Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, Petitioner,	**G.R. No. 191591** Present:
- versus -	PERALTA, *J.*,* *Acting Chairperson*, DEL CASTILLO,** VILLARAMA, JR., REYES, and JARDELEZA, *JJ.*
FOUNDATION SPECIALISTS, INC., Respondent.	Promulgated: June 17, 2015

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DECISION

REYES, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assails the Decision[2] dated October 30, 2009 of the Court of Appeals (CA) in CA-G.R. SP Nos. 91329 and 91349 affirming with modification the Decision[3] dated September 1, 2005 of the Construction Industry Arbitration Commission (CIAC) which awarded the monetary claims of Foundation Specialists, Inc. (FSI) against the Department of Public Works and Highways (DPWH).

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* Designated as Acting Chairperson per Special Order No. 2059 dated June 17, 2015 *vice* Associate Justice Presbitero J. Velasco, Jr.

** Designated as Acting Member per Special Order No. 2060 dated June 17, 2015 *vice* Associate Justice Presbitero J. Velasco, Jr.

1 *Rollo*, pp. 15-38.

2 Penned by Associate Justice Stephen C. Cruz, with Associate Justices Jose C. Reyes, Jr. and Estela M. Perlas-Bernabe (now a member of this Court) concurring; id. at 41-56.

3 Issued by Sole Arbitrator Felisberto G.L. Reyes; id. at 60-97.

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The Antecedents

FSI, a private corporation organized and existing under Philippine laws, was the winning bidder for the construction of the DPWH's EDSA/BONI PIONEER INTERCHANGE PROJECT (hereinafter referred to as the Project). On December 22, 1992, the parties signed the corresponding contract[4] reflecting the total project cost of ₱100,779,998.60 for a 60-meter long tunnel connecting Pioneer Street and Boni Avenue in Mandaluyong City, to be completed in 120 calendar days or four (4) months. To provide, among others, necessary engineering supervision, DPWH engaged the services of Renardet-Pacific Philippines Interstructure Consulting Engineers represented by Engineer Ennio Bossi as Consultant and Project Manager.[5]

On March 4, 1993, the contract was renegotiated in order to accommodate a major redesign that increased the scope of work to a 282 m "cut and cover tunnel" for the amended contract price of ₱146,344,932.91 with a completion date of nine (9) months or until December 2, 1993.[6]

FSI failed to complete the Project on December 2, 1993. It requested the DPWH for extension on five (5) separate instances which were all approved. The new completion date was thus moved to November 19, 1995 but the Project was already substantially completed as of November 1, 1995.[7] The DPWH also approved three (3) variation orders increasing the contract price to ₱153,447,899.82, which was fully paid to FSI.[8]

The DPWH issued a Certificate of Acceptance in favor of FSI on November 9, 2001.[9]

The present controversy arose when FSI filed on July 27, 2004 a Request for Arbitration[10] before the CIAC for the recovery of its additional expenses and damages incurred for the rental of equipment made available for the Project but were rendered idle during the periods of delay, *viz*:

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4 Id. at 101-105.
5 Id. at 43, 107, 247.
6 Id. at 65.
7 Id. at 540.
8 Id. at 44.
9 Id. at 238.
10 Id. at 120-136.

1. Standby Rental Cost for the Rotary Equipment	₱ 883,221.29
2. Overhead Costs during the periods of delay	₱ 15,379,790.11
3. Extended Rental Costs of Various Equipment	₱ 27,570,622.82

FSI also demanded for the payment of ₱23,670,162.48 as interest charges, ₱500,000.00 as attorney's fees, as well as the reimbursement costs of Arbitration. According to FSI, the delays were caused by construction problems that were beyond its control, such as right of way problems, underground obstructions not shown in the plan and utilities and other obstructions which the contract prohibited them to touch. These problems were detailed in the Judicial Affidavit of Dr. Armando Cazzola, FSI's witness, thus:

