

**HON. JUAN PONCE ENRILE, AS COMMISSIONER OF CUSTOMS;
JUANITO A. AGBAYANI, AS COLLECTOR OF CUSTOMS OF THE PORT
OF CEBU; AND JOSE SYBICO, AS CUSTOMS ARRASTRE SUPERVISOR
OF THE PORT...**

G.R. No. L-27549. September 30, 1969

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

On October 19, 1966 the Commissioner of Customs, acting under the authority of section 1213 of the Tariff and Customs Code⁺ and in representation of the Bureau of Customs (hereinafter referred to as the Bureau), entered into a Management Contract with the Cebu Port Terminal, Inc. (hereinafter referred to as CPTI), whereby the latter corporation was designated as sole manager of the arrastre service at the port of Cebu for a period of five (5) years unless sooner terminated in accordance with the contract.

Time came when the Bureau, through the Cebu Collector of Customs and the Customs Arrastre Supervisor, called the attention of CPTI to its numerous violations of the contract, ranging from failure to provide the necessary pier facilities to avoid congestion of cargoes to non-submission of the required monthly reports of operations. Attention was likewise directed to complaints aired by several Cebu-based merchants, decrying the inefficiency of CPTI in the handling and delivery of imported articles. Specific demands were formally made by the Bureau for immediate compliance in order to attain a more satisfactory and efficient service. To these demands, according to petitioners, no answer or explanation was received by the Bureau.

On February 10, 1967 the Commissioner of Customs formally notified CPTI, by letter addressed to its president and general manager, that the Bureau was taking over the arrastre operations at the port of Cebu pursuant to paragraph 32 of the Management Contract, which provides:

"32. It is understood and expressly agreed that violation of any of the terms and conditions of this Contract shall be sufficient ground for revocation and cancellation of this Contract. The Bureau upon discovery of the violation, shall inform the CONTRACTOR in writing of such violation. If within one (1) week from such notice, the CONTRACTOR shall fail to satisfy the BUREAU that such violation has not been committed or does not exist, it is expressly agreed that the BUREAU shall take over the management and operations of the whole arrastre service." (underlining supplied.)

On the same date the Commissioner also issued Customs Administrative Order (CAO) No. 1-67, directing the Customs Arrastre Service (created under unnumbered Customs Administrative Order dated June 23, 1966) to take over the management and operation of the arrastre service at the port of Cebu. On March 7, 1967 the Commissioner wrote another letter to CPTI, reiterating the Bureau's cancellation and termination on the management contract effective as of the date of actual take-over, i.e., February 13, 1967.

In February 1967 CPTI filed a complaint (Civil Case No. 9846) against herein petitioners in the Court of First Instance of Cebu (Branch VI), with an "application for temporary restraining order and/or temporary injunction,"

alleging, inter alia that the management contract had been terminated by the Commissioner in violation of paragraph 32 thereof; that since said contract was bilateral the act of the Commissioner in terminating it was without due process of law, arbitrary and unlawful; and that the Bureau should have filed an action for rescission instead. The reliefs prayed for were preliminary injunction pending trial, and, after trial, final injunction, damages and attorney's fees.

On February 16, 1967 the court a quo issued ex-parte a writ of preliminary injunction, "enjoining the defendants and their representatives and workers from performing the arrastre services in the piers, wharves and ports of Cebu and from preventing them to enter said areas in order to carry out their arrastre functions, upon plaintiff's filing a bond in the amount of P20,000.00 to answer for whatever damages defendants may suffer by reason thereof." On February 17, 1967 the same court suspended the effect of the writ of preliminary injunction issued the day before by ordering a status quo in the sense that the arrastre services, which had been taken over by herein petitioners, were temporarily allowed to remain under the Bureau's supervision pending final resolution as to whether to dissolve the writ or to maintain it.

