



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**SHENZHOU MINING GROUP G.R. No. 206685
CORP.,**

Petitioner,

Present:

-versus-

LEONEN, J., *Chairperson,*
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., *JJ.*

**MAMANWA TRIBES OF
BARANGAY TAGANITO AND
URBIZTONDO, MUNICIPALITY
OF CLAVER, SURIGAO DEL
NORTE (AS REPRESENTED BY
DATU REYNANTE BUKLAS AND
DATU ALICIO PATAK) AND THE
NATIONAL COMMISSION ON
INDIGENOUS PEOPLES,**

Respondents.

**Promulgated:
March 16, 2022**

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DECISION

LEONEN, J.:

The delegatee's exercise of the delegated power is always subject to the review of the delegating authority. When the delegation is found to be void, acts performed pursuant to it may be voided by the delegating authority.

This Court resolves the Petition for Review on Certiorari,¹ assailing the

¹ *Rollo*, pp. 7-19.

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Decision² and Resolution³ of the Court of Appeals. The Court of Appeals affirmed the Resolution⁴ of the National Commission on Indigenous Peoples, which declared void the Compliance Certificate Control No. CCRXIII-19-02-13⁵ issued to Shenzhou Mining Group Corporation (Shenzhou). The Commission found that Commissioner Felecito L. Masagnay signed the certificate under an invalid delegation of authority by its chairperson, Eugenio A. Insigne.

The Mamanwa Tribes reside in Barangays Daganito and Urbiztondo, Claver, Surigao del Norte (Mamanwa Tribes). They are part of the Mamanwa tribes that have continuously occupied, possessed, and used an ancestral domain in the Municipalities of Alegria, Bacuag, Claver, Gigaquit, and Tubod in Surigao del Norte since time immemorial and under a bona fide claim of ownership. Their ownership was recognized by the National Commission on Indigenous Peoples under the Certificate of Ancestral Domain Title No. R13-CLA-0906-048.⁶

On February 21, 2010, the Mamanwa Tribes, represented by tribal leaders Datu Reynante Buklas and Datu Alicio Patac, executed a Memorandum of Agreement with Shenzhou and the National Commission on Indigenous Peoples, through Chair Insigne. The agreement provided for the exploration, exploitation, use, and development of mineral resources found in Barangay Cagdianao, Claver, Surigao del Norte. During the signing, Datu Buklas and Datu Patac were made to believe that Shenzhou was a bona fide holder of Mineral Production Sharing Agreement No. 102-98-XIII allegedly issued on February 23, 1998.⁷

Commissioner Masagnay then issued Compliance Certificate Control No. CCRXIII-19-02-13, certifying that Shenzhou had complied with the procedure and process requirements for the issuance of certificate of precondition and the free and prior informed consent.⁸

However, Datu Buklas and Datu Patac later discovered that the true contractor of Mineral Production Sharing Agreement No. 102-98-XIII was not

² Id. at 26–46. The October 29, 2012 Decision in CA-G.R. SP No. 123186 was penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Franchito N. Diamante and Melchor Quirino C. Sadang of the Fifteenth Division of the Court of Appeals, Manila.

³ Id. at 236–238. The April 14, 2013 Resolution in CA-G.R. SP No. 123186 was penned by Associate Justice Celia C. Librea-Leagogo, and concurred in by Associate Justices Franchito N. Diamante and Melchor Quirino C. Sadang of the Fifteenth Division of the Court of Appeals, Manila.

⁴ Id. at 111–114. The January 12, 2012 Resolution was penned by Commissioner Roque N. Agton, Jr., and concurred in by Chairperson Zenaida Brigida H. Pawid and Commissioners Cosme M. Lambayon, Dionesia O. Banua, Percy A. Brawner, and Conchita C. Calzado of the National Commission on Indigenous Peoples.

⁵ Also referred to as CCRXIII-10-02-13 in other parts of the *rollo*.

⁶ *Rollo*, p. 28.

⁷ Id. at 28–29.

