

## **SECOND DIVISION**

**[ G.R. No. 135639, February 27, 2002 ]**

**TERMINAL FACILITIES AND SERVICES CORPORATION,  
PETITIONER, VS. PHILIPPINE PORTS AUTHORITY AND PORT  
MANAGER, AND PORT DISTRICT OFFICER OF DAVAO CITY,  
RESPONDENTS.**

**[G.R. No. 135826. February 27, 2002]**

**PHILIPPINE PORTS AUTHORITY AND PORT MANAGER, AND  
PORT DISTRICT OFFICER OF DAVAO CITY, PETITIONERS, VS.  
TERMINAL FACILITIES AND SERVICES CORPORATION,  
RESPONDENT.**

### **D E C I S I O N**

**DE LEON, JR., J.:**

Before us are two (2) consolidated petitions for review, one filed by the Terminal Facilities and Services Corporation (TEFASCO) (G.R. No. 135639) and the other by the Philippine Ports Authority (PPA) (G.R. No. 135826), of the Amended Decision<sup>[1]</sup> dated September 30, 1998 of the former Special Second Division of the Court of Appeals in CA-G.R. CV No. 47318 ordering the PPA to pay TEFASCO: (1) Fifteen Million Eight Hundred Ten Thousand Thirty-Two Pesos and Seven Centavos (P15,810,032.07) representing fifty percent (50%) wharfage dues and Three Million Nine Hundred Sixty-One Thousand Nine Hundred Sixty-Four Pesos and Six Centavos (P3,961,964.06) representing thirty percent (30%) berthing fees from 1977 to 1991, which amounts TEFASCO could have earned had not PPA illegally imposed one hundred percent (100%) wharfage and berthing fees, and (2) the sum of Five Hundred Thousand Pesos (P500,000.00) as attorney's fees. No pronouncement was made as to costs of suit.

In G.R. No. 135639 TEFASCO assails the declaration of validity of the government share and prays for reinstatement in toto of the decision of the trial court. In G.R. No. 135826 PPA impugns the Amended Decision for awarding the said two (2) amounts for loss of private port usage fees as actual damages, plus attorney's fees.

TEFASCO is a domestic corporation organized and existing under the laws of the Philippines with principal place of business at Barrio Ilang, Davao City. It is engaged in the business of providing port and terminal facilities as well as arrastre, stevedoring and other port-related services at its own private port at Barrio Ilang.

Sometime in 1975 TEFASCO submitted to PPA a proposal for the construction of a specialized terminal complex with port facilities and a provision for port services in Davao City. To ease the acute congestion in the government ports at Sasa and Sta. Ana, Davao City, PPA welcomed the proposal and organized an inter-agency

committee to study the plan. The committee recommended approval thereof and its report stated that -

TEFASCO Terminal is a specialized terminal complex. The specialized matters intended to be captured are: (a) bananas in consideration of the rate of spoilage; (b) sugar; (c) fertilizers; (d) specialized movement of beer in pallets containerized handling lumber and plywood.

### 3.2 Limitations of the government facilities -

The government port facilities are good for general cargoes only. Both ports are not equipped to handle specialized cargoes like bananas and container cargoes. Besides the present capacity, as well as the planned improvements, cannot cope with the increasing volume of traffic in the area. Participation of the private sector, therefore, involving private financing should be encouraged in the area.

### 3.3 Project Viability -

3.3.1 Technical Aspect - From the port operations point of view, the project is technically feasible. It is within a well-protected harbor and it has a sufficient depth of water for berthing the ships it will service. The lack of back up area can be supplied by the 21-hectare industrial land which will be established out of the hilly land area which is to be scrapped and leveled to be used to fill the area for reclamation.

