MANILA INTERNATIONAL AIRPORT AUTHORITY, Petitioner vs. COMMISSION ON AUDIT, Respondent

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[G.R. 218388, Oct. 15, 2019]

DECISION

BERSAMIN, C. J.:

Facts

The Manila International Airport Authority ("MIAA") and the Aeroports de Paris-Japan Airport Consultants, Inc. Consortium (Consultant for brevity) entered into an Agreement for Consulting Services (Agreement for, brevity) for the Ninoy Aquino International Airport ("NAIA") Terminal 2 Development Project on Apr.15, 1994. However, the duration of the services was extended and the number of man-months increased, due to a prolonged process of prequalification, bidding and awarding stages; delayed Department of Environment and Natural Resources approval and contractor's site possession, as well as numerous additional construction works. The extension was covered by three (3) Supplementary Agreements (SAs) entered into by the MIAA and the Consultant. The relevant issue is whether or not Loan Agreement No. PH-136 is equivalent to an executive agreement. The petitioner argues **that the loan agreement was equivalent to an executive agreement based on the ruling in *Abaya v. Ebdane* (G.R. No. 167919, February 14, 2007);** that as an executive agreement, the loan agreement should control the determination of payments charged to contingency; that the 5% ceiling for payments charged to contingency under the National Economic and Development Authority ("NEDA") Guidelines did not apply because the normal practice of international financial institutions was to provide a 10% contingency.

In this case, the Supreme Court held that a loan agreement executed in conjunction with an exchange of notes between the Republic of the Philippines and a foreign government **shall be governed by international law, with the rule on pacta sunt servanda as the guiding principle.** Any subsequent agreement adjunct to the loan agreement shall be similarly governed.

RULING

PH-136 should be treated as an executive agreement and the parties' intention as to how the payments would be charged to contingency should govern as it should be construed and interpreted in accordance with the doctrine of pacta sunt servanda. A similar treatment should be extended to the three Supplemental Agreements entered into by the petitioner and the ADP-JAC Consortium.

The Supreme Court stated that pursuant to the pronouncement in *Abaya v. Ebdane, supra*, **a loan agreement executed in conjunction with the Exchange of Notes between the Philippine Government and a foreign government is an executive agreement, and should be governed by international law.** This pronouncement has been consistently applied in succeeding rulings, including those in *DBM Procurement Service v. Kolonwel Trading*,*Land Bank of the Philippines v. Atlanta Industries, Inc.*, and *Mitsubishi Corporation-Manila Branch v. Commissioner of Internal Revenue*.

Consequently, we see no justification to treat Loan Agreement No. PH-136 differently, particularly as its preambular paragraph expressly made reference to the Exchange of Notes between the Philippines and Japan on Aug. 16, 1993.

We point out that Loan Agreement No. PH-136, which financed the NAIA Terminal 2 Development Project, stemmed from the Aug. 16, 1993 Exchange of Notes whereby the Government of Japan agreed to extend loans in favor of the Philippines to promote economic development and stability. Thusly, the loan agreement was the adjunct of the Exchange of Notes and should thus be treated as an executive agreement. **In other words, international law should apply in the implementation and construction of the terms and conditions of Loan Agreement No. PH-136. Accordingly, the Philippine Government was bound to faithfully comply with the provisions of the loan agreements in accordance with the doctrine of *pacta sunt servanda*.** Needless to indicate, the doctrine has been incorporated in the 1987 Constitution pursuant to Section 2 of its Article II, which declares:

> Sec. 2. The Philippines renounces war as an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the

policy of peace, equality, justice, freedom, cooperation, and amity with all nations.

Logically, the Agreement for Consulting Services ("ACS") executed by and between the petitioner and the ADP-JAC Consortium, being a mere accessory of Loan Agreement No. PH-136, should likewise be treated as an executive agreement, and construed and interpreted in accordance with the **doctrine of *pacta sunt servanda*.**

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A similar treatment should be extended to the three Supplemental Agreements entered into by the petitioner and the ADP-JAC Consortium.

Accordingly, the Commission on Audit ("COA") could not validly insist that the NEDA Guidelines, particularly that on applying a 5% interest on contingency, should find application because the contracting parties did not stipulate on the applicable law. The pronouncement in *Abaya v. Ebdane, supra*, and its **progeny that international law applies in interpreting and implementing contracts executed in conjunction with executive agreements was controlling. No express stipulation by the contracting parties to that effect was necessary.**

Having settled the issue of the governing law in interpreting and implementing the agreements, we next determine whether or not the COA properly disallowed the amounts disbursed for the additional man-months for the consulting services as provided in the supplemental agreements.

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It appears, however, that in disallowing the disbursements for the additional man-months, the COA charged the disallowance against the contingency, and thus concluded that the same exceeded the 5% ceiling (or ¥53 million and P3.2 million) fixed under the NEDA Guidelines by ¥398 million and P45.5 million. Considering that ND No. (FMT) 99-00-44 only disallowed ¥53 million and P3.2 million, the COA ordered an additional disallowance of ¥344 million and P42 million to be charged against the liable officials of the petitioner.

The Court finds the action of the COA not only erroneous but also in contravention of the **doctrine of pacta sunt servanda** and, most importantly, contrary to the intention of the parties in entering into the supplemental agreements.

To reiterate, the applicable law in interpreting and construing the agreements should be the canons of international law, particularly the doctrine of pacta sunt servanda. Yet, in affirming the NDs, the COA proposed that the Government negate its accession to the executive agreements without any valid justification. Obviously, this approach should not be adopted. In *Agustin v. Edu*,[47] we stressed that "[i]t is not for this country to repudiate a commitment to which it had pledged its word. The concept of *pacta sunt servanda* stands in the way of such an attitude, which is, moreover, at war with the principle of international morality."

WHEREFORE, the Court GRANTS the petition for *certiorari*; and **REVERSES** and **SETS ASIDE** Decision by the Commission on Audit. **SO ORDERED.**

ANDREWS MANPOWER CONSULTING, INC., Petitioner vs. FLAVIO J. BUHAWE, JR., Respondent

DECISION

[G.R. No. 249633, December 4, 2019]

Facts

This case involved a complaint for illegal dismissal filed by Flavio Buhawe (respondent) against Andrews Manpower Consulting, Inc. (petitioner), a pipe fabricator and his principal employer Gulf Piping Co. W.L.L ("Gulf Piping") based in United Arab Emirates ("UAE"). In affirming the ruling that the respondent was illegally dismissed, the SC stated the while the Philippines adopts the generally accepted principles of international law as part of its domestic law, the principles of international law and comity have no application in this case because the petitioner was failed to prove that the respondent actually violated any labor law of the UAE. The alleged safety violations and disrespectful encounter with an engineer were never established by the petitioner.