

NATIONAL MARKETING CORPORATION, (NAMARCO) JOVENAL D. ALMENDRAS, AND SERAPIO DATOC, PETITIONERS, VS. HON. GAUDENCIO CLORIBEL, IN HIS CAPACITY AS DISTRICT JUDGE OF THE COURT OF FI...

G.R. No. L-26585. March 13, 1968

Ponente: DIZON, J.

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DIZON, J.:

This is a petition for certiorari, prohibition and mandamus, with a prayer for the immediate issuance of a writ of preliminary injunction, filed on September 23, 1966 by the National Marketing Corporation, hereinafter referred to as NAMARCO, Jovenal D. Almendras and Serapio Datoc, against the Honorable Gaudencio Cloribel, in his capacity as Judge of the Court of First Instance of Manila, and VILTRA Company and/or German E. Villanueva, to annul certain orders issued by the respondent judge in Civil Case No. 64696 of his court; to prohibit respondent judge from enforcing said orders, and to order him to approve and certify the appeal interposed by petitioners Almendras and Datoc from one of said orders which found them guilty of contempt of court and ordered their arrest.

On September 28 of the same year, de gave due course to the petition and issued, upon previous approval of the bond required from petitioners, the writ of preliminary in-junction prayed for.

It appears that respondent German E. Villanueva, a Manila businessman, had been trading under the name and style of VILTRA Company. For purposes of this decision We shall hereafter refer to him simply as VILTRA.

On March 11, 1966 VILTRA filed in the Court of First Instance of Manila an action for mandamus against NAMARCO and Pacific Banking Corporation, with a prayer for the issuance of a writ of preliminary injunction and a judgment for damages. On the same date the verified petition was superseded by an amended one, the only amendment introduced being the omission of the Pacific Banking Corporation as a party respondent.

Main allegations of the verified petition above referred to were: that on November 24, 1965 VILTRA and NAMARCO had entered into a written contract, the former as buyer and the latter as seller, whereby VILTRA agreed to open an irrevocable domestic letter of credit in favor of NAMARCO who, in turn, would open an irrevocable foreign letter of credit in favor of certain parties in Japan who would supply 10,000 metric tons of wire rods valued at \$1,320,000.00; that subsequently NAMARCO refused to comply with its obligation to open an irrevocable foreign letter of credit in favor of the suppliers, as a result of which the wire rods agreed upon could not be shipped and imported to the Philippines, to the damage and prejudice of VILTRA in the total amount of P330,000; that on March 11, 1966 the respondent judge ordered the issuance of the writ of preliminary injunction prayed for in the verified petition upon the filing by VILTRA and approval by the Court of a P10,000 bond, said writ having been subsequently issued commanding NAMARCO to honor, comply and/or abide with the contract of sale mentioned in the petition as executed on November 24, 1965 and to request or direct the Pacific Banking Corporation to immediately send a cable to its correspondent bank in Japan and open

immediately upon re-ceipt of the writ an irrevocable letter of credit in favor of Tokyo Boeki Ltd. for the account of NAMARCO in connection with 10,000 metric tons of wire rods at \$132 per metric ton; that in due time NAMARCO filed its answer to the amended petition praying for its dismissal, alleging substantially, inter alia, that VILTRA was not a qualified applicant for trade assistance under Section 7, Administrative Order No. 17 of NAMARCO dated August 31, 1965, and that VILTRA itself had failed to open an irrevocable domestic letter of credit in pursuance of the alleged agreement.

The motion filed by NAMARCO for the reconsideration of the order granting, and the issuance of, the writ of pre-liminary mandatory injunction was denied on March 24, 1966.

Thereafter, or more specifically, on March 16, 1966, VILTRA filed an urgent motion to cite herein petitioners Jovenal D. Almendras and Serapio Datoc, Acting General Manager and Assistant General Manager, respectively, of NAMARCO, for contempt of court upon the ground that they had refused and failed to comply with the order of the Court of March 11, 1966. Granting the motion the Court ordered Almendras and Datoc to appear before it on March 16, 1966 to show cause why they should not be found guilty of contempt. After said parties had given their explanation, the respondent judge issued on March 29, 1966 an order find-ing them guilty of contempt of court and ordering their arrest.

It is not disputed that Almendras and Datoc filed on March 30, 1966 a notice of appeal from the order just men-tioned, together with the corresponding appeal bond. However, VILTRA objected to the appeal being given due course on the ground that the notice of appeal filed did not mention the court to which the aggrieved parties were appealing. Notwithstanding the reply filed by Almendras and Datoc to said opposition, the respondent judge, in his order of July 6, 1966 "dismissed" (refused to give due course to) the appeal. Almendras and Datoc filed an urgent motion for the recon-sideration of this order of July 6 and prayed that their appeal be given due course, but the respondent judge, in an order dated August 24, 1966, denied the same for lack of merit and further directed the Sheriff of Manila to enforce the court's order of July 6, 1966 in relation to those issued on March 11, 24 and 29 of the same year. Furthermore, the respondent judge issued another order dated September 16, 1966 directing the Sheriff of Manila or his deputy to take Almen-dras and Datoc into their custody and not to release them until they had complied with the order of March 11, 1966.

In view of the foregoing actuations of the respondent judge, herein petitioners filed the present action.