On February 27, 1967 herein petitioners moved to dismiss the complaint and "to dissolve or maintain dissolution of the ancillary writ," alleging among other things that the Court had no jurisdiction to review the actuation of the Commissioner in taking over the arrastre service pursuant to Sec. 1213 of the Tariff and Customs Code, for the reason that such jurisdiction pertained to the Court of Tax Appeals; that respondent Court had no jurisdiction to enforce a writ of injunction, whether permanent or temporary, outside its territorial jurisdiction, in accordance with section 44(h) of Republic Act 296 and the decisions of the Supreme Court on the matter; that as herein petitioners were being sued for damages arising from acts committed in their official capacities and in the performance of their official duties, the action was in reality a suit against the State, which had not given its consent to be sued; and that the complaint states no cause of action because paragraph 32 of the management contract authorizes the Commissioner to revoke the contract and/or take over the operation and management of the arrastre service.

On February 28, 1967, upon motion of CPTI, respondent Court granted the parties five (5) days within which to submit their respective memoranda. On March 8, 1967, after ruling that it had jurisdiction to grant the questioned writ, the Court issued the following order:

"Considering all the foregoing, this Court hereby maintains the writ of preliminary injunction authorized by its order dated February 16, 1967 and enjoins all of the defendants and their representatives from preventing the plaintiff, its representatives, personnel, laborers, and workers from performing the arrastre services in all the piers, wharves, and ports of Cebu City, and from preventing them to enter all of the said areas together with all of their equipments, vehicles, and any other properties in order to carry out their arrastre functions. In the interest of the public this order of injunction shall be effective immediately upon service upon the defendant Collector of Customs of Cebu City, Juanito A. Agbayani."

Petitioners thereupon filed a petition for prohibition and certiorari, with preliminary injunction, in the Court of Appeals. Pending final resolution of the issues presented, said Court issued on March 13, 1967 a writ of preliminary injunction temporarily restraining respondent Court of First Instance from executing, enforcing and/or implementing its orders dated February 16 and March 8, 1967. After hearing, however, the appellate Court ruled in favor of respondents, dismissed the petition and dissolved the injunction it had previously issued.

The case is now before us on review by certiorari. On June 5, 1967 we issued a temporary restraining order directed to the Presiding Judge of the Court of First Instance of Cebu (Branch VI) restraining him, his agents, representatives and/or any person acting in his behalf from "executing, enforcing and/or implementing (his) orders of February 16 and March 9 (should be the 8th), 1967, and the writ of preliminary injunction issued

pursuant thereto; and from otherwise proceeding in any manner whatsoever with the hear-ings in Civil Case No. R-9846, x x x until further orders from this Court."

In assailing the validity of the writ of preliminary injunction issued by the Court a quo, petitioners maintain that it has no jurisdiction over the subject-matter and that such jurisdiction pertains to the Court of Tax Appeals, pursuant to Section 7 of Republic Act 1125, which provides:

"SEC. 7. Jurisdiction.- The Court of Tax Appeals shall exercise exclusive appellate jurisdiction to review by appeal, as herein provided –

x x x

"(2) Decisions of the Commissioner of Customs in cases involving liability for customs duties, fees or other money charges; seizure, detention or release of property affected; fines, forfeitures or other penalties imposed in relation thereto; or other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs;

x x x “

Petitioners contend that inasmuch as the Commissioner awarded the arrastre management contract by virtue of his authority under Section 1213 of the Tariff and Customs Code, said contract is covered by the phrase "other matters arising under the Customs Law or other law or part of law administered by the Bureau of Customs."

