

**NATIONAL WATERWORKS & SEWERAGE AUTHORITY,
PETITIONER, VS. HON. ANDRES REYES, PRESIDING JUDGE OF
BRANCH VI, CFI, RIZAL; AND C & C COMMERCIAL
CORPORATION, RESPONDENTS.**

G.R. No. L-28597. February 29, 1968

Ponente: ANGELES, J.

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ANGELES, J.:

An original action for certiorari and prohibition filed by the National Waterworks & Sewerage Authority, hereinafter referred to as the NAWASA against the Honorable Andres Reyes, presiding judge of Branch VI, Court of First Instance of Rizal and the C & C Commercial Corporation, seeking to set aside a preliminary injunction issued by the said court dated January 18, 1968, in Civil Case No. 10523, which restrained herein petitioner from proceeding with the calling of bids for the supply of steel pipes intended for the improvement of its waterworks projects in the City of Manila and its suburbs. Herein petitioner assails the legality of the said restraining order on several grounds: lack of jurisdiction of the court a quo to issue the injunctive writ of afore-said against herein petitioner when, admittedly, the offices for place of business of petitioner corporation and the bidding enjoined are outside its territorial jurisdiction; the complaint in the lower court fails to state a cause of action; and the plaintiff corporation is disqualified to participate in public biddings called for by the NAWASA under the provisions of Administrative Order No. 66, dated June 27, 1967.

The background facts of the controversy are as follows:

On December 12, 1967, the NAWASA caused to be published an advertisement calling for bids for the supply of steel pipes of 30-inch and 24-inch diameters, intended for the Interim Program of Development of the Distribution System of the Manila and Suburbs Water-works. Believing that the said call for bids was prejudicial to its interest, in the circumstance that the NAWASA had specifically and exclusively called for the supply of steel pipes only excluding therefrom the asbestos cement pressure pipes it manufactures, the C & C Commercial Corporation filed a complaint against the NAWASA in the court below, alleging that it is a qualified bidder in any bidding of the Government; that its locally manufactured asbestos cement pipes are far less expensive and cheaper than any other type, class or kind of pipe locally manufactured; are available, proven and tested to be durable and usable and serve as equally well as steel pipes in waterworks distribution systems; that in the call for bids of the NAWASA in its advertisement of December 12, 1967, asbestos cement pressure pipes had been excluded in violation of Republic Act 912; and that said deliberate discrimination against its products would cause great prejudice to public interest and would cause irreparable damage to both plaintiff and the Government, if not enjoined by the court from the act complained of. It concluded with a prayer that a writ of preliminary injunction or restraining order be issued immediately ex-parte, upon plaintiff's filing a sufficient bond, enjoining the NAWASA from opening the bids submitted under the advertisement above-mentioned, and after trial, that judgment be rendered: (1) ordering the NAWASA permanently to desist from proceeding with the conduct of the bidding complained of; (2) ordering the NAWASA to call and advertise another bidding to include plaintiff's

products; and (3) ordering the NAWASA to pay unto the plaintiff actual damages, attorney's fees, and the costs of the suit.

It appears that the NAWASA, as well as the In-ternational Pipe Industries Corporation which had been granted leave to intervene in the case, opposed the application for preliminary injunction, contending, that the complaint states no cause of action by reason of failure on the part of the plaintiff to allege or how that it has complied with the requirements of Republic Act 912, i. e., by showing that it has secured a certification from the Director of Public Works as to the "availability, practicability, usability and durability" of its products; that plain-tiff is a disqualified bidder in any Government pro-ject under the provisions of administrative Order No. 66 dated June 26, 1967, by reason of the fact that plaintiff corporation and its President have tremen-dous tax liabilities with the Government; that plain-tiff's plant is not capable of producing asbestos cement pipes in the sizes called for in the bids, the largest size of pipe; it is actually producing being up to 12 inches in diameter only; that it has actually ceased to be a manufacturer of said products, having leased its plant together with all the machineries and the land whereon the plant is located, in favor of D. B. Canicosa & Sons for a period of three (3) years starting November 20, 1967; that the court has no jurisdiction to issue the writ prayed for because the NAWASA and the holding of the bidding sought to be enjoined, are outside its territorial jurisdiction; that the issuance of the injunction would cause prejudice to public interest for the delay in the completion of the projects wherein the pipes called for in the bid are intended would cause public inconvenience which are natural results of water shortage; and that plaintiff's damage is reparable while teat of the NAWASA is irreparable.

The application for the writ of preliminary injunction was set for hearing by trial court on January 15, 1967. The same was reset for hearing on the following day where the parties were called in chambers and there discussion ensued relative to the case. Thereafter, under date of January 18, 1967, the respondent judge issued the order complained of which, as earlier stated, ordered the NAWASA to desist from proceeding with the bidding in question.