> The construction of the tunnel across EDSA was originally divided into two (2) stages involving a shallow excavation and an open cut portion. When the plans were redesigned by [DPWH] and the [Contract] was renegotiated, the plans and specifications for the Tunnel was increased to [a] depth of nine (9) meters from the original depth of about 5 meters and from the original length of 60 meters to 282 meters with cut and cover to allow unobstructed passage along EDSA.
>
> Under the construction Agreement, the Claimant cannot remove or relocate privately-owned structures such as walls, septic vaults, etc. and public utilities, such as Meralco posts, MWSS sewer lines, PLDT lines, etc.
>
> In view of the increase in the size of the project and the numerous obstructions encountered, an additional ten (10) sections in the Cut and Cover Tunnel along Pioneer Street was added. As a result in the change of construction methodology from two (2) to fourteen (14) stages, the contract time was amended and approved from one hundred twenty (120) calendar days to two hundred seventy (270) calendar days.
>
> The construction of the Project, which was supposed to start at the Boni Avenue side on 22 January 1993, also included the construction of ramps or access roads on either side of the Interchange (Boni, Pioneer). These further delayed the works due to additional obstructions.
>
> As a necessary consequence of these obstructions which the DPWH had to relocate and the adjustment in the traffic re-routing at EDSA, which all contributed to right of way problems of DPWH, the start up of the Project was reset to 08 March 1993.
>
> The construction of Stage 2 of the Cut and Cover Tunnel was likewise delayed and started only on 14 October 1993 due to the restrictions imposed by the MMA-TEC.
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> The construction of Stage 3 of the Cut and Cover Tunnel started only on 13 January 1994 after the Christmas holidays due to the restrictions imposed by MMA-TEC prohibiting work at the Project during the holiday season. The said construction was further delayed because of an existing

> 250 mm diameter MWSS pipe and PLDT underground lines at the work site.
>
> Stage 4 construction of the Cut and Cover Tunnel was delayed to 16 March 1994 due to restrictions imposed by the MMA-TEC Transec and the obstructions caused by two (2) PLDT lines and three (3) MWSS pipelines.
>
> Due to the existence of obstructions such as telephone and electric lines and septic vaults found at the areas where the bored piles were supposed to be drilled for the protective wall covering the Triumph Building, the Claimant was constrained to start excavation works for the Cut and Cover Tunnel (Stages 5-7) on Pioneer Street on 01 May 1994. The work was further made more difficult because the Claimant had to avoid the Triumph Building.
>
> Construction work along the Pioneer right side approach to the EDSA Tunnel was supposed to have been made available [as] of 15 May [1993] but was made available only on 28 March 1994 after the DPWH had caused the complete relocation and/or demolition of the MWSS pipes, Phelps Dodge's sewer line, electrical service post, concrete fence, guard house and locker building.
>
> Originally, Pioneer Street was to be excavated in bulk but was stopped on 10 June 1993 because of right of way problems or obstructions at the work site. Excavation work resumed only on 19 September 1993 and was limited to the Pioneer left side approach after the DPWH had finally caused the complete relocation of existing utility obstructions.
>
> Other portions of the Pioneer side tunnel (Stages 8-14) were supposed to be made available by the DPWH [for FSI] on 15 May 1993 but was made available only on 17 July 1994 after the DPWH had caused the relocation of Triumph's service entrance post, underground PLDT line drainage manhole and septic vault.
>
> x x x x
>
> Moreover, the business establishments around the construction site required an access road for their businesses even before excavation could start. The re-routing scheme imposed by the MMA and TEC, plus the additional scope of work not shown on the plans, also contributed to further delaying the construction of the Project.[11]

To bolster its claim, FSI submitted as Exhibit C-58 a copy of the Conditions of Contract for Works of Civil Engineering Construction portion of the Contract Documents which in turn was taken from the "*Federation Internationale Des Ingenieurs – Conseils*", Sub-Clause 42.2 of which reads as follows:

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11 Id. at 70-74.

"*Failure to give possession*

42.2 *If the Contractor suffers delay and/or incurs costs from failures on the part of the employer to give possession in accordance with the terms of Sub-Clause 42.1. The Engineer shall, after due consultation with the Employer and the Contractor determine:*

a) Any extension of time to which the Contractor is entitled under Clause 44, and[;]
b) The amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly with a copy to the Employer."[12]

The DPWH denied any liability for FSI's claims and asserted that under Sub-Clause 42.2, Part II of the Conditions of Particular Application, FSI bound itself not to claim for damages as a result of any delay when it requested for five (5) extensions. According to the DPWH, the provision reads:

