

FIRST DIVISION

[G.R. NO. 128509, August 22, 2006]

ROBLE ARRASTRE, INC., PETITIONER, VS. HON. ALTAGRACIA VILLAFLO AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari*, assailing the 7 October 1996 Decision^[1] and the 13 February 1997 Resolution^[2] of the Court of Appeals in CA-G.R. SP No. 40621, which reversed and set aside the 29 March 1995 Decision^[3] of the Regional Trial Court (RTC), Branch XVIII, Hilongos, Leyte, in Special Civil Action No. H-237.

The Antecedents

Petitioner Roble Arrastre, Inc. is a cargo handling service operator, authorized by the Philippine Ports Authority (PPA) through Permit No. M92-005 to provide and render arrastre and stevedoring services at the Municipal Port of Hilongos, Leyte, and on all vessels berthed thereat, from 7 September 1992 to 15 September 1993.^[4] For the years 1992 and 1993, petitioner was granted Business Permits No. 349 and No. 276, respectively, by respondent Altagracia Villaflor as Municipal Mayor of Hilongos, Leyte. On 14 December 1993, pending final consideration of petitioner's application for renewal with the PPA Office, Manila, the PPA through its Port Manager Salvador L. Reyna of the Tacloban Port Management Office issued a 90-day hold-over authority to petitioner. Stated therein was the proviso that notwithstanding the 90-day period aforementioned, the authority shall be deemed *ipso facto* revoked if an earlier permit/contract for cargo handling services is granted or sooner withdrawn or cancelled for cause pursuant to PPA Administrative Order No. 10-81. On 27 January 1994, while the 90-day hold-over authority was in effect, petitioner filed with respondent mayor an application for the renewal of its Business Permit No. 276. However, the same was denied.

Aggrieved by the denial, petitioner filed with the RTC, a Petition for Mandamus with Preliminary Mandatory Injunction^[5] against respondent mayor, raising the primary ground that the refusal to issue the business license sought for was a neglect to perform an act which the law enjoins her to do, by virtue of the office she occupies. According to petitioner, the source of the power of the municipal mayor to issue licenses is Section 444(b)(3)(iv)^[6] of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, which is merely for the purpose of revenue generation and not regulation, hence, the municipal mayor has no discretion to refuse the issuance of a business license following the applicant's payment or satisfaction of the proper license fees.^[7] Petitioner further alleged that it is the PPA

which is vested with the discretion to determine whether a party can render arrastre service in a particular port area.^[8]

In answer thereto, respondent mayor averred, *inter alia*, that the remedy of mandamus does not lie as the issuance of the permit sought is not a ministerial function, but one that requires the exercise of sound judgment and discretion.^[9] In denying petitioner's application, respondent mayor invoked Municipal Resolution No. 93-27,^[10] passed by the Sangguniang Bayan of Hilongos, Leyte, on 17 March 1993, which prohibits any party which likewise operates shipping lines plying the route of Cebu to Hilongos and *vice versa*, from engaging in arrastre and stevedoring services at the port of Hilongos.^[11] Respondent mayor asserted that petitioner is owned and operated by Roble Shipping Lines, a shipping company that operates along the routes specified in Municipal Resolution No. 93-27;^[12] hence, effectively rendering petitioner disqualified from operating an arrastre service therein.^[13] Finally, by way of counterclaim, respondent mayor sought moral and exemplary damages, attorney's fees and expenses of litigation.^[14]

On 16 May 1994, petitioner filed a Supplemental Petition,^[15] contending that subsequent to the filing of the Petition for Mandamus with the RTC, it was granted by the PPA a five-year contract^[16] to provide cargo handling and other related services at the Port of Hilongos, Leyte, effective 1 March 1994. The aforesaid contract was indorsed by the District Manager for the Visayas to the Port Manager of Tacloban. Moreover, petitioner sought to incorporate the five-year contract as an integral part of its Petition. The Supplemental Petition was admitted by the RTC, in the Order^[17] dated 19 July 1994.

