Supreme Court E-Library

said order within thirty (30) days from receipt of this resolution; and

4. *DIRECTING* the Clerk of Court of the Regional Trial Court and *Ex-Officio* Sheriff of Quezon City to cause the immediate execution of our Decision. Said Clerk of Court is further directed to submit to this Court his/her compliance to this directive within thirty (30) days from receipt of this resolution.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Leonardo-De Castro,[*] and *Brion,*[**] *JJ.,* concur.

EN BANC

[G.R. No. 162243. December 3, 2009]

HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources, *petitioner, vs.* **PICOP RESOURCES, INC.,** *respondent.*

[G.R. No. 164516. December 3, 2009]

PICOP RESOURCES, INC., *petitioner, vs.* **HON. HEHERSON ALVAREZ substituted by HON. ELISEA G. GOZUN, in her capacity as Secretary of the Department of Environment and Natural Resources,** *respondent.*

---

[*] Associate Justice Teresita J. Leonardo-De Castro was designated to sit as additional member replacing Associate Justice Antonio Eduardo B. Nachura per Raffle dated 13 April 2009.

[**] Associate Justice Arturo D. Brion was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 3 August 2009.

Supreme Court E-Library

[G.R. No. 171875. December 3, 2009]

THE HON. ANGELO T. REYES (formerly Hon. Elisea G. Gozun), in his capacity as Secretary of the Department of Environment and Natural Resources (DENR), *petitioner, vs.* **PAPER INDUSTRIES CORP. OF THE PHILIPPINES (PICOP),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; CONSTRUED. — Petitions for *Mandamus* are governed by Rule 65 of the Rules of Court, Section 3 of which provides: SEC. 3. *Petition for mandamus*.—When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an **act which the law specifically enjoins as a duty resulting from an office, trust, or station,** or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

2. ID.; ID.; ID.; NOT APPLICABLE FOR THE ENFORCEMENT OF SECTION 9, DAO NO. 99-53. — Respondent PICOP is asking this Court to conclude that the DENR Secretary is specifically enjoined by law to issue an Integrated Forest Management Agreement (IFMA) in its favor. x x x PICOP stresses the word "automatic" in Section 9 of DENR (Administrative Order (DAO) No. 99-53: Sec. 9. *Qualifications of Applicants*. – The applicants for IFMA shall be: (a) A Filipino citizen of legal age; or, (b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws. However, in the case of application for conversion of TLA into IFMA, an *automatic* conversion after proper evaluation shall be *allowed*, provided the TLA holder shall have signified such intention prior to the expiry of the TLA, PROVIDED further, that the TLA

holder has showed satisfactory performance and have complied in the terms of condition of the TLA and pertinent rules and regulations. This administrative regulation provision *allowing* automatic conversion after proper evaluation can hardly qualify as a law, much less a law *specifically enjoining* the execution of a contract. To enjoin is "to order or direct with urgency; to instruct with authority; to command." "'Enjoin' is a mandatory word, in legal parlance, always; in common parlance, usually." The word "allow," on the other hand, is not equivalent to the word "must," and is in no sense a command. As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a *ministerial* duty, not a discretionary one; *mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.

3. ID.; ID.; ID.; WHEN *MANDAMUS* CAN BE ISSUED TO RESPONDENT IN CASE AT BAR BY VIRTUE OF THE 1969 DOCUMENT WHERE THE STATE IS A PARTY.— A contract (1969 Document), being the law between the parties, can indeed, with respect to the State when it is a party to such contract, qualify as a law specifically enjoining the performance of an act. Hence, it is possible that a writ of *mandamus* may be issued to PICOP, but **only if it proves <u>both</u> of the following:** 1) That the 1969 Document is a contract recognized under the non-impairment clause; and 2) That the 1969 Document specifically enjoins the government to issue the IFMA.

4. POLITICAL LAW; CONSTITUTIONAL LAW; NATIONAL ECONOMY AND PATRIMONY; VIOLATED WITH THE INTERPRETATION OF THE 1969 DOCUMENT THAT THE TERM OF WARRANTY FOR TIMBER LICENSE IS NOT LIMITED TO FIFTY YEARS BUT EXTENDS TO ANOTHER FIFTY YEARS.— PICOP's claim that the term of the warranty is not limited to fifty years, but that it extends to other fifty years, perpetually, violates Section 2, Article XII of the Constitution. x x x IFMAs are production-sharing agreements concerning the development and utilization of natural resources. As such, these agreements "may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided

Supreme Court E-Library

by law." Any superior "contract" requiring the State to issue TLAs and IFMAs whenever they expire clearly circumvents Section 2, Article XII of the Constitution, which provides for the only permissible schemes wherein the full control and supervision of the State are not derogated: co-production, joint venture, or production-sharing agreements within the time limit of twenty-five years, renewable for another twenty-five years. On its face, the 1969 Document was meant to expire on 26 April 2002, upon the expiration of the expected extension of the original TLA period ending on 26 April 1977: x x x Any interpretation extending the application of the 1969 Document beyond 26 April 2002 and any concession that may be granted to PICOP beyond the said date would violate the Constitution, and no amount of legal hermeneutics can change that.

5. ID.; ID.; TRANSITORY PROVISIONS; THAT ALL EXISTING LAWS, DECREES, EXECUTIVE ORDERS, PROCLAMATIONS, LETTERS OF INSTRUCTIONS, AND OTHER EXECUTIVE ISSUANCES NOT INCONSISTENT WITH THE CONSTITUTION SHALL REMAIN OPERATIVE UNTIL AMENDED, REPEALED, OR REVOKED; ELUCIDATED. — PICOP insists that the alleged Presidential Warranty, having been signed on 29 July 1969, could not have possibly considered the limitations yet to be imposed by future issuances, such as the 1987 Constitution. However, Section 3, Article XVIII of said Constitution, provides: **Section** 3. All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked. In the recent case *Sabio v. Gordon*, we ruled that "(t)he clear import of this provision is that all existing laws, executive orders, proclamations, letters of instructions and other executive issuances inconsistent or repugnant to the Constitution are repealed." When a provision is susceptible of two interpretations, "the one that will render them operative and effective and harmonious with other provisions of law" should be adopted. As the interpretations in the assailed Decision and in Mr. Justice Tinga's *ponencia* are the ones that would not make the subject Presidential Warranty unconstitutional, these are what we shall adopt.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; ESSENTIAL REQUISITES OF CONTRACTS; CAUSE OF CONTRACTS;

Supreme Court E-Library

INVESTMENTS AS CONTRACT CONSIDERATION FOR GOVERNMENT LICENSE, NOT PROPER AS SAID LICENSE NOT A CONTRACT. — According to Article 1350 of the Civil Code, "(i)n onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other." Private investments for one's businesses, while indeed eventually beneficial to the country and deserving to be given incentives, are still principally and predominantly for the benefit of the investors. Thus, the "mutual" contract considerations by both parties to this alleged contract would be both for the benefit of one of the parties thereto, BBLCI, which is not obligated by the 1969 Document to surrender a share in its proceeds any more than it is already required by its TLA and by the tax laws. PICOP's argument that its investments can be considered as contract consideration derogates the rule 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." All licensees obviously put up investments, whether they are as small as a tricycle unit or as big as those put up by multi-billion-peso corporations. To construe these investments as contract considerations would be to abandon the foregoing rule, which would mean that the State would be bound to all licensees, and lose its power to revoke or amend these licenses when public interest so dictates.

7. POLITICAL LAW; POLICE POWER OF THE STATE; ISSUANCE OF LICENSES THAT COME IN THE FORM OF AGREEMENTS, NOT CONSIDERED CONTRACTS UNDER THE NON-IMPAIRMENT CLAUSE.— The power to issue licenses springs from the State's police power, known as "the most essential, insistent and least limitable of powers, extending as it does to all the great public needs." Businesses affecting the public interest, such as the operation of public utilities and those involving the exploitation of natural resources, are mandated by law to acquire licenses. This is so in order that the State can regulate their operations and thereby protect the public interest. Thus, while these licenses come in the form of "agreements," *e.g.*, "Timber License Agreements," they cannot be considered contracts under the non-impairment clause.

Supreme Court E-Library

8. REMEDIAL LAW; CIVIL PROCEDURE; WHEN A COURT BASES ITS DECISION ON TWO OR MORE GROUNDS, EACH IS AS AUTHORITATIVE AS THE OTHER AND NEITHER IS *OBITER DICTUM*; CASE AT BAR. — When a court bases its decision on two or more grounds, each is as authoritative as the other and neither is *obiter dictum*. Thus, both grounds on which we based our ruling in the assailed Decision would become *judicial dictum*, and would affect the rights and interests of the parties to this case unless corrected in this Resolution on PICOP's Motion for Reconsideration. Therefore, although PICOP would not be entitled to a Writ of *Mandamus* even if the second issue is resolved in its favor, we should nonetheless resolve the same and determine whether PICOP has indeed complied with all administrative and statutory requirements for the issuance of an IFMA.

9. ID.; EVIDENCE; RULES OF ADMISSIBILITY; TESTIMONY GENERALLY CONFINED TO PERSONAL KNOWLEDGE; HEARSAY, EXCLUDED. — A witness may testify only on facts of which he has personal knowledge; that is, those derived from his perception, except in certain circumstances allowed by the Rules. Otherwise, such testimony is considered hearsay and, hence, inadmissible in evidence. SFMS Evangelista, while not relying on the Memoranda of Orlanes and Arayan, nevertheless relied on records, the preparation of which he did not participate in. These records and the persons who prepared them were not presented in court, either. As such, SFMS Evangelista's testimony, insofar as he relied on these records, was on matters not derived from his own perception, and was, therefore, hearsay.

10. ID.; ID.; ID.; ID.; ID.; EXCEPTION; ENTRIES IN OFFICIAL RECORDS. — Section 44, Rule 130 of the Rules of Court, which speaks of entries in official records as an exception to the hearsay rule, cannot excuse the testimony of SFMS Evangelista. Section 44 provides: SEC. 44. *Entries in official records*. – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated. In *Africa v. Caltex*, we enumerated the following requisites for the admission of entries in official records as an exception to the hearsay rule: (1) the entries were made by a public officer or a private person

Supreme Court E-Library

in the performance of a duty; (2) the performance of the duty is especially enjoined by law; (3) the public officer or the private person had sufficient knowledge of the facts stated by him, which must have been acquired by him personally or through official information. The presentation of the records themselves would, therefore, have been admissible as an exception to the hearsay rule even if the public officer/s who prepared them was/were not presented in court, provided the above requisites could be adequately proven. In the case at bar, however, neither the records nor the persons who prepared them were presented in court. Thus, the above requisites cannot be sufficiently proven. Also, since SFMS Evangelista merely testified based on what those records contained, his testimony was hearsay evidence twice removed, which was one step too many to be covered by the official-records exception to the hearsay rule.

11. POLITICAL LAW; RA NO. 8371; REQUIREMENT OF PRIOR CERTIFICATION FROM THE NCIP THAT THE AREAS AFFECTED BY TIMBER LICENSE DO NOT OVERLAP WITH ANY ANCESTRAL DOMAIN BEFORE ANY IFMA CAN BE ENTERED INTO BY THE GOVERNMENT; SUBJECT LANDS NEED NOT BE PROVEN PART OF ANCESTRAL DOMAINS FIRST BEFORE CERTIFICATION BE REQUIRED. — Section 59 of Republic Act No. 8371 requires prior certification from the NCIP that the areas affected do not overlap with any ancestral domain before any IFMA can be entered into by the government. x x x What is required in Section 59 of Republic Act No. 8379 is a Certification from the NCIP that there was no overlapping with any Ancestral Domain. PICOP cannot claim that the DENR gravely abused its discretion for requiring this Certification, on the ground that there was no overlapping. We reiterate that **it is manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that they are not can be required.**

12. ID.; LOCAL GOVERNMENT CODE; SANGGUNIAN CONSULTATION AND APPROVAL BEFORE ISSUANCE OF IFMA TO PICOP; IN SUFFICIENT COMPLIANCE IN CASE AT BAR. — Sections 2(c), 26 and 27 of the Local Government Code provide: SEC. 2. x x x. (c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other

Supreme Court E-Library

concerned sectors of the community before any project or program is implemented in their respective jurisdictions. SEC. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance*. – It shall be the duty of every ***national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species,*** to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof. SEC. 27. *Prior Consultations Required*. – No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with***, and prior approval of the sanggunian concerned is obtained*:** Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution. x x x PICOP had claimed that it complied with the Local Government Code requirement of obtaining prior approval of the Sanggunian concerned by submitting a purported resolution of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion. We ruled that this cannot be deemed sufficient compliance with the foregoing provision. Surigao del Sur is not the only province affected by the area covered by the proposed IFMA. The approval of the Sanggunian concerned is required by law, not because the local government has control over such project, but because the local government has the duty to protect its constituents and their stake in the implementation of the project. Again, Section 26 states that it applies to projects that "may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species." The local government should thus represent the communities in such area, the very people who will be affected by flooding, landslides or even climatic change if the project is not properly regulated, and who likewise have a stake in the

Supreme Court E-Library

resources in the area, and deserve to be adequately compensated when these resources are exploited.

13. ID.; CONSTITUTIONAL LAW; THAT ALL PROJECTS RELATING TO EXPLORATION, DEVELOPMENT AND UTILIZATION OF NATURAL RESOURCES ARE PROJECTS OF THE STATE, EMPHASIZED. – All projects relating to the exploration, development and utilization of natural resources are projects of the State. While the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by these citizens, such as PICOP, the projects nevertheless remain as State projects and ***can never be purely private endeavors***. Also, despite entering into co-production, joint venture, or production-sharing agreements, the State remains in full control and supervision over such projects. PICOP, thus, cannot limit government participation in the project to being merely its bouncer, whose primary participation is only to "warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project."

APPEARANCES OF COUNSEL

The Solicitor General for Hon. Heherson T. Alvarez and Hon. Angelo T. Reyes.

Quasha Ancheta Peña and Nolasco and *Agabin Verzola Hermoso and Layaoen Law Offices* for Paper Industries Corporation of the Philippines (PICOP) Resources, Inc.

R E S O L U T I O N

CHICO-NAZARIO, *J.*:

The cause of action of PICOP Resources, Inc. (PICOP) in its Petition for *Mandamus* with the trial court is clear: the government is bound by contract, a 1969 Document signed by then President Ferdinand Marcos, to enter into an Integrated Forest Management Agreement (IFMA) with PICOP. Since the remedy of *mandamus* lies only to compel an officer to

Supreme Court E-Library

perform a *ministerial* duty, and since the 1969 Document itself has a proviso requiring compliance with the laws and the Constitution, the issues in this Motion for Reconsideration are the following: (1) firstly, is the 1969 Document a *contract* enforceable under the Non-Impairment Clause of the Constitution, so as to make the signing of the IFMA a ministerial duty? (2) secondly, did PICOP comply with all the legal and constitutional requirements for the issuance of an IFMA?

To recall, PICOP filed with the Department of Environment and Natural Resources (DENR) an application to have its Timber License Agreement (TLA) No. 43 converted into an IFMA. In the middle of the processing of PICOP's application, however, PICOP refused to attend further meetings with the DENR. Instead, on 2 September 2002, PICOP filed before the Regional Trial Court (RTC) of Quezon City a Petition for *Mandamus*[1] against then DENR Secretary Heherson T. Alvarez. PICOP seeks the issuance of a privileged writ of *mandamus* to compel the DENR Secretary to sign, execute and deliver an IFMA to PICOP, as well as to –

> [I]ssue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended; b) to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and c) to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, [1969] between the government and PICOP's predecessor-in-interest. x x x.[2]

On 11 October 2002, the RTC rendered a Decision granting PICOP's Petition for *Mandamus*, thus:

> WHEREFORE, premises considered, the Petition for *Mandamus* is hereby GRANTED.

---

[1] Records, pp. 1-38.

[2] *Id.* at 36.

Supreme Court E-Library

The Respondent DENR Secretary Hon. Heherson Alvarez is hereby ordered:

1. to sign, execute and deliver the IFMA contract and/or documents to PICOP and issue the corresponding IFMA assignment number on the area covered by the IFMA, formerly TLA No. 43, as amended;

2. to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and

3. to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, 1999 (sic) between the government and PICOP's predecessor-in-interest Exhibits "H", "H-1" to "H-5", particularly the following:

    a) the area coverage of TLA No. 43, which forms part and parcel of the government warranties;

    b) PICOP tenure over the said area of TLA No. 43 and exclusive right to cut, collect and remove sawtimber and pulpwood for the period ending on April 26, 1977; and said period to be renewable for [an]other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions; and

    c) The peaceful and adequate enjoyment by PICOP of the area as described and specified in the aforesaid amended Timber License Agreement No. 43.

The Respondent Secretary Alvarez is likewise ordered to pay petitioner the sum of ₱10 million a month beginning May 2002 until the conversion of TLA No. 43, as amended, to IFMA is formally effected and the harvesting from the said area is granted.[3]

---

[3] *Rollo* (G.R. No. 162243), pp. 221-222.

Supreme Court E-Library

On 25 October 2002, the DENR Secretary filed a Motion for Reconsideration.[4] In a 10 February 2003 Order, the RTC denied the DENR Secretary's Motion for Reconsideration and granted PICOP's Motion for the Issuance of Writ of *Mandamus* and/or Writ of Mandatory Injunction.[5] The *fallo* of the 11 October 2002 Decision was practically copied in the 10 February 2003 Order, although there was no mention of the damages imposed against then DENR Secretary Alvarez.[6] The DENR Secretary

[4] Records, Vol. 2, pp. 393-456.