- Failure to Give Possession -

"If the contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 42.2, the Engineer, shall, after due consultation with the Employer and the Contractor, determine any extension of time to which the Contractor is entitled under Clause 44, and shall notify the Contractor accordingly, with a copy to the Employer. **No amount of such costs shall be added to the contract price**." (Emphasis Supplied)[13]

These averments of DPWH, however, were not substantiated by any documentary evidence showing that such provision indeed exists in the Contract.[14]

The DPWH also argued that the delays were due to FSI's fault. Based on the final report of the Project Manager, the following were the reasons for the Project's delayed completion: 1) FSI's equipment breakdown for ten (10) months; 2) FSI's insufficient manpower and/or labor problems for thirteen (13) months; 3) insufficient financial support from FSI for seven (7) months; 4) insufficient materials from FSI for eight (8) months; and 5) insufficient fuel for FSI's equipment for two (2) months. Also out of the 39 monthly evaluations made on FSI from January 1993 to March 1996, it registered unsatisfactory performance for 28 months.[15]

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12 Id. at 76.
13 Id. at 74-75.
14 Id. at 76.
15 Id. at 84.

Ruling of the CIAC

In a Decision[16] dated September 1, 2005, the CIAC ruled in favor of FSI. It held that the modified Sub-Clause 42.2 alleged by DPWH was not substantiated with any documentary proof. Hence, DPWH cannot use it to avoid liability for the costs and damages incurred by FSI as a result of the delay in the construction of the Project. Consequently, FSI's money claims were granted except for the Extended Rental Costs for Various Equipment for failure of FSI to present credible and correct computations.

The computation submitted by FSI was found grossly erroneous owing to the large discrepancies between it and the data shown in the "Contractor's Field Equipment Report on Site."

The CIAC decision disposed, thus:

> WHEREFORE, judgment is hereby rendered and AWARD made on the monetary claims of [FSI] as follows:
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> | | | |
> |---|---|---|
> | 1. Standby Rental Cost for the Rotary Equipment | - P | 355,582.60 |
> | 2. Overhead Costs during the periods of delay | - | 15,379,790.11 |
> | 3. Extended Rental Costs of various equipment | - | |
> | 4. Interest | - | 8,876,310.93 |
> | 5. Attorney's Fees | - | 300,000.00 |
> | **Total** | **P** | **24,911,683.64** |
>
> [DPWH] is hereby directed to pay [FSI] the sum of **PESOS TWENTY-FOUR MILLION NINE HUNDRED ELEVEN THOUSAND SIX HUNDRED EIGHTY-THREE and 64/100 (P24,911,683.64)** plus the reimbursement of the cost of Arbitration, advanced by [FSI] to the [CIAC] the amount of **PESOS THREE HUNDRED EIGHTY-EIGHT THOUSAND NINE HUNDRED NINE and 87/100 (P388,909.87).**
>
> The above awarded amount due [FSI] shall bear an interest at the legal rate of six percent (6%) per annum from the date of filing of the Request for Adjudication on 27 July 2004 to the date of receipt of this DECISION by [both] Parties and/or their respective counselors. After the date received, the interest rate of twelve percent (12%) per annum shall be made on the outstanding amount until full payment thereof shall have been made, "this interim period being deemed to be at that time already a forbearance of credit." x x x.

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16 Id. at 60-97.

> The CIAC Secretariat is directed to make the necessary computations in order to quantify the interests to be paid by [DPWH] on the net amount hereby found to be due [FSI].
>
> **SO ORDERED.**[17]

Ruling of the CA

Both parties appealed to the CA. FSI questioned the CIAC's refusal to award its claim for Extended Rental Costs of Various Equipment.[18] DPWH, on the other hand, faulted the CIAC for ignoring its evidence and arguments against FSI's money claims. DPWH insisted that the delay in the completion of the Project was primarily due to FSI's own fault. The obstructions cited by FSI as reasons for the delay were expected contingencies in any infrastructure project and it should have been prepared to meet them without sacrificing the time table for the project's completion. DPWH also argued that the award of attorney's fees had no legal basis because no bad faith was attributed to it.[19]