⁸ Id. at 28. These requirements were provided for under National Commission on Indigenous Peoples Administrative Order No. 1, series of 2006.

Shenzhou, but Claver Mineral Development Corporation. The Mamanwa Tribes were also not paid royalty shares of ₱5 million for the third and fourth quarters of 2010, and another ₱5 million for the first and second quarters of 2011.⁹

Thus, the Mamanwa Tribes filed with the National Commission on Indigenous Peoples a Petition¹⁰ for the cancellation of Shenzhou's Certificate of Precondition, with prayer for issuance of a writ of preliminary injunction.

On January 12, 2012, the National Commission on Indigenous Peoples En Banc issued a Resolution¹¹ in favor of the Mamanwa Tribes. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the Commission En Banc, after due deliberation, is poised to resolve the aforementioned pending incidents, as well as the main issues in the instant case, as it hereby resolves the (sic), as follows:

1. That, the Compliance Certificate, dated February 22, 2010 (sic), issued in favor of Shenzou (sic) Mining Group, with Control No. CCRXIII-19-02-13 is DECLARED VOID AB INITIO; therefore, all other agreements, licenses, and similar issuances, premised on the said Compliance Certificate, are also DEEMED VOID.

3. (sic) That, the respondent is hereby ORDERED to CEASE and DESIST with their mining operations within the area covered by the aforesaid compliance certificate, and is hereby ENJOINED from undertaking further activities in the area, without the appropriate FPIC of the ICCs/IPs concerned, as well as DIRECTED to RETURN POSSESSION of the subject matter premises to the rightful owners under the Certificate of Ancestral Domain Title No. R13-CLA-0906-048.

4. (sic) That respondent is ORDERED to pay the petitioners the agreed royalties until such time when they would have turned over the possession of the premises to the rightful owners. In the meantime, the amount of ₱4,658,950.00, deposited in escrow with the Development Bank of the Philippines, is hereby ORDERED released in favor of herein petitioners.

5. (sic) That NO ACTION is TAKEN with regards to all other pending incidents for the reason that the same has (sic) been rendered MOOT and ACADEMIC as a consequence of the aforementioned resolution, particularly the one declaring the Certificate of Compliance, void ab initio.

SO ORDERED.¹²

⁹ Id. at 29.

¹⁰ Id. at 47-50.

¹¹ Id. at 340-342. The January 12, 2012 Resolution was penned by Commissioner Roque N. Agton, Jr. and concurred in by Chairperson Zenaida Brigida H. Pawid and Commissioners Cosme M. Lambayon, Dionesia O. Banua, Percy A. Brawner, and Conchita C. Calzado of the National Commission on Indigenous Peoples.

¹² Id. at 341-342.

The National Commission on Indigenous Peoples noted that Compliance Certificate Control No. CCRXIII-19-02-13 was issued under similar circumstances as in *Royalco Philippines, Inc. v. National Commission on Indigenous Peoples* then pending with the Court of Appeals, where it held that the compliance certificate signed by Masagnay in favor of Royalco Philippines, Inc. was void for having been issued without proper authority. Relative to that case, the Commission issued Resolution No. A-004, series of 2011, voiding the certificate. To be consistent with its position in *Royalco* and in line with Resolution No. A-004, series of 2011, the Commission also declared Compliance Certificate Control No. CCRXIII-19-02-13 void.¹³

Aggrieved, Shenzhou appealed to the Court of Appeals.