[5] Records, Vol. 4, pp. 1349-1575.

[6] The dispositive portion of the 10 February 2003 Order reads:

WHEREFORE, premises considered, the Motion for Reconsideration dated October 25, 2002 is hereby DENIED for utter lack of merit while the Motion for the Issuance of Writ of *Mandamus* and/or Writ of Mandatory Injunction is GRANTED. Accordingly, respondent DENR Secretary Heherson Alvarez, now substituted by Secretary Elisea Gozun, is hereby ordered:

1. to sign, execute and deliver the IFMA contract and/or documents to PICOP and issue the corresponding IFMA assignment number on the area covered by IFMA, formerly TLA No. 43, as amended;

2. to issue the necessary permit allowing petitioner to act and harvest timber from the said area of TLA No. 43, sufficient to meet the raw material requirements of petitioner's pulp and paper mills in accordance with the warranty and agreement of July 29, 1969 between the government and PICOP's predecessor-in-interest; and

3. to honor and respect the Government Warranties and contractual obligations to PICOP strictly in accordance with the warranty and agreement dated July 29, 1999 (sic) between the government and PICOP's predecessor-in-interest (Exhibits "H", "H-1" to "H-5", particularly the following:

a) The area coverage of TLA No. 43, which forms part and parcel of the government warranties;

b) PICOP tenure over the said area of TLA No. 43 and exclusive right to cut, collect and remove sawtimber and pulpwood for the period ending on April 26, 1977; and said period to be renewable for another 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions, and

c) The peaceful and adequate enjoyment by PICOP of the area as described and specified in the aforesaid amended Timber License Agreement No. 43. (Records, Vol. 4, pp. 1374-1375)

Supreme Court E-Library

filed a Notice of Appeal[7] from the 11 October 2002 Decision and the 10 February 2003 Order.

On 19 February 2004, the Seventh Division of the Court of Appeals affirmed[8] the Decision of the RTC, to wit:

> WHEREFORE, the appealed Decision is hereby AFFIRMED with modification that the order directing then DENR Secretary Alvarez "to pay petitioner-appellee the sum of ₱10 million a month beginning May, 2002 until the conversion to IFMA of TLA No. 43, as amended, is formally effected and the harvesting from the said area is granted" is hereby deleted.[9]

Challenging the deletion of the damages awarded to it, PICOP filed a Motion for Partial Reconsideration[10] of this Decision, which was denied by the Court of Appeals in a 20 July 2004 Resolution.[11]

The DENR Secretary and PICOP filed with this Court separate Petitions for Review of the 19 February 2004 Court of Appeals Decision. These Petitions were docketed as G.R. No. 162243 and No. 164516, respectively. These cases were consolidated with G.R. No. 171875, which relates to the lifting of a Writ of Preliminary Injunction enjoining the execution pending appeal of the foregoing Decision.

On 29 November 2006, this Court rendered the assailed Decision on the Consolidated Petitions:

> WHEREFORE, the Petition in G.R. No. 162243 is **GRANTED**. The Decision of the Court of Appeals insofar as it affirmed the RTC Decision granting the Petition for *Mandamus* filed by Paper Industries Corp. of the Philippines (PICOP) is hereby **REVERSED** and **SET ASIDE**. The Petition in G.R. No. 164516 seeking the reversal of the same Decision

---

[7] Records, Vol. 2, p. 611.

[8] *Rollo* (G.R. No. 162243), pp. 229-258. Penned by Associate Justice Ruben T. Reyes, with Associate Justices Edgardo P. Cruz and Noel G. Tijam concurring; *rollo* (G.R. No. 162243), pp. 229-258.

[9] *Rollo* (G.R. No. 162243), p. 257.

[10] *Rollo* (G.R. No. 164516), pp. 107-119.

[11] *Id.* at 121-122.

Supreme Court E-Library

insofar as it nullified the award of damages in favor of PICOP is **DENIED** for lack of merit. The Petition in G.R. No. 171875, assailing the lifting of the Preliminary Mandatory Injunction in favor of the Secretary of Environment and Natural Resources is **DISMISSED** on the ground of mootness.[12]

On 18 January 2006, PICOP filed the instant Motion for Reconsideration, based on the following grounds:

I.

THE HONORABLE COURT ERRED IN HOLDING THAT THE CONTRACT WITH PRESIDENTIAL WARRANTY SIGNED BY THE PRESIDENT OF THE REPUBLIC ON 29 JUNE 1969 ISSUED TO PICOP IS A MERE PERMIT OR LICENSE AND IS NOT A CONTRACT, PROPERTY OR PROPERTY RIGHT PROTECTED BY THE DUE PROCESS CLAUSE OF THE CONSTITUTION

II.

THE EVALUATION OF PICOP'S MANAGEMENT OF THE TLA 43 NATURAL FOREST CLEARLY SHOWED SATISFACTORY PERFORMANCE FOR KEEPING THE NATURAL FOREST GENERALLY INTACT AFTER 50 YEARS OF FOREST OPERATIONS. THIS COMPLETES THE REQUIREMENT FOR AUTOMATIC CONVERSION UNDER SECTION 9 OF DAO 99-53.

III.

WITH DUE RESPECT, THE HONORABLE COURT, IN REVERSING THE FINDINGS OF FACTS OF THE TRIAL COURT AND THE COURT OF APPEALS, MISAPPRECIATED THE EVIDENCE, TESTIMONIAL AND DOCUMENTARY, WHEN IT RULED THAT:

i.

PICOP FAILED TO SUBMIT A FIVE-YEAR FOREST PROTECTION PLAN AND A SEVEN-YEAR REFORESTATION PLAN FOR THE YEARS UNDER REVIEW.

ii.

PICOP FAILED TO COMPLY WITH THE PAYMENT OF FOREST CHARGES.

---

[12] *Id*. at 814.

Supreme Court E-Library

iii.

PICOP DID NOT COMPLY WITH THE REQUIREMENT FOR A CERTIFICATION FROM THE NCIP THAT THE AREA OF TLA 43 DOES NOT OVERLAP WITH ANY ANCESTRAL DOMAIN.

iv.

PICOP FAILED TO HAVE PRIOR CONSULTATION WITH AND APPROVAL FROM THE SANGUNIAN CONCERNED, AS REQUIRED BY SECTION 27 OF THE REPUBLIC ACT NO. 7160, OTHERWISE KNOWN AS THE LOCAL GOVERNMENT CODE OF 1991.

v.

PCIOP FAILED TO SECURE SOCIAL ACCEPTABILITY UNDER PRESIDENTIAL DECREE NO. 1586.

IV

THE MOTIVATION OF ALVAREZ IN RECALLING THE CLEARANCE FOR AUTOMATIC CONVERSION HE ISSUED ON 25 OCTOBER 2001 WAS NOT DUE TO ANY SHORTCOMING FROM PICOP BUT DUE TO HIS DETERMINATION TO EXCLUDE 28,125 HECTARES FROM THE CONVERSION AND OTHER THINGS.

On 15 December 2008, on Motion by PICOP, the Third Division of this Court resolved to refer the consolidated cases at bar to the Court *en banc*. On 16 December 2008, this Court sitting *en banc* resolved to accept the said cases and set them for oral arguments. Oral arguments were conducted on 10 February 2009.

PICOP's Cause of Action: Matters PICOP Should Have Proven to Be Entitled to a Writ of *Mandamus*

In seeking a writ of *mandamus* to compel the issuance of an IFMA in its favor, PICOP relied on a 29 July 1969 Document, the so-called Presidential Warranty approved by then President Ferdinand E. Marcos in favor of PICOP's predecessor-in-interest, Bislig Bay Lumber Company, Inc. (BBLCI). PICOP's cause

Supreme Court E-Library

of action is summarized in paragraphs 1.6 and 4.19 of its Petition for *Mandamus*:

1.6 Respondent Secretary impaired the obligation of contract under the said Warranty and Agreement of 29 July 1969 by refusing to respect the tenure; and its renewal for another twenty five (25) years, of PICOP over the area covered by the said Agreement which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable and disposable lands with an aggregate area of approximately 21,580 hectares, and petitioner's exclusive right to cut, collect and remove sawtimber and pulpwood therein and the peaceful and adequate enjoyment of the said area as described and specified in petitioner's Timber License Agreement (TLA) No. 43 guaranteed by the Government, under the Warranty and Agreement of 29 July 1969.[13]

4.19 Respondent is in violation of the Constitution and has impaired the obligation of contract by his refusal to respect: a) the tenurial rights of PICOP over the forest area covered by TLA No. 43, as amended and its renewal for another twenty five (25) years; b) the exclusive right of PICOP to cut, collect and remove sawtimber and pulpwood therein; and c) PICOP's peaceful and adequate enjoyment of the said area which the government guaranteed under the Warranty and Agreement of 29 July 1969.[14]

The grounds submitted by PICOP in its Petition for *Mandamus* are as follows:

I

Respondent secretary has unlawfully refused and/or neglected to sign and execute the IFMA contract of PICOP even as the latter has complied with all the legal requirements for the automatic conversion of TLA No. 43, as amended, into an IFMA.

II

Respondent Secretary acted with grave abuse of discretion and/or in excess of jurisdiction in refusing to sign and execute PICOP's IFMA contract, notwithstanding that PICOP had complied with all the requirements for Automatic Conversion under DAO 99-53, as in fact

---

[13] PICOP's Petition for *Mandamus*; records, p. 5.

[14] *Id.*; records, p. 20.

Supreme Court E-Library

Automatic Conversion was already cleared in October, 2001, and was a completed process.

III

Respondent Secretary has impaired the obligation of contract under a valid and binding warranty and agreement of 29 July 1969 between the government and PICOP's predecessor-in-interest, by refusing to respect: a) the tenure of PICOP, and its renewal for another twenty five (25) years, over the TLA No.43 area covered by said agreement; b) the exclusive right to cut, collect and remove sawtimber and pulpwood timber; and c) the peaceful and adequate enjoyment of the said area.

IV

As a result of respondent Secretary's unlawful refusal and/or neglect to sign and deliver the IFMA contract, and violation of the constitutional rights of PICOP against non-impairment of the obligation of contract (Sec. 10, Art. III, 1997 [sic] Constitution), PICOP suffered grave and irreparable damages.[15]

Petitions for *Mandamus* are governed by Rule 65 of the Rules of Court, Section 3 of which provides:

SEC. 3. *Petition for mandamus.*—When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an **act which the law specifically enjoins as a duty resulting from an office, trust, or station**, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphasis supplied.)

PICOP is thus asking this Court to conclude that the DENR Secretary is specifically enjoined by law to issue an IFMA in

[15] *Id.* at 20-21.

Supreme Court E-Library

its favor. An IFMA, as defined by DENR Administrative Order (DAO) No. 99-53,[16] is -

> [A] production-sharing contract entered into by and between the DENR and a qualified applicant wherein the DENR grants to the latter the exclusive right to develop, manage, protect and utilize a specified area of forestland and forest resource therein for a period of 25 years and may be renewed for another 25-year period, consistent with the principle of sustainable development and in accordance with an approved CDMP, and under which both parties share in its produce.[17]

PICOP stresses the word "automatic" in Section 9 of this DAO No. 99-53:

> Sec. 9. *Qualifications of Applicants*. – The applicants for IFMA shall be:
>
> (a) A Filipino citizen of legal age; or,
>
> (b) Partnership, cooperative or corporation whether public or private, duly registered under Philippine laws.
>
> However, in the case of application for conversion of TLA into IFMA, an *automatic* conversion after proper evaluation shall be *allowed*, provided the TLA holder shall have signified such intention prior to the expiry of the TLA, PROVIDED further, that the TLA holder has showed satisfactory performance and have complied in the terms of condition of the TLA and pertinent rules and regulations. (Emphasis supplied.)[18]

This administrative regulation provision *allowing* automatic conversion after proper evaluation can hardly qualify as a law, much less a law *specifically enjoining* the execution of a contract. To enjoin is "to order or direct with urgency; to instruct with authority; to command."[19] "'Enjoin' is a mandatory word, in

---

[16] Regulations Governing the Integrated Forest Management Program (IFMP); records, pp. 41-55.

[17] Records, p. 43.

[18] *Id.* at 46.

[19] 14A Words and Phrases, West Publishing Co., p. 290 (1952), citing *Lawrence v. Cooke*, N.Y., 32 Hun 126, 134.

Supreme Court E-Library

legal parlance, always; in common parlance, usually."[20] The word "allow," on the other hand, is not equivalent to the word "must," and is in no sense a command.[21]

As an extraordinary writ, the remedy of *mandamus* lies only to compel an officer to perform a *ministerial* duty, not a discretionary one; *mandamus* will not issue to control the exercise of discretion of a public officer where the law imposes upon him the duty to exercise his judgment in reference to any manner in which he is required to act, because it is his judgment that is to be exercised and not that of the court.[22]

The execution of agreements, in itself, involves the exercise of discretion. Agreements are products of negotiations and mutual concessions, necessitating evaluation of their provisions on the part of both parties. In the case of the IFMA, the evaluation on the part of the government is specifically mandated in the afore-quoted Section 3 of DAO No. 99-53. This evaluation necessarily involves the exercise of discretion and judgment on the part of the DENR Secretary, who is tasked not only to negotiate the sharing of the profit arising from the IFMA, but also to evaluate the compliance with the requirements on the part of the applicant.

Furthermore, as shall be discussed later, the period of an IFMA that was merely automatically converted from a TLA in accordance with Section 9, paragraph 2 of DAO No. 99-53 would only be for the remaining period of the TLA. Since the TLA of PICOP expired on 26 April 2002, the IFMA that could have been granted to PICOP via the automatic conversion provision in DAO No. 99-53 would have expired on the same date, 26 April 2002, and the PICOP's Petition for *Mandamus* would have become moot.

This is where the 1969 Document, the purported Presidential Warranty, comes into play. When PICOP's application was brought to a standstill upon the evaluation that PICOP had yet to comply

---

[20] *Id.*, citing *Clifford v. Stewart*, 49 A. 52, 55, 95 Me. 38.

[21] 3 Words and Phrases, West Publishing Co., p. 344 (1953), citing *Giffin v. Petree*, 46 S.W. 2d 609, 618, 226 Mo. App. 718.

[22] *Akbayan-Youth v. Commission on Elections*, 407 Phil. 618, 646 (2001).

Supreme Court E-Library

with the requirements for such conversion, PICOP refused to attend further meetings with the DENR and instead filed a Petition for *Mandamus*, insisting that the DENR Secretary had impaired the obligation of contract by his refusal to respect: a) the tenurial rights of PICOP over the forest area covered by TLA No. 43, as amended, and its renewal for another twenty-five (25) years; b) the exclusive right of PICOP to cut, collect and remove sawtimber and pulpwood therein; and c) PICOP's peaceful and adequate enjoyment of the said area which the government guaranteed under the Warranty and Agreement of 29 July 1969.[23]

PICOP is, thus, insisting that the government is *obligated by contract* to issue an IFMA in its favor because of the 1969 Document.

A contract, being the law between the parties, can indeed, with respect to the State when it is a party to such contract, qualify as a law specifically enjoining the performance of an act. Hence, it is possible that a writ of *mandamus* may be issued to PICOP, but **only if it proves both of the following**:

1) That the 1969 Document is a contract recognized under the non-impairment clause; and

2) That the 1969 Document specifically enjoins the government to issue the IFMA.

If PICOP fails to prove any of these two matters, the grant of a privileged writ of *mandamus* is not warranted. This was why we pronounced in the assailed Decision that the overriding controversy involved in the Petition was one of law.[24] If PICOP fails to prove any of these two matters, more significantly its assertion that the 1969 Document is a contract, PICOP fails to prove its cause of action.[25] Not even the satisfactory

---

[23] PICOP's Petition for *Mandamus*; records, p. 20.

[24] Decision, p. 26.

[25] The nature of PICOP's Petition for *Mandamus* reads in full:

NATURE OF THE PETITION/COMPLAINT

Supreme Court E-Library

compliance with all legal and administrative requirements for an IFMA would save PICOP's Petition for *Mandamus*.

---

1. This is a Special Civil Action for *Mandamus*, with prayer for issuance of Writ of Preliminary Prohibitory and Mandatory Injunction with Damages under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

1.1 Petitioner invokes the jurisdiction of this Honorable Court conferred by Batas Pambansa Blg. 129, The Judiciary Reorganization Act of 1980, under Sections 21 thereof:

> "Sec. 21. Original Jurisdiction in other cases. Regional Trial Court shall exercise original jurisdiction:
>
> (1) In the issuance of writs of *certiorari*, prohibition *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions; xxx (underscoring supplied).

1.2 Petitioner brings the instant petition for the grant of the privileged writ of *mandamus*, with prayer for the issuance of provisional remedies of preliminary prohibitory and mandatory injunction *pendente lite* against respondent Secretary for illegal acts which impinge on and violate the constitutional rights of petitioner, and respondent Secretary has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction.

1.3 Appropriateness of Recourse to *Mandamus*. The 1997 Rules of Civil Procedure, as amended, under Rule 65, Sec. 3 thereof provides relief against official acts by public officers which are illegal and traduces fundamental rights of a party aggrieved, or acts done without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus:

> "Sec. 3. Petition for *Mandamus*. When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another person from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay damages sustained by the petitioner by reason of the wrongful acts of the respondent." (Emphasis supplied)

1.4 The jurisdiction of this Honorable Court to adjudicate the matters raised in this petition and to issue the privileged writ of *mandamus* is a settled matter. In *Tañada v. Angara*, 272 SCRA 18 [1997], the Supreme Court held:

Supreme Court E-Library

The reverse, however, is not true. The 1969 Document expressly states that the warranty as to the tenure of PICOP

The jurisdiction of this Court to adjudicate the matters raised in the petition is clearly set out in the 1987 Constitution, as follows:

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government.

The foregoing text emphasizes the judicial department's duty and power to strike down grave abuse of discretion on the part of any branch or instrumentality of government including Congress. It is innovation in our political law. As explained by former Chief Justice Roberto Concepcion, the judiciary is the final arbiter on the question of whether or not a branch of government or any of its officials has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess of jurisdiction. This is not a judicial power but a duty to pass judgment on matters of this nature.

As this Court has repeatedly and firmly emphasized in many cases, it will not shirk, digress from or abandon its sacred duty and authority to uphold the Constitution in matters that involve grave abuse of discretion brought before it in appropriate cases, committed by any officer, agency, instrumentality or department of the government.

As the petition alleges grave abuse of discretion and as there is no other plain, speedy or adequate remedy in the ordinary course of law, we have no hesitation at all in holding that this petition should be given due course and the vital questions raised therein ruled upon under Rule 65 of the Rules of Court. Indeed, *certiorari*, prohibition and *mandamus* are appropriate remedies to raise constitutional issues and to review and/or prohibit/nullify, when proper, acts of legislative and executive officials. On this, we have no equivocation.

1.5 By this privileged writ of *mandamus*, petitioner seeks to:

1.5.1 Compel respondent Department of Environment and Natural Resources (DENR) Secretary Heherson T. Alvarez to execute and deliver the Integrated Forestry Management Agreement (IFMA for short), and issue the corresponding IFMA number assignment to petitioner and to which it has a clear legal right and respondent has the legal duty to perform.

Respondent DENR Secretary has unlawfully refused and neglected and continue to unlawfully refuse and neglect, to issue the IFMA and corresponding IFMA number assignment to PICOP, the performance of which the law specifically enjoins as a duty resulting from his office.

Supreme Court E-Library

is "subject to compliance with constitutional and statutory requirements as well as with existing policy on timber

---

Respondent Secretary Alvarez in refusing to sign, execute and deliver the IFMA and corresponding IFMA assignment number to PICOP has acted without jurisdiction or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess or lack of jurisdiction.

1.5.2 Compel respondent DENR Secretary to abide by and respect the obligation of contract embodied under a letter warranty and agreement entered into by and between the Government and PICOP's predecessor-in-interest dated 29 July 1969, with the following covenants:

> "This has reference to the request of the Board of Investment through its Chairman in a letter dated July 16, 1969 for a warranty on the boundaries of your concession area under Timber License Agreement No. 43, as amended.
>
> We are made to understand that your company is committed to support the first large scale integrated wood processing complex (hereinafter called "The Project") and that such support will be provided not only in the form of the supply of pulpwood and other wood materials from your concession but also by making available funds generated out of your own operations, to supplement PICOP's operational sources of funds and other financial arrangements made by him. In order that your company may provide such support effectively, it is understood that you will call upon your stockholders to take such steps as may be necessary to effect in unification of managerial, technical, economical and manpower resources between your company and PICOP.
>
> It is in the public interest to promote industries that will enhance the proper conservation of our forest resources as well as insure the maximum utilization thereof to the benefit of the national economy. The Administration feels that the PICOP project is one such industry which should enjoy priority over the usual logging operations hitherto practiced by ordinary timber licenses for this reason, we are pleased to consider favorably the request.
>
> We confirm that your Timber License Agreement No. 43, as amended, (copy of which is attached as Annex "A") hereof attached to form part and parcel of this warranty) definitely establishes the boundary lines of your concession area which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares.
>
> We further confirm that your tenure over the area and exclusive right to cut, collect and remove sawtimber and pulpwood shall be for the period ending on April 26, 1997; said period to be renewable

Supreme Court E-Library

concessions." Thus, **if PICOP proves the two above-mentioned matters, it still has to prove compliance with**

---

for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

The peaceful and adequate enjoyment by you of your area as described and specified in your aforesaid amended Timber License Agreement No. 43 is hereby warranted provided that pertinent laws, regulations and the terms and conditions of your license agreement are observed."

Copy of which is attached as Annex "A".

1.6 Respondent Secretary impaired the obligation of contract under the said Warranty and Agreement of 29 July 1969 by refusing to respect the tenure; and its renewal for other twenty five (25) years, of PICOP over the area covered by said Agreement which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares, and petitioner's exclusive right to cut, collect and remove sawtimber and pulpwood therein and the peaceful and adequate enjoyment of the said area as described and specified in petitioner's Timber License Agreement (TLA) No. 43 guaranteed by the Government, under the Warranty and Agreement of 29 July 1969.

1.7 The Bill of Rights of the 1987 Constitution guarantees the non-impairment of the obligation of contract, providing in Sec. 10, Art. III thereof that:

"Sec. 10. No law impairing the obligation of contracts shall be passed."

1.8 The obligation of a contract is the law or duty which binds the parties to perform their agreement according to its terms or intent (*Sturgess v. Crownshields*, 4 Wheat 122). The treaties on the Constitution state the scope of terms "law" and "contract", to mean:

> (1) The law, the enactment of which is prohibited, includes executive and administrative orders issued by heads of departments, and ordinances enacted by local governments. (citing *Lim v. Secretary of Agriculture*, 34 SCRA 751 [1970]).
>
> (2) The contract, the obligation of which is secured against impairment by the Constitution, includes contracts entered into by the Government (citing *Maddumba v. GSIS*, 182 SCRA 281 [1990]). An example of impairment by law is when a tax exemption based on a contract entered into by the government is revoked by a letter taxing statute (citing *Casanova v. Hord*, 8 Phil. 125 [1907]).
>
> 3) The State when contracting does so upon the same terms as a private individual or corporation and may not plead its sovereignty as justification in impairing a contractual obligation which it has assumed (citing Willoughby, op. Cit. p. 1224).

Supreme Court E-Library

statutory and administrative requirements for the conversion of its TLA into an IFMA.

Exhaustion of Administrative Remedies

PICOP uses the same argument — that the government is bound by contract to issue the IFMA — in its refusal to exhaust all administrative remedies by not appealing the alleged illegal non-issuance of the IFMA to the Office of the President. PICOP claimed in its Petition for *Mandamus* with the trial court that:

1.10 This petition falls as an exception to the exhaustion of administrative remedies. The acts of respondent DENR Secretary complained of in this petition are ***patently illegal; in derogation of the constitutional rights of petitioner against non-impairment of the obligation of contracts***; without jurisdiction, or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to

---

(4) In a Contract, a party acquires a right ande the other assumed an obligation arising from the same (Art. 1305 New Civil Code). A contract is the law between the contracting parties, their assigns, and their heirs (Arts. 1159, 1311 par. 1, Civil Code) (De Leon, *Philippine Constitutional Law, Principles* and *Cases*, 1999 Ed., pp. 682, 283).

As used in the Constitution, the word "Contracts" includes other arrangement not normally considered to be contracts such as a legislative grant of a public land to particular individuals, such that a subsequent attempt by the State to annul the title of purchasers in good faith from the grantee would be unconstitutional (citing *Fletcher v. Peck,* 10 US 87). (*ibid.*, p. 6).

1.9 There is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law except the privileged writ of *mandamus* prayed for in this petition.

1.10 This petition falls as an exception to the exhaustion of administrative remedies. The acts of respondent DENR Secretary complained of in this petition are patently illegal; in derogation of the constitutional rights of petitioner against non-impairment of the obligation of contracts; without jurisdiction, or in excess of jurisdiction or so capriciously as to constitute an abuse of discretion amounting to excess or lack of jurisdiction; and moreover, the failure or refusal of a high government official such as a Department head from whom relief is brought to act on the matter was considered equivalent to exhaustion of administrative remedies (*Sanoy v.*

Supreme Court E-Library

excess or lack of jurisdiction; and moreover, the failure or refusal of a high government official such as a Department head from whom relief is brought to act on the matter was considered equivalent to exhaustion of administrative remedies (*Sanoy v. Tantuico,* 50 SCRA 455 [1973]), and there are compelling and urgent reasons for judicial intervention (*Bagatsing v. Ramirez*, 74 SCRA 306 [1976]).

Thus, if there has been no impairment of the obligation of contracts in the DENR Secretary's non-issuance of the IFMA, the proper remedy of PICOP in claiming that it has complied with all statutory and administrative requirements for the issuance of the IFMA should have been with the Office of the President. This makes the issue of the enforceability of the 1969 Document as a contract even more significant.

The Nature and Effects of the Purported 29 July 1969 Presidential Warranty

Base Metals Case

PICOP challenges our ruling that the 1969 Document is *not* a contract. Before we review this finding, however, it must be pointed out that one week after the assailed Decision, another division of this Court promulgated a Decision concerning the very same 1969 Document. Thus, in *PICOP Resources, Inc. v. Base Metals Mineral Resources Corporation*,[26] five other Justices who were still unaware of this Division's Decision,[27] came up with the same conclusion as regards the same issue of whether former President Marcos's Presidential Warranty is a contract:

Tantuico, 50 SCRA 455 [1973]), and there are compelling and urgent reasons for judicial intervention (*Bagatsing v. Ramirez,* 74 SCRA 306 [1976]). (PICOP's Petition for *Mandamus*, Records pp. 1-6.)

[26] G.R. No. 163509, 6 December 2006, 510 SCRA 400, penned by Associate Justice Dante O. Tinga with Associate Justices Leo A. Quisumbing, Antonio T. Carpio, Conchita Carpio Morales, and Presbitero J. Velasco, Jr., concurring.

[27] That the erstwhile Third Division of this Court was still unaware of this Division's Decision is shown by the following excerpts in its Decision: PICOP brings to the Court's attention the case of *PICOP Resources, Inc. v. Hon. Heherson T. Alvarez*, wherein the Court of Appeals ruled that the

Supreme Court E-Library

Finally, we do not subscribe to PICOP's argument that the Presidential Warranty dated September 25, 1968 is a contract protected by the non-impairment clause of the 1987 Constitution.

An examination of the Presidential Warranty at once reveals that ***it simply reassures PICOP of the government's commitment to uphold the terms and conditions of its timber license and guarantees PICOP's peaceful and adequate possession and enjoyment of the areas which are the basic sources of raw materials for its wood processing complex***. The warranty covers only the right to cut, collect, and remove timber in its concession area, and does not extend to the utilization of other resources, such as mineral resources, occurring within the concession.

The Presidential Warranty cannot be considered a contract distinct from PTLA No. 47 and FMA No. 35. We agree with the OSG's position that it is merely a collateral undertaking which cannot amplify PICOP's rights under its timber license. Our definitive ruling in *Oposa v. Factoran* that ***a timber license is not a contract within the purview of the non-impairment clause*** is edifying. We declared:

> Needless to say, all licenses may thus be revoked or rescinded by executive action. It is not a contract, property or a property right protected by the due process clause of the Constitution. In *Tan vs. Director of Forestry*, this Court held:
>
> > "x x x A timber license is an instrument by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. A timber license is not a contract within the purview of the due process clause; it is only a license or a privilege, which can be validly withdrawn whenever dictated by public interest or public welfare as in this case.

Presidential Warranty issued to PICOP for its TLA No. 43 dated July 29, 1969, a TLA distinct from PTLA No. 47 involved in this case, is a valid contract involving mutual prestations on the part of the Government and PICOP.

x x x x x x x x x

The case of *PICOP Resources, Inc. v. Hon. Heherson T. Alvarez, supra,* cited by PICOP cannot be relied upon to buttress the latter's claim that a presidential warranty is a valid and subsisting contract between PICOP and the Government ***because the decision of the appellate court in that case is still pending review before the Court's Second Division.*** (*Id.* at 411-415.)

Supreme Court E-Library

> '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 a property or a property right, nor does it create a vested right; nor is it taxation' (C.J. 168). Thus, this Court held that the granting of license does not create irrevocable rights, neither is it property or property rights (*People vs. Ong Tin,* 54 O.G. 7576). x x x"

We reiterated this pronouncement in *Felipe Ysmael, Jr. & Co., Inc. vs. Deputy Executive Secretary*:

> "x x x Timber licenses, permits and license agreements are the principal instruments by which the State regulates the utilization and disposition of forest resources to the end that public welfare is promoted. And it can hardly be gainsaid that they merely evidence a privilege granted by the State to qualified entities, and do not vest in the latter a permanent or irrevocable right to the particular concession area and the forest products therein. They may be validly amended, modified, replaced or rescinded by the Chief Executive when national interests so require. Thus, they are not deemed contracts within the purview of the due process of law clause [See Sections 3(ee) and 20 of Pres. Decree No. 705, as amended. Also, *Tan v. Director of Forestry*, G.R. No. L-24548, October 27, 1983, 125 SCRA 302]."

Since timber licenses are not contracts, the non-impairment clause, which reads:

> "SEC. 10. No law impairing the obligation of contracts shall be passed."

cannot be invoked.

The Presidential Warranty cannot, in any manner, be construed as a contractual undertaking assuring PICOP of exclusive possession and enjoyment of its concession areas. Such an interpretation would result in the complete abdication by the State in favor of PICOP of the

Supreme Court E-Library

sovereign power to control and supervise the exploration, development and utilization of the natural resources in the area.[28]

The Motion for Reconsideration was denied with finality on 14 February 2007. A Second Motion for Reconsideration filed by PICOP was denied on 23 May 2007.

PICOP insists that the pronouncement in *Base Metals* is a mere *obiter dictum*, which would not bind this Court in resolving this Motion for Reconsideration. In the oral arguments, however, upon questioning from the *ponente* himself of *Base Metals*, it was agreed that the issue of whether the 1969 Document is a contract was necessary in the resolution of *Base Metals*:

JUSTICE TINGA:

And do you confirm that one of the very issues raised by PICOP in that case [*PICOP Resources Inc. v. Base Metal Mineral Resources Corporation*] revolves around its claim that a Presidential Warranty is protected by the non-impairment c[l]ause of the Constitution.

ATTY. AGABIN:

Yes, I believe that statement was made by the Court, your Honor.

JUSTICE TINGA:

Yes. And that claim on the part of PICOP necessarily implies that the Presidential Warranty according to PICOP is a contract protected by the non-impairment clause.

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE TINGA:

Essentially, the PICOP raised the issue of whether the Presidential Warranty is a contract or not.

ATTY. AGABIN:

Yes, Your Honor.

---

[28] *Id.* at 426-428.

Supreme Court E-Library

JUSTICE TINGA:

And therefore any ruling on the part of the Court on that issue could not be an *obiter dictum*.

ATTY. AGABIN:

Your Honor, actually we believe that the basic issue in that case was whether or not Base Metals could conduct mining activities underneath the forest reserve allotted to PICOP and the Honorable Court ruled that the Mining Act of 1995 as well as the Department Order of DENR does not disallow mining activity under a forest reserve.

JUSTICE TINGA:

But it was PICOP itself which raised the claim that a Presidential Warranty is a contract. And therefore be, should be protected on the under the non-impairment clause of the Constitution.

ATTY. AGABIN:

Yes, Your Honor. Except that…

JUSTICE TINGA:

So, how can you say now that the Court merely uttered, declared, laid down an *obiter dictum* in saying that the Presidential Warranty is not a contract, and it is not being a contract, it is not prohibited by the non-impairment clause.

ATTY. AGABIN:

This Honorable Court could have just ruled, held that the mining law allows mining activities under a forest reserve without deciding on that issue that was raised by PICOP, your Honor, and therefore we believe….

JUSTICE TINGA:

It could have been better if PICOP has not raised that issue and had not claimed that the Presidential Warranty is not a contract.

ATTY. AGABIN:

Well, that is correct, your Honor except that the Court could have just avoided that question. Because…

Supreme Court E-Library

JUSTICE TINGA:

Why[?]

ATTY. AGABIN:

It already settled the issue, the basic issue.

JUSTICE TINGA:

Yes, because the Court in saying that merely reiterated a number of rulings to the effect that the Presidential Warranty, a Timber License for that matter is not a contract protected by the non-impairment laws.

ATTY. AGABIN:

Well, it is our submission, your Honor, that it is *obiter* because, that issue even a phrase by PICOP was not really fully argued by the parties for the Honorable Court and it seems from my reading at least it was just an aside given by the Honorable Court to decide on that issue raised by PICOP but it was not necessary to the decision of the court.

JUSTICE TINGA:

It was not necessary[?]

ATTY. AGABIN:

To the decision of the Court.

JUSTICE TINGA:

It was.

ATTY. AGABIN:

It was not necessary.

JUSTICE TINGA:

It was.

ATTY. AGABIN:

Yes.

JUSTICE TINGA:

And PICOP devoted quite a number of pages in [its] memorandum to that issue and so did the Court [in its Decision].

Supreme Court E-Library

ATTY. AGABIN:

Anyway, your Honor, we beg the Court to revisit, not to…[29]

Interpretation of the 1969 Document That Would Be in Harmony with the Constitution

To remove any doubts as to the contents of the 1969 Document, the purported Presidential Warranty, below is a complete text thereof:

Republic of the Philippines
Department of Agriculture and Natural Resources
OFFICE OF THE SECRETARY
Diliman, Quezon City

D-53, Licenses (T.L.A. No. 43)
Bislig Bay Lumber Co., Inc.
(Bislig, Surigao)

July 29, 1969

Bislig Bay Lumber Co., Inc.
[unreadable word] Bldg.
Makati, Rizal

S i r s:

This has reference to the request of the Board of Investments through its Chairman in a letter dated July 16, 1969 for a warranty on the boundaries of your concession area under Timber License Agreement No. 43, as amended.

We are made to understand that your company is committed to support the first large scale integrated wood processing complex hereinafter called: "The Project") and that such support will be provided not only in the form of the supply of pulpwood and other wood materials from your concession but also by making available funds generated out of your own operations, to supplement PICOP's operational sources of funds and other financial arrangements made by him. In order that your company may provide such support effectively, it is understood that you will call upon your stockholders

[29] TSN, Oral Arguments, pp. 174-181.

Supreme Court E-Library

to take such steps as may be necessary to effect a unification of managerial, technical, economic and manpower resources between your company and PICOP.

It is in the public interest to promote industries that will enhance the proper conservation of our forest resources as well as insure the maximum utilization thereof to the benefit of the national economy. The administration feels that the PICOP project is one such industry which should enjoy priority over the usual logging operations hitherto practiced by ordinary timber licensees: For this reason, we are pleased to consider favorably the request.

We confirm that your Timber License Agreement No. 43, as amended (copy of which is attached as Annex "A" hereof which shall form part and parcel of this warranty) definitely establishes the boundary lines of your concession area which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares.

We further confirm that your tenure over the area and exclusive right to cut, collect and remove sawtimber and pulpwood shall be for the period ending on April 26, 1977; said period to be renewable for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

The peaceful and adequate enjoyment by you of your area as described and specified in your aforesaid amended Timber License Agreement No. 43 is hereby warranted provided that pertinent laws, regulations and the terms and conditions of your license agreement are observed.

Very truly yours,

(Sgd.) FERNANDO LOPEZ
Secretary of Agriculture
and Natural Resources

Encl.:

RECOMMENDED BY:

(Sgd.) JOSE VIADO
Acting Director of Forestry

Supreme Court E-Library

APPROVED:

(Sgd.) FERDINAND E. MARCOS
President of the Philippines

ACCEPTED:

BISLIG BAY LBR. CO., INC.

By:

(Sgd.) JOSE E. SORIANO
President

PICOP interprets this document in the following manner:

6.1 It is clear that the thrust of the government warranty is to establish a particular area defined by boundary lines of TLA No. 43 for the PICOP Project. In consideration for PICOP's commitment to pursue and establish the project requiring huge investment/funding from stockholders and lending institutions, the government provided a warranty that ensures the continued and exclusive right of PICOP to source its raw materials needs from the forest and renewable trees within the areas established.

6.2 As a long-term support, the warranty covers the initial twenty five (25) year period and is **renewable for periods of twenty five (25) years provided the project continues to exist and operate.** Very notably, the wording of the Presidential Warranty connotes that for as long as the holder complies with all the legal requirements, **the term of the warranty is not limited to fifty (50) years but other twenty five (25) years.**

6.3 Note must be made that the government warranted that PICOP's tenure over the area and exclusive right to cut, collect and remove saw timber and pulpwood shall be for the period ending on 26 April 1977 and said period to be renewable for other 25 years subject to "compliance with constitutional and statutory requirements as well as existing policy on timber requirements". It is clear that the renewal for other 25 years, not necessarily for another 25 years is guaranteed. This explains why on 07 October 1977, TLA No. 43, as amended, was automatically renewed for another period of twenty five (25) years to expire on 26 April 2002.[30]

---

[30] PICOP's Petition for *Mandamus*; records, pp. 26-27.

Supreme Court E-Library

PICOP's interpretation of the 1969 Document cannot be sustained. PICOP's claim that the term of the warranty is not limited to fifty years, but that it extends to other fifty years, perpetually, violates Section 2, Article XII of the Constitution which provides:

> Section 2. **All** lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, **forests or timber**, wildlife, flora and fauna, **and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law.** In cases of water rights for irrigation, water supply fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

Mr. Justice Dante O. Tinga's interpretation of the 1969 Document is much more in accord with the laws and the Constitution. What one cannot do directly, he cannot do indirectly. Forest lands cannot be alienated in favor of private entities. Granting to private entities, via a contract, a permanent, irrevocable, and exclusive possession of and right over forest lands is tantamount to granting ownership thereof. PICOP, it should be noted, claims nothing less than having exclusive, continuous and uninterrupted possession of its concession areas,[31] where all other entrants are illegal,[32] and where so-called "illegal settlers and squatters" are apprehended.[33]

---

[31] PICOP's Memorandum, p. 101; *rollo*, p. 1262.

[32] PICOP's Motion for Reconsideration, p. 50; *rollo*, p. 1391a; TSN, 19 September 2002, pp. 27-35; 41-45.

[33] *Id.* at 51; *rollo*, p. 1391b.

Supreme Court E-Library

IFMAs are production-sharing agreements concerning the development and utilization of natural resources. As such, these agreements "may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law." Any superior "contract" requiring the State to issue TLAs and IFMAs whenever they expire clearly circumvents Section 2, Article XII of the Constitution, which provides for the only permissible schemes wherein the full control and supervision of the State are not derogated: co-production, joint venture, or production-sharing agreements within the time limit of twenty-five years, renewable for another twenty-five years.

On its face, the 1969 Document was meant to expire on 26 April 2002, upon the expiration of the expected extension of the original TLA period ending on 26 April 1977:

> We further confirm that your tenure over the area and exclusive right to cut, collect and remove sawtimber and pulpwood shall be for the period ending on April 26, 1977; said period to be renewable for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

Any interpretation extending the application of the 1969 Document beyond 26 April 2002 and any concession that may be granted to PICOP beyond the said date would violate the Constitution, and no amount of legal hermeneutics can change that. Attempts of PICOP to explain its way out of this Constitutional provision only led to absurdities, as exemplified in the following excerpt from the oral arguments:

JUSTICE CARPIO:

> The maximum trend of agreement to develop and utilize natural resources like forest products is 25 years plus another 25 years or a total of 50 years correct?

ATTY. AGABIN

> Yes, Your Honor.

Supreme Court E-Library

JUSTICE CARPIO:

That is true for the 1987, 1973, 1935 Constitution, correct?

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

The TLA here, TLA 43, expired, the first 25 years expired in 1977, correct?

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

And it was renewed for another 25 years until 2002, the 50th year?

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

Now, could PICOP before the end of the 50th year let's say in 2001, one year before the expiration, could it have asked for an extension of another 25 years of its TLA agreement[?]

ATTY. AGABIN:

I believe so, Your Honor.

JUSTICE CARPIO:

But the Constitution says, maximum of fifty years. How could you ask for another 25 years of its TLA.

ATTY. AGABIN:

Well, your Honor, we believe on a question like this, this Honorable Court should balance the interest.

JUSTICE CARPIO:

The Constitution is very clear, you have only a maximum of 50 years, 25 plus another 25. PICOP could never have applied for an extension, for a third 25-year term whether under the 1935 Constitution, the 1973 Constitution and the 1987 Constitution, correct?

Supreme Court E-Library

ATTY. AGABIN:

Your Honor, except that we are invoking the warranty, the terms of the warranty….

JUSTICE CARPIO:

Can the warranty prevail over the Constitution?

ATTY. AGABIN:

Well, it is a vested right, your Honor.

JUSTICE CARPIO:

Yes, but whatever it is, can it prevail over the Constitution?

ATTY. AGABIN:

The Constitution itself provides that vested rights should be ….

JUSTICE CARPIO:

If it is not in violation of specific provision of the Constitution. The Constitution says, 25 years plus another 25 years, that's the end of it. You mean to say that a President of the Philippines can give somebody 1,000 years license?

ATTY. AGABIN:

Well, that is not our position, Your Honor. Because our position is that ….

JUSTICE CARPIO:

My question is, what is the maximum term, you said 50 years. So, my next question is, can PICOP apply for an extension of another 25 years after 2002, the 50th year?

ATTY. AGABIN:

Yes, based on the contract of warranty, Your Honor, because the contract of warranty….

JUSTICE CARPIO:

But in the PICOP license it is very clear, it says here, provision 28, it says the license agreement is for a total of 50 years. I mean it is very simple, the President or even Congress cannot pass a law extending the license, whatever kind of license to utilize natural

resources for more than fifty year[s]. I mean even the law cannot do that. It cannot prevail over the Constitution. Is that correct, Counsel?

ATTY. AGABIN:

It is correct, Your Honor, except that in this case, what is actually our application is that the law provides for the conversion of existing TLA into IFMA.

JUSTICE CARPIO:

So, they file the petition for conversion before the end of the 50th year for IFMA.

ATTY. AGABIN:

Yes, Your Honor.

JUSTICE CARPIO:

But IFMA is the same, it is based on Section 2, Article 12 of the Constitution, develop and utilize natural resources because as you said when the new constitution took effect we did away with the old licensing regime, we have now co-production, a production sharing, joint venture, direct undertaking but still the same developing and utilizing the natural resources, still comes from Section 2, Art. 12 of the Constitution. It is still a license but different format now.

ATTY. AGABIN:

It is correct, Your Honor, except that the regimes of joint venture, co-production and production sharing are what is referred to in the constitution, Your Honor, and still covered…

JUSTICE CARPIO:

Yes, but it is covered by same 25 year[s], you mean to say people now can circumvent the 50 year maximum term by calling their TLA as IFMA and after fifty years calling it ISMA, after another 50 years call it MAMA.

ATTY. AGABIN:

Yes, Your Honor. Because…

JUSTICE CARPIO:

It can be done.

Supreme Court E-Library

ATTY. AGABIN:

That is provided for by the department itself.[34]

PICOP is, in effect, arguing that the DENR issued DAO No. 99-53 in order to provide a way to circumvent the provisions of the Constitution limiting agreements for the utilization of natural resources to a maximum period of fifty years. Official duties are, however, disputably considered to be regularly performed,[35] and good faith is always presumed.

DAO No. 99-53 was issued to change the means by which the government enters into an agreement with private entities for the utilization of forest products. DAO No. 99-53 is a late response to the change in the constitutional provisions on natural resources from the 1973 Constitution, which allowed the granting of licenses to private entities,[36] to the present Constitution, which provides for co-production, joint venture, or production-sharing agreements as the permissible schemes wherein private entities may participate in the utilization of forest products. Since the granting of timber licenses ceased to be a permissible scheme for the participation of private entities under the present Constitution, their operations should have ceased upon the issuance of DAO No. 99-53, the rule regulating the schemes under the present Constitution. This would be iniquitous to those with existing TLAs that would not have expired yet as of the issuance of DAO No. 99-53, especially those with new TLAs that were

---

[34] Oral Arguments, 10 February 2009; TSN, pp. 158-167.

[35] RULES OF COURT, Section 3(m), Rule 131.

[36] Article XIV, Section 8, 1973 Constitution provides:

Section 8. All lands of public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, or resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than development of water power, in which cases, beneficial use may by the measure and the limit of the grant.

Supreme Court E-Library

originally set to expire after 10 or even 20 or more years. The DENR thus inserted a provision in DAO No. 99-53 allowing these TLA holders to finish the period of their TLAs, but this time as IFMAs, without the rigors of going through a new application, which they have probably just gone through a few years ago.

Such an interpretation would not only make DAO No. 99-53 consistent with the provisions of the Constitution, but would also prevent possible discrimination against new IFMA applicants:

ASSOCIATE JUSTICE DE CASTRO:

I ask this question because of your interpretation that the period of the IFMA, if your TLA is converted into IFMA, would cover a new a fresh period of twenty-five years renewable by another period of twenty-five years.

DEAN AGABIN:

Yes, Your Honor.

ASSOCIATE JUSTICE DE CASTRO:

Don't you think that will, in effect, be invidious discrimination with respect to other applicants if you are granted a fresh period of twenty-five years extendible to another twenty-five years?

DEAN AGABIN:

I don't think it would be, Your Honor, considering that the IFMA is different regime from the TLA. And not only that, there are considerations of public health and ecology which should come into play in this case, and which we had explained in our opening statement and, therefore the provision of the Constitution on the twenty-five limits for renewal of co-production, joint venture and production sharing agreements, should be balanced with other values stated in the Constitution, like the value of balanced ecology, which should be in harmony with the rhythm of nature, or the policy of forest preservation in Article XII, Section 14 of the Constitution. These are all important policy considerations which should be balanced against the term limits in Article II of the Constitution.

Supreme Court E-Library

ASSOCIATE JUSTICE DE CASTRO:

The provision of this Administrative Order regarding automatic conversion may be reasonable, if, I want to know if you agree with me, if we limit this automatic conversion to the remaining period of the TLA, because in that case there will be a valid ground to make a distinction between those with existing TLA and those who are applying for the first time for IFMA?

DEAN AGABIN:

Well, Your Honor, we beg to disagree, because as I said TLA's are completely different from IFMA. The TLA has no production sharing or co-production agreement or condition. All that the licensee has to do is, to pay forest charges, taxes and other impositions from the local and national government. On the other hand, the IFMAs contained terms and conditions which are completely different, and that they either impose co-production, production sharing or joint venture terms. So it's a completely different regime, Your Honor.

ASSOCIATE JUSTICE DE CASTRO:

Precisely, that is the reason why there should be an evaluation of what you mentioned earlier of the development plan.

DEAN AGABIN:

Yes, Your Honor.

ASSOCIATE JUSTICE DE CASTRO:

So it will be reasonable to convert a TLA into an IFMA without considering the development plan submitted by other applicants or the development plan itself of one seeking conversion into IFMA if it will only be limited to the period, the original period of the TLA. But once you go beyond the period of the TLA, then you will be, the DENR is I think should evaluate the different proposals of the applicants if we are thinking of a fresh period of twenty-five years, and which is renewable under the Constitution by another twenty-five years. So the development plan will be important in this case, the submission of the development plan of the different applicants must be considered. So I don't understand why you mentioned earlier that the development plan will later on be a subject matter of negotiation between the IFMA grantee and the government. So it seems that it will be too late in the day to discuss that if you

Supreme Court E-Library

have already converted the TLA into IFMA or if the government has already granted the IFMA, and then it will later on study the development plan, whether it is viable or not, or it is sustainable or not, and whether the development plan of the different applicants are, are, which of the development plan of the different applicants is better or more advantageous to the government.[37]

PICOP insists that the alleged Presidential Warranty, having been signed on 29 July 1969, could not have possibly considered the limitations yet to be imposed by future issuances, such as the 1987 Constitution. However, Section 3, Article XVIII of said Constitution, provides:

> **Section 3.** All existing laws, decrees, executive orders, proclamations, letters of instructions, and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed, or revoked.

In the recent case *Sabio v. Gordon*,[38] we ruled that "(t)he clear import of this provision is that all existing laws, executive orders, proclamations, letters of instructions and other executive issuances inconsistent or repugnant to the Constitution are repealed."

When a provision is susceptible of two interpretations, "the one that will render them operative and effective and harmonious with other provisions of law"[39] should be adopted. As the interpretations in the assailed Decision and in Mr. Justice Tinga's *ponencia* are the ones that would not make the subject Presidential Warranty unconstitutional, these are what we shall adopt.

Purpose of the 1969 Document: Assurance That the Boundaries of Its Concession Area Would Not Be Altered Despite the Provision in the TLA that the DENR Secretary Can Amend Said Boundaries

---

[37] Oral Arguments, 10 February 2009, TSN, pp. 230-236.

[38] G.R. No. 174340, 17 October 2006, 504 SCRA 704, 730.

[39] *Javellana v. Tayo*, 116 Phil. 1342, 1351 (1962).

Supreme Court E-Library

In the assailed Decision, we ruled that the 1969 Document cannot be considered a contract that would bind the government regardless of changes in policy and the demands of public interest and social welfare. PICOP claims this conclusion "did not take into consideration that PICOP already had a valid and current TLA before the contract with warranty was signed in 1969."[40] PICOP goes on: "The TLA is a license that equips any TLA holder in the country for harvesting of timber. A TLA is signed by the Secretary of the DANR now DENR. The Court ignored the significance of the need for another contract with the Secretary of the DANR but this time with the approval of the President of the Republic."[41] PICOP then asks us: "If PICOP/BBLCI was only an ordinary TLA holder, why will it go through the extra step of securing another contract just to harvest timber when the same can be served by the TLA signed only by the Secretary and not requiring the approval of the President of the Republic(?)"[42]

The answer to this query is found in TLA No. 43 itself wherein, immediately after the boundary lines of TLA No. 43 were established, the following conditions were given:

This license is granted to the said party of the second part upon the following express conditions:

I. That authority is granted hereunder to the *party of the second part*[43] to cut, collect or remove firewood or other minor forest products from the area embraced in this license agreement except as hereinafter provided.