We see no merit in the contention. The case at bar is not one involving liability for customs duties, fees or other money charges. It does not involve seizure, detention or release of property affected, nor fines, forfeitures or other penalties imposed in relation thereto. It arose from a contract of services or, more specifically, from an alleged violation thereof. While the authority of the Commissioner to enter into such contract emanates from the Tariff and Customs Code, the controversy itself concerns rights and obligations which proceed from the contract, not from the Commissioner's administration of the customs laws. The following statement of this Court in a previous case is apropos:

"Note that the law gives to the Court of Tax Appeals exclusive appellate jurisdiction to review the decision of the x x x Commissioner of Customs, x x x. Note also that in defining the cases that may be reviewed, the law begins by enumerating them and then adds a general clause pertaining to other matters that may arise under the x x x Customs law x x x. This shows that the 'other matters' that may come under the general clause should be of the same nature as those that have preceeded them applying the rule of construction known as ejusdem generis. In other words, in order that a matter may come under the general clause, it is necessary that it belongs to the same kind or class therein specifically enumerated. Otherwise, it should be deemed foreign or extraneous and is not included." (011ada vs. Court of Tax Appeals, 99 Phil. 604)

Petitioners plead non-suability of the State alleging that because they are sued in their official capacities, any judgment for damages against them would in effect result in loss of money by the government. *Syquia vs. Almeda Lopez* (47 O.G. 665) is cited, particularly the following statement of this Court therein:

"Where the judgment (in a suit by a private citizen against officers of the government) would result not only in the recovery of the possession of property in favor of said citizen but also in a charge against or financial liability to the government, then the suit should be regarded as one against the government itself, and consequently it cannot prosper or be entertained by courts except with the consent of said government."

It is not necessary to consider the issue of State non-suability here. That issue may be raised at the proper time in the answer to the complaint, as a defense to the claim for damages. The question before us relates to the propriety of the writ of preliminary injunction issued by the Court below, and it is not pretended that acts of government

officers, even if illegal, oppressive, or violative of contracts with private citizens, are beyond the power of the courts to enjoin. In the context of this case, that question, stated otherwise, is whether or not, on the basis of the pleadings and of the evidence so far before the said Court, the unilateral termination of the management contract by the Bureau, followed by its take-over of the operation of the arrastre service, was justified.

CPTI first contends that a judicial action for rescission of said contract should have been filed. In this connection it should be noted that under paragraph 32 of the management contract the same may be revoked and cancelled for violation of any of its terms and conditions. All that is required before cancellation is (a) that the Bureau inform the contractor (respondent CPTI) in writing of such violation, and (b) that the contractor fail within one week to satisfy the Bureau that such violation has not been committed or does not exist, whereupon the Bureau may take over the management and operation of the whole arrastre service. Resort to judicial action for rescission is obviously not contemplated under the circumstances just mentioned. The validity of the stipulation cannot be seriously disputed. It is in the nature of a facultative resolutive condition, which in many cases has been upheld by this Court.

"Judicial permission to cancel the agreement is not necessary because of the agreement that NDC may cancel the contract. Judicial action is proper only where there is absence of a special provision granting the power of cancellation." (De La Rama Steamship Co., Inc. vs. Tan, et al., L-8784, May 21, 1956)

"There is nothing in the law that prohibits the parties from entering into agreement that violation of the terms of the contract would cause cancellation thereof, even without court intervention. In other words, it is not always necessary for the injured party to resort to court for rescission of the contract." (Froilan vs. Pan Oriental Shipping Company, L-11897, October 31, 1964)

"ART. 1256 of the Civil Code (now Art. 1308) x x x creates no impediment to the insertion in a contract for personal service of a resolutive condition permitting the cancellation of the contract by one of the parties. Such a stipulation x x x does not make either the validity or the fulfillment of the contract dependent upon the will of the party to whom is conceded the privilege of cancellation; for where the contracting parties have agreed that such option shall exist, the exercise of the option is as much in the fulfillment of the contract as any other act which may have been the subject of agreement. In-deed, the cancellation of a contract in accordance with conditions agreed upon beforehand is fulfillment." (Taylor vs. Uy Tieng Piao, 43 Phil. 873.)