3.3.2 Economic Aspect - The international port of Sasa and the domestic port of Sta. Ana are general cargo type ports. They are facing serious ship and cargo congestion problems brought about mainly by the faster growth of shipping industry than the development of the ports. They do not possess the special cargo handling facilities which TFSC plans to put up at the proposed terminal.

xxx The proposed project expects to get a 31% market slice. It will service domestic and foreign vessels. Main products to be handled initially will be bananas in the export trade and beer in the domestic traffic. Banana exporters in Davao, like Stanfilco and Philippine Packing Corporation have signified their intentions to use the port. Negotiations between TFSC and banana exporters on whether the former or the latter should purchase the mechanical loading equipment have not yet been formed up xxx.

Easing the problems at these two ports would result in savings on cost of the operation as cargo storage and on damages and losses. It would also give relief to passengers from time-delay, inconvenience and exposure to hazards in commuting between the pier and ship at anchor.

Furthermore, it would redound to better utilization of the government piers, therefore greater revenue from port operations.

At the bigger scale, more economic benefits in terms of more employment, greater productivity, increased per capita income in the

Davao region, and in light of the limited financial resources of the government for port development the TFSC proposal would be beneficial to the country.

On April 21, 1976 the PPA Board of Directors passed Resolution No. 7 accepting and approving TEFASCO's project proposal. PPA resolved to -

xxx [a]pprove, xxx the project proposal of the Terminal Facilities and Services Corporation, Inc. for the construction of specialized port facilities and provision of port services in Davao City, subject to the terms and conditions set forth in the report of the Technical Committee created by the Board in its meeting of January 30, 1975, and to the usual government rules and regulations.

PPA relayed its acceptance of the project terms and conditions to TEFASCO in the letter<sup>[2]</sup> dated May 7, 1976 of Acting General Manager Mariano Nicanor which affirmed that -

We are pleased to inform you that the Board of Directors, Philippine Ports Authority, approved the project proposal of the Terminal Facilities and Services Corporation to construct a specialized port facilities and provision of port services in Davao City as follows:

- 1) Docking Facilities for Ocean Going and Interisland vessels with containerized cargo.
- 2) Stevedoring and Arrastre for above.
- 3) Warehousing;
- 4) Container yard and warehouse for containerizing cargoes or breaking up cargoes for containers.
- 5) Bulk handling and silos for corn, in cooperation with the NGA.
- 6) Bulk handling for fertilizer.
- 7) Bulk handling or conveyor system for banana exports.
- 8) Bulk handling for sugar.
- 9) Bonded warehousing.

The approval is subject to the terms and conditions set forth at enclosure.

You are hereby authorized to start work immediately taking into account national and local laws and regulations pertaining to the project construction and operation.

The enclosure referred to in the letter above-quoted stipulated the "Terms and Conditions of PPA Board Approval of the Project Proposal,"<sup>[3]</sup> particularly -

- (1) That all fees and/or permits pertinent to the construction and operation of the proposed project shall be paid to and/or secured from the proper authorities.
- (2) That the plans shall not be altered without the prior approval of the Bureau of Public Works in coordination with the PPA.

- (3) That [any] damage to public and private property arising from the construction and operation of the project shall be the sole responsibility of the applicant-company.
- (4) That the Director of Public Works shall be notified five (5) days before the start of the construction works and that the Director of Public Works or his representative shall be authorized to inspect the works and premises while the work is in progress and even after the completion thereof.
- (5) That the applicant shall construct and complete the structure under the proposed project within eighteen (18) months after the approval of the permit, otherwise the permit shall be null and void.
- (6) That the facility shall handle general cargoes that are loaded as filler cargoes on bulk/container ships calling at the facility.
- (7) That the applicant shall build up its banana export traffic to replace the probable loss of its container traffic five (5) years from now because of the plan of PPA to put up a common user type container terminal at the port of Sasa.
- (8) That all charges payable to the Bureau of Customs will continue to apply upon take over of port operations by the PPA of the Port of Davao from the Bureau of Customs and direct control and regulations of operations of private port facilities in the general area of that port.