II. That **the *party of the first part*[44] <u>may amend or alter the description of the boundaries of the area covered by this license agreement to conform with official surveys</u>** and that **the decision of**

---

[40] PICOP's Motion for Reconsideration, p. 16; *rollo*, p. 1385.

[41] *Id*.

[42] *Id*.

[43] PICOP (CA *rollo*, p. 176).

[44] Secretary of Agriculture and Natural Resources (*id.*).

Supreme Court E-Library

the party of the first part as to the exact location of the said boundaries shall be final.

III. That if the party of the first part deems it necessary to establish on the ground the boundary lines of the area granted under this license agreement, the party of the second part shall furnish to the party of the first part or its representatives as many laborers as it needs and all the expenses to be incurred on the work including the wages of such laborers shall be paid by the party of the second part.[45]

Thus, **BBLCI needed an assurance that the boundaries of its concession area, as established in TLA No. 43, as amended, would not be altered despite this provision.** Hence, BBLCI endeavored to obtain the 1969 Document, which provides:

We confirm that your Timber License Agreement No. 43, as amended (copy of which is attached as Annex "A" hereof which shall form part and parcel of this warranty) ***definitely establishes the boundary lines of your concession area*** which consists of permanent forest lands with an aggregate area of 121,587 hectares and alienable or disposable lands with an aggregate area of approximately 21,580 hectares.

We further confirm that your ***tenure over the area*** and ***exclusive right to cut, collect and remove sawtimber and pulpwood*** shall be for the period ending on April 26, 1977; said period to be renewable for other 25 years subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions.

The peaceful and adequate enjoyment by you of your area as described and specified in your aforesaid amended Timber License Agreement No. 43 is hereby warranted provided that pertinent laws, regulations and the terms and conditions of your license agreement are observed.[46]

---

[45] Timber License Agreement No. 43; CA *rollo*, p. 177.

[46] CA *rollo*, pp. 323-324.

Supreme Court E-Library

In *Koa v. Court of Appeals*,[47] we ruled that a warranty is a collateral undertaking and is merely part of a contract. As a collateral undertaking, it follows the principal wherever it goes. When this was pointed out by the Solicitor General, PICOP changed its designation of the 1969 Document from "Presidential Warranty" or "government warranty" in all its pleadings prior to our Decision, to "contract with warranty" in its Motion for Reconsideration. This, however, is belied by the statements in the 29 July 1969 Document, which refers to itself as "this warranty."

Re: Allegation That There Were Mutual Contract Considerations

Had the 29 July 1969 Document been intended as a contract, it could have easily said so. More importantly, it could have clearly defined the mutual considerations of the parties thereto. It could have also easily provided for the sanctions for the breach of the mutual considerations specified therein. PICOP had vigorously argued that the 1969 Document was a contract because of these mutual considerations, apparently referring to the following paragraph of the 1969 Document:

> We are made to understand that your company is committed to support the first large scale integrated wood processing complex hereinafter called: "The Project") and that such support will be provided not only in the form of the supply of pulpwood and other wood materials from your concession but also by making available funds generated out of your own operations, to supplement PICOP's operational surces (sic) of funds and other financial arrangements made by him. In order that your company may provide such support effectively, it is understood that you will call upon your stockholders to take such steps as may be necessary to effect a unification of managerial, technical, economic and manpower resources between your company and PICOP.

This provision hardly evinces a contract consideration (which, in PICOP's interpretation, is in exchange for the *exclusive and perpetual tenure over 121,587 hectares of forest land and 21,580 hectares of alienable and disposable lands*).

---

[47] G.R. No. 84847, 5 March 1993, 219 SCRA 541.

Supreme Court E-Library

As elucidated by PICOP itself in bringing up the Investment Incentives Act which we shall discuss later, and as shown by the tenor of the 1969 Document, the latter document was more of a conferment of an incentive for BBLCI's investment rather than a contract creating mutual obligations on the part of the government, on one hand, and BBLCI, on the other. There was no stipulation providing for sanctions for breach if BBLCI's being "committed to support the first large scale integrated wood processing complex" remains a commitment. Neither did the 1969 Document give BBLCI a period within which to pursue this commitment.

According to Article 1350 of the Civil Code, "(i)n onerous contracts the cause is understood to be, for each contracting party, the prestation or promise of a thing or service by the other."[48] Private investments for one's businesses, while indeed eventually beneficial to the country and deserving to be given incentives, are still principally and predominantly for the benefit of the investors. Thus, the "mutual" contract considerations by both parties to this alleged contract would be both for the benefit of one of the parties thereto, BBLCI, which is not obligated by the 1969 Document to surrender a share in its proceeds any more than it is already required by its TLA and by the tax laws.

PICOP's argument that its investments can be considered as contract consideration derogates the rule 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." All licensees obviously put up investments, whether they are as small as a tricycle unit or as big as those put up by multi-billion-peso corporations. To construe these investments as contract considerations would be to abandon the foregoing rule, which would mean that the State would be bound to all licensees, and lose its power to revoke or amend these licenses when public interest so dictates.

---

[48] *Quirino v. Palarca*, 139 Phil. 488, 492 (1969).

Supreme Court E-Library

The power to issue licenses springs from the State's police power, known as "the most essential, insistent and least limitable of powers, extending as it does to all the great public needs."[49] Businesses affecting the public interest, such as the operation of public utilities and those involving the exploitation of natural resources, are mandated by law to acquire licenses. This is so in order that the State can regulate their operations and thereby protect the public interest. Thus, while these licenses come in the form of "agreements," *e.g.*, "Timber License Agreements," they cannot be considered contracts under the non-impairment clause.[50]

PICOP found this argument "lame," arguing, thus:

43. It is respectfully submitted that the aforesaid pronouncement in the Decision is an egregious and monumental error.

44. The Decision could not dismiss as "preposterous" the mutual covenants in the Presidential Warranty which calls for a huge investment of Php500 million at that time in 1969 out of which Php268,440,000 raised from domestic foreign lending institution to establish the first large scale integrated wood processing complex in the Philippines.

45. The Decision puts up a lame explanation that "all licensees put up investments in pursuing their business"

46. Now there are about a hundred timber licenses issued by the Government thru the DENR, but these are ordinary timber licenses which involve the mere cutting of timber in the concession area, and nothing else. Records in the DENR shows that no timber licensee has put up an integrated large wood processing complex in the Philippines except PICOP.[51]

---

[49] *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306, 318 (1967).

[50] The definition in DAO No. 99-53 that an IFMA is a "production sharing *contract*" has not been assailed as unconstitutional, thus prohibiting us from determining its constitutionality. Nonetheless, a mere designation in an administrative rule cannot alter the legal nature thereof.

[51] PICOP's Motion for Reconsideration, p. 21; *rollo*, p. 1386.

Supreme Court E-Library

PICOP thus argues on the basis of quantity, and wants us to distinguish between the investment of the tricycle driver and that of the multi-billion corporation. However, not even billions of pesos in investment can change the fact that natural resources and, therefore, public interest are involved in PICOP's venture, consequently necessitating the full control and supervision by the State as mandated by the Constitution. Not even billions of pesos in investment can buy forest lands, which is practically what PICOP is asking for by interpreting the 1969 Document as a contract giving it perpetual and exclusive possession over such lands. Among all TLA holders in the Philippines, PICOP has, by far, the largest concession area at 143,167 hectares, a land area more than the size of two Metro Manilas.[52] How can it not expect to also have the largest investment?

Investment Incentives Act

PICOP then claims that the contractual nature of the 1969 Document was brought about by its issuance in accordance with and pursuant to the Investment Incentives Act. According to PICOP:

The conclusion in the Decision that to construe PICOP's investments as a consideration in a contract would be to stealthily render ineffective the principle that a license is not a contract between the sovereignty and the licensee is so flawed since the contract with the warranty dated 29 July 1969 was issued by the Government in accordance with and pursuant to Republic Act No. 5186, otherwise known as "The Investment Incentives Act."[53]

PICOP then proceeds to cite Sections 2 and 4(d) and (e) of said act:

---

[52] The land area of Metro Manila is 63,600 hectares, or 636 square kilometers. Metro Manila includes within its boundaries the following cities and municipalities: Quezon City, Manila, Caloocan, Makati, Pasig, Marikina, Mandaluyong, Pasay City, Muntinlupa, Parañaque, Las Piñas, Valenzuela, Taguig, Malabon, Navotas, San Juan and Pateros.

[53] PICOP's Motion for Reconsideration, pp. 22-23; *rollo*, pp. 1386a-1386b.

Supreme Court E-Library

Section 2. *Declaration of Policy* – To accelerate the sound development of the national economy in consonance with the principles and objectives of economic nationalism, and in pursuance of a planned, economically feasible and practicable dispersal of industries, under conditions which will encourage competition and discharge monopolies, it is hereby declared to be the policy of the state to encourage Filipino and foreign investments, as hereinafter set out, in projects to develop agricultural, mining and manufacturing industries which increase national income most at the least cost, increase exports, bring about greater economic stability, provide more opportunities for employment, raise the standards of living of the people, and provide for an equitable distribution of wealth. It is further declared to be the policy of the state to welcome and encourage foreign capital to establish pioneer enterprises that are capital intensive and would utilize a substantial amount of domestic raw materials, in joint venture with substantial Filipino capital, whenever available.

Section 4. *Basic Rights and Guarantees*. – All investors and enterprises are entitled to the basic rights and guarantees provided in the constitution. Among other rights recognized by the Government of the Philippines are the following:

x x x x x x x x x

d) *Freedom from Expropriation*. – There shall be no expropriation by the government of the property represented by investments or of the property of enterprises except for public use or in the interest of national welfare and defense and upon payment of just compensation. x x x.

e) *Requisition of Investment*. – There shall be no requisition of the property represented by the investment or of the property of enterprises, except in the event of war or national emergency and only for the duration thereof. Just compensation shall be determined and paid either at the time of requisition or immediately after cessation of the state of war or national emergency. Payments received as compensation for the requisitioned property may be remitted in the currency in which the investment was originally made and at the exchange rate prevailing at the time of remittance, subject to the provisions of Section seventy-four of Republic Act Numbered Two hundred sixty-five.

Section 2 speaks of the policy of the State to encourage Filipino and foreign investments. It does not speak of how this

Supreme Court E-Library

policy can be implemented. Implementation of this policy is tackled in Sections 5 to 12 of the same law,[54] which PICOP failed to mention, and for a good reason. None of the 24 incentives

---

[54] SECTION 5. *Incentives to Investors in a Registered Enterprise*. — An investor, with respect to his investment in a registered enterprise, shall be granted the following incentive benefits:

(a) *Protection of Patents and Other Proprietary Rights*. — The right to be protected from infringement of patents, trademarks, copyright, trade names, and other proprietary rights, where such patents, trade marks, copyright, trade names, and other proprietary rights have been registered with the Board and the appropriate agencies of the Government of the Philippines.

(b) *Capital Gains Tax Exemption*. — Exemption from income tax on that portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section thirty-four of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of a registered enterprise within six months from the date the gains were realized: *Provided*, (1) that the said sale, disposition or transfer and the investment of the proceeds thereof have been registered with the Board and the Bureau of Internal Revenue; and (2) that the shares of stock representing the investment are not disposed of, transferred, assigned, or conveyed for a period of five years from the date the investment was made. If such shares of stock are disposed of within the said period of five (5) years, all taxes due on the gains realized from the original transfer, sale or disposition of the capital assets shall immediately become due and payable.

SECTION 6. *Incentives to Philippine Nationals Investing in Pioneer Enterprises*. — In addition to the incentives provided in the preceding sections, Philippine Nationals investing in a pioneer enterprise shall be granted the following incentives benefits:

(a) *Tax Allowance for Investments*. — An investment allowance to the extent of his actual investment, paid in cash or property shall be allowed as a deduction from his taxable income but not to exceed ten per cent thereof: *Provided*, (1) That the investment is made in a subscription of shares in the original and/or increased capital stock of a pioneer enterprise within seven years from the date of registration; (2) that the shares are held for a period of not less than three years and; (3) that the investment is registered with the Board. If the shares are disposed of within the said three year period, the tax payer shall lose the benefit of this deduction, his income tax liability shall be recomputed, and he shall pay whatever additional sum be due plus interest thereon, within thirty days from the date of disposition.

Supreme Court E-Library

enumerated therein relates to, or even remotely suggests that, PICOP's proposition that the 1969 Document is a contract.

(b) *Capital Gains Tax Exemption*. — Exemption from income tax on the portion of the gains realized from the sale, disposition, or transfer of capital assets, as defined in Section thirty-four of the National Internal Revenue Code, that corresponds to the portion of the proceeds of the sale that is invested in new issues of capital stock of, or in the purchase of stock owned by foreigners in, pioneer enterprises, within six months from the date the gains were realized: *Provided*, (1) That such sale, disposition or transfer and the investment of the proceeds thereof are registered with the Board and the Bureau of Internal Revenue; and (2) that the shares of stock representing the investment are not disposed of, transferred, assigned or conveyed for a period of three (3) years from the date the investment was made. If said shares of stock are disposed of within the said period of three (3) years, all taxes due on the gains realized from the original transfer, sale or disposition of the capital assets shall immediately become due and payable.

(c) *Tax Exemption on Sale of Stock Dividends*. — Exemption from income tax on all gains realized from the sale, disposition, or transfer of stock dividends received from a pioneer enterprise: *Provided*, That the sale, disposition or transfer occurs within seven years from the date of registration of the enterprise.

SECTION 7. *Incentives to a Registered Enterprise*. — A registered enterprise, to the extent engaged in a preferred area of investment, shall be granted the following incentive benefits:

(a) *Deduction of Organizational and Pre-Operating Expenses*. — All capitalized organizational and pre-operating expenses attributable to the establishment of a registered enterprise may be deducted from its taxable income over a period of not more than ten years beginning with the month the enterprise begins operations, provided the taxpayer indicates the desired amortization period at the time of the filing of the income tax returns for the first taxable year. For the purpose of this provision, organizational and pre-operating expenses shall include expenses for pre-investment studies, start up costs, costs of initial recruitment and training, and similar expenses.

(b) *Accelerated Depreciation*. — At the option of the taxpayer and in accordance with the procedure established by the Bureau of Internal Revenue, fixed assets may be (1) depreciated to the extent of not more than twice as fast as normal rate of depreciation or depreciated at normal rate of depreciation if expected life is ten years or less; or (2) depreciated over any number of years between five years and expected life if the latter is more than ten (10) years; and the depreciation thereon allowed as a

Supreme Court E-Library

PICOP could indeed argue that the enumeration is not exclusive. Certainly, granting incentives to investors, whether

---

deduction from taxable income: *Provided*, That the taxpayer notifies the Bureau of Internal Revenue at the beginning of the depreciation period which depreciation rate allowed by this section will be used by it.

(c) *Net Operating Loss Carry-over*. — A net operating loss incurred in any of the first ten years of operations may be carried over as a deduction from taxable income for the six years immediately following the year of such loss. The entire amount of the loss shall be carried over to the first of the six taxable years following the loss, and any portion of such loss which exceeds the taxable income of such first year shall be deducted in like manner from the taxable income of the next remaining five years. The net operating loss shall be computed in accordance with the provisions of the National Internal Revenue Code, any provision of this Act to the contrary notwithstanding, except that income not taxable either in whole or in part under this or other laws shall be included in gross income.

(d) *Tax Exemption on Imported Capital Equipment*. — Within seven years from the date of registration of the enterprise, importation of machinery and equipment, and spare parts shipped with such machinery and equipment, shall not be subject to tariff duties and compensating tax: *Provided*, That said machinery, equipment and spare parts: (1) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (2) are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products; (3) are covered by shipping documents in the name of the registered enterprise to whom the shipment will be delivered direct by customs authorities; (4) the prior approval of the Board was obtained by the registered enterprise before the importation of such machinery, equipment and spare parts; and (5) the registered enterprise chooses not to avail of the privileges granted by Republic Act Numbered Thirty-one hundred twenty-seven, as amended. If the registered enterprise sells, transfers, or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise shall pay twice the amount of the tax exemption given it. However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five (5) years if made: (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise.

(e) *Tax Credit on Domestic Capital Equipment*. — A tax credit equivalent to one hundred per cent (100%) of the value of the compensating tax and customs duties that would have been paid on the machinery, equipment and spare parts had these items been imported shall be given to the registered enterprise who purchases machinery, equipment and spare parts from a

Supreme Court E-Library

included in the enumeration or not, would be an implementation of this policy. However, it is presumed that whatever incentives

---

domestic manufacturer, and another tax credit equivalent to fifty per cent (50%) thereof shall be given to the said manufacturer: *Provided*, (1) That the said machinery, equipment and spare parts are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products; (2) that the prior approval of the Board was obtained by the local manufacturer concerned; and (3) that the sale is made within seven years from the date of registration of the registered enterprise. If the registered enterprise sells, transfers or disposes of these machinery, equipment and spare parts without the prior approval of the Board within five years from the date of acquisition, then it shall pay twice the amount of the tax credit given it. However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five years if made (1) to another registered enterprise; (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise

(f) *Tax Credit for Withholding Tax on Interest*. — A tax credit for taxes withheld on interest payments on foreign loans shall be given a registered enterprise when (1) no such credit is enjoyed by the lender-remittee in his country and (2) the registered enterprise has assumed the liability for payment of the tax due from the lender-remittee.

