

## FIRST DIVISION

[ G.R. No. 167057, April 11, 2012 ]

**NERWIN INDUSTRIES CORPORATION, PETITIONER, VS. PNOC-  
ENERGY DEVELOPMENT CORPORATION, AND ESTER R.  
GUERZON, CHAIRMAN, BIDS AND AWARDS COMMITTEE,  
RESPONDENTS.**

### DECISION

**BERSAMIN, J.:**

Republic Act No. 8975<sup>[1]</sup> expressly prohibits any court, except the Supreme Court, from issuing any temporary restraining order (TRO), preliminary injunction, or preliminary mandatory injunction to restrain, prohibit or compel the Government, or any of its subdivisions or officials, or any person or entity, whether public or private, acting under the Government's direction, from: (a) acquiring, clearing, and developing the right-of-way, site or location of any National Government project; (b) bidding or awarding of a contract or project of the National Government; (c) commencing, prosecuting, executing, implementing, or operating any such contract or project; (d) terminating or rescinding any such contract or project; and (e) undertaking or authorizing any other lawful activity necessary for such contract or project.

Accordingly, a Regional Trial Court (RTC) that ignores the statutory prohibition and issues a TRO or a writ of preliminary injunction or preliminary mandatory injunction against a government contract or project acts contrary to law.

### Antecedents

The following antecedents are culled from the assailed decision of the Court of Appeals (CA) promulgated on October 22, 2004,<sup>[2]</sup> viz:

In 1999, the National Electrification Administration ("NEA") published an invitation to pre-qualify and to bid for a contract, otherwise known as *IPB No. 80*, for the supply and delivery of about sixty thousand (60,000) pieces of woodpoles and twenty thousand (20,000) pieces of crossarms needed in the country's Rural Electrification Project. The said contract consisted of four (4) components, namely: PIA, PIB and PIC or woodpoles and P3 or crossarms, necessary for NEA's projected allocation for Luzon, Visayas and Mindanao. In response to the said invitation, bidders, such as private respondent [Nerwin], were required to submit their application for eligibility together with their technical proposals. At the same time, they were informed that only those who would pass the standard pre-qualification would be invited to submit their financial bids.

Following a thorough review of the bidders' qualifications and eligibility, only four (4) bidders, including private respondent [Nerwin], qualified to participate in the bidding for the IPB-80 contract. Thereafter, the qualified bidders submitted their financial bids where private respondent [Nerwin] emerged as the lowest bidder for all schedules/components of the contract. NEA then conducted a pre-award inspection of private respondent's [Nerwin's] manufacturing plants and facilities, including its identified supplier in Malaysia, to determine its capability to supply and deliver NEA's requirements.

In the *Recommendation of Award for Schedules PIA, PIB, PIC and P3 - IBP No. 80 [for the] Supply and Delivery of Woodpoles and Crossarms* dated October 4, 2000, NEA administrator Conrado M. Estrella III recommended to NEA's Board of Directors the approval of award to private respondent [Nerwin] of all schedules for IBP No. 80 on account of the following:

- a. Nerwin is the lowest complying and responsive bidder;
- b. The price difference for the four (4) schedules between the bid of Nerwin Industries (lowest responsive and complying bidder) and the second lowest bidder in the amount of \$1.47 million for the poles and \$0.475 million for the crossarms, is deemed substantial and extremely advantageous to the government. The price difference is equivalent to 7,948 pcs. of poles and 20.967 pcs. of crossarms;
- c. The price difference for the three (3) schedules between the bids of Nerwin and the Tri-State Pole and Piling, Inc. approximately in the amount of \$2.36 million for the poles and \$0.475 million for the crossarms are equivalent to additional 12.872 pcs. of poles and 20.967 pcs. of crossarms; and
- d. The bidder and manufacturer are capable of supplying the woodpoles and specified in the bid documents and as based on the pre-award inspection conducted.

However, on December 19, 2000, NEA's Board of Directors passed Resolution No. 32 reducing by 50% the material requirements for IBP No. 80 "*given the time limitations for the delivery of the materials, xxx, and with the loan closing date of October 2001 fast approaching*". In turn, it resolved to award the four (4) schedules of IBP No. 80 at a reduced number to private respondent [Nerwin]. Private respondent [Nerwin] protested the said 50% reduction, alleging that the same was a ploy to accommodate a losing bidder.

On the other hand, the losing bidders Tri State and Pacific Synnergy appeared to have filed a complaint, citing alleged false or falsified documents submitted during the pre-qualification stage which led to the award of the IBP-80 project to private respondent [Nerwin].

Thus, finding a way to nullify the result of the previous bidding, NEA officials sought the opinion of the Government Corporate Counsel who, among others, upheld the eligibility and qualification of private respondent [Nerwin]. Dissatisfied, the said officials attempted to seek a revision of the earlier opinion but the Government Corporate Counsel declared anew that there was no legal impediment to prevent the award of IPB-80 contract to private respondent [Nerwin]. Notwithstanding, NEA allegedly held negotiations with other bidders relative to the IPB-80 contract, prompting private respondent [Nerwin] to file a complaint for specific performance with prayer for the issuance of an injunction, which injunctive application was granted by Branch 36 of RTC-Manila in Civil Case No. 01102000.