In a Decision[20] dated October 30, 2009, the CA upheld the CIAC's findings. It, however, modified the CIAC's ruling by awarding FSI's claim for Extended Rental Costs of Various Equipment upon finding that there was no material discrepancy between the Contractor's Field Equipment Report on Site and the table of computation submitted by FSI. Accordingly, the CA decision was disposed as follows:

> **WHEREFORE,** [p]remises considered, the Petition for Review under CA-G.R. SP-No. 91329 is hereby **DISMISSED**. The Petition for Review under CA-G.R. SP-No. 91349, on the other hand, is **GRANTED** ordering the **MODIFICATION** of the Decision of the [CIAC] dated September 5, 2005 to include the payment of extended rental costs of equipment by DPWH to FSI in the amount of P27,570,622.82 plus the necessary interests to be computed by the CIAC Secretariat.
>
> **SO ORDERED.**[21] (Emphasis in the original)

DPWH moved for reconsideration[22] but its motion was denied in the CA Resolution[23] dated March 10, 2010. Hence, the present petition imputing that the CA erred in:

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17 Id. at 96-97.
18 Id. at 162-193.
19 Id. at 137-161.
20 Id. at 41-56.
21 Id. at 54-55.
22 Id. at 194-206.
23 Id. at 57-59.

I.

HOLDING THAT THE CIAC RIGHTLY FAULTED DPWH FOR ALLEGEDLY NOT PRESENTING IN EVIDENCE THE PARTIES' PERTINENT CONTRACT, CONSIDERING THAT FSI ITSELF HAD ALREADY ADMITTED ITS EXISTENCE AND THAT THE CIAC SHOULD HAVE TAKEN NOTICE THEREOF AS AN INDISPENSABLE REQUISITE TO THE RESOLUTION OF THE CONTROVERSY AT HAND; and

II.

AFFIRMING THE CIAC'S MONETARY AWARD AND IN FURTHER ADJUDGING DPWH LIABLE FOR AN ADDITIONAL AMOUNT REPRESENTING EXTENDED RENTAL COSTS OF EQUIPMENT ON THE GROUND OF DPWH'S ACQUIESCENCE THERETO, CONSIDERING THAT DPWH AT THE VERY OUTSET DISPUTED ALL OF FSI'S MONEY CLAIMS INCLUDING ITS DEMAND FOR EXTENDED RENTAL COST OF EQUIPMENT.[24]

Ruling of the Court

The Court denies the petition.

It is evident from the arguments proffered by DPWH that the resolution of the present petition hinges on factual questions which the Court cannot delve upon in a petition for review on *certiorari* under Rule 45 of the Rules of Court. Section 1 of the rule categorically ordains that a petition for review on *certiorari* "shall raise only questions of law which must be distinctly set forth."

The propriety of arbitral awards,[25] matters on the entitlement to additional compensation for extended services based on contractual provisions[26] are factual issues that require for their determination a calibration of evidence - a task which the Court is not bound to discharge under Rule 45 because it is not a trier of facts. More importantly, factual issues are generally conceded to be within the competence of trial courts or the expertise of quasi-judicial bodies, such as the CIAC.

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[24] Id. at 23.

[25] *National Transmission Corporation v. AlphaOmega Integrated Corporation*, G.R. No. 184295, July 30, 2014.

[26] *R.V. Santos Company, Inc. v. Belle Corporation*, G.R. Nos. 159561-62, October 3, 2012, 682 SCRA 219.

Hence, the settled rule that factual findings of quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but also finality, especially when affirmed by the CA. More specifically in this case, the CIAC possesses that required expertise in the field of construction arbitration and the factual findings of its construction arbitrators are final and conclusive, not reviewable by this Court on appeal.[27]

The foregoing rule is complemented by Section 19 of Executive Order (E.O.) No. 1008, as amended, which states that: "(t)he arbitral award shall be binding upon the parties. It shall be final and inappealable except on questions of law which shall be appealable to the Supreme Court."

The Court has thus ruled –

> The Court will not review the factual findings of an arbitral tribunal upon the artful allegation that such body had "misapprehended the facts" and will not pass upon issues which are, at bottom, issues of fact, no matter how cleverly disguised they might be as "legal questions." The parties here had recourse to arbitration and chose the arbitrators themselves; they must have had confidence in such arbitrators. The Court will not, therefore, permit the parties to relitigate before it the issues of facts previously presented and argued before the Arbitral Tribunal x x x.[28]

The rule admits of certain exceptions. As laid down in *Shinryo (Phils.) Company, Inc. v. RRN, Inc.*,[29] factual findings of construction arbitrators may be reviewed by this Court when the petitioner proves affirmatively that:

> (1) the award was procured by corruption, fraud or other undue means; (2) there was evident partiality or corruption of the arbitrators or any of them; (3) the arbitrators were guilty of misconduct in refusing to hear evidence pertinent and material to the controversy; (4) one or more of the arbitrators were disqualified to act as such under Section nine of Republic Act No. 876 and willfully refrained from disclosing such disqualifications or of any other misbehavior by which the rights of any party have been materially prejudiced; or (5) the arbitrators exceeded their powers, or so imperfectly executed them, that a mutual, final and definite award upon the subject matter submitted to them was not made.

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27 *National Transmission Corporation v. AlphaOmega Integrated Corporation,* supra note 25.

28 *Shinryo (Phils.) Company, Inc. v. RRN, Inc.,* 648 Phil. 342, 352-353 (2010), citing *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction & Dev't. Corp.*, 540 Phil. 350, 376 (2006).

29 648 Phil. 342 (2010).

> Other recognized exceptions are as follows: (1) when there is a very clear showing of grave abuse of discretion resulting in lack or loss of jurisdiction as when a party was deprived of a fair opportunity to present its position before the Arbitral Tribunal or when an award is obtained through fraud or the corruption of arbitrators, (2) when the findings of the Court of Appeals are contrary to those of the CIAC, and (3) when a party is deprived of administrative due process.[30]

Nothing in the records, however, indicates that any of the foregoing exceptional circumstances obtain. At any rate, even if we were to disregard this procedural infirmity and proceed to conduct a factual probe of the records, the Court is still inclined to affirm the CIAC's disposition on the merits of the case.

The fact of delay and its primary cause

The fact of delay is undisputed and evident in the records. The principal cause thereof and whether FSI may claim for the costs it incurred during the period of delay were the factual issues traversed by the CIAC and the CA.

According to DPWH, the delays were due to the fault of FSI. Based on the final report of the Project Manager, the following were the reasons for the Project's delay: 1) FSI's equipment breakdown for ten (10) months; 2) FSI's insufficient manpower and/or labor problems for thirteen (13) months; 3) insufficient financial support from FSI for seven (7) months; 4) insufficient materials from FSI for eight (8) months; and 5) insufficient fuel for FSI's equipment for two (2) months. Also, out of the 39 monthly evaluations made on FSI from January 1993 to March 1996, it registered unsatisfactory performance for 28 months.[31]

Meanwhile, it is FSI's position that the cause of delay was the right of way problems and various obstructions in the work site that precluded continuous work. It was the obligation of DPWH to give FSI possession of the work site free from obstructions or provide FSI the necessary right of way during construction.[32]

Both the CIAC and the CA upheld FSI's stance. They held that DPWH incurred a delay of two (2) years in performing its obligation to remove all obstructions and secure road of right of way.

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30 Id. at 350, citing *Uniwide Sales Realty and Resources Corp. v. Titan-Ikeda Construction & Dev't. Corp.*, supra note 28, at 360-361.

31 *Rollo*, pp. 84.

32 Id. at 120-136.

The Court agrees. These findings are confirmed by Chapter II, Section IV, page 34 of the Final Report of the Project Manager stating that the failure of DPWH to acquire the road right of way and to eliminate the obstructions in the construction site and its immediate peripheries were the main causes for the slow progress of work, *viz*:

> SECTION-IV ROAD RIGHT OF WAY
>
> Acquisition of the road right-of-way and obstructions within the construction limits gave rise to various problems that were the main causes for the slow progress of work in this project.
>
> Examples to these problems were the following:
>
> 1. Uncooperative attitude of the owners affected with regard to the acquisition of land and demolition of improvements within the construction limits.
>
> 2. Stringent requirements that had to be complied with before removal and ejection of building structure occupants could be carried out.
>
> 3. Time consuming process before transfer of existing MERALCO and PLDT posts and cables as well as MWSS pipes located along the right of way could be carried out.
>
> The Road Right-Of-Way (RROW) acquisitions in this project were totally complete in the month of July 1994.[33]

That the obstructions caused by the posts and lines of public utility providers seriously hampered FSI's work and even the determination of the Project's completion was cited several times in the Final Report. One of such instances revealed:

> The Contractor requested for seventy[-]five (75) calendar days time extension provided that interconnection of MWSS pipe and installation of PLDT conduits at Pioneer Right Service Road is completed. However, it is unfortunate that at present the MWSS is working on their pipe interconnections from Sta. 1+210.00 to Sta. 1+280.00 and valve manhole at Sta. 1+320.00 along Pioneer Right Service Road while the laying of PLDT encased conduits is in progress from Sta. 1+220.00 to Sta. 1+380.00 on [the] same service road. With this situation, the Contractor cannot work seriously on the construction of Pioneer Right Service Road until MWSS and PLDT have completed their works, so the project completion cannot be determine[d] a[t] this point of time.[34]

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33 Id. at 279.

34 Id. at 499.

It is true that the Final Report also cited delays caused by FSI. However, they were too insubstantial as to have gravely affected the timely completion of the Project that FSI had to request for extensions in the same way that it did for the delays brought about by the right of way problems and obstructions. Moreover, if DPWH indeed believed that the delays were truly and solely the fault of FSI then it could have imposed liquidated damages against FSI. As aptly observed by the CIAC, the absence of any imposition of liquidated damages upon FSI can only mean that: (1) the reasons presented by FSI for its requests for extension were found valid; and (2) in spite of the adverse finding of the Project Manager on FSI's unsatisfactory performance, it did not affect the completion of the Project to merit liquidated damages. The non-imposition by DPWH of liquidated damages on FSI upon acceptance of the completed Project negates the adverse comments on FSI's performance.[35]

As a matter of fact, DPWH did not even counterclaim for liquidated damages during the proceedings before the CIAC.

The costs incurred by FSI during the period of delay

The factual findings of the CIAC, as affirmed by the CA, on FSI's entitlement to the costs incurred during the periods of extensions are amply supported by evidence on record.

FSI's claim for reimbursement for the costs it incurred during the period of delay was anchored on Sub-Clause 42.2 of the contract. Since this is an affirmative claim, it was incumbent upon FSI to present competent evidence of the existence and contents of the subject provision. It was able to discharge this burden through a copy of the contract reflecting Sub-Clause 42.2 which states:

> Failure to give possession
>
> 42.2 If the Contractor suffers delay and/or incurs costs from failures on the part of the employer to give possession in accordance with the terms of Sub-Clause 42.1. The Engineer shall, after due consultation with the Employer and the Contractor determine:
>
> a) Any extension of time to which the Contractor is entitled under Clause 44, and
> b) The amount of such costs, which shall be added to the Contract Price, and shall notify the Contractor accordingly with a copy to the Employer.

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35 Id. at 86.

While the DPWH utilized the same provision in its pleadings, it averred a modified version thereof supposedly absolving it of any liability for the delay, thus:

> Failure to Give Possession
>
> If the contractor suffers delay and/or incurs costs from failure on the part of the Employer to give possession in accordance with the terms of Sub-Clause 42.1, the Engineer shall, after due consultation with the Employer and the Contractor, determine any extension of time to which the Contractor is entitled under Clause 44, and shall notify the Contractor accordingly, with a copy to the Employer. **No amount of such costs shall be added to the contract price**.

DPWH, however, tendered nothing more than mere allegations to support the supposedly modified version. Thus, the only persuasive evidence on record as to the contents of the subject provision is the document presented by FSI. Based thereon and absent any contrary evidence that prove otherwise, FSI is entitled to additional compensation for the services it rendered during the periods of delay which were caused by DPWH's failure to give possession of the work site free from any obstructions.

He who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff, the burden of proof never parts. However, in the course of trial, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiff's *prima facie* case, otherwise, a verdict must be returned in favor of plaintiff.[36]

Indeed, the failure of DPWH to present documentary proof of the alleged modified version of Sub-Clause 42.2 was fatal to its denial of any liability for FSI's claims. Even disregarding such documentary proof, a key evidence on record actually negates DPWH's averment. As noted by the CIAC, the caveat supposedly stated in the alleged modified version of Sub-Clause 42.2 was not even mentioned in DPWH's letters to FSI granting the latter's request for extension.[37] Based on this finding, it can be reasonably concluded that no such modified version of Sub-Clause 42.2 existed.

FSI was, thus, able to establish by preponderance of evidence that it is entitled to claim payment for the costs it incurred during the period of delay.

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36 *Jison v. CA*, 350 Phil. 138, 173 (1998).

37 *Rollo*, p. 78.

The Court finds no ground to disturb the decision of the CIAC with respect to the awards for Standby Rental Cost and Overhead Costs, especially considering that the CA has stamped its affirmation thereon. The evidence adduced to prove the amount of such costs have been exhaustively studied by the CIAC and the CA, and for the Court to re-calibrate them again will only negate the objective of E.O. No. 1008 of creating an arbitration body to ensure the prompt and efficient settlement of disputes in the construction industry.

Such is not the case, however, with respect to the claim for Extended Rental Costs of Various Equipment. FSI can only receive payment for the days that its various equipment were idle due to the delay. FSI's Request for Arbitration thus specifically stated:

> Aside from the claimant's claim for the recovery of management and other fixed costs during the several periods of delay, the claimant had additionally sought the recovery of additional expenses and damages incurred for the rental of equipment made available for the Project but were rendered idle during the periods of delay.[38]

The computation of the amount of such rental costs for the idle days should be made by the CIAC Secretariat based on the Contractor's Field Equipment Report on Site as it is the unbiased source of such data considering that it was signed by the parties' respective representatives. The discrepancy found by the CIAC was sufficiently explained by FSI before the CA. The computation used by FSI was based on the combined operating and idle days, while the Contractor's Field Equipment Report on Site segregated the operating days and the idle days. The CA, however, erred in awarding the costs even for the days that the rental equipment was operational since FSI was only claiming compensation for the idle days.

The interest charges on the principal monetary awards must be upheld as DPWH is deemed to have defaulted in its contractual obligation to pay the costs incurred by FSI during the period of delay. The rate of six percent (6%) *per annum* reckoned from the date of filing of the request for arbitration until receipt by the parties of the CIAC judgment was correct. However, pursuant to the prevailing jurisprudence,[39] the twelve percent (12%) interest rate imposed after the date of the parties' receipt of the CIAC decision shall apply only until June 30, 2013. Thereafter, or beginning July 1, 2013, a six percent (6%) interest rate *per annum* shall apply until the judgment award is fully satisfied.

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38 Id. at 131.

39 *Nacar v. Gallery Frames,* G.R. No. 189871, August 13, 2013, 703 SCRA 439, 456, citing Bangko Sentral ng Pilipinas-Monetary Board Circular No. 799.

An award of attorney's fees is proper when, among others: (1) the defendant has compelled the plaintiff to litigate or to incur expenses to protect its interest; or (2) where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim; or (3) in any case where the court deems it just and equitable that attorney's fees should be recovered.[40] Here, it is unmistakable that DPWH unreasonably denied the claims of FSI. DPWH had no contractual basis to refuse FSI's demands because the alleged modified version of Sub-Clause 42.2 was non-existent. Bad faith on the part of DPWH is deducible from its brazen attempt to resist a valid and legal claim by fabricating a non-existent contractual provision thus forcing FSI to pursue arbitration.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated October 30, 2009 of the Court of Appeals in CA-G.R. SP Nos. 91329 and 91349 is **AFFIRMED** with the **MODIFICATIONS** that: (a) the amount of Extended Rental Costs for Various Equipment awarded to Foundation Specialists, Inc. shall be limited only to the number of days that such equipment were rendered idle by the delay; and (b) the twelve percent (12%) interest rate *per annum* imposed on the judgment award after the parties' receipt of the CIAC Decision dated September 1, 2005 shall apply only until June 30, 2013, thereafter, or beginning July 1, 2013, the interest rate of six percent (6%) *per annum* shall be imposed.

The Construction Industry Arbitration Commission Secretariat is hereby **DIRECTED** to compute the rental costs for such period that the various equipment utilized by Foundation Specialist, Inc. were rendered idle by the delay.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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40 *See Hanjin Heavy Industries and Construction Co., Ltd. v. Dynamic Planners and Construction Corp.*, 576 Phil. 502, 535 (2008).

WE CONCUR:

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson

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CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 28 2015