(g) *Employment of Foreign Nationals*. — Subject to the provisions of Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, as amended, an enterprise may, within five years from registration, employ foreign nationals in supervisory, technical or advisory positions not in excess of five *per centum* of its total personnel in each such category: *Provided*, That in no case shall each employment exceed five years. The employment of foreign nationals after five years from registration, or within such five years but in excess of the proportion herein provided, shall be governed by Section twenty of Commonwealth Act Numbered Six hundred thirteen, as amended.

Foreign nationals under employment contract within the purview of this Act, their spouse and unmarried children under twenty-one years of age, who are not excluded by Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

A registered enterprise shall train Filipinos in administrative, supervisory, and technical skills and shall submit annual reports on such training to the Board of Investments.

(h) *Deduction for Expansion Reinvestment*. — When a registered enterprise reinvests its undistributed profit or surplus by actual transfer thereof to the capital stock of the corporation for procurement of machinery,

Supreme Court E-Library

may be given to investors should be within the bounds of the laws and the Constitution. The declaration of policy in

---

equipment and spare parts previously approved by the Board under Subsections "d" and "e" hereof or for the expansion of machinery and equipment used in production or for the construction of the buildings, improvements or other facilities for the installation of the said machinery and equipment, the amount so reinvested shall be allowed as a deduction from its taxable income in the year in which such reinvestment was made: *Provided*, (1) That prior approval by the Board of such reinvestment was obtained by the registered enterprise planning such reinvestment, and (2) that the registered enterprise does not reduce its capital stock represented by the reinvestment within seven years from the date such reinvestment was made. In the event the registered enterprise does not order the machinery and equipment within two (2) years from the date the reinvestment was made or reduces its capital stock represented by the reinvestment within a period of seven years from the date of reinvestment, a recomputation of the income tax liability therefor shall be made for the period when the deduction was made, and the proper taxes shall be assessed and paid with interest.

(i) *Anti-Dumping Protection*. — Upon recommendation of the Board, made after notice and hearing, the President shall issue a directive banning for a limited period the importation of goods or commodities which, as provided in Section three hundred one (a) of the Tariff and Customs Code of the Philippines, unfairly or unnecessarily complete with those produced by registered enterprises: *Provided*, (1) That the Board certifies to the satisfactory quality of the goods or commodities produced or manufactured by the registered enterprises; and (2) that the enterprises agree not to increase the price of these goods or commodities during this period, unless for good cause, the Board allows such an increase.

(j) *Protection from Government Competition*. — No agency or instrumentality of the government shall import, or allow the importation tax and duty free of products or items that are being produced or manufactured by registered enterprises, except when the President determines that the national interest so requires or when international commitments require international competitive bidding.

SECTION 8. *Incentives to a Pioneer Enterprise*. — In addition to the incentives provided in the preceding section, pioneer enterprises shall be granted the following incentives benefits:

(a) *Tax Exemptions*. — Exemptions from all taxes under the National Internal Revenue Code, except income tax, to the following extent:

(1) One hundred per cent up to December 31, 1972;

(2) Seventy-five per cent up to December 31, 1975;

Supreme Court E-Library

Section 2 cannot, by any stretch of the imagination, be read to provide an exception to either the laws or, heaven forbid, the

---

(3) Fifty per cent up to December 31, 1977;

(4) Twenty per cent up to December 31, 1979;

(5) Ten per cent up to December 31, 1981;

(b) *Employment of Foreign Nationals*. — Subject to the provisions of Section twenty- nine of Commonwealth Act Numbered Six hundred thirteen, as amended, to employ and bring into the Philippines foreign nationals under the following conditions:

(1) That all such foreign nationals shall register with the Board;

(2) That the employment of all foreign nationals shall cease and they shall be repatriated five years after the registered enterprise has begun operating: *Provided*, That when the majority of the capital stock of the pioneer enterprise is owned by foreign investors, the positions of president, treasurer and general manager, or their equivalents, may be retained by foreign nationals. In exceptional cases, the Board may allow employment of foreign nationals in other positions that cannot be filled by the Philippine nationals, but in such cases the limitations of Section seven paragraph (g) of this Act shall apply.

Foreign nationals under employment contract within the purview of this Act, their spouse and unmarried children under twenty-one years of age, who are not excluded by Section twenty-nine of Commonwealth Act Numbered Six hundred thirteen, shall be permitted to enter and reside in the Philippines during the period of employment of such foreign nationals.

(c) *Post-Operative Tariff Protection*. — Upon recommendation of the Board, the President, with or without the recommendation of the Tariff Commission or the National Economic Council, shall issue a certification that a pioneer industry shall be entitled to post-operative tariff protection to an extent not exceeding fifty per cent of the dutiable value of imported items similar to those being manufactured or produced by a pioneer enterprise, unless a higher rate or amount is provided for in the Tariff Code or pertinent laws. Said tariff shall take effect automatically upon certification by the Board that the pioneer enterprise is operating on a commercial scale: *Provided*, That said tariff, once operative, may be modified in accordance with Section four hundred one of the Tariff and Customs Code.

SECTION 9. *Special Export Incentives for Registered Enterprises*. — Registered enterprises shall be entitled to the following special incentives for exports of their completely finished products and commodities:

Supreme Court E-Library

Constitution. Exceptions are never presumed and should be convincingly proven. Section 2 of the Investment Incentives

(a) *Double Deduction of Promotional Expenses*. — To deduct from taxable income twice the amount of the ordinary and necessary expenses incurred for the purpose of promoting the sale of their products abroad;

(b) *Double Deduction of Shipping Costs*. — To deduct from taxable income twice the amount of shipping freight incurred in connection with the export of their products, if the shipments are made in vessels of Philippine registry to their regular ports of call; and to deduct one hundred fifty per cent (150%) of the freight when shipments are made in vessels of foreign registry to a port which is not a regular port of call of Philippine vessels;

(c) *Special Tax Credit on Raw Materials*. — A tax credit equivalent to seven per cent (7%) of the total cost of the raw materials and supplies purchased by registered enterprises or an amount equivalent to the taxes actually paid by registered enterprises on said raw materials, whichever is higher, to the extent used in manufacturing exported products and commodities.

Before registered enterprises may avail themselves of the foregoing exports incentives benefits, the (sic) shall apply first with the Board, which shall approve the application upon proof: (1) that the enterprise proposes to engage in good faith in creating a market for its products abroad; (2) that the product to be exported is one included in the government priorities plan as suitable for export, or if not so included that its export will not adversely affect the needs of the domestic market for the finished product to be exported or for the domestic raw materials used in its manufacture; (3) that the enterprise has or will set up an adequate accounting system to segregate revenues, purchases and expenses of its export market operations from those of its domestic market operations; and (4) that the exported products and commodities meet the standards of quality established by the Bureau of Standards or, in default thereof, by the Board.

SECTION 10. *Preference in Grant of Government Loans*. — Government financial institutions such as the Development Bank of the Philippines, Philippine National Bank, Government Service Insurance System, Social Security System, Land Bank, and such other government institutions as are now engaged or may hereafter engage in financing or investment operations shall, in accordance with and to the extent allowed by the enabling provisions of their respective charters or applicable laws, accord high priority to applications for financial assistance submitted by pioneer and other registered enterprises, whether such financial assistance be in the form of equity participation in preferred, common, or preferred convertible shares of stock, or in loans and guarantees, and shall facilitate the processing thereof and the release of the funds therefor. However, no financial assistance shall be extended under this section to any investor or enterprise that is not a Philippine National.

Supreme Court E-Library

Act cannot be read as exempting investors from the Constitutional provisions (1) prohibiting private ownership of

---

The above-mentioned financial institutions, to the extent allowed by their respective charters or applicable laws, shall contribute to the capital of a registered enterprise whenever the said contribution would enable the formation of pioneer or other registered enterprise with at least sixty per cent control by Philippine Nationals: *Provided*, That the capital contribution of the said financial institutions shall be limited to the amount that cannot be contributed by private Filipino investors, and shall in no case exceed thirty per cent of the total capitalization of the pioneer or other registered enterprises. The shares representing the contribution of the said financial institutions shall be offered for public sale to Philippine Nationals through all the members of a registered Philippine stock exchange.

To facilitate the implementation of the provisions of this Section, all the said financial institutions shall coordinate their financial assistance programs with each other, exchange relevant information about applicants and applications, and submit a monthly report to the Board showing the amount of funds available for financial assistance to pioneer or other registered enterprises. The Board shall recommend to the Board of Directors of each such financial institution what order of priority shall be given the applications of pioneer and other registered enterprises, or of applicants that propose to seek registration as such.

SECTION 11. *Private Financial Assistance*. — Any provision of existing laws to the contrary notwithstanding, the Insurance Commissioner is hereby authorized to allow insurance companies, under such rules and regulations as he may issue, to invest in new issues of stock of registered enterprises, notwithstanding that said enterprises may not have paid regular dividends, to the extent set out in section two hundred, paragraphs (c) and (f) of the Insurance Act, as amended: *Provided*, that said investments are diversified.

SECTION 12. *Loans for Investment*. — The Government Service Insurance System and the Social Security System shall extend to their respective members five-year loans at a rate of interest not to exceed six per cent per annum for the purchase of shares of stock in any registered enterprise: *Provided*, That (1) the shares so purchased shall be deposited in escrow with the lending institution for the full five-year term of the loan; partial releases of the shares shall, however, be allowed to the extent of the payment of amortization made therefor; (2) such loans shall be amortized in sixty equal monthly installments which shall be withheld by the employer from the monthly salary of the employee concerned and remitted to the lending institution by the employer; but any and all dividends earned by shares of stock while they are held in escrow shall be delivered to the employee; and (3) the maximum loan available to each employee in any one calendar year shall not exceed fifty per centum of the employee's annual gross income: *Provided, further*, That the total investment of the government

Supreme Court E-Library

forest lands; (2) providing for the complete control and supervision by the State of exploitation activities; or (3) limiting exploitation agreements to twenty-five years, renewable for another twenty-five years.

Section 4(d) and (e), on the other hand, is a recognition of rights already guaranteed under the Constitution. Freedom from expropriation is granted under Section 9 of Article III[55] of the Constitution, while the provision on requisition is a negative restatement of Section 6, Article XII.[56]

Refusal to grant perpetual and exclusive possession to PICOP of its concession area would not result in the expropriation or requisition of PICOP's property, as these forest lands belong to the State, and not to PICOP. This is not changed by PICOP's allegation that:

> Since it takes 35 years before the company can go back and harvest their residuals in a logged-over area, it must be assured of tenure in order to provide an inducement for the company to manage and preserve the residuals during their growth period. This is a commitment of resources over a span of 35 years for each plot for each cycle. ***No company will undertake the responsibility and cost involved in policing, preserving and managing residual forest areas until it were sure that it had firm title to the timber***.[57]

---

financial institution concerned, consisting of its direct investment in the registered enterprise and the loans it has extended to its respective members which have been invested by the members in a registered enterprise, shall not be more than forty-nine per cent (49%) of the total capitalization of the registered enterprise in which the investments have been made.

[55] **Section 9.** Private property shall not be taken for public use without just compensation.

[56] **Section 18.** The State may, in the interest of national welfare or defense, establish and operate vital industries and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

[57] PICOP's Motion for Reconsideration, pp. 17-18. *rollo* pp. 1386a-1386b.

Supreme Court E-Library

The requirement for logging companies to preserve and maintain forest areas, including the reforestation thereof, is one of the prices a logging company must pay for the exploitation thereof. Forest lands are meant to be enjoyed by countless future generations of Filipinos, and not just by one logging company. The requirements of reforestation and preservation of the concession areas are meant to protect them, the future generations, and not PICOP. **Reforestation and preservation of the concession areas are not required of logging companies so that they would have something to cut again, but so that the forest would remain intact after their operations.** That PICOP would not accept the responsibility to preserve its concession area if it is not assured of tenure thereto does not speak well of its corporate policies.

Conclusion

In sum, PICOP was not able to prove either of the two things it needed to prove to be entitled to a Writ of *Mandamus* against the DENR Secretary. The 1969 Document is not a contract recognized under the non-impairment clause and, even if we assume for the sake of argument that it is, it did not enjoin the government to issue an IFMA in 2002 either. These are the essential elements in PICOP's cause of action, and the failure to prove the same warrants a dismissal of PICOP's Petition for *Mandamus*, as not even PICOP's compliance with all the administrative and statutory requirements can save its Petition now.

Whether PICOP Has Complied with the Statutory and Administrative Requirements for the Conversion of the TLA to an IFMA

In the assailed Decision, our ruling was based on two distinct grounds, each one being sufficient in itself for us to rule that PICOP was not entitled to a Writ of *Mandamus*: (1) the 1969 Document, on which PICOP hinges its right to compel the issuance of an IFMA, is not a contract; and (2) PICOP has

Supreme Court E-Library

not complied with all administrative and statutory requirements for the issuance of an IFMA.

When a court bases its decision on two or more grounds, each is as authoritative as the other and neither is *obiter dictum*.[58] Thus, both grounds on which we based our ruling in the assailed Decision would become *judicial dictum*, and would affect the rights and interests of the parties to this case unless corrected in this Resolution on PICOP's Motion for Reconsideration. Therefore, although PICOP would not be entitled to a Writ of *Mandamus* even if the second issue is resolved in its favor, we should nonetheless resolve the same and determine whether PICOP has indeed complied with all administrative and statutory requirements for the issuance of an IFMA.

While the first issue (on the nature of the 1969 Document) is entirely legal, this second issue (on PICOP's compliance with administrative and statutory requirements for the issuance of an IFMA) has both legal and factual sub-issues. Legal sub-issues include whether PICOP is legally required to (1) consult with and acquire an approval from the Sanggunian concerned under Sections 26 and 27 of the Local Government Code; and (2) acquire a Certification from the National Commission on Indigenous Peoples (NCIP) that the concession area does not overlap with any ancestral domain. Factual sub-issues include whether, at the time it filed its Petition for *Mandamus*, PICOP had submitted the required Five-Year Forest Protection Plan and Seven-Year Reforestation Plan and whether PICOP had paid all forest charges.

For the factual sub-issues, PICOP invokes the doctrine that factual findings of the trial court, especially when upheld by the Court of Appeals, deserve great weight. However, deserving of even greater weight are the factual findings of administrative agencies that have the expertise in the area of concern. The contentious facts in this case relate to the licensing, regulation and management of forest resources, the determination of which belongs exclusively to the DENR:

---

[58] *Riss & Co. v. Wallace*, 195 S.W. 2d 881, 885, 239 Mo.App. 979, cited in Words and Phrases, Permanent Edition, Vol. 29, p. 13.

Supreme Court E-Library

SECTION 4. Mandate. – The Department shall be the ***primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, specifically forest and grazing lands***, mineral resources, including those in reservation and watershed areas, and lands of the public domain, ***as well as the licensing and regulation of all natural resources as may be provided for by law*** in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.[59]

When parties file a Petition for *Certiorari* against judgments of administrative agencies tasked with overseeing the implementation of laws, the findings of such administrative agencies are entitled to great weight. In the case at bar, PICOP could not have filed a Petition for *Certiorari*, as the DENR Secretary had not yet even determined whether PICOP should be issued an IFMA. As previously mentioned, when PICOP's application was brought to a standstill upon the evaluation that PICOP had yet to comply with the requirements for the issuance of an IFMA, PICOP refused to attend further meetings with the DENR and instead filed a Petition for *Mandamus* against the latter. By jumping the gun, PICOP did not diminish the weight of the DENR Secretary's initial determination.

Forest Protection and Reforestation Plans

The Performance Evaluation Team tasked to appraise PICOP's performance on its TLA No. 43 found that PICOP had not submitted its Five-Year Forest Protection Plan and its Seven-Year Reforestation Plan.[60]

In its Motion for Reconsideration, PICOP asserts that, in its Letter of Intent dated 28 August 2000 and marked as Exhibit L in the trial court, there was a reference to a Ten-Year Sustainable Forest Management Plan (SFMP), in which a Five-Year Forest Protection Plan and a Seven-Year Reforestation Plan were allegedly incorporated. PICOP

---

[59] E.O. No. 192, otherwise known as the "Reorganization Act of the Department of Environment and Natural Resources," Section 4.

[60] Exhibit 7-g-2, Folder of Exhibits, Vol. 3, pp. 480-482.

Supreme Court E-Library

submitted a machine copy of a certified photocopy of pages 50-67 and 104-110 of this SFMP in its Motion for Reconsideration. PICOP claims that the existence of this SFMP was repeatedly asserted during the IFMA application process.[61]

Upon examination of the portions of the SFMP submitted to us, we cannot help but notice that PICOP's concept of forest protection is the security of the area against "illegal" entrants and settlers. There is no mention of the protection of the wildlife therein, as the focus of the discussion of the silvicultural treatments and the SFMP itself is on the protection and generation of future timber harvests. We are particularly disturbed by the portions stating that trees of undesirable quality shall be removed.

However, when we required the DENR Secretary to comment on PICOP's Motion for Reconsideration, the DENR Secretary did not dispute the existence of this SFMP, or question PICOP's assertion that a Ten-Year Forest Protection Plan and a Ten-Year Reforestation Plan are already incorporated therein. Hence, since the agency tasked to determine compliance with IFMA administrative requirements chose to remain silent in the face of allegations of compliance, we are constrained to withdraw our pronouncement in the assailed Decision that PICOP had not submitted a Five-Year Forest Protection Plan and a Seven-Year Reforestation Plan for its TLA No. 43. As previously mentioned, the licensing, regulation and management of forest resources are the primary responsibilities of the DENR.[62]

The compliance discussed above is, of course, only for the purpose of determining PICOP's satisfactory performance as a TLA holder, and covers a period within the subsistence of PICOP's TLA No. 43. This determination, therefore, cannot prohibit the DENR from requiring PICOP, in the future, to submit proper forest protection and reforestation plans covering the period of the proposed IFMA.