It is not disputed that VILTRA's action (Civil Case No. 64696 of the Court of First Instance of Manila) was a special civil action for mandamus and that its obvious purpose and objective was to compel NAMARCO –

“x x x x x x x x to honor, comply and/or abide with the contract of sale it executed with petitioner Viltra Co., on Novem-ber 24, 1965, and further, request and direct Pacific Banking Corporation, to cable immediate-ly its correspondent bank in Japan, and/or order said bank to open immediately upon receipt of this order from the Manila Sheriff or his Deputy, an irrevocable letter of credit in favor of Tokyo Boeki, Ltd., No. 1-2, Chome, Nishitachobori, Tokyo, Japan for the account of respondent NAMARCO, Manila, for 5,000 metric tons of wire rods, quality, SAE 1008, Dia. 5.5 MM, at US\$13.00 per M/T, C&F, Manila, from any Port in Japan, port of discharge Manila, marine insurance for the account of petitioner, subject to such terms and con-ditions in the Contract of Sale, and the balance of 5,000 metric tons of wire rods, out of the original 10,000 metric tons of wire rods stated in the contract, SAE 1008, Dia. 6.0 MM, at US \$132.00 per M/T, C&F, Manila, marine insurance of the account of the petitioner, subject to the terms and con-ditions in the said Contract of Sale, and after due proceedings:

‘a. Render judgment in favor of peti-tioner making the injunction permanent;

‘b. Render judgment ordering respondent NAMARCO to pay petitioner the following sums of money:

1. P100,000.00 for material and actual damages;
2. P100,000.00 for moral damages;
3. P100,000.00 for exemplary damages;
4. P30,000.00 attorney's fees;
5. P20,000.00 as litigation, and
6. Payment of costs.'

"Petitioner further prays for such other relief deemed just and equitable in the pre-mises."

Plain it is, therefore, that the real purpose of the action was to compel NAMARCO to comply with the contract or agreement it had allegedly entered into with VILTRA on November 24, 1965. The action was clearly improper, it being the settled rule that mandamus never lies to enforce performance of contractual obligations (*City of Manila vs. Posadas*, 48 Phil. 309; *Florida Central etc. vs. State etc.* 20 L.R.A. 419). In case of breach of contract the aggrieved party's remedy is an ordinary action in the proper court for specific performance. We have heretofore held this rule to be applicable even in cases brought against municipal corporations to compel payment of the price agreed upon in a contract (*Quiogue vs. Romualdez*, 46 Phil. 337; *Jacinto vs. Director of Lands*, 49 Phil. 853), the reason being that a contractual obligation is not a duty specifically enjoined upon a party by law resulting from office, trust or station.

VILTRA's error in this respect was compounded and made worse by the gross error of the respondent judge in entertaining and granting an ex-parte motion for the issuance of a preliminary mandatory injunction.

As is well known, a mandatory injunction which commands the performance of some specific act is regarded as of a more serious nature than a mere prohibitive in-junction, the latter being intended generally to maintain the status quo only. While our courts, being both of law and equity, have jurisdiction to issue a mandatory writ, We have always held that its issuance would be justified only in clear cases; that it is generally im-proper to issue it before final hearing because it tends to do more than to maintain the status quo; that it should be issued only where there is a willful and unlawful in-vasion of plaintiff's right and that the latter's case is one free from doubt and dispute (*Manila Electric Company vs. del Rosario*, 22 Phil. 433-437; *Eusebio vs. Aguas*, 47 Phil. 567; *Villadones et al. vs. Encarnacion et al.*, G. R. No. L-6425, September 30, 1954; *Coronado vs. Tan* G. R. No. L-6530, March 31, 1955; *Bautista vs. Honorable Barcelona*, 53 O. G. 4464).

In the case now before Us, the facts make it crystal clear that VILTRA's right under its alleged contract with NAMARCO did not give him a clear and undisputed right to the relief sought in his petition for mandamus, it being undisputed that the perfection of the contract was denied by NAMARCO in its answer filed in Civil Case No. 64696, for the reason that VILTRA was not qualified to receive the benefit of what was known as trade assistance in accordance with Section 7, Administrative Order No. 16 of NAMARCO dated August 31, 1965, and that VILTRA itself had not complied nor had it offered to comply with the condition precedent stipulated therein regarding the opening by VILTRA of an irrevocable domestic letter of credit in favor of NAMARCO.

Moreover, the writ of mandatory injunction issued by the respondent judge actually amounted not only to a judgment for the issuance of the writ of mandamus prayed for in VILTRA's verified petition, but also amounted to an order of execution thereof - all these before a hearing on the merits.

From what has been said heretofore we conclude, and so declare, that the respondent judge committed a grave abuse of discretion in issuing his orders of March 11 and 29, and August 24 and September 16, 1966.

IN VIEW OF ALL THE FOREGOING, it is the judgment of this Court that the writs prayed for should issue. Consequently, the orders complained of, issued in Civil Case No. 64696 of the Court of First Instance of Manila on March 11, 24, 29, July 6, August 24 and September 16, all of the year 1966, are hereby voided and set aside.

The order of March 29, 1966 finding petitioners Almendras and Datoc guilty of contempt of court and all orders subsequently issued to implement the same having been voided, there is no need for said parties to appeal therefrom, nor for Us to discuss the question of whether or not the respondent judge erred in not giving due course to their appeal. Consequently, the writ of mandamus prayed for in their petition is denied, the relief being unnecessary.

With costs against respondent VILTRA.

Reyes, Acting Chief Justice, Makalintal, Bengson, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

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