In the interim, PNOC-Energy Development Corporation purporting to be under the Department of Energy, issued Requisition No. FGJ 30904R1 or an invitation to pre-qualify and to bid for wooden poles needed for its Samar Rural Electrification Project ("O-ILAW project").

Upon learning of the issuance of Requisition No. FGJ 30904R1 for the O-ILAW Project, Nerwin filed a civil action in the RTC in Manila, docketed as Civil Case No. 03106921 entitled *Nerwin Industries Corporation v. PNOC-Energy Development Corporation and Ester R. Guerzon, as Chairman, Bids and Awards Committee*, alleging that Requisition No. FGJ 30904R1 was an attempt to subject a portion of the items covered by IPB No. 80 to another bidding; and praying that a TRO issue to enjoin respondents' proposed bidding for the wooden poles.

Respondents sought the dismissal of Civil Case No. 03106921, stating that the complaint averred no cause of action, violated the rule that government infrastructure projects were not to be subjected to TROs, contravened the mandatory prohibition against non-forum shopping, and the corporate president had no authority to sign and file the complaint.<sup>[3]</sup>

On June 27, 2003, after Nerwin had filed its rejoinder to respondents' reply, the RTC granted a TRO in Civil Case No. 03106921.<sup>[4]</sup>

On July 30, 2003, the RTC issued an order,<sup>[5]</sup> as follows:

WHEREFORE, for the foregoing considerations, an order is hereby issued by this Court:

1. DENYING the motion to consolidate;
2. DENYING the urgent motion for reconsideration;
3. DISQUALIFYING Attys. Michael A. Medado, Datu Omar S. Sinsuat and Mariano H. Paps from appearing as counsel for the defendants;
4. DECLARING defendants in default;
5. GRANTING the motion for issuance of writ of preliminary injunction.

Accordingly, let a writ of preliminary injunction issue enjoining the defendant PNOC-EDC and its Chairman of Bids and Awards Committee Esther R. Guerzon from continuing the holding of the subject bidding upon the plaintiffs filing of a bond in the amount of P200,000.00 to answer for any damage or damages which the defendants may suffer should it be finally adjudged that petitioner is not entitled thereto, until final determination of the issue in this case by this Court.

This order shall become effective only upon the posting of a bond by the plaintiffs in the amount of P200,000.00.

Let a copy of this order be immediately served on the defendants and strict compliance herein is enjoined. Furnish the Office of the Government Corporate Counsel copy of this order.

SO ORDERED.

Respondents moved for the reconsideration of the order of July 30, 2003, and also to set aside the order of default and to admit their answer to the complaint.

On January 13, 2004, the RTC denied respondents' motions for reconsideration, to set aside order of default, and to admit answer.<sup>[6]</sup>

Thence, respondents commenced in the Court of Appeals (CA) a special civil action for *certiorari* (CA-GR SP No. 83144), alleging that the RTC had thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that Nerwin had been entitled to the issuance of the writ of preliminary injunction despite the express prohibition from the law and from the Supreme Court; in issuing the TRO in blatant violation of the *Rules of Court* and established jurisprudence; in declaring respondents in default; and in disqualifying respondents' counsel from representing them.<sup>[7]</sup>

On October 22, 2004, the CA promulgated its decision,<sup>[8]</sup> to wit:

WHEREFORE, the petition is GRANTED. The assailed Orders dated July 30 and December 29, 2003 are hereby ANNULLED and SET ASIDE. Accordingly, Civil Case No. 03106921, private respondent's complaint for issuance of temporary restraining order/writ of preliminary injunction before Branch 37 of the Regional Trial Court of Manila, is DISMISSED for lack of merit.

SO ORDERED.

Nerwin filed a motion for reconsideration, but the CA denied the motion on February 9, 2005.<sup>[9]</sup>

## **Issues**

Hence, Nerwin appeals, raising the following issues:

- I. Whether or not the CA erred in dismissing the case on the basis of Rep. Act 8975 prohibiting the issuance of temporary restraining orders and preliminary injunctions, except if issued by the Supreme Court, on government projects.
- II. Whether or not the CA erred in ordering the dismissal of the entire case on the basis of Rep. Act 8975 which prohibits the issuance only of a preliminary injunction but not injunction as a final remedy.
- III. Whether or not the CA erred in dismissing the case considering that it is also one for damages.

### **Ruling**

The petition fails.

In its decision of October 22, 2004, the CA explained why it annulled and set aside the assailed orders of the RTC issued on July 20, 2003 and December 29, 2003, and why it altogether dismissed Civil Case No. 03106921, as follows:

It is beyond dispute that the crux of the instant case is the propriety of respondent Judge's issuance of a preliminary injunction, or the earlier TRO, for that matter.

Respondent Judge gravely abused his discretion in entertaining an application for TRO/preliminary injunction, and worse, in issuing a preliminary injunction through the assailed order enjoining petitioners' sought bidding for its *O-ILAW Project*. The same is a palpable violation of RA 8975 which was approved on November 7, 2000, thus, already existing at the time respondent Judge issued the assailed Orders dated July 20 and December 29, 2003.

*Section 3 of RA 8975 states in no uncertain terms, thus:*

*Prohibition on the Issuance of temporary Restraining Order, Preliminary Injunctions and Preliminary Mandatory Injunctions.* – No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials, or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

xxx

(b) **Bidding or awarding of contract/project of the**