Under the foregoing terms and conditions, TEFASCO contracted dollar loans from private commercial institutions abroad to construct its specialized terminal complex with port facilities and thereafter poured millions worth of investments in the process of building the port. Long after TEFASCO broke ground with massive infrastructure work, the PPA Board curiously passed on October 1, 1976 Resolution No. 50 under which TEFASCO, without asking for one, was compelled to submit an application for construction permit. Without the consent of TEFASCO, the application imposed additional significant conditions -

- (1) This Permit to Construct (PTC) will entitle the applicant to operate the facility for a period of fifteen (15) years, without jeopardy to negotiation for a renewal for a period not exceeding ten (10) years. At the expiration of the permit, all improvements shall automatically become the property of the Authority. Thereafter, any interested party, including the applicant, may lease it under new conditions;
- (2) In the event that the Foreshore Lease Application expires or is disapproved/canceled, this permit shall also be rendered null and void;
- xxx (7) All other fees and/or permits pertinent to the construction and operation of the proposed project shall be paid to and/or secured from the proper authorities;
- xxx (9) Unless specifically authorized, no general cargo shall be handled through the facility;
- (10) All rates and charges to be derived from the use of said facility or facilities shall be approved by the Authority;
- xxx (12) An application fee in the amount of one-tenth or one percent of the total estimated cost of the proposed improvement/structure shall be paid upon advice;
- (13) Other requirements of the law shall be complied by the applicant.

NOTE: Subject further to the terms and conditions as approved by PPA Board under Resolution No. 7 of 21 April 1976, except that PPA shall take over the role of the Bureau of Public Works and of the Bureau of Customs stipulated in the said approval.

TEFASCO played along with this needless exercise as PPA approved the awkward application in a letter stating -

We are returning herewith your application for Permit to Construct No. 77-19 dated 18 October 1977, duly approved (validation of the original permit to construct approved by the PPA Board under Resolution No. 7 of 21 April 1976), for the construction of your port facilities in Bo. Ilang, Davao City, subject to the conditions stipulated under the approved permit and in accordance with the attached approved set of plans and working drawings.

It is understood that this permit is still subject to the terms and conditions under the original permit except that this Authority takes over the role of the Bureau of Public Works and of the Bureau of Customs as stipulated thereon.

The series of PPA impositions did not stop there. Two (2) years after the completion of the port facilities and the commencement of TEFASCO's port operations, or on June 10, 1978, PPA again issued to TEFASCO another permit, designated as Special Permit No. CO/CO-1-067802, under which more onerous conditions were foisted on TEFASCO's port operations.<sup>[4]</sup> In the purported permit appeared for the first time the contentious provisions for ten percent (10%) government share out of arrastre and stevedoring gross income and one hundred percent (100%) wharfage and berthing charges, thus -

Pursuant to the provisions of Presidential Decree No. 857, otherwise known as the Revised Charter of the Philippine Ports Authority, and upon due consideration of the formal written application and its enclosures in accordance with PPA Memorandum Order No. 21 dated May 27, 1977, PPA Administrative Order No. 22-77 dated December 9, 1977, and other pertinent policies and guidelines, a Special Permit is hereby granted to TERMINAL FACILITIES AND SERVICES CORPORATION (TEFASCO), with address at Slip 3, Pier 4, North Harbor, Manila to provide its arrastre/stevedoring services at its own private wharf located at Barrio Ilang, Davao City, subject to the following conditions:

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2. Grantee shall render arrastre/stevedoring services on cargoes of vessels under the agency of Retla Shipping/Transcoastal Shipping, Solid Shipping, Sea Transport and other commercial vessels which cannot be accommodated in government piers at PMU-Davao due to port congestion which shall be determined by the Port Manager/Harbor Master/Port Operations Officer whose decision shall be conclusive;
3. Grantee shall promptly submit its latest certified financial statement and all statistical and other data required by the Authority from time to time;