Acting upon the petition, this Court resolved to require the herein respondents to file their answer not later than February 12, 1968. Hearing on the merits was set on February 14, on which date the case was argued by the respective counsels for the petitioner and the respondents. Petitioner was given two (2) days within which to submit a copy of the contract of lease over the asbestos cement pressure pipe plant or factory of the respondent C & C Commer-cial Corporation which the former claims the latter had executed in favor of D. B. Canicosa & Sons, to support herein petitioner's contention that the said respondent corporation had ceased to be a manufacturer of asbestos cement pressure pipes; and the C & C Com-mercial Corporation was likewise given two (2) days within which to submit the necessary certification from the Bureau of Public Works to sustain its claim that it has a right to the preference granted to lo-cally manufactured products under the Flag Laws. It appears that the NAWASA has complied with the order of the Court by submitting copies of the alleged contract of lease of C & C Commercial Corporation's factory for a term of three (3) years, but the said respondent up to now has not filed the certification from the Bureau of Public Works required of it.

An examination of the pleadings revealed that the issues raised in the instant petition are substantially the very same points relied upon by herein petitioner in the lower court in support of its opposi-tion to the issuance of the preliminary injunction in question. Admittedly the NAWASA has its offices in Manila, and the bidding sought to be enjoined is to be conducted in that city. Hence, the issue then that needs to be resolved is: May a court of first instance issue a writ of preliminary injunction which will be enforced outside the territorial boundaries of said court? This was the very same question that was brought before Us in a very recent case,[1] and We answered the question in the negative, thus:

"The power of a court to issue an injunction, which is a matter of jurisdiction, is one of legislative enactment

(Manila Railroad Co. v. Atty. Gen., 20 Phil. 523) but the manner of its exercise is prescribed by the Rules of Court. Thus, the Judiciary Act, as amended provides:

'Sec. 44. Original Jurisdiction. - Courts of First Instance shall have original jurisdiction:

x x x x x

'(n) Said courts and their judges, or any of them, shall have power to issue writs of in-junction, mandamus, certiorari, prohibition, quo warranto and habeas corpus in their respect-ive provinces and dis-tricts, in the manner provided in the Rules of Court.' [Underscoring Ours.]

"The above provision should not be confused with Sec. 2, Rule 58 of the Revised Rules of Court (Sec. 2, Rule 60 of the old Rules) which reads as follows:

'SEC. 2. Who may grant preliminary injunction. - A prelimi-nary injunction may be granted by the judge of any court in which the action is pending, or by a Justice of the Court of Appeals or of the Supreme Court. It may also be granted by the judge of a Court of First Instance in any action pending in an inferior court within his district.'

"The preliminary Injunction that may be granted by a court of first instance under Sec. 2 is, in its application, co-extensive with the ter-ritorial boundaries of the province or district in which the said court sits. (Acosta v. Alvendia, et al., L-14598, Oct. 31, 1960; Alhambra Cigar & Cigarette Manufacturing Co., Inc. v. National Administrator of Regional Office No. 2, etc., et al., L-20491, Aug. 31, 1965; Peo et al. v. Mencias, L-19633, Nov. 28, 1966)"

Upon the facts of this case, and in the light of autho-ry above-quoted, there can be no doubt that the writ of preliminary injunction issued by the respondent judge of the Court of First Instance of Rizal which purports to restrain acts of herein petitioner outside of the territorial limits of its province or district is null and void, for want of jurisdiction.

Herein private respondent claims that the call for bids of the NAWASA is in violation of Republic Act 912 which grants preference right to locally manufact-ured products. An examination of the complaint filed in the lower court, however, would show that it does not contain any allegation that it possesses the necessary certification as to the "availability, practicability, usability and, durability" of the asbestos cement pressure pipes manufactured by it from the director of Public Works pursuant to the requirement of said Act. Now was the said certification produced before Us in this proceeding as required in the resolution of this Court of February 14, 1968. It is safe to conclude under the circumstances that it does not have such cer-tification. This is fatal to herein private respondents cause of action in the lower court, and sustains the claim of herein petitioner that the C & C Commercial Corporation is not entitled to the benefits of Republic Act 912. We have clearly passed upon this point in a former case,[2] involving the same parties herein, and for pronouncement there should apply with equal force here.

"Statutes granting advantages to private persons have in many instan-ces created special privileges or monopolies for the grantees and thus have been viewed with suspicion and strictly construed. This is altoge-ther appropriate in the majority of situations for if public advantage is gained by the grant it normally appears to be of secondary significance compared with the advantage gