EN BANC

G.R. NO. 244063 – LONE CONGRESSIONAL DISTRICT OF BENGUET PROVINCE, REPRESENTED BY HON. RONALD M. COSALAN, REPRESENTATIVE, PETITIONER, v. LEPANTO CONSOLIDATED MINING COMPANY AND FAR SOUTHEAST GOLD RESOURCES, INC., RESPONDENTS.

G.R. NO. 244216 – REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE MINES AND GEOSCIENCES BUREAU OF THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (MGB-DENR), PETITIONER, v. LEPANTO CONSOLIDATED MINING COMPANY AND FAR SOUTHEAST GOLD RESOURCES, INC., RESPONDENTS.

Promulgated:

June 21, 2022

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CONCURRENCE

LAZARO-JAVIER, *J.*:

The issue arose when respondents sought to renew their Mineral Production Sharing Agreement (*MPSA*) No. 001-90 dated March 3, 1990 with petitioners Republic *et al.*, for another 25 years. After receiving their renewal application, petitioners referred this matter to the *National Commission on Indigenous Peoples* (*NCIP*) for the requisite consultation, consent, and certification processes pursuant to Section 59 of the Republic Act (*RA*) No. 8371, Indigenous Peoples Rights Act *(IPRA)*.[1] Respondents refused to submit themselves to these processes arguing that the requisites for the renewal did

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[1] SECTION 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 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. (REPUBLIC ACT. No. 8371, AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLES, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, Approved on October 29, 1997).

not include the processes under Section 59 and for petitioners to insist on these processes would result in the impairment of their contractual and other vested rights under the MPSA. The Arbitral Tribunal also opined that the consent process could lead to the Indigenous Cultural Communities/Indigenous Peoples (*ICCs/IPs*) non-consent and therefore, result in the non-renewal of the MPSA and the wastage of all the investments that were poured in with a view to renewals of the MPSAs *ad infinitum* on the basis of the old and the then applicable regulatory regimes. Respondents immediately submitted their objection to arbitration. The Arbitral Tribunal rendered an award which exempted respondents and the renewal of their MPSA from Section 59.

Petitioners petitioned the Regional Trial Court (*RTC*) for Makati City to vacate the arbitral award on the ground that it violated public policy as established in Section 59. They argued that the MPSA, even as a contract can be impaired by the exercise of the State's police power, which here is evidenced by the IPRA and its Section 59.

The RTC agreed with petitioners and vacated the arbitral award. The RTC saw Section 59 as a clear expression of the State's public policy and the renewal of the MPSA must abide by this provision. This is especially so since it is not disputed that the MPSA covered parts of the ancestral domains of the Mankayan Indigenous Cultural Communities/Indigenous Peoples (*Mankayan ICCs/IPs*).

The Court of Appeals though reversed. It agreed with the Arbitral Tribunal that respondents acquired a vested right to renew the MPSA with the government after they have complied with all the requirements independent of the consent requirement under Section 59. Petitioners cannot demand compliance with Section 59 as this would be contrary to respondents' contractual rights under the MPSA, and could lead to the wastage of respondents' investments should the ICCs/IPs withhold consent.

The Court has resolved to vacate the Final Award dated November 27, 2015, issued by the Arbitral Tribunal in favor of respondents Lepanto Consolidated Mining Company and Far Southeast Gold Resources, Inc. without prejudice to their full compliance with the requirement of Free and Prior Informed and Written Consent (*FPIC*) of the Mankayan ICCs/IPs as a condition for the renewal of the MPSA.

I concur.

First. The MPSA has been adjudged to be a contract "whereby the State, through the Department of Environment and National Resources, grants to a private party the exclusive right to conduct mining operations within a

specified area, in exchange for a share in the proceeds of the operations."[2] But this characterization does not immunize the MPSA from modification as a consequence of the State's exercise of police power over contracts imbued with public interest and/or public welfare.

As held in *The Provincial Bus Operators Association of the Philippines v. Department of Labor and Employment*:[3]

> There is an impairment when, either by statute or any administrative rule issued in the exercise of the agency's quasi-legislative power, the terms of the contracts are changed either in the time or mode of the performance of the obligation. There is likewise impairment when new conditions are imposed or existing conditions are dispensed with.
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> **Not all contracts, however, are protected under the non-impairment clause. Contracts whose subject matters are so related to the public welfare are subject to the police power of the State and, therefore, some of its terms may be changed or the whole contract even set aside without offending the Constitution; otherwise, "important and valuable reforms may be precluded by the simple device of entering into contracts for the purpose of doing that which otherwise may be prohibited."**
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> Similar to the right to due process, **the right to non-impairment yields to the police power of the State.**
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> In *Anucension v. National Labor Union*, Hacienda Luisita and the exclusive bargaining agent of its agricultural workers, National Labor Union, entered into a collective bargaining agreement. The agreement had a union security clause that required membership in the union as a condition for employment. Republic Act No. 3350 was then subsequently enacted in 1961, exempting workers who were members of religious sects which prohibit affiliation of their members with any labor organization from the operation of union security clauses.
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> On the claim that Republic Act No. 3350 violated the obligation of contract, specifically, of the union security clause found in the collective bargaining agreement, this Court conceded that "there was indeed an impairment of [the] union security clause." Nevertheless, this Court noted that the "prohibition to impair the obligation of contracts is not absolute and unqualified" and that **"the policy of protecting contracts against impairment presupposes the maintenance of a government** by virtue of which contractual relations are worthwhile — **a government which retains adequate authority to secure the peace and good order of society**." A **statute passed to protect labor** is a "legitimate exercise of police power, although it incidentally destroys existing contract rights." "[C]ontracts regulating relations between capital and labor x x x are not merely

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2 *Diamond Drilling Corporation of the Philippines v. Crescent Mining and Development Corporation*, G.R. No. 201785, April 10, 2019.

3 836 Phil. 205–280 (2018).

> contractual, and said labor contracts x x x [are] impressed with public interest, [and] must yield to the common good."
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> This Court found the purpose behind Republic Act No. 3350 legitimate. Republic Act No. 3350 protected labor by "preventing discrimination against those members of religious sects which prohibit their members from joining labor unions, confirming thereby their natural, statutory[,] and constitutional right to work, the fruits of which work are usually the only means whereby they can maintain their own life and the life of their dependents." This Court, therefore, upheld the constitutionality of Republic Act No. 3350.
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> **Laws regulating public utilities are likewise police power legislations.** In *Pangasinan Transportation Co., Inc. v. The Public Service Commission, Pangasinan Transportation Co., Inc.* (Pangasinan Transportation) filed an application with the Public Service Commission to operate 10 additional buses for transporting passengers in Pangasinan and Tarlac. The Public Service Commission granted the application on the condition that the authority shall only be for 25 years.
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> When the Public Service Commission denied Pangasinan Transportation's motion for reconsideration with respect to the imposition of the 25-year validity period, the bus company filed a petition for certiorari before this Court. It claimed that it acquired its certificates of public convenience to operate public utility buses when the Public Service Act did not provide for a definite period of validity of a certificate of public convenience. Thus, Pangasinan Transportation claimed that it "must be deemed to have the right [to hold its certificates of public convenience] in perpetuity."
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> Rejecting Pangasinan Transportation's argument, this Court declared that certificates of public convenience are granted subject to amendment, alteration, or repeal by Congress. Statutes enacted for the regulation of public utilities, such as the Public Service Act, are police power legislations "applicable not only to those public utilities coming into existence after [their] passage, but likewise to those already established and in operation."[4] (Emphases supplied)

Mining corporations and mining activities are imbued with public interests. Necessarily, mining contracts must also be imbued with public interests. The Court has said –

> It cannot be overemphasized that the exploration, development[,] and utilization of the country's natural resources are matters vital to the public interest and the general welfare; hence, their regulation must be of utmost concern to the government, since these natural resources are not only critical to the nation's security, but they also ensure the country's survival as a viable and sovereign republic.[5]

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4 Id. at 272–275.

5 *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corporation*, G.R. Nos. 152613 & 152628, November 20, 2009.

Given the police power of the State over mining activities and appurtenant mining contracts, the Court cannot set aside Section 59 of the *IPRA* as an unimportant side note in the renewal of MPSAs including respondents' own. Section 59 is deemed written into respondents' MPSA and similar contracts. This is especially so since Section 59 expressly covers the renewal of concessions and production sharing agreements. It is an expression of public interest that the State as legal owner of the mineral sources has required of mining companies like respondents to comply with in recognition of, and respect for, the collective ownership rights of ICCs/IPs over their ancestral domains.

Second. The arbitral award is not immune from the *vacatur* remedy before the RTC. This remedy is expressly recognized in Section 41 of RA 9285, *Alternative Dispute Resolution Act of* 2004,[6] and Rule 19.1 of the *Special Rules of Court on Alternative Dispute Resolution.*[7] Among the grounds for this remedy is "violation of public policy."

This ground for vacating an arbitral award has been explained thus:

> **Alagasco seeks *vacatur* of the Arbitration Award on the grounds that Moseley's reinstatement violates public policy.** Courts play a very limited role in reviewing arbitral awards, due to the congressionally-mandated preference for private settlement of grievances under the Labor Management Relations Act. *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 509, 121 S. Ct. 1724, 149 L. Ed. 2d 740 (2001); *United Paperworkers Int'l Union v. Misco*, 484 U.S. 29, 36-37, 108 S. Ct. 364, 98 L. Ed. 2d 286 (1987). Although courts generally cannot consider arbitration awards on their merits or otherwise second guess the arbitrator, the question whether an arbitrator's interpretation of a collective bargaining agreement is contrary to public policy is one for the courts to decide. *Misco, 484 U.S. at 36-40, 43; W.R. Grace & Co. v. Local Union 759, Int'l Union of United Rubber Workers*, 461 U.S. 757, 766, 103 S. Ct. 2177, 76 L. Ed. 2d 298 (1983). However, such authority is not "a broad judicial power to set aside arbitration awards as against public policy." *Misco*, 484 U.S. at 43. **To prevail on the claim of vacatur on public policy grounds, Alagasco has the burden to prove three general elements. First, the arbitrator's interpretation of the collective bargaining agreement (*i.e.*, Moseley's reinstatement) violates "some explicit public policy that is well defined and dominant."** *Misco*, 484 U.S. at 43 (quotation marks omitted). **Second, that policy is ascertainable "by reference to the laws and legal precedents and not from general considerations of supposed public interests."** *Id.* at 43 (quotation marks omitted). **Third, the violation of the**

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[6] SEC. 41. *Vacation Award.* - A party to a domestic arbitration may question the arbitral award with the appropriate regional trial court in accordance with the rules of procedure to be promulgated by the Supreme Court only on those grounds enumerated in Section 25 of Republic Act No. 876. Any other ground raised against a domestic arbitral award shall be disregarded by the regional trial court. (REPUBLIC ACT No. 9285, AN ACT TO INSTITUTIONALIZE THE USE OF AN ALTERNATIVE DISPUTE RESOLUTION SYSTEM IN THE PHILIPPINES AND TO ESTABLISH THE OFFICE FOR ALTERNATIVE DISPUTE RESOLUTION, AND FOR OTHER PURPOSES, Approved on April 2, 2004).

[7] A.M. No. 07-11-08-SC, SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION, September 1, 2009.

> **public policy must be "clearly shown" and not be based on "speculation or assumption."** *Id.* at 44.[8] (Emphases supplied)

In rejecting Section 59, the arbitral award here violated public policy. This is because –

One, the Arbitral Tribunal's interpretation of the MPSA as not being subject to Section 59 of the IPRA violates a clear and explicit public policy that is well-defined and dominant.

Two, this policy is clear, explicit, well-defined, and dominant since it is directly ascertainable by reference to a statute, implementing administrative rules and court decisions, and not merely from ambiguous and murky general considerations of supposed public interests.

Three, by exempting the renewal of MPSAs, especially respondents' MPSA, public policy has been shown to have been clearly violated since as a consequence, Section 59 need no longer be complied with. Such violation is not just based on speculation or assumption.

The RTC was therefore correct in setting aside and vacating the arbitral award and substituting its own by requiring respondents to comply with Section 59.

Third. Respondents' impairment argument has no leg to stand on. At this point, it is speculative. The mere requirement to undergo the processes under Section 59 of the IPRA does not automatically mean – whether *ipso facto* or *ipso jure* – that respondents' MPSA will actually be rejected. The fact that the contract areas lie within the Mankayans' ancestral domains only means that the Mankayans have to be consulted and their consent to the MPSA's renewal ought to be obtained.

What is respondents so afraid of? If they have done the best for the interests of the Mankayans, they would be the first to consent, on consultation, to the renewal. If they have been short-changed, as the ICCs/IPs historically have been, for which reason the IPRA was enacted, then humanity, and not only profits, demands that they consent. To put a crass analogy, officers of respondent-corporations would at least require to be consulted and to consent when their respective abodes are desecrated and ransacked by others for their own benefits. So with the Mankayan ICCs/IPs. If anyone destroys their properties, the least thing this Court can do is to require the interlopers to consult them and obtain their free and prior informed and written consent.

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[8] *Ala. Gas Corp. v. Gas Fitters Local Union No. 548 of the United Ass'n, 2014 U.S. Dist. LEXIS 99765*, *7-14, 2014 WL 3655713 (M.D. Ala. July 23, 2014).

At this stage of the renewal process, the Court cannot place the cart before the horse or the horse ahead of the rider. *We have yet to hear from the Mankayan ICCs/IPs. We cannot say, without evidence, that they will reject the renewal of respondents' MPSA, and for this lack of evidence, our remedy is to do away with Section 59 for all MPSAs entered into and coming into effect after November 22, 1997 when the IPRA went into force.* Respondents have no cause of action to claim non-impairment of contracts. *We do not even know that the consultation and consent process would entail any further expense or unconscionable number of days.* Clearly, we cannot react reflexively simply on respondents' say-so.

AMY C. LAZARO-JAVIER