

## SECOND DIVISION

[ G.R. NO. 145742, August 14, 2005 ]

**THE PHILIPPINE PORTS AUTHORITY, REPRESENTED BY ITS  
GENERAL MANAGER JUAN O. PENA, PETITIONER, VS. CIPRES  
STEVEDORING & ARRASTRE, INC., RESPONDENT.**

### D E C I S I O N

**CHICO-NAZARIO, J.:**

This is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 59553 entitled, "Cipres Stevedoring and Arrastre, Inc. (CISAI) v. The Honorable Alvin L. Tan in his capacity as Presiding Judge, Regional Trial Court (RTC), Br. 44, Dumaguete City, Philippine Ports Authority (PPA), Juan Peña<sup>[2]</sup> & Benjamin Cecilio." Said decision declared as null and void the Order dated 31 May 2000<sup>[3]</sup> of Judge Tan and directed the court *a quo* to issue a writ of preliminary injunction enjoining petitioner "from conducting the scheduled public bidding of cargo handling operations in the port of Dumaguete City" until the termination of the main case.

The facts follow.

Petitioner PPA is a government entity created by virtue of Presidential Decree (P.D.) No. 857 and is tasked to implement an integrated program for the planning, development, financing, and operation of ports and port districts in the country.<sup>[4]</sup>

Respondent CISAI is a domestic corporation primarily engaged in stevedoring, arrastre, and portage business, including cargo handling and hauling services, in the province of Negros Oriental and in the cities of Dumaguete and Bais. Since the commencement of its corporate existence in 1976, respondent had been granted permits of varied durations to operate the cargo handling operations in Dumaguete City. In 1991, petitioner awarded an eight-year contract<sup>[5]</sup> to respondent allowing the latter to pursue its business endeavor in the port of Dumaguete City. This contract expired on 31 December 1998.

At about the time respondent was awarded an eight-year contract in 1991 or, on 12 June 1990, PPA Administrative Order No. 03-90 (PPA AO No. 03-90) dated 14 May 1990 took effect.<sup>[6]</sup> This administrative order contained the guidelines and procedures in the selection and award of cargo handling contracts in all government ports as well as cargo handling services that would be turned over by petitioner to the private sector. Section 2 of said administrative order states:

Section 2. – Statement of Policies

As a general rule, cargo handling services in all government ports shall

be awarded through the system of public bidding, except in the following cases:

2.1 Cargo handling contractors in ports with existing or expired contracts whose performance is satisfactory shall be granted renewal of their contracts.

2.2 Cargo handling operators issued one-year permits and have already been in operation for at least six (6) months prior to the effectivity of this Order shall be audited, and if found satisfactory, awarded contracts.

2.3 Cargo handling services in ports with low cargo volume and where handling operations are primarily manual.<sup>[7]</sup>

On 29 May 1996, a Memorandum of Understanding (MOU)<sup>[8]</sup> was entered into among the National Union of Portworkers of the Philippines/Trade Union Congress of the Philippines,<sup>[9]</sup> the Department of Transportation and Communications,<sup>[10]</sup> the PPA,<sup>[11]</sup> the Department of Labor and Employment (DOLE),<sup>[12]</sup> and the Philippine Chamber of Arrastre and Stevedoring Operators (PCASO)<sup>[13]</sup> relative to the nationwide protests then being conducted by port workers. Among the items agreed upon by the parties to the MOU were:

3. The DOTC Secretary shall immediately create a tripartite oversight committee to review, assess and evaluate current and future issuances pertaining to Cargo Handling contracts, portworkers' contracts with employers, and the like. The oversight committee shall be composed of equal representatives from the portworkers, the cargo handling operators and the government including the PPA and the DOTC Undersecretary who shall act as Chairman.

4 Henceforth, all expiring Cargo Handling contracts shall be reviewed by the oversight committee referred to in paragraph 3 above for recommendation to the PPA Board of Directors as to whether the same shall be terminated and subjected to public bidding, or as may be authorized upon consideration of paragraph 2 hereof.<sup>[14]</sup>

Following the expiration of its contract for cargo handling, respondent was able to continue with its business by virtue of hold-over permits given by petitioner. The first of these permits expired on 17 January 2000<sup>[15]</sup> and the last was valid only until 18 April 2000.<sup>[16]</sup> While respondent's second hold-over permit was still in effect, petitioner, through its General Manager Juan O. Peña, issued PPA AO No. 03-2000<sup>[17]</sup> dated 15 February 2000 which amended by substitution PPA AO No. 03-90. PPA AO No. 03-2000 expressly provides that all contract for cargo handling services of more than three (3) years shall be awarded through public bidding. With respect to cargo handling permits for a period of three (3) years and less in ports where the average yearly cargo throughout for the last five (5) years did not surpass 30,000 metric tons and where the operations are mainly manual, the same shall be awarded through comparative evaluation.