In its Decision,¹⁴ the Court of Appeals denied the Petition of Shenzhou. It held that the Commission correctly found that the compliance certificates signed by Commissioner Masagnay, including Control No. CCRXIII-19-02-13, were null and void.¹⁵ It explained that the National Commission on Indigenous Peoples is the agency authorized to issue certification precondition for any entity undertaking operations within ancestral domains under Republic Act No. 8371. Pursuant to this law, the Commission authorized its chairperson to sign compliance certificates on the behalf of the Commission.¹⁶ Later, this authority was further redelegated to Commissioner Masagnay in his capacity as officer-in-charge of the National Commission on Indigenous Peoples at the time.¹⁷

In 2011, however, the Commission issued Resolution No. A-004, series of 2011, which stated, among others that “[then Commissioner Masagnay] was not authorized to sign any Compliance Certificate under the principle of ‘*potestas delegata non potest delegari*,’ [that is] delegated authority cannot be delegated[.]”¹⁸ To the Court of Appeals, the authority to sign compliance certificates, having already been delegated to the chairperson of the National Commission on Indigenous Peoples, could no longer be redelegated. Moreover, the National Commission on Indigenous Peoples En Banc itself confirmed that Masagnay was unauthorized to sign any compliance certificates.¹⁹

Given that the Compliance Certificate Control No. CCRXIII-19-02-13 was void, the Court of Appeals held that the National Commission on

¹³ Id. at 113.

¹⁴ Id. at 26-46.

¹⁵ Id. at 38.

¹⁶ Id. at 37.

¹⁷ Id. at 35.

¹⁸ Id. at 36.

¹⁹ Id. at 38.

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Indigenous Peoples correctly ordered Shenzhou to cease and desist mining operations within the coverage of the certificate and return possession of the property to its rightful owners.²⁰

The Court of Appeals brushed aside Shenzhou's argument that Masagnay's authority should not have been ruled upon for failure of Mamanwa Tribes to raise the same before the National Commission on Indigenous Peoples. It found that the matter was properly considered "in the interest of substantial justice and for compelling reasons of public policy."²¹

The Court of Appeals also found that the National Commission on Indigenous Peoples did not rely on *Royalco* then pending with the Court of Appeals. It merely made a factual comparison between the circumstances of the two cases to arrive at the conclusion that Masagnay had no authority to sign compliance certificates. The Commission was only taking a consistent position on Masagnay's authority.²²

Finally, the Court of Appeals upheld the Mamanwa Tribes' entitlement to royalty payments, citing Article XII, Section 5 of the Constitution; Section 7 of Republic Act No. 8731, and Section 17 of Republic Act No. 7942. It held that to allow Shenzhou to retain profits it acquired prior to the compliance certificate being declared void would be unjust enrichment.

The Court of Appeals also denied Shenzhou's Motion for Reconsideration.²³

Thus, Shenzhou filed with this Court a Petition for Review on Certiorari under Rule 45 of the Rules of Court,²⁴ assailing the Decision and Resolution of the Court of Appeals. It also claims that it filed its Petition pursuant to Rule 65 of the Rules of Court to assail the Court of Appeals' alleged grave abuse of discretion.²⁵

Petitioner claims that, although Masagnay had no authority to sign the compliance certificate, he should have been considered a *de facto* officer whose acts were clothed with the color of legality. Thus, even if it was declared that his appointment was null, his acts should not have been nullified, too.²⁶ Invoking *Tuanda v. Sandiganbayan*,²⁷ petitioner argues that the following elements of a *de facto* officer were present: first, there was a *de jure*

²⁰ Id.

²¹ Id.

²² Id. at 39-41.

²³ Id. at 237.

²⁴ Id. at 7-19.

²⁵ Id. at 7.

²⁶ Id. at 12.

²⁷ 319 Phil. 460 (1995).

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office; second, there was color of right or general acquiescence by the public; and third, there was actual physical possession of the office in good faith.²⁸

In its Comment,²⁹ public respondent National Commission on Indigenous Peoples argues that the Court of Appeals correctly upheld the nullity of Compliance Certificate Control No. CCRXIII-19-02-13 given Masagnay's lack of authority to sign it. It points to its Resolution No. 22, series of 2010, which authorized Insigne to sign compliance certificates on its behalf. This allegedly shows the delegated power, which could not be redelegated by Insigne to another officer or official of the Commission.³⁰ Public respondent also refutes Shenzhou's claim that the doctrine of *de facto* officer applies. It argued that Masagnay was never a *de facto* officer, but only an officer-in-charge, as he was not appointed or elected to an office.³¹

