC reasoned that while there were lapses on the part of the DPWH and KEI, these lapses do not constitute gross and evident bad faith as to justify the award of these fees and expenses. Thus, CIAC ruled that it would be more equitable and reasonable if all the parties shoulder their respective expenses.

The counterclaims of DPWH and KEI against ITD, on the other hand, were denied.

Ruling of the CA

Not satisfied with the Final Award of CIAC, DPWH filed a Petition for Review under Rule 43 of the Rules of Court before the CA. The CA, however, in its Decision dated November 27, 2017, dismissed the Petition. The CA ruled that CIAC did not err in ruling that the overrun earthwork quantities should be paid by DPWH as records show that the Variation Orders were issued at its behest. The CA agreed with the CIAC that ITD was constrained to realign the roads and excavate into the mountains to accommodate the changes stated in the Variation Orders. This led to the

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collapse of cliff edges, reduction of stone masonry and widening of sharp curves, which could have been prevented had DPWH and KEI foreseen the possible effects of the substantial changes in the design as stated in the Variation Orders.

The CA also found it undisputed that neither DPWH nor KEI informed ITD about the existence of the EGGAR which shows that the rocks are unsuitable for the application of the overhang design.

According to the CA, DPWH and KEI's failure to foresee the effects of the changes stated in the Variation Orders and their non-disclosure of the EGGAR to ITD, led the latter to incur overrun earthwork quantities. Thus, the CA ruled that DPWH, being the project owner, should compensate ITD for the same.

As regards DPWH's claim that the overrun earthwork quantities were due to excessive blasting, the CA held that DPWH failed to substantiate such allegation with convincing evidence.

On the alleged failure of ITD to follow the provisions for settlement of claims under the FIDIC and COPA, the CA ruled that DPWH effectively waived the requirements when it agreed to proceed directly to negotiation with ITD, and when it allowed the conduct of a joint survey to determine the final settlement amount.

Not convinced by the disposition of the CA, DPWH elevated the matter before this Court through a Petition for Review under Rule 45 of the Rules of Court on the following grounds:

The [CA] committed grave abuse of discretion in rendering the herein assailed Decision dismissing petitioner's appeal considering that:

I.

The CIAC seriously erred in finding petitioner liable to pay respondent ITD for alleged overrun earthwork quantities which resulted from respondent ITD's implementation of the overhang design.

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II.

The CIAC seriously erred in finding petitioner liable to pay respondent ITD for alleged overrun earthwork quantities due to road realignment.

III.

The CIAC seriously erred in finding petitioner liable to pay respondent ITD for alleged overrun earthwork quantities due to road improvements and miscellaneous works.

IV.

The CIAC seriously erred in ruling that the FIDIC and COPA provisions on the procedure for claims have become moot and academic.

V.

The CIAC seriously erred in holding that respondent ITD's varying claims did not cast doubt on its entitlement thereto.

VI.

The CIAC seriously erred in holding that petitioner is not entitled to its cross-claims against respondent KEI.

VII.

The CIAC seriously erred in awarding temperate damages to respondent ITD.⁴

By imputing grave abuse of discretion on the part of the CA, DPWH claims exception to the rule that only pure questions of law may be raised in a Petition for Review under Rule 45 of the Rules of Court. DPWH submits that the CA grossly misappreciated the facts and made findings that are contrary to the evidence on record. Hence, DPWH claims that the CA gravely abused its discretion in appreciating the evidence presented by the parties, which warrants a review of the factual issues by the Court.

The Court is, thus, called to determine whether it should relax the strict requirement of Rule 45 of the Rules of Court and admit the exception

⁴ *Rollo*, pp. 62-63.

claimed by DPWH, and if the exception applies, whether it should reverse the Decision of the CA.

The Court's Ruling

We deny the Petition.

Section 1, Rule 45 of the Revised Rules of Court expressly states that a petition for review on *certiorari* under this Rule shall raise only pure questions of law, which must be distinctly set forth.

This Rule is complemented by Section 19 of the Construction Industry Arbitration Law which states that CIAC arbitral awards may only be assailed on pure questions of law:

SEC. 19. Finality of Awards. — The arbitral award shall be binding upon the parties. It shall be final and [unappealable] except on questions of law which shall be appealable to the Supreme Court.

In the case of *Hi-Precision Steel Center, Inc. v. Lim Kin Steel Builders, Inc.*,⁵ the Court explained why this rule should be applied rigorously:

Section 19 makes it crystal clear that questions of fact cannot be raised in proceedings before the Supreme Court — which is not a trier of facts — in respect of an arbitral award rendered under the aegis of the CIAC. Consideration of the animating purpose of voluntary arbitration in general, and arbitration under the aegis of the CIAC in particular, requires us to apply rigorously the above principle embodied in Section 19 that the Arbitral Tribunal's findings of fact shall be final and unappealable.