Pursuant to PPA AO No. 03-2000, petitioner set the deadline for the submission of the technical and financial bids for the port of Dumaguete City at 12:00 noon of 05

July 2000; the opening of the technical bids on 05 July 2000 at 1:00 p.m.; and the dropping of the financial bids on 28 July 2000 at 1:00 p.m. Contending that this action on the part of petitioner was in derogation of its vested right over the operation of cargo handling enterprise in Dumaguete City, respondent initiated an action for specific performance, injunction with application for preliminary mandatory injunction and temporary restraining order before the RTC of Dumaguete City.<sup>[18]</sup> This civil action was filed on 31 March 2000 and was raffled off to Branch 44 of said court wherein it was docketed as Civil Case No. 12688.

Respondent alleged in its complaint that PPA AO No. 03-90 explicitly provides that cargo handling contractors with existing or expired contracts but were able to obtain a "satisfactory" performance rating were entitled to a renewal of their respective cargo handling contracts with petitioner; thus, as respondent was given a rating of "very satisfactory"<sup>[19]</sup> in 1998, it follows that its cargo handling agreement should have been renewed after its expiration. Respondent likewise claimed that the approval and implementation of PPA AO No. 03-2000 was plainly arbitrary as said administrative order was:

19.1 Obviously unfair to plaintiff and port operators affected because it is an afterthought. It came about after PCASO<sup>[20]</sup> wrote a letter dated 04 February 2000 demanding for the renewal of the contract of the members with a rating of Satisfactory...

19.2 Obviously prejudicial to the right to renew the contract vested upon plaintiff (respondent herein) by virtue of Administrative Order No. 03-90 which was in force and effect during the period of contractual relations between defendant PPA and plaintiff.

19.3 Obviously repugnant to the Memorandum of Understanding dated May 29, 1996, which has the force of law between the contracting parties.

19.4 Obviously designed to justify non-compliance of a legal obligation created under Administrative Order No. 03-90.

19.5 A scheme to accommodate political pressures.

19.6 Arbitrary because it did not treat all port operators alike. For instance the Asian Terminals, Inc., the operator of South Harbor, had a negotiated Contract.<sup>[21]</sup>

In addition, respondent stated in its complaint that in the event the bidding would take place as scheduled, a substantial number of workers in the port of Dumaguete City faced the risk of displacement. Moreover, the possibility existed that the contract for cargo handling in Dumaguete City would be awarded to an incompetent and inexperienced participant in the bidding process unlike respondent which had already invested substantial capital in its operations in the port of said city. To further support its claim for a preliminary mandatory injunction, respondent alleged that a fellow PCASO member, Vitas Port Arrastre Service Corporation, operating at Pier 18, Vitas, Tondo, Manila, successfully obtained a writ of preliminary injunction from the RTC, Branch 46, Manila.<sup>[22]</sup>

Immediately after the filing of respondent's complaint, the RTC, Branch 44 of Dumaguete City, issued an order<sup>[23]</sup> granting respondent's prayer for a temporary restraining order. The dispositive portion of the order reads:

WHEREFORE, premises considered, and considering the urgent nature of the plaintiff's complaint, that serious and irreparable damage or injury would be suffered by the plaintiff unless said acts of the defendants complained of, is restrained; said defendants Philippine Ports Authority, Manila, Juan O. Peña, Benjamin Cecilio, their agents, representatives or persons acting in their behalves, are hereby ordered to cease and desist from further conducting the scheduled public bidding and awards on April 7, 2000, and April 10, 2000, respectively within twenty (20) days from receipt hereof...<sup>[24]</sup>

Petitioner thereafter filed a manifestation with urgent motion for reconsideration<sup>[25]</sup> to the aforesaid order of the trial court. Petitioner argued that the court *a quo* did not have the requisite jurisdiction to issue the assailed temporary restraining order; that respondent was estopped from seeking refuge from the court as it had already expressed its intention to join the bidding process involving the operation of the cargo handling operations in the port of Dumaguete City; that respondent failed to exhaust administrative remedies by not seeking relief from petitioner prior to initiating this action before the court; and that it was in the best interest of the public if the bidding process proceeds as scheduled because of the "internal squabbling" taking place within respondent corporation which could affect the quality of its service. This motion was denied in the order of the court *a quo* dated 24 April 2000.<sup>[26]</sup>