It is pertinent to bear in mind that what we are asked to review here is not only the issuance of the writ of injunction by the Court a quo but also the decision of the Court of Appeals dismissing the petition for certiorari and prohibition filed before it by herein petitioners, and dissolving the writ of preliminary injunction it had theretofore issued. Insofar as the prayer for prohibition is concerned, based as it is on the ground of the trial court is lack of jurisdiction over the subject-matter of the action, we are of the opinion that the dismissal was proper. As has been pointed out, the case below is one cognizable by the court a quo and not by the Court of Tax Appeals under Section 7 of Republic Act No. 1125.

On the certiorari aspect of the petition in the Court of Appeals, which had to do primarily with the writ of preliminary injunction issued by the Court a quo on February 16, 1967, and with its order of March 8, 1967, maintaining the said writ and directing its implementation, the question is whether or not the said Court thereby exceeded its jurisdiction or committed a grave abuse of discretion. To resolve the question, the writ must be viewed in its setting when issued.

Before the trial Court, first of all, was the complaint of respondent CPTI. The only allegations therein advanced to support the prayer for preliminary injunction aside from the recital of the acts sought to be enjoined, were "that without due process or hearing to the plaintiff corporation and without any opportunity at all to it to present formally the true facts concerning its operations," and without having been given the one-week notice required in

paragraph 32 of the management contract, it was served with the Commissioner's letter of termination dated February 10, 1967.[1] But before the Court likewise was the herein petitioner's motion to dis-miss the complaint and "to dissolve or maintain dissolution of ancillary writ" dated February 27, 1967, containing, inter alia, the following allegations:

"During the progress of plaintiff's operations under the said Management Contract, defendants Collector of Customs and Customs Arrastre Supervisor notified plaintiff of several violations of the Management Contract, notices of which violations are hereto attached as Annexes "1", "1-A", "2", "3", "4" and "5", all of which are made integral parts hereof. Despite the lapse of more than the required period of one week under Paragraph 32 of the Management Contract, plaintiff failed to answer them in a manner satisfactory to the Bureau of Customs represented by defendants. This forced defendant Commissioner of Customs to write a letter to the President and General Manager, Cebu Port Terminal, Inc., dated February 10, 1967, copy attached as Annex "6" hereof, informing him of the immediate taking over by the Bureau of Customs of the arrastre operations at the Port of Cebu. Said letter was duly served on plaintiff on or about the afternoon of February 13, 1967, immediately after which the Bureau of Customs entered into the management of the arrastre operations up to the present, without any untoward incident."

It bears emphasis that the foregoing allegations were accompanied by undisputed documentary evidence to substantiate them. Annex 1 is a letter dated December 2, 1966, signed by the Customs Arrastre Supervisor and addressed to Rolando Veloso, Board Chairman of CPTI, enclosing copy of a memorandum of the Collector of Customs dated December 1, 1966. The said memorandum, Annex 1-A, called attention to specific instances of in-efficient handling of imported cargoes by CPTI and ordering specific methods to be followed to remedy the situation. Annex 2, dated December 5, 1966, is another letter to Veloso, signed by the Acting Collector of Customs himself, making reference to numerous complaints from importers concerning deficiencies in the arrastre service, particularly the insufficient number and capacity of the forklifts in operation. Annex 3, dated January 9, 1967, called attention to the great delay in the deliveries of imported cargoes to the consignees due to lack of sufficient laborers employed in the piers. Annex 4, dated January 24, 1967, signed by the Acting Collector of Customs, refers to the failure of CPTI to submit to him the monthly reports of operation for November and December 1966, in spite of a previous directive that such monthly report must be submitted within the first five days of every succeeding month. Annex 5, dated February 6, 1967, reiterated the demand made in Annex 4.