Voluntary arbitration involves the reference of a dispute to an impartial body, the members of which are chosen by the parties themselves, which parties freely consent in advance to abide by the arbitral award issued after proceedings where both parties had the opportunity to be heard. The basic objective is to provide a speedy and inexpensive method of settling disputes by allowing the parties to avoid the formalities, delay, expense and aggravation which commonly accompany ordinary litigation, especially litigation which goes through the entire hierarchy of courts. Executive Order No. 1008 created an arbitration facility to which the construction industry in the Philippines can have recourse. [The Construction Industry Arbitration Law] created an arbitration facility to which the construction industry in the Philippines can have recourse. The [Construction Industry Arbitration Law] was enacted to encourage the early and expeditious settlement of disputes in

⁵ 298-A Phil. 361, 372 (1993).

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the construction industry, a public policy the implementation of which is necessary and important for the realization of national development goals.

This restrictive approach, as explained by the Court in *CE Construction Corp. v. Araneta Center, Inc.*,⁶ renders this Court duty-bound to ensure that an appeal does not undermine the integrity of arbitration or conveniently set aside the conclusions made by the arbitral tribunal. An appeal, according to the aforementioned case, is not an artifice for the parties to undermine the process they voluntarily elected to engage in.⁷

Thus, the settled rule is that factual findings of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the CA.⁸ The factual findings of the CIAC, which possesses the required expertise in the field of construction arbitration, are final and conclusive and are not reviewable by this Court on appeal.⁹ Even as exceptions are to be admitted, they should be on the narrowest of grounds:

Thus, even as exceptions to the highly restrictive nature of appeals may be contemplated, these exceptions are only on the [narrowest] of grounds. Factual findings of CIAC arbitral tribunals may be revisited not merely because arbitral tribunals may have erred, **not even on the already exceptional grounds traditionally available in Rule 45 Petitions. Rather, factual findings may be reviewed only in cases where the CIAC arbitral tribunals conducted their affairs in a haphazard, immodest manner that the most basic integrity of the arbitral process was imperiled.**¹⁰ (Emphasis supplied and citation omitted)

In *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*,¹¹ the Court held that factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that:

x x x (1) [T]he award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their

⁶ 816 Phil. 221 (2017).

⁷ Id. at 260.

⁸ *Department of Public Works and Highways v. Foundation Specialists, Inc.*, 760 Phil. 795, 807 (2015).

⁹ Id.

¹⁰ *CE Construction Corp. v. Araneta Center, Inc.*, supra note 6, at 260-261.

¹¹ 648 Phil. 342, 350 (2010), citing *Uniwide Sales Realty and Resources Corporation v. Titan-Ikeda Construction and Development Corporation*, 540 Phil. 350, 360-361 (2006).

powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process. (Citations omitted)

We find that none of the above-mentioned circumstances exists in this case. The allegation that the CA gravely abused its discretion in appreciating the facts and the evidence on record is not enough to claim exception from the stringent application of Rule 45 of the Rules of Court. In order for grave abuse of discretion to be recognized as an exception, the party alleging must, at the very least, show that it was deprived of a fair opportunity to present its position before the CIAC, or that the award was obtained through fraud or corruption of arbitrators.

This Court, in the case of *Hi-Precision Steel Center, Inc. v. Lim Kin Steel Builders, Inc.*,¹² emphasized that it will not review the factual findings of the arbitral tribunal on the allegation that such body misapprehended the facts:

Aware of the objective of voluntary arbitration in the labor field, in the construction industry, and in any other area for that matter, the Court will not assist one or the other or even both parties in any effort to subvert or defeat that objective for their private purposes. The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal, save only where a very clear showing is made that, in reaching its factual conclusions, the Arbitral Tribunal committed an error so egregious and hurtful to one party as to constitute a grave abuse of discretion resulting in lack or loss of jurisdiction. Prototypical examples would be factual conclusions of the Tribunal which resulted in deprivation of one or the other party of a fair opportunity to present its position before the Arbitral Tribunal, and an award obtained through fraud or the corruption of arbitrators. Any other, more relaxed, rule would result in setting at naught the basic objective of a voluntary arbitration and would reduce arbitration to a largely inutile institution.

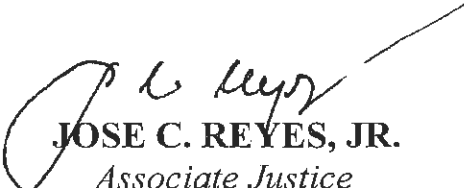
¹² Supra note 5, at 373-374.

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Thus, DPWH's claim for exception is denied. As a rule, the arbitral award of the CIAC is final and unappealable, and may only be questioned before this Court on pure questions of law. Unless the party claiming for exception shows that any of the exceptional circumstances mentioned in *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*¹³ exists, this Court is duty-bound to uphold the integrity of the arbitration process and ensure that the parties do not undermine the process they voluntarily engaged themselves in.


WHEREFORE, the Petition is **DENIED**. The Decision dated November 27, 2017 issued by the Court of Appeals in CA-G.R. SP No. 133771 is hereby **AFFIRMED**.

SO ORDERED.



JOSE C. REYES, JR.
Associate Justice

WE CONCUR:



DIOSDADO M. PERALTA
Chief Justice
Chairperson



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice

¹³ Supra note 11.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Chief Justice