

AVENUE ARRASTRE AND STEVEDORING CORPORATION, INC., AS SUCCESSOR TO PUERTO PRINCESA CITY ARRASTRE AND STEVEDORES; UNION, PETITIONER, VS. THE HONORABLE COMMISSIONER OF CUSTOMS, TH...

G.R. No. L-44674. February 28, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This petition raises anew the question of whether an order of the Commissioner of Customs, affirmed by the Secretary (now Minister) of Finance, on a matter involving the exercise of his discretion, may be reviewed and set aside by mandamus.

The Puerto Princesa City and Stevedores Union, PPCASU for short, was the original operator of the arrastre and stevedoring service in the Port of Puerto Princesa, Palawan, under a temporary permit issued by the respondent Commissioner of Customs for a period of six (6) months starting December 20, 1974. Despite poor and inefficient operations and resource problems on the part of PPCASU, the permit was renewed four times, covering the period from December 21, 1974 to March 19, 1976, to enable PPCASU to make good its repeated commitment to improve its service and procure needed equipment.

On March 18, 1976, respondent Commissioner finally terminated PPCASU's permit and at the same time authorized respondent Prudential Brokerage Services Inc., to operate arrastre and stevedoring service in the Port of Puerto Princesa starting March 19, 1976. Basis of the order of respondent Commissioner is the report of the Collector of Customs of Puerto Princesa with the following findings:

"1) PPCASU, at present has practically no capitalization at all. This fact has been made known to that office thru Mr. Quiray. I've informed him personally about the withdrawal from the group of the chinese capitalists who had a misunderstanding with the President, Mr. Paredes. This is one main reason why the corporation could not update its accounts with this office, the employees and laborers and above all, the claims for damages and/or losses of goods.

"2) PPCASU, practically, has no equipment at all. Although it has acquired a second hand forklift six months ago, it is out of order for the last four months due to lack of spare parts. It has only two pieces of canvass which are actually worn out and thorned and cannot protect the goods from the rain. There are less than twenty pieces of pallets in use most of which are with broken parts and do not serve the purpose effectively.

"3) In spite of our oral and written directives to the contrary, the laborers are paid up to the present on a 'Pakway System' which actually is against the labor law. This was brought personally to the knowledge of Mr. Quiray on his stay here during the seminar on arrastre.

"4) No record of PPCASU could show that they have remitted any amount to the SSS as their counterpart. All employees and laborers are not covered by any sort of protection.

"5) PPCASU has paid its Mayor's Permit for the purpose during the period from January to March, 1975 only. I am surprised why the City government does not go after them.

"6) No bond has been filed during the current year."

Meanwhile, petitioner Avenue Arrastre and Stevedoring Corporation Inc., claiming to have been merged with PPCASU and as successor of the latter, moved for reconsideration of the above order. The motion was denied. Petitioner's appeal to the Secretary of Finance was likewise dismissed. Hence, this petition for mandamus.

The petition is devoid of merit.

Even conceding that petitioner, as successor of PPCASU, has the privilege of obtaining renewal of the latter's permit after its expiration, such privilege rests on the sound discretion on the part of respondent public officials, and refusal to grant continuance of the privilege, especially upon their findings of PPCASU's gross inefficiency and flagrant violation of the Labor Laws, cannot be the subject of an action for mandamus. The rule consistently adhered to in this jurisdiction is that mandamus will not lie to control or review the exercise of discretion of a public officer where the law imposes upon him the right or duty to exercise judgment in reference to a matter in which he is required to act.

Moreover, mandamus will not issue in doubtful cases. In the case at bar, petitioner has not shown a clear and certain right to warrant the grant thereof.

ACCORDINGLY, the petition is hereby dismissed, with costs against petitioner.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, Abad Santos and De Castro, JJ., concur.
Aquino, J., on leave.

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