Significantly, the Court of Appeals, in its decision, took note of the foregoing factual background, thus:

"During the progress of the operation of respondent CPTI under the said Management Contract, petitioning Commissioner and Supervisor notified the CPTI of several violations of the Management Contract. x x x Several merchants in Cebu, so petitioners alleged, also formally complained to the Collector for the inefficient handling of the arrastre operations in Cebu. Customs Lawyers and investigators were dispatched by the Commissioner to Cebu City to look into the complaint and alleged violations of the contract, and after hearing all the parties, including the officers of the respondent CPTI, they found that said respondent violated paragraphs 3,8,9,11,12,15,17,18,19,20,21,25 and 26 of the Management Contract. Despite the lapse of more than the required period of one (1) week under said paragraph 32 of the Management Contract, respondent CPTI failed to explain the violations in a manner satisfactory to the Bureau of Customs."

"On February 10, 1967, the Commissioner wrote a letter to the President and General Manager of the CPTI informing him of the taking over by the Bureau of Customs of the arrastre operations at the Port of Cebu. Likewise, on the same date, the Commissioner issued Customs Administrative Order (CAO) No. 1-67, directing the Customs Arrastre Service, created under CAO dated June 23, 1966 to take over the management and operation of the arrastre service in the Port of Cebu."

It was therefore a fact sufficiently demonstrated at that stage of the case before the trial Court, albeit subject to

the outcome of the trial on the merits upon due presentation of evidence by both parties, that numerous violations of the management contract had been committed by CPTI; that CPTI had been duly informed thereof in writing; and that not only had CPTI failed to satisfy the Bureau that such violations had been committed or did not exist, but had failed utterly to give any explanation despite the lapse of the period of one week stipulated for that purpose. Prima facie at least, at that stage of the case before the trial court, the take-over by the Bureau of the operation of the arrastre service at the port of Cebu was clearly justified under the terms of the said management contract. Indeed, the take-over was a compelling necessity under the circumstances. For an overriding consideration, which the said Court overlooked when it issued the injunction, is that the case involves not merely the private rights of the contracting parties. Over and above such rights is the para-mount public interest, both in respect of the receiving, handling, custody and delivery of all cargoes imported and exported, or in transit, through the port of Cebu and in respect of the income that the government derives from the arrastre service, which under the contract is 46.1% of the total gross receipts of the contractor from all sources, whether actually collected or not, "payable monthly within the first five (5) days of the succeeding month." This public interest, in the light of the facts then before the trial Court, stood in serious jeopardy in the hands of CPTI as arrastre operator. The burden was squarely and plainly upon it to show otherwise, and pending satisfactory showing to that effect the issuance of a preliminary injunction against herein petitioners was an improvident act, amounting to grave abuse of discretion correctible by certiorari.

WHEREFORE the decision of the Court of Appeals is reversed; the writ of preliminary injunction issued by the Court a quo is set aside; the case is remanded for continuation of the proceedings; and the restraining order issued by this Court against such continuation is pro tanto dissolved. With costs.

Concepcion, C.J., Dizon, Zaldivar, Sanchez, Ruiz Castro, Fernando, Capistrano, and Teehankee, JJ., concur.

Reyes, JBL, J., on leave.

Fernando, J., in the result.

Barredo, J., did not take part.

+ "The Bureau of Customs shall have exclusive supervision and control over the receiving, handling, custody and delivery of articles on the wharves and piers at all ports of entry and in the exercise of its functions it is hereby authorized to acquire, take over, operate and superintend such plants and facilities as may be necessary for the receiving, handling, custody and delivery of articles, and the convenience and comfort of passengers and the handling of baggage, as well as to acquire fire protection equipment for use in the piers: Provided, that whenever in his judgment the receiving, handling custody and delivery of articles can be carried on by private parties with greater efficiency, the Commissioner may, after public bidding and subject to the approval of the department head, contract with any private party for the service of receiving, handling, custody and delivery of articles, and in such event, the contract may include the sale or lease of government owned equipment and facilities used in such service."

[1] There was also, of course, the other allegation, already disposed of earlier in this decision, that the Commissioner should have filed an action for rescission of the contract instead of cancelling it extrajudicially.

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