In their Comment,³² private respondents Mamanwa Tribes argue that Masagnay was not a *de facto* officer, but one whose appointment as officer-in-charge was void. As such, his acts were void and legally nonexistent.³³

In its Reply,³⁴ petitioner argues that the chairperson of the National Commission on Indigenous Peoples is authorized to delegate their authority to the other commissioners or the executive director of the Commission under the implementing rules and regulations of the Indigenous People's Rights Act. As such, Resolution No. 007, series of 2010, which delegated to Masagnay the authority to sign compliance certificates, was consistent with the said implementing rules.³⁵

Petitioner also argues that it was the Commission, acting as a body, that approved the issuance of Shenzhou's compliance certificate. Masagnay was allegedly only acting as its representative and signatory. Assuming that Masagnay's appointment was void, it did not necessarily follow that Compliance Certificate Control No. CCRXIII-19-02-13 was void as it fully complied with all the requirements for its grant.³⁶

The issue to be resolved in this case is whether or not public respondent National Commission on Indigenous Peoples correctly declared void the Compliance Certificate Control No. CCRXIII-19-02-13 issued in favor petitioner Shenzhou Mining Group Corporation.

²⁸ *Rollo*, p. 13.

²⁹ *Id.* at 254-267.

³⁰ *Id.* at 259-262.

³¹ *Id.* at 262-263.

³² *Id.* at 303-306.

³³ *Id.* at 303-304.

³⁴ *Id.* at 378-387.

³⁵ *Id.* at 379-380.

³⁶ *Id.* at 381-382.

We rule against petitioner.

The power to certify that a concession, license, lease, or production sharing agreement complies with requirements concerning ancestral domains and free and prior informed and written consent is vested in the National Commission on Indigenous Peoples. Section 59 of Republic Act No. 8371 states:

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. (Emphasis supplied)*

The Implementing Rules and Regulations³⁷ of Republic Act No. 8371 provides:

Part IV: Powers and Functions of the [National Commission on Indigenous Peoples]

....

Section 3: Functions Pertaining to Ancestral Domains/Lands. In relation to its functions pertaining to Ancestral Domains and lands, the NCIP shall have the following responsibilities/ roles:

....

c) *Issuance of Certification as a Precondition.* To issue appropriate certification as a precondition to the grant or renewal of permit, concession, license, lease, production sharing agreement, or any other similar authority for the disposition, utilization, management and appropriation by any private individual, corporate entity or any government agency, corporation or subdivision thereof on any part or portion of the ancestral domain taking into consideration the free and prior informed consent of the ICCs/IPs concerned.

Here, Compliance Certificate Control No. CCRXIII-19-02-13 was signed by Masagnay when he was designated officer-in-charge by then Chair

³⁷ National Commission on Indigenous Peoples Administrative Order No. 1 (1998).

Insigne, as shown in Memorandum Circular No. 039, series of 2010:

In order for the undersigned to focus on his out-of-town and out-of-the-country engagements and other unfinished business which have to be resolved before the end of my term which is February 20, you are hereby designated as Officer-in-Charge of this Office effective today, January 27, 2010, until revoked by the undersigned.

As Officer-in-Charge, you are authorized to act for and in behalf of the Secretary on all administrative and operational matters inherent to his functions and imperative to efficient office management, including but not limited to, signing of all communications, orders and directives, Certification Precondition (Certificates of Compliance), CADT and CALT Resolutions, promulgations on appealed cases, and other related documents approved by the Commission.³⁸

Petitioner claims that this delegation of authority was consistent with the power granted to the chair under the implementing rules and regulations:

Section 4. Appointment and Authority of the Chairperson. — The Chairperson shall have the authority to preside over the Commission en banc. He/She shall likewise be the Chief Executive Officer of the NCIP as an independent agency under the Office of the President. *Any delegation of authority by the Chairperson to other Commissioners and to the Executive Director shall be done in writing.* (Emphasis supplied)

However, the power to sign certificates of compliance had already been delegated by the Commission as a body to the chairperson of the National Commission on Indigenous Peoples. Thus:

RESOLVED FURTHERMORE, that the Chairperson is hereby authorized to sign [on] behalf of the Commission the Compliance Certificate and the Memorandum of Agreement provided, that such Compliance Certificate and Memorandum of Agreement shall embody the terms and conditions for the participation, duties[,] and responsibilities of . . . all the parties[.]³⁹

This delegation was later enshrined in the Revised Guidelines on Free and Prior Informed Consent and Related Processes of 2012,⁴⁰ where it is made clear that a certification precondition is issued by the Commission and signed by its chairperson:

Section 5. Definition of Terms. In addition to the terms defined under IPRA and its IRR, the following are defined thus:

.....

³⁸ *Rollo*, p. 145.

³⁹ *Id.* at 269.

⁴⁰ National Commission on Indigenous Peoples Administrative Order No. 3 (2012).

e. Certification Precondition (CP). It refers to *the Certificate issued by the NCIP, signed by the Chairperson, attesting to the grant of FPIC by the concerned ICCs/IPs after appropriate compliance with the requirements provided for in this Guidelines[.]* (Emphasis supplied)

Section 59 of Republic Act No. 8371 and its implementing rules specifically gave the power to issue certification precondition to the National Commission on Indigenous Peoples as a body, not to any individual member. Thus, Memorandum Circular No. 039, series of 2010 is a delegation of a power already delegated to the chairperson of the National Commission for Indigenous Peoples.

Entrenched in this jurisdiction is the principle of nondelegation of delegated powers:

The principle of separation of powers ordains that each of the three great branches of government has exclusive cognizance of and is supreme in matters falling within its own constitutionally allocated sphere. A logical corollary to the doctrine of separation of powers is the principle of non-delegation of powers, as expressed in the Latin maxim: *potestas delegata non delegari potest* which means “what has been delegated, cannot be delegated.” This doctrine is based on the ethical principle that such as delegated power constitutes not only a right but a duty to be performed by the delegate through the instrumentality of [their] own judgment and not through the intervening mind of another.⁴¹

“Any ambiguity or vagueness in the delegation must be resolved in favor of [nondelegation].”⁴² Otherwise, the delegatee might abdicate their duty to perform the task delegated to them.

There are instances where an official may validly exercise authority through persons appointed to assist them with their functions. In *American Tobacco Company v. Director of Patents*,⁴³ this Court upheld the director of patents’ delegation of the power to hear *inter partes* proceedings to designated hearing officers. In so ruling, it held that this delegation gave the director “administrative flexibility necessary for the prompt and expeditious discharge of [their] duties in the administration” of intellectual property laws.⁴⁴ It must be clarified, however, that the director of patents themselves was the very entity designated under Republic Act No. 166 in relation to Republic Act No. 165 to hear and decide those cases. The same is true in *Mollaneda v. Umacob*,⁴⁵ where this Court held that the Administrative Code of 1987 granted the Civil Service Commission power to deputize another department, agency, official, or group of officials to hear and receive evidence concerning

⁴¹ *Abakada Guro Party List v. Ermita*, 506 Phil. 1, 107–108 (2005) [Per J. Austria-Martinez, En Banc].

⁴² *In re Leonardo-De Castro*, 835 Phil. 26, 67 (2018) [Per J. Leonen, En Banc].

⁴³ 160-A Phil. 439 (1975) [Per J. Antonio, Second Division].

⁴⁴ *Id.* at 444.

⁴⁵ 411 Phil. 159 (2001) [Per J. Sandoval-Gutierrez, Third Division].

complaints against public officers.

In contrast, the authority involved in this case is vested by law in the Commission. The Commission then delegated this authority to Chairperson Insigne. When Insigne authorized Masagnay to sign on his behalf, Insigne did so as someone to whom authority had already been delegated. "A power once delegated cannot be redelegated."⁴⁶

It is true that the delegatee may be permitted to redelegate functions assigned to them. However, the power of redelegation must be granted by the delegating authority, and not unilaterally exercised by the delegatee. This was demonstrated in *In re Razon*,⁴⁷ where this Court, as the delegating authority, allowed the authorized officers of specific law enforcement agencies to endorse search warrant applications in certain criminal cases.

In this case, there was no showing that the Commission En Banc allowed Insigne to redelegate the power to sign compliance certificates to other officials from the Commission.

The delegatee's exercise of the delegated power is always subject to the review of the delegating authority.⁴⁸ When the delegation is found to be void, all acts performed pursuant to that delegation may be declared void by the delegating authority.⁴⁹

Here, as correctly explained by the Court of Appeals:

It could thus be gleaned from R.A. No. 8371 and the Rules and Regulations Implementing the said law, that the [National Commission on Indigenous Peoples] is the agency specifically authorized to issue the appropriate certification as a precondition—which authority, was delegated to the National Commission on Indigenous Peoples [Chairperson] by the National Commission on Indigenous Peoples *en banc*, through Resolution No. 007, Series of 2010. The [National Commission on Indigenous Peoples Chairperson] cannot redelegate said authority. In the National Commission on Indigenous Peoples *En Banc* Resolution No. A-004, Series of 2011, it was clearly stated, among others, that Commissioner Masagnay was not authorized to sign any Compliance Certificate. A further delegation of such power would indeed constitute a negation of the duty in violation of the trust reposed in the delegate mandated to discharge it directly. A power once delegated cannot be redelegated.

Since Commissioner Masagnay was not clothed with authority to sign Compliance Certificates, any such certificate he issued or signed is null and void. Thus, Compliance Certificate (Certificate of Compliance to the

⁴⁶ *Heirs of Santiago v. Lazaro*, 248 Phil. 593, 595 (1988) [Per C.J. Fernan, Third Division].

⁴⁷ 609 Phi. 472 (2009) [Per J. Chico-Nazario, En Banc].

⁴⁸ *In re Leonardo-De Castro*, 835 Phil. 26 (2018) [Per J. Leonen, En Banc].

⁴⁹ *Qua Chee Gan v. Deportation Board*, 118 Phil. 868 (1963) [Per J. Barrera, En Banc]; *Dalamal v. Deportation Board*, 118 Phil. 1225 (1963) [Per J. Bautista Angelo, En Banc].

FPIC Process and Certification that the Community has given its Consent) under Control No. CCRXIII-10-02-13) (sic) dated 23 February 2010 signed by OIC Masagnay, Commissioner, Southern and Eastern Mindanao, in favor of petitioner Shenzhou is void. Being void, (i)t cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Hence, contrary to petitioner's stance, the [National Commission on Indigenous Peoples] did not err when it: (sic) ordered petitioner to cease and desist with their mining operations within the area covered by the aforesaid Compliance Certificate; enjoined petitioner from undertaking further activities in the area, without the appropriate free and informed prior consent of the ICCs/IPs concerned; and directed petitioner to return possession of the subject matter premises to the rightful owners under Certificate of Ancestral Domain Title No. R13-CLA-0906-048.⁵⁰

By revoking Masagnay's authority, the Commission, as the delegating authority, confirmed that the compliance certificates he signed, including the one issued to petitioner, were void. Having no valid compliance certificate, petitioner must cease its mining operations.

Moreover, the application of the doctrine of *de facto* officer is misplaced.

In *Civil Liberties Union v. Executive Secretary*,⁵¹ this Court explained the *de facto* doctrine:

During their tenure in the questioned positions, respondents may be considered *de facto* officers and as such entitled to emoluments for actual services rendered. It has been held that "in cases where there is no *de jure* officer, a *de facto* officer, who, in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office. This doctrine is, undoubtedly, supported on equitable grounds since it seems unjust that the public should benefit by the services of an officer *de facto* and then be freed from all liability to pay any one for such services. Any per diem, allowances or other emoluments received by the respondents by virtue of actual services rendered in the questioned positions may therefore be retained by them."⁵² (Citations omitted)

This doctrine presupposes an election or appointment to some office.⁵³ Here, Masagnay was never appointed or elected to occupy Insigne's position. At the time he signed the compliance certificates, he was already the commissioner for Southern and Eastern Mindanao. Insigne could not have appointed Masagnay as a *de facto* officer as he had no power to appoint anyone to the position he occupied. Masagnay was merely designated as the

⁵⁰ *Rollo*, pp. 37-38.

⁵¹ 272 Phil. 147 (1991) [Per C.J. Fernan, En Banc].

⁵² *Id.* at 172.

⁵³ *Dimaandal v. Commission on Audit*, 353 Phil. 525 (1998) [Per J. Martinez, En Banc].

officer-in-charge during Insigne's absence.

This Court has distinguished between an appointment and a designation:

Strictly speaking, there is an accepted legal distinction between appointment and designation. While appointment is the selection by the proper authority of an individual who is to exercise the functions of a given office, designation, on the other hand, connotes merely the imposition of additional duties, usually by law, upon a person already in the public service by virtue of an earlier appointment (or election). Thus, the appointed Secretary of Trade and Industry is, by statutory designation, a member of the National Economic and Development Authority. A person may also be designated in an acting capacity, as when [they are] called upon to fill a vacancy pending the selection of a permanent appointee thereto or, more usually, the return of the regular incumbent. In the absence of the permanent Secretary, for example, an undersecretary is designated acting head of the department.

As the Court said in *Binamira v. Garrucho*:

Appointment may be defined as the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office. When completed, usually with its confirmation, the appointment results in security of tenure for the person chosen unless [they are] replaceable at pleasure because of the nature of [their] office. Designation, on the other hand, connotes merely the imposition by law of additional duties on an incumbent official, as where, in the case before us, the Secretary of Tourism is designated Chairman of the Board of Directors of the Philippine Tourism Authority, or where, under the Constitution, three Justices of the Supreme Court are designated by the Chief Justice to sit in the Electoral Tribunal of the Senate or the House of Representatives. It is said that appointment is essentially executive while designation is legislative in nature.⁵⁴

The Constitution requires the State to protect the right of indigenous cultural communities to their ancestral lands. The Congress may also provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.⁵⁵ Pursuant to Section 57 of the Republic Act No. 8371, indigenous cultural communities and indigenous peoples have priority rights over natural resources within the ancestral domains:

⁵⁴ *Santiago v. Commission on Audit*, 276 Phil. 127 (1991) [Per J. Cruz, En Banc].

⁵⁵ CONST., art. XII, sec. 5 states:

SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.
The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

SECTION 57. Natural Resources within Ancestral Domains. — The ICCs/IPs shall have priority rights in the harvesting, extraction, development or exploitation of any natural resources within the ancestral domains. A non-member of the ICCs/IPs concerned may be allowed to take part in the development and utilization of the natural resources for a period of not exceeding twenty-five (25) years renewable for not more than twenty-five (25) years: Provided, That a formal and written agreement is entered into with the ICCs/IPs concerned or that the community, pursuant to its own decision making process, has agreed to allow such operation: Provided, finally, That the NCIP may exercise visitorial powers and take appropriate action to safeguard the rights of the ICCs/IPs under the same contract.

A nonmember of the community or indigenous peoples may only take part in the development and use of those natural resources upon a formal and written agreement with the concerned community or peoples. The Commission is tasked to safeguard the rights of these communities or peoples under this contract. As such, when a site affected by any application for concession, license or lease, or production-sharing agreement is within an ancestral domain, a certification precondition is issued by the Commission affirming that free and informed prior consent had been obtained from the indigenous cultural community or indigenous peoples community that owns the ancestral domain.⁵⁶

Here, public respondent Commission correctly considered the extent of Masagnay's authority during the proceedings to cancel the compliance certificate issued to petitioner. This is particularly crucial in this case, where the proceedings were initiated by respondents Mamanwa Tribes whose consent to the exploitation of natural resources within their ancestral domain was indispensable.

Voiding the certificate and ordering petitioner to desist from further mining activities within respondents' ancestral domain are in keeping with the Commission's statutory mandate to protect the interest and wellbeing of indigenous peoples and indigenous cultural communities.⁵⁷

Nonetheless, we modify the Resolution of the National Commission on Indigenous Peoples En Banc to align it with *Nacar v. Gallery Frames*⁵⁸ on computation of interest.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 123186 are **AFFIRMED** with **MODIFICATION**.

⁵⁶ National Commission on Indigenous Peoples Administrative Order No. 1 (2006), sec. 5(b).

⁵⁷ Republic Act No. 8371 (1997), sec. 39 states:

Section 39. *Mandate*.—The NCIP shall protect and promote the interest and well-being of the ICC/IPs with due regard to their beliefs, customs, traditions and institutions.

⁵⁸ 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

The Compliance Certificate issued on favor of petitioner Shenzhou Mining Group Corp. with Control No. CCRXIII-19-02-13 is **DECLARED** void ab initio. All other agreements, licenses, and similar issuances premised on the said compliance certificate are also **DEEMED VOID**.

Petitioner Shenzhou Mining Group Corp is **ORDERED** to cease and desist with its mining operations within the area covered by the aforesaid compliance certificate, **ENJOINED** from undertaking further activities in the area without the appropriate free, prior, and informed consent of the indigenous cultural communities/indigenous peoples concerned, and **DIRECTED** to return possession of the subject matter premises to the rightful owners under the Certificate of Ancestral Domain Title No. R13-CLA-0906-048.

Petitioner Shenzhou Mining Group Corp is **ORDERED** to pay respondent Mamanwa Tribes the agreed royalties and the stipulated interest, if any, until such time when it would have returned the possession of the premises to the rightful owners. If no interest is stipulated, the agreed royalties shall earn 6% per annum computed from the time of filing of the cancellation petition. Further, these shall earn 6% interest per annum from finality of this Decision until fully paid.⁵⁹ The amount of ₱4,658,950.00 deposited in escrow with the Development Bank of the Philippines is hereby **ORDERED** released in favor of respondent Mamanwa Tribes.

Costs against petitioner.

SO ORDERED.



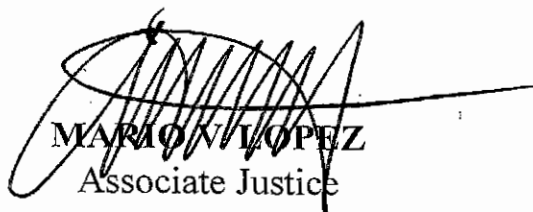
MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



AMY C. LAZARO-JAVIER
Associate Justice

⁵⁹ Id.

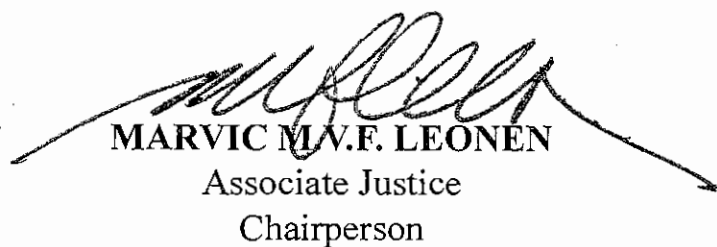

MARIO N. LOPEZ
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

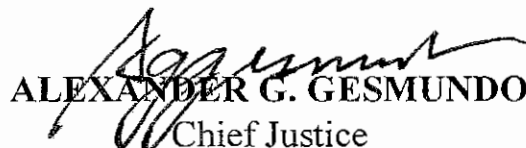
ATTESTATION

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.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution and the Division 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.


ALEXANDER G. GESMUNDO
Chief Justice