---

[61] Motion for Reconsideration, p. 30.

[62] E.O. No. 192, otherwise known as the "Reorganization Act of the Department of Environment and Natural Resources," Section 4.

Supreme Court E-Library

Forest Charges

In determining that PICOP did not have unpaid forest charges, the Court of Appeals relied on the assumption that if it were true that PICOP had unpaid forest charges, it should not have been issued an approved Integrated Annual Operation Plan (IAOP) for the year 2001-2002 by Secretary Alvarez himself.[63]

In the assailed Decision, we held that the Court of Appeals had been selective in its evaluation of the IAOP, as it disregarded the part thereof that shows that the IAOP was approved subject to several conditions, not the least of which was the submission of proof of the updated payment of forest charges from April 2001 to June 2001.[64] We also held that even if we considered for the sake of argument that the IAOP should not have been issued if PICOP had existing forestry accounts, the issuance of the IAOP could not be considered proof that PICOP had paid the same. Firstly, the best evidence of payment is the receipt thereof. PICOP has not presented any evidence that such receipts were lost or destroyed or could not be produced in court.[65] Secondly, the government cannot be estopped by the acts of its officers. If PICOP has been issued an IAOP in violation of the law, allegedly because it may not be issued if PICOP had existing forestry accounts, the government cannot be estopped from collecting such amounts and providing the necessary sanctions therefor, including the withholding of the IFMA until such amounts are paid.

We therefore found that, as opposed to the Court of Appeals' findings, which were based merely on estoppel of government officers, the positive and categorical evidence presented by the DENR Secretary was more convincing with respect to the issue of payment of forestry charges:

1. Forest Management Bureau (FMB) Senior Forest Management Specialist (SFMS) Ignacio M. Evangelista

---

[63] *Rollo* (G.R. No. 162243), p. 252.

[64] Folder of Exhibits, Vol. 2, pp. 398-399.

[65] *See* Rules of Court, Rule 130, Section 3(a).

Supreme Court E-Library

testified that PICOP had failed to pay its regular forest charges covering the period from 22 September 2001 to 26 April 2002 in the total amount of ₱15,056,054.05[66] PICOP also allegedly paid late most of its forest charges from 1996 onwards, by reason of which, PICOP is liable for a surcharge of 25% per annum on the tax due and interest of 20% per annum which now amounts to ₱150,169,485.02.[67] Likewise, PICOP allegedly had overdue and unpaid silvicultural fees in the amount of ₱2,366,901.00 as of 30 August 2002.[68] Summing up the testimony, therefore, it was alleged that PICOP had unpaid and overdue forest charges in the sum of ₱167,592,440.90 as of 10 August 2002.[69]

2. Collection letters were sent to PICOP, but no official receipts are extant in the DENR record in Bislig City evidencing payment of the overdue amount stated in the said collection letters.[70] There were no official receipts for the period covering 22 September 2001 to 26 April 2002.

We also considered these pieces of evidence more convincing than the other ones presented by PICOP:

1. PICOP presented the certification of Community Environment and Natural Resources Office (CENRO) Officer Philip A. Calunsag, which refers only to PICOP's alleged payment of regular forest charges covering the period from 14 September 2001 to 15 May 2002.[71] We noted that it does not mention similar payment of the penalties, surcharges and interests that

---

[66] Folder of Exhibits, Vol. 3, pp. 433-434.

[67] Exhibit 6, p. 440; Folder of Exhibits, Vol. 3.

[68] *Id*.

[69] *Id*.

[70] TSN, 1 October 2002, pp. 13-14.

[71] Exhibit NN, p. 349; Folder of Exhibits, Vol. 2.

Supreme Court E-Library

PICOP incurred in paying late several forest charges, which fact was not rebutted by PICOP.

2. The 27 May 2002 Certification by CENRO Calunsag specified only the period covering 14 September 2001 to 15 May 2002 and the amount of ₱53,603,719.85 paid by PICOP without indicating the corresponding volume and date of production of the logs. This is in contrast to the findings of SFMS Evangelista, which cover the period from CY 1996 to 30 August 2002 and includes penalties, interests, and surcharges for late payment pursuant to DAO 80, series of 1987.

3. The 21 August 2002 PICOP-requested certification issued by Bill Collector Amelia D. Arayan, and attested to by CENRO Calunsag himself, shows that PICOP paid only regular forest charges for its log production covering 1 July 2001 to 21 September 2001. However, there were log productions after 21 September 2001, the regular forest charges for which have not been paid, amounting to ₱15,056,054.05.[72] The same certification shows delayed payment of forest charges, thereby corroborating the testimony of SFMS Evangelista and substantiating the imposition of penalties and surcharges.

In its Motion for Reconsideration, PICOP claims that SFMS Evangelista is assigned to an office that has nothing to do with the collection of forest charges, and that he based his testimony on the Memoranda of Forest Management Specialist II (FMS II) Teofila Orlanes and DENR, Bislig City Bill Collector Amelia D. Arayan, neither of whom was presented to testify on his or her Memorandum. PICOP also submitted an Addendum to Motion for Reconsideration, wherein it appended certified true copies of CENRO Summaries with attached Official Receipts tending to show that PICOP had paid a total of ₱81,184,747.70 in forest charges for 10 January 2001 to 20 December 2002, including the period during which SFMS Evangelista claims

[72] Records, Vol. 2, pp. 457-458.

Supreme Court E-Library

PICOP did not pay forest charges (22 September 2001 to 26 April 2002).

Before proceeding any further, it is necessary for us to point out that, as with our ruling on the forest protection and reforestation plans, this determination of compliance with the payment of forest charges is exclusively for the purpose of determining PICOP's satisfactory performance on its TLA No. 43. This cannot bind either party in a possible collection case that may ensue.

An evaluation of the DENR Secretary's position on this matter shows a heavy reliance on the testimony of SFMS Evangelista, making it imperative for us to strictly scrutinize the same with respect to its contents and admissibility.

PICOP claims that SFMS Evangelista's office has nothing to do with the collection of forest charges. According to PICOP, the entity having administrative jurisdiction over it is CENRO, Bislig City by virtue of DENR Administrative Order No. 96-36, dated 20 November 1996, which states:

> 1. In order for the DENR to be able to exercise closer and more effective supervision, management and control over the forest resources within the areas covered by TLA No. 43, PTLA No. 47 and IFMA No. 35 of the PICOP Resources, Inc., (PRI) and, at the same time, provide greater facility in the delivery of DENR services to various publics, the aforesaid forest holdings of PRI are hereby placed under the exclusive jurisdiction of DENR Region No. XIII with the CENR Office at Bislig, Surigao del Sur, as directly responsible thereto. x x x.

We disagree. Evangelista is an SFMS assigned at the Natural Forest Management Division of the FMB, DENR. In Evangelista's aforementioned affidavit submitted as part of his direct examination, Evangelista enumerated his duties and functions as SFMS:

> 1. As SFMS, I have the following duties and functions:
>
> a) To evaluate and act on cases pertaining to forest management referred to in the Natural forest Management Division;

Supreme Court E-Library

b) To monitor, verify and validate forest management and related activities by timber licences as to their compliance to approved plans and programs;
c) To conduct investigation and verification of compliance by timber licenses/permittees to existing DENR rules and regulations;
d) To gather field data and information to be used in the formulation of forest policies and regulations; and
e) To perform other duties and responsibilities as may be directed by superiors.[73]

PICOP also alleges that the testimony of SFMS Evangelista was based on the aforementioned Memoranda of Orlanes and Arayan and that, since neither Orlanes nor Arayan was presented as a witness, SFMS Evangelista's testimony should be deemed hearsay. SFMS Evangelista's 1 October 2002 Affidavit,[74] which was offered as part of his testimony, provides:

2. Sometime in September, 2001 the DENR Secretary was furnished a copy of forest Management Specialist II (FMS II) Teofila L. Orlanes' Memorandum dated September 24, 2001 concerning unopaid forest charges of PICOP. Attached to the said Memorandum was a Memorandum dated September 19, 2001 of Amelia D. Arayan, Bill collector of the DENR R13-14, Bislig City. Copies of the said Memoranda are attached as Annexes 1 and 2, respectively.

3. The said Memoranda were referred to the FMB Director for appropriate action.

4. Thus, on August 5, 2002, I was directed by the FMB Director to proceed to Region 13 to gather forestry-related data and validate the report contained in the Memoranda of Ms. Orlanes and Arayan.

5. On August 6, 2002, I proceeded to DENR Region 13 in Bislig City. A copy of my Travel Order is attached as Annex 3.

6. Upon my arrival at CENRO, Bislig, Surigao del Sur, I coordinated with CENRO Officer Philip A. Calunsag and requested him to make

---

[73] Folder of Exhibits, Volume 3, p. 423.

[74] Folder of Exhibits, Volume 3, pp. 423-425.

Supreme Court E-Library

available to me the records regarding the forest products assessments of PICOP.

7. After I was provided with the requested records, I evaluated and collected the data.

8. After the evaluation, I found that the unpaid forest charges adverted to in the Memoranda of Mr. Orlanes and Arayan covering the period from May 8, 2001 to July 7, 2001 had already been paid but late. I further found out that PICOP had not paid its forest charges covering the period from September 22, 2001 to April 26, 2002 in the total amount of ₱15,056,054.05.

9. I also discovered that from 1996 up to august 30, 2002, PICOP paid late some of its forest charges in 1996 and consistently failed to pay late its forest charges from 1997 up to the present time.

10. Under Section 7.4 of DAO No. 80 Series of 197\87 and Paragraph (4a), Section 10 of BIR revenue Regulations No. 2-81 dated November 18, 1980, PICOP is mandated to pay a surcharge of 25% per annum of the tax due and interest of 20% per annum for late payment of forest charges.

11. The overdue unpaid forest charges of PICOP as shown in the attached tabulation marked as Annex 4 hereof is ₱150,169,485.02. Likewise, PICOP has overdue and unpaid silvicultural fees in the amount of ₱2,366,901.00 from 1996 to the present.

12. In all, PICOP has an outstanding and overdue total obligation of ₱167,592,440.90 as of August 30, 2002 based on the attached tabulation which is marked as Annex 5 hereof.[75]

Clearly, SFMS Evangelista had not *relied* on the Memoranda of Orlanes and Arayan. On the contrary, he traveled to Surigao del Sur in order to verify the contents of these Memoranda. SFMS Evangelista, in fact, revised the findings therein, as he discovered that certain forest charges adverted to as unpaid had already been paid.

---

[75] *Id*.

Supreme Court E-Library

This does not mean, however, that SFMS Evangelista's testimony was not hearsay. A witness may testify only on facts of which he has personal knowledge; that is, those derived from his perception, except in certain circumstances allowed by the Rules.[76] Otherwise, such testimony is considered hearsay and, hence, inadmissible in evidence.[77]

SFMS Evangelista, while not relying on the Memoranda of Orlanes and Arayan, nevertheless relied on records, the preparation of which he did not participate in.[78] These records and the persons who prepared them were not presented in court, either. As such, SFMS Evangelista's testimony, insofar as he relied on these records, was on matters not derived from his own perception, and was, therefore, hearsay.

Section 44, Rule 130 of the Rules of Court, which speaks of entries in official records as an exception to the hearsay rule, cannot excuse the testimony of SFMS Evangelista. Section 44 provides:

> SEC. 44. *Entries in official records.* – Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are *prima facie* evidence of the facts therein stated.

In *Africa v. Caltex*,[79] we enumerated the following requisites for the admission of entries in official records as an exception to the hearsay rule: (1) the entries were made by a public officer or a private person in the performance of a duty; (2) the performance of the duty is especially enjoined by law; (3) the public officer or the private person had sufficient knowledge of the facts stated by him, which must have been acquired by him personally or through official information.

---

[76] Section 36, Rule 130 of the Rules of Court.

[77] *People v. Parungao*, 332 Phil. 917, 924 (1996).

[78] TSN, Volume 2, 1 October 2002, p. 32.

[79] 123 Phil. 272, 277 (1966).

Supreme Court E-Library

The presentation of the records themselves would, therefore, have been admissible as an exception to the hearsay rule even if the public officer/s who prepared them was/were not presented in court, provided the above requisites could be adequately proven. In the case at bar, however, neither the records nor the persons who prepared them were presented in court. Thus, the above requisites cannot be sufficiently proven. Also, since SFMS Evangelista merely testified based on what those records contained, his testimony was hearsay evidence twice removed, which was one step too many to be covered by the official-records exception to the hearsay rule.

SFMS Evangelista's testimony of nonpayment of forest charges was, furthermore, based on his failure to find official receipts corresponding to billings sent to PICOP. As stated above, PICOP attached official receipts in its Addendum to Motion for Reconsideration to this Court. While this course of action is normally irregular in judicial proceedings, we merely stated in the assailed Decision that "the DENR Secretary has adequately proven that PICOP has, ***at this time***, failed to comply with administrative and statutory requirements for the conversion of TLA No. 43 into an IFMA,"[80] and that "this disposition confers another chance to comply with the foregoing requirements."[81]

In view of the foregoing, we withdraw our pronouncement that PICOP has unpaid forestry charges, at least for the purpose of determining compliance with the IFMA requirements.

NCIP Certification

The Court of Appeals held that PICOP need not comply with Section 59 of Republic Act No. 8371, which requires prior certification from the NCIP that the areas affected do not overlap with any ancestral domain before any IFMA can be entered into by the government. According to the Court of Appeals, Section 59 should be interpreted to refer to ancestral domains

---

[80] *Alvarez v. PICOP Resources, Inc.*, G.R. No. 162243, 29 November 2006, 508 SCRA 498, 553.

[81] *Id*.

Supreme Court E-Library

that have been duly established as such by the continuous possession and occupation of the area concerned by indigenous peoples since time immemorial up to the present. The Court of Appeals held that PICOP had acquired property rights over TLA No. 43 areas, being in exclusive, continuous and uninterrupted possession and occupation of these areas since 1952 up to the present.

In the assailed Decision, we reversed the findings of the Court of Appeals. Firstly, the Court of Appeals ruling defies the settled jurisprudence we have mentioned earlier, that a TLA is neither a property nor a property right, and that it does not create a vested right.[82]

Secondly, the Court of Appeals' resort to statutory construction is misplaced, as Section 59 of Republic Act No. 8379 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.*** Such certification shall only be issued after a field-based investigation is conducted by the Ancestral Domains Office of the area concerned: Provided, That no certification shall be issued by the NCIP without the free and prior informed and written consent of the ICCs/IPs concerned: Provided, further, That no department, government agency or government-owned or controlled corporation may issue new concession, license, lease, or production sharing agreement while there is a pending application for a CADT: Provided, finally, That the ICCs/IPs shall have the right to stop or suspend, in accordance with this Act, any project that has not satisfied the requirement of this consultation process.

PICOP had tried to put a cloud of ambiguity over Section 59 of Republic Act No. 8371 by invoking the definition of Ancestral Domains in Section 3(a) thereof, wherein the possession by

---

[82] *Oposa v. Factoran, Jr.*, G.R. No. 101083, 30 July 1993, 224 SCRA 792, 812; *Tan v. Director of Forestry*, 210 Phil. 244 (1983).

Supreme Court E-Library

Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) must have been continuous to the present. However, we noted the exception found in the very same sentence invoked by PICOP:

> a) Ancestral domains – Subject to Section 56 hereof, refers to all areas generally belonging to ICCs/IPs comprising lands, inland waters, coastal areas, and natural resources therein, ***held under a claim of ownership, occupied or possessed by ICCs/IPs, by themselves or through their ancestors, communally or individually since time immemorial, continuously to the present except when interrupted*** by war, *force majeure* or displacement by force, deceit, stealth or ***as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/ corporations***, and which are necessary to ensure their economic, social and cultural welfare. It shall include ancestral lands, forests, pasture, residential, agricultural, and other lands individually owned whether alienable and disposable or otherwise, hunting grounds, burial grounds, worship areas, bodies of water, mineral and other natural resources, and lands which may no longer be exclusively occupied by ICCs/IPs but from which they traditionally had access to for their subsistence and traditional activities, particularly the home ranges of ICCs/IPs who are still nomadic and/or shifting cultivators;

Ancestral domains, therefore, remain as such even when possession or occupation of these areas has been interrupted by causes provided under the law, such as voluntary dealings entered into by the government and private individuals/ corporations. Consequently, the issuance of TLA No. 43 in 1952 did not cause the ICCs/IPs to lose their possession or occupation over the area covered by TLA No. 43.

Thirdly, we held that it was manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that the lands are not part of ancestral domains can be required, and invoked the separate opinion of now Chief Justice Reynato Puno in *Cruz v. Secretary of DENR*:[83]

---

[83] 400 Phil. 904, 1012-1013 (2000), Separate Opinion of Justice Reynato Puno.

