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Late Marcos crony owes country P1.1-B over BNPP project

By Benjamin Pulta June 15, 2021, 7:28 pm

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Bataan Nuclear Power Plant in Morong, Bataan *(Photo courtesy of Philippine Senate)*

MANILA – The Supreme Court (SC) awarded damages worth more than PHP1 billion to the Philippine government as it affirmed the decision of the Sandiganbayan against the late Herminio Disini in connection with

anomalies in the mothballed Bataan Nuclear Power Plant (BNPP).

In a statement, the SC said it voted unanimously, with two justices recusing, and awarded PHP1 billion in temperate damages and PHP1 million in exemplary damages in favor of the Republic of the Philippines against Disini, who brokered the USD2.2-billion BNPP project to American nuclear power company Westinghouse Electrical Corporation.

The BNPP project began in 1976 on a 3.57-square kilometer government reservation at Napot Point in Morong, Bataan.

Safety concerns and corruption allegations led to the shelving of operations after its completion in 1984.

Disini died in 2014 due to organ failure. He was 78.

The SC ruling affirmed and modified the April 11, 2012 decision of the anti-graft court's First Division.

The Sandiganbayan dismissed the government's claims for damages "for not being established by preponderance of evidence".

During the Sandiganbayan proceedings, Danilo Daniel of the Presidential Commission on Good Government (PCGG) lumped the government's claims for damages into PHP22.2 billion, representing the cost of the BNPP project, and the PHP20-billion expenses allegedly incurred by government to recover the ill-gotten wealth.

"The level of attention given to the power plant contract, the alertness to minutiae, the substantial amount of time and effort exerted by Disini, and President Marcos were unusual. And the only reason this Court could think of behind the former president's level of micromanaging the BNPP contract is a personal financial interest," the Sandiganbayan 2012 decision read.

Facts of the case

The deal started in 1973 when Westinghouse saw an opportunity to promote nuclear power in the Philippines after losing the bidding for the Malaya power plant project in the Philippines.

The Malaya project in Pililla, Rizal involved the rehabilitation of existing power generating units in the power complex.

Westinghouse eyed a brother of the former president, Pacifico, who declined to become the company's special sales representative (SSR).

In subsequent talks in a Manila golf club, company officers met with Disini and convinced him to assume the SSR position.

At that time, Disini's wife and a cousin of former first lady Imelda Marcos, Paciencia, was the personal physician of the presidential family.

The SC held Disini liable for exerting undue influence in the awarding of the BNPP project by taking advantage of his close association with Marcos.

The Republic, through the PCGG, filed a complaint before the Sandiganbayan in 1987 for restitution and damages against Disini, former president Marcos and Mrs. Marcos.

In 2012, the anti-graft court found Disini liable for receiving commissions of about USD50 million from Westinghouse, but absolved the former First Couple for lack of evidence.

Decision

The High Court held that the Sandiganbayan erred in relying on a piece of photocopied document which was not substantiated as a secondary evidence, and which purportedly showed that Disini received USD50 million in commissions.

Nonetheless, the totality of the testimonial and documentary evidence of the government proved that Disini had unduly enriched himself at the expense of the people and the Republic.

The Republic has the right to be indemnified by reason thereof in the form of damages.

The SC modified the decision of the anti-graft court, deleting the order to account for and convey the USD50,562,500 received by Disini for lack of basis and instead directed Disini to pay damages.

"These monetary awards shall earn legal interest at the rate of 6 percent per annum from the finality of this decision until its satisfaction," the court said. (*PNA*)