Petitioner seasonably sought the reconsideration<sup>[27]</sup> of the trial court's order of 24 April 2000 this time arguing that:

1. PRESIDENTIAL DECREE NO. 1818 PROHIBITS COURTS FROM ISSUING THE INJUNCTIVE WRIT IN ANY CASE, DISPUTE OR CONTROVERSY INVOLVING STEVEDORING AND ARRASTRE CONTRACTS.
2. THE ORDER DATED APRIL 24, 2000 ADJUDICATES THE MERITS OF THE COMPLAINT EVEN BEFORE THE PARTIES ARE HEARD.
3. THE ISSUANCE OF THE ORDER DATED APRIL 24, 2000 VIOLATES THE LAW IN CONTRACT MAKING.
4. THE ISSUANCE OF THE ORDER DATED APRIL 24, 2000 IS BEYOND THE JURISDICTION OF THE HONORABLE COURT.
5. THE ISSUANCE OF THE ORDER DATED APRIL 24, 2000 IS AGAINST PUBLIC INTEREST.
6. THE ISSUANCE OF THE ORDER DATED APRIL 24, 2000 IS VIOLATION OF THE 1997 RULES ON CIVIL PROCEDURE.
7. THE ISSUANCE OF THE ORDER DATED APRIL 24, 2000 IS VIOLATIVE OF DUE PROCESS.

8. THE ISSUANCE OF THE ORDER DATED APRIL 24, 2000 IS UNSUPPORTED BY THE FACTS OF THIS CASE.<sup>[28]</sup>

In its 31 May 2000 Order, the trial court set aside the injunctive writ it previously issued "to give way to the pronouncements of P.D. No. 1818" as the "function of the PPA is vested with public interest."<sup>[29]</sup>

It was thereafter the turn of respondent to file its motion for reconsideration<sup>[30]</sup> of the Order of the trial court but the court a quo stood firm on its Order setting aside the injunctive writ it issued.<sup>[31]</sup> From this adverse ruling, respondent filed a petition for certiorari under Rule 65 before the Court of Appeals. In said petition, respondent maintained that P.D. No. 1818 did not cover the restraining order and preliminary injunction formerly issued by the RTC, Branch 44, Dumaguete City. According to respondent, as there was no assurance that the would-be winner of the bidding process possessed the capacity to operate the cargo handling services in Dumaguete City, there would have been a cessation of the cargo handling operations in the port of said city following the expiration of respondent's second hold-over permit. This, respondent insisted, was not the situation contemplated by P.D. No. 1818 which was precisely issued to ensure that essential government projects such as stevedoring and arrastre services would not be disrupted by the issuance of a temporary restraining order. In this case, the restraining order and injunction issued by the trial court ensured the continuity of the cargo handling operations in Dumaguete City. Respondent further argued that as what is involved in this case is petitioner's failure to comply with its obligation under PPA AO No. 03-90 and the validity of PPA AO No. 03-2000, petitioner could not invoke P.D. No. 1818 which should only apply to matters involving the exercise of discretion by administrative agencies.<sup>[32]</sup>

Respondent likewise claimed that the pre-qualification phase of the bidding procedure was attended by the following irregularities:

1. Respondents (petitioner herein), then defendants (in Civil Case No. 12688), set October 15, 1999 as the deadline for the submission of the pre-qualification documents of prospective bidders. However, they pre-qualified DUMAGUETE KING PORTS & ILOILO QUEEN PORTS INC. (DUKIQ), which incidentally tried to intervene in this case, on April 3, 1999, which was not a juridical entity as of said date. It should be pointed out that it was only registered with the Securities and Exchange Commission (SEC) on April 4, (2000)... This means that DUKIQ became only (sic) a juridical entity only three days before the scheduled dropping of the bids on April 7, 2000 and seven (7) days before the supposed opening of the bids on April 10, 2000. This is certainly irregular and only bolsters petitioner's (respondent herein) apprehensions that there exists a preferred bidder. Moreover, DUKIQ was only issued a Mayor's Permit on April 18, 2000... This is not also in accordance with the rules of the bidding.
2. The composition of the Pre-qualification, Bids, Awards Committee (PBAC) as composed by the respondents is not in conformity with AO 03-90.