On 19 September 1994, the RTC issued a Pre-Trial Order containing the following admitted stipulations of facts, to wit:

1. That petitioner in 1993 was issued a Mayor's Permit No. 276 on January 29, 1993, [as] shown by Annex "B" of the petition;
2. [That petitioner paid] for Business and License Permit for the year 1994 in the amount of P9,789.48 under Official Receipt No. 7534455-C;
3. [That petitioner procured a] Barangay Clearance.^[18]

In the same Order, the RTC denied the parties' motion that the case be submitted on the pleadings since no judgment on the pleadings could be had as there were controverted issues material to the case.^[19]

The Ruling of the RTC

The RTC opined that the PPA has the sole authority to grant permits in the operation of cargo handling services in all Philippine ports, whether public or private. Proceeding therefrom, it ruled that the refusal of respondent mayor to approve petitioner's application for renewal of the business permit was not based on law nor upon her discretion.

The RTC ratiocinated in this wise, thus:

As can be read the resolution is to object to the approval of a five (5) year management contract for Arrastre and Stevedoring Services in the port of Hilongos, Leyte, applied by the Roble Arrastre, Inc. with the concomitant reason that the Sangguniang Bayan finds it logical and ethical not to grant any permit to any group or corporation in the municipal port of Hilongos who are operators of Shipping Lines flying (sic) the route from Cebu to Hilongos and vice-versa to protect the business interest of the shipping industry of the municipality. This resolution is signed by the Municipal Vice Mayor as Presiding Officer of Sangguniang Bayan and approved by the Mayor. To the mind of the court the approval of the Mayor in a resolution by the Sangguniang Bayan is superfluous. This is not an ordinance that should be signed by the mayor in order to become effective as a law but a resolution of that august body. The above resolution was approved on March 17, 1993 notwithstanding (sic) the fact that as shown by the wordings thereat there was already a public hearing conducted by PPA Manila on March 9, 1993 at the Municipal Multi[-] Purpose Center. The Municipal Mayor was present and complaints were entertained by the Hearing Officers from several shippers of Hilongos, Leyte. As appearing also in the lower portion of the said resolution, the same was furnished PPA Manila and the respondent admitted that she did not even know whether a copy had been sent by the Sangguniang Bayan to the concerned offices. Granting that this resolution reached the General Manager, PPA, Manila, she have (sic) not pursued any action on the matter nor the Office of the Mayor and the Sangguniang Bayan received any information of what proper action was taken therein. It is indeed unfortunate that whatever nature of the complaints which was heard during the public hearing by the representative of the PPA, it is not shown whether PPA lend (sic) an ear to it. The fact remains that on March 1, 1994[,], nearly 1 year after this resolution and public hearing, the petitioner, Roble Arrastre, Inc., was given a contract by PPA who has the authority under P.D. 875^[20] (sic) to issue the same.

x x x x

x x x The law is clear that under P.D. 875 the sole authority to authorize operation of cargo handling services in all ports of the Philippines whether public or private is lodge (sic) with the Philippine Ports Authority. Under the said law the granting of permits is through the PPA Board carried out by the General Manager or his assistant. This Court has taken noticed (sic) also that no ordinance had been passed by the Sangguniang Bayan and approved by the Municipal Mayor of Hilongos, Leyte, in accordance with the Local Government with regards to the port operation in the port of Hilongos nor there was [a] showing that the Executive Officer of the municipality has anything to say on the power and jurisdiction of the PPA in the port of Hilongos, Leyte. This goes to show that even these public officers knows (sic) the extent of their power as regards the authority of the PPA.

This Court is of the firmed (sic) belief and so holds that the refusal of the Municipal Mayor to approve the application for renewal is not based on law nor upon her discretion. Under the milieu of the case the PPA is authorized and have (sic) the exclusive jurisdiction over all ports of the Philippines and they (sic) alone can issue cargo handling contracts.^[21]

Finding for petitioner, the court *a quo* disposed as follows:

PREMISES CONSIDERED, by preponderance of evidence, this Court give (sic) due course to this petition of Mandamus in favor of the Roble Arrastre, Inc. and against the respondent, the Honorable Municipal Mayor of Hilongos sued in her capacity as a Public Officer and orders her forthwith:

a) To approve the application of Roble Arrastre, Inc. for the year 1994 as he has already paid the necessary payments in connection therewith albeit the same permit is now *functous officio* as this is now 1995. Nevertheless, this approved permit to be issued by the Mayor shall be a basis for renewal of the said 1994 permit for the year 1995 after payment of due fees required by her office.