Supreme Court E-Library

As its subtitle suggests, [Section 59 of R.A. No. 8371] requires as a precondition for the issuance of any concession, license or agreement over natural resources, that a certification be issued by the NCIP that the area subject of the agreement does not lie within any ancestral domain. The provision does not vest the NCIP with power over the other agencies of the State as to determine whether to grant or deny any concession or license or agreement. It merely gives the NCIP the authority to ensure that the ICCs/IPs have been informed of the agreement and that their consent thereto has been obtained. Note that ***the certification applies to agreements over natural resources that do not necessarily lie within the ancestral domains. For those that are found within the said domains, Sections 7(b) and 57 of the IPRA apply.***

PICOP rejects the entire disposition of this Court on the matter, relying on the following theory:

84. It is quite clear that Section 59 of R.A. 8371 does not apply to the automatic conversion of TLA 43 to IFMA.

First, the automatic conversion of TLA 43 to an IFMA is not a new project. It is a mere continuation of the harvesting process in an area that PICOP had been managing, conserving and reforesting for the last 50 years since 1952. Hence any pending application for a CADT within the area, cannot affect much less hold back the automatic conversion. That the government now wishes to change the tenurial system to an IFMA could not change the PICOP project, in existence and operating for the last 30 (sic) years, into a new one.[84]

PICOP's position is anything but clear. What is clearly provided for in Section 59 is that it covers "issuing, *renewing* or granting (of) any concession, license or lease, or entering into any production sharing agreement." PICOP is implying that, when the government changed the tenurial system to an IFMA, PICOP's existing TLA would just be upgraded or modified, but would be the very same agreement, hence, dodging the inclusion in the word "renewing." However, PICOP is conveniently leaving out the fact that its TLA expired in 2002. If PICOP really intends to pursue the argument that the

[84] PICOP's Motion for Reconsideration, p. 41; *rollo*, pp. 1390a-1390b.

Supreme Court E-Library

conversion of the TLA into an IFMA would not create a new agreement, but would only be a modification of the old one, then it should be willing to concede that the IFMA expired as well in 2002. An automatic modification would not alter the terms and conditions of the TLA except when they are inconsistent with the terms and conditions of an IFMA. Consequently, PICOP's concession period under the renewed TLA No. 43, which is from the year 1977 to 2002, would remain the same.

PICOP cannot rely on a theory of the case whenever such theory is beneficial to it, but refute the same whenever the theory is damaging to it. In the same way, PICOP cannot claim that the alleged Presidential Warranty is "renewable for other 25 years" and later on claim that what it is asking for is not a renewal. Extensions of agreements must necessarily be included in the term *renewal*. Otherwise, the inclusion of "renewing" in Section 59 would be rendered inoperative.

PICOP further claims:

> 85. Verily, in interpreting the term "held under claim of ownership," the Supreme Court could not have meant to include claims that had just been filed and not yet recognized under the provisions of DENR Administrative Order No. 2 Series of 1993, nor to any other community /ancestral domain program prior to R.A. 8371.
>
> x x x x x x x x x
>
> 87. One can not imagine the terrible damage and chaos to the country, its economy, its people and its future if a mere claim filed for the issuance of a CADC or CADT will already provide those who filed the application, the authority or right to stop the renewal or issuance of any concession, license or lease or any production-sharing agreement. The same interpretation will give such applicants through a mere application the right to stop or suspend any project that they can cite for not satisfying the requirements of the consultation process of R.A. 8371. If such interpretation gets enshrined in the statures of the land, the unscrupulous and the extortionists can put any ongoing or future project or activity to a stop in any part of the country citing their right from having filed

Supreme Court E-Library

an application for issuance of a CADC or CADT claim and the legal doctrine established by the Supreme Court in this PICOP case.[85]

We are not sure whether PICOP's counsels are deliberately trying to mislead us, or are just plainly ignorant of basic precepts of law. The term "claim" in the phrase "claim of ownership" is not a document of any sort. It is an attitude towards something. The phrase "claim of ownership" means "the possession of a piece of property with the intention of claiming it in hostility to the true owner."[86] It is also defined as "a party's manifest intention to take over land, regardless of title or right."[87] Other than in Republic Act No. 8371, the phrase "claim of ownership" is thoroughly discussed in issues relating to acquisitive prescription in Civil Law.

Before PICOP's counsels could attribute to us an assertion that a mere *attitude* or *intention* would stop the renewal or issuance of any concession, license or lease or any production-sharing agreement, we should stress beforehand that this *attitude* or *intention* must be clearly shown by overt acts and, as required by Section 3(a), should have been in existence "since time immemorial, continuously to the present except when interrupted by war, *force majeure* or displacement by force, deceit, stealth or as a consequence of government projects or any other voluntary dealings entered into by government and private individuals/ corporations."

Another argument of PICOP involves the claim itself that there was no overlapping:

> Second, there could be no overlapping with any Ancestral Domain as proven by the evidence presented and testimonies rendered during the hearings in the Regional Trial Court. x x x.
>
> x x x x x x x x x.

---

[85] PICOP's Motion for Reconsideration, pp. 43-44; *rollo*, pp. 1390a-1390b.

[86] Black's Law Dictionary (Eighth Edition), p. 265.

[87] *Id*.

Supreme Court E-Library

88. The DENR issued a total of 73 CADCs as of December 11, 1996. The DENR Undersecretary for Field Operations had recommended another 11 applications for issuance of CADCs. None of the CADCs overlap the TLA 43 area.

89. However former DENR Secretary Alvarez, in a memorandum dated 13 September, 2002 addressed to PGMA, insisted that PICOP had to comply with the requirement to secure a Free and Prior Informed Concent because CADC 095 was issued covering 17,112 hectares of TLA 43.

90. This CADC 095 is a fake CADC and was not validly released by the DENR. While the Legal Department of the DENR was still in the process of receiving the filings for applicants and the oppositors to the CADC application, PICOP came across filed copies of a CADC 095 with the PENRO of Davao Oriental as part of their application for a Community Based Forest Management Agreement (CBFMA). Further research came across the same group filing copies of the alleged CADC 095 with the Mines and Geosciences Bureau in Davao City for a mining agreement application. The two applications had two different versions of the CADCs second page. One had Mr. Romeo T. Acosta signing as the Social reform Agenda Technical Action Officer, while the other had him signing as the Head, Community-Based Forest Management Office. One had the word "Eight" crossed out and "Seven" written to make it appear that the CADC was issued on September 25, 1997, the other made it appear that there were no alterations and the date was supposed to be originally 25 September 1997.

What is required in Section 59 of Republic Act No. 8379 is a Certification from the NCIP that there was no overlapping with any Ancestral Domain. PICOP cannot claim that the DENR gravely abused its discretion for requiring this Certification, on the ground that there was no overlapping. We reiterate that **it is manifestly absurd to claim that the subject lands must first be proven to be part of ancestral domains before a certification that they are not can be required**. As discussed in the assailed Decision, PICOP did not even seek any certification from the NCIP that the area covered by TLA No. 43, subject of its IFMA conversion, did not overlap with any ancestral domain.[88]

---

[88] *Rollo* (G.R. No. 162243), pp. 470-472.

Supreme Court E-Library

Sanggunian Consultation and Approval

While PICOP did not seek any certification from the NCIP that the former's concession area did not overlap with any ancestral domain, PICOP initially sought to comply with the requirement under Sections 26 and 27 of the Local Government Code to procure prior approval of the Sanggunians concerned. However, only one of the many provinces affected approved the issuance of an IFMA to PICOP. Undaunted, PICOP nevertheless submitted to the DENR the purported resolution[89] of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion, apparently hoping either that the disapproval of the other provinces would go unnoticed, or that the Surigao del Sur approval would be treated as sufficient compliance.

Surprisingly, the disapproval by the other provinces *did* go unnoticed before the RTC and the Court of Appeals, despite the repeated assertions thereof by the Solicitor General. When we pointed out in the assailed Decision that the approval must be by all the Sanggunians concerned and not by only one of them, PICOP changed its theory of the case in its Motion for Reconsideration, this time claiming that they are not required *at all* to procure Sanggunian approval.

Sections 2(c), 26 and 27 of the Local Government Code provide:

SEC. 2. x x x.

x x x x x x x x x

(c) It is likewise the policy of the State to require all national agencies and offices to conduct periodic consultations with appropriate local government units, nongovernmental and people's organizations, and other concerned sectors of the community before any project or program is implemented in their respective jurisdictions.

SEC. 26. *Duty of National Government Agencies in the Maintenance of Ecological Balance.* – It shall be the duty of every

[89] Folder of Exhibits, Vol. 2, Exhibit OO, p. 351.

Supreme Court E-Library

national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, its impact upon the people and the community in terms of environmental or ecological balance, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

SEC. 27. *Prior Consultations Required*. – No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2(c) and 26 hereof are complied with, ***and prior approval of the sanggunian concerned is obtained***: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution.

As stated in the assailed Decision, the common evidence of the DENR Secretary and PICOP, namely, the 31 July 2001 Memorandum of Regional Executive Director (RED) Elias D. Seraspi, Jr., enumerated the local government units and other groups which had expressed their opposition to PICOP's application for IFMA conversion:

> 7. During the conduct of the performance evaluation of TLA No. 43 issues complaints against PRI were submitted thru Resolutions and letters. It is important that these are included in this report for assessment of what are their worth, *viz*:
>
> x x x x x x x x x
>
> 7.2 Joint Resolution (unnumbered), dated March 19, 2001 of the *Barangay* Council and *Barangay* Tribal Council of Simulao, Boston, Davao Oriental (ANNEX F) opposing the conversion of TLA No. 43 into IFMA over the 17,112 hectares allegedly covered with CADC No. 095.
>
> 7.3 Resolution Nos. 10, s-2001 and 05, s-2001 (ANNEXES G & H) of the Bunawan Tribal Council of Elders (BBMTCE) strongly demanding none renewal of PICOP TLA. They claim to be the rightful owner of the area it being their alleged ancestral land.

Supreme Court E-Library

7.4 Resolution No. 4, S-2001 of Sitio Linao, San Jose, Bislig City (ANNEX I) requesting not to renew TLA 43 over the 900 hectares occupied by them.

7.5 Resolution No. 22, S-2001 (ANNEX J) of the Sanguniang Bayan, Lingig, Surigao del Sur not to grant the conversion of TLA 43 citing the plight of former employees of PRI who were forced to enter and farm portion of TLA No. 43, after they were laid off.

7.6 SP Resolution No. 2001-113 and CDC Resolution Nos. 09-2001 of the Sanguniang Panglungsod of Bislig City (ANNEXES K & L) requesting to exclude the area of TLA No. 43 for watershed purposes.

7.7 Resolution No. 2001-164, dated June 01, 2001 (ANNEX M) Sanguniang Panglungsod of Bislig City opposing the conversion of TLA 43 to IFMA for the reason that IFMA do not give revenue benefits to the City.[90]

PICOP had claimed that it complied with the Local Government Code requirement of obtaining prior approval of the Sanggunian concerned by submitting a purported resolution[91] of the Province of Surigao del Sur indorsing the approval of PICOP's application for IFMA conversion. We ruled that this cannot be deemed sufficient compliance with the foregoing provision. Surigao del Sur is not the only province affected by the area covered by the proposed IFMA. As even the Court of Appeals found, PICOP's TLA No. 43 traverses the length and breadth not only of Surigao del Sur but also of Agusan del Sur, Compostela Valley and Davao Oriental.[92]

On Motion for Reconsideration, PICOP now argues that the requirement under Sections 26 and 27 does not apply to it:

97. PICOP is not a national agency. Neither is PICOP government owned or controlled. Thus Section 26 does not apply to PICOP.

---

[90] Folder of Exhibits, Vol. 2, Exhibit O-1, p. 176; Folder of Exhibits, Vol. 3, Exhibit 7-g, p. 475.

[91] Folder of Exhibits, Vol. 2, Exhibit OO, p. 351.

[92] *Rollo* (G.R. No. 162243), p. 230.

Supreme Court E-Library

98. It is very clear that Section 27 refers to projects or programs to be implemented by government authorities or government-owned and controlled corporations. PICOP's project or the automatic conversion is a purely private endevour. First the PICOP project has been implemented since 1969. Second, the project was being implemented by private investors and financial institutions.

99. The primary government participation is to warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project. To rule now that a project whose foundations were commenced as early as 1969 shall now be subjected to a 1991 law is to apply the law retrospectively in violation of Article 4 of the Civil Code that laws shall not be applied retroactively.

100. In addition, under DAO 30, Series of 1992, TLA and IFMA operations were not among those devolved function from the National Government / DENR to the local government unit. Under its Section 03, the devolved function cover only:

a) Community Based forestry projects.
b) Communal forests of less than 5000 hectares
c) Small watershed areas which are sources of local water supply.[93]

We have to remind PICOP again of the contents of Section 2, Article XII of the Constitution:

Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. **The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens.** Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions

[93] PICOP's Motion for Reconsideration, pp. 48-49, *rollo*, pp. 1391a-1391b.

Supreme Court E-Library

as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

All projects relating to the exploration, development and utilization of natural resources are projects of the State. While the State may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by these citizens, such as PICOP, the projects nevertheless remain as State projects and ***can never be purely private endeavors***.

Also, despite entering into co-production, joint venture, or production-sharing agreements, the State remains in full control and supervision over such projects. PICOP, thus, cannot limit government participation in the project to being merely its bouncer, whose primary participation is only to "warrant and ensure that the PICOP project shall have peaceful tenure in the permanent forest allocated to provide raw materials for the project."

PICOP is indeed neither a national agency nor a government-owned or controlled corporation. The DENR, however, is a national agency and is *the* national agency prohibited by Section 27 from issuing an IFMA without the prior approval of the Sanggunian concerned. As previously discussed, PICOP's Petition for *Mandamus* can only be granted if the DENR Secretary is *required by law* to issue an IFMA. We, however, see here the exact opposite: the DENR Secretary was actually *prohibited by law* from issuing an IFMA, as there had been no prior approval by all the other Sanggunians concerned.

As regards PICOP's assertion that the application to them of a 1991 law is in violation of the prohibition against the non-retroactivity provision in Article 4 of the Civil Code, we have to remind PICOP that it is applying for an IFMA with a term of 2002 to 2027. Section 2, Article XII of the Constitution allows exploitation agreements to last only "for a period not exceeding twenty-five years, renewable for not more than twenty-five years." PICOP, thus, cannot legally claim that the project's term started in 1952 and extends all the way to the present.

Supreme Court E-Library

Finally, the devolution of the project to local government units is not required before Sections 26 and 27 would be applicable. Neither Section 26 nor 27 mentions such a requirement. Moreover, it is not only the letter, but more importantly the spirit of Sections 26 and 27, that shows that the devolution of the project is not required. The approval of the Sanggunian concerned is required by law, not because the local government has control over such project, but because the local government has the duty to protect its constituents and their stake in the implementation of the project. Again, Section 26 states that it applies to projects that "may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest cover, and extinction of animal or plant species." The local government should thus represent the communities in such area, the very people who will be affected by flooding, landslides or even climatic change if the project is not properly regulated, and who likewise have a stake in the resources in the area, and deserve to be adequately compensated when these resources are exploited.

Indeed, it would be absurd to claim that the project must first be devolved to the local government before the requirement of the national government seeking approval from the local government can be applied. If a project has been devolved to the local government, the local government itself would be implementing the project. That the local government would need its own approval before implementing its own project is patently silly.

EPILOGUE AND DISPOSITION

PICOP'c cause of action consists in the allegation that the DENR Secretary, in not issuing an IFMA, violated its constitutional right against non-impairment of contracts. We have ruled, however, that the 1969 Document is not a contract recognized under the non-impairment clause, much less a contract specifically enjoining the DENR Secretary to issue the IFMA. The conclusion that the 1969 Document is not a contract recognized under the non-impairment clause has even been disposed of in another case decided by another division of this Court, *PICOP Resources, Inc. v. Base*

Supreme Court E-Library

Metals Mineral Resources Corporation,[94] the Decision in which case has become final and executory. PICOP's Petition for *Mandamus* should, therefore, fail.

Furthermore, even if we assume for the sake of argument that the 1969 Document is a contract recognized under the non-impairment clause, and even if we assume for the sake of argument that the same is a contract specifically enjoining the DENR Secretary to issue an IFMA, PICOP's Petition for *Mandamus* must still fail. The 1969 Document expressly states that the warranty as to the tenure of PICOP is "subject to compliance with constitutional and statutory requirements as well as with existing policy on timber concessions." Thus, if PICOP proves the two above-mentioned matters, it still has to prove compliance with statutory and administrative requirements for the conversion of its TLA into an IFMA.

While we have withdrawn our pronouncements in the assailed Decision that (1) PICOP had not submitted the required forest protection and reforestation plans, and that (2) PICOP had unpaid forestry charges, thus effectively ruling in favor of PICOP on ***all*** factual issues in this case, PICOP still insists that the requirements of an NCIP certification and Sanggunian consultation and approval do not apply to it. To affirm PICOP's position on these matters would entail nothing less than rewriting the Indigenous Peoples' Rights Act and the Local Government Code, an act simply beyond our jurisdiction.

WHEREFORE, the Motion for Reconsideration of PICOP Resources, Inc. is *DENIED*.

SO ORDERED.

Puno, C.J.,, Carpio, Corona, Carpio Morales, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad and *Villarama, Jr., JJ.,* concur.

Nachura ,* *J.,* no part.

---

[94] *Supra* note 26.

* No part.