Without pronouncement as to costs. The counterclaim of respondent is hereby dismissed.^[22]

Respondent mayor filed a Motion for Reconsideration thereon, which was denied for lack of merit by the RTC, in the Order^[23] dated 25 October 1995.

The Ruling of the Appellate Court

Upon elevation of the case to the Court of Appeals, the appellate court rendered a Decision dated 7 October 1996, reversing and setting aside the RTC. Moreover, it entered a new judgment dismissing Special Civil Action No. H-237.

The Court of Appeals ruled that the pursuit of the duty of respondent mayor under Section 444(b)(3)(iv)^[24] of the Local Government Code necessarily entails the exercise of official discretion. Hence, it held that mandamus will not lie to control or review the exercise of her discretion. Moreover, the Court of Appeals declared that petitioner's main prayer, *i.e.*, to compel respondent mayor to issue a business license for the year 1994, by the passage of time had already become moot and academic. On this score, the appellate court declared that the issue is academic. Courts will not adjudicate moot cases nor hear a case when the object sought is no longer attainable.

The appellate court pronounced, thus:

Under Section 444(b)(3)(iv), all local chief executive officer (sic) or municipal mayors are vested with the authority to issue licenses and permits within their jurisdiction. In the same provision, the mayor may likewise suspend or revoke a permit for any violation of the conditions upon which the same had been issued, pursuant to law or ordinance. In effect, under said Section 444(b)(3)(iv), the municipal governments, thru its chief executive, are endowed with the authority to exercise police

power.

Evidently, the pursuit of its duty under the (sic) police power necessarily entails exercise of official discretion in order for any local officials to ascertain which will better serve their constituents who elected them into office. Full discretion must necessarily be granted them to perform their functions and it will not be sound logic to simply make them perform purely ministerial functions. And when the discharge of an official duty requires the exercise of official discretion or judgment, it is never a ministerial one (*Mateo vs. CA*, 196 SCRA 280 [1991]).

Furthermore, where the only power given to a municipal corporation or official is to issue license, as in Section 444 of the Local Government Code, it is clearly regulatory in nature rather than a revenue raising one. Conclusively, regulation being the object of the power to issue license and permits the exercise of discretion by the issuing authority becomes an inescapable prerogative. This could be the very same reason why business permits and licenses are renewed almost annually in order that the licensing officials in carrying out their functions could examine and evaluate availing circumstances and conditions and with the exercise of discretion determine whether to grant or deny the application or, to revoke a license or permit already issued. It should also be understood that a municipal license is not a property such that it is revocable when public interest so requires (*Pedro vs. Provincial Board of Rizal*, 56 Phil. 126).^[25]

The dispositive portion of the assailed Decision reads:

IN VIEW OF ALL THE FOREGOING, the appealed decision is hereby REVERSED AND SET ASIDE and a new one entered dismissing Special Civil Action No. [H-]237. No pronouncement as to costs.^[26]

Petitioner filed a Motion for Reconsideration but the same was denied by the Court of Appeals in its Resolution dated 13 February 1997.

Hence, the instant Petition.

The Issues

Petitioner, in its Memorandum, presented the following statement of issues, to wit:

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Whether or not it was valid for the Court of Appeals to have relied on the cases of *Mateo v. Court of Appeals* and *Pedro v. Provincial Board of Rizal*, in ruling that respondent Mayor had full discretion in issuing or renewing the Business Permit even after the petitioner duly complied with all documentary requirements and fully paid the corresponding permit fees.

II

Whether or not the Court of Appeals validly interpreted *Section 444, (3) (iv), R.A. 7160*, otherwise known as the *Local Government Code of 1991*, as a grant of police power and full discretion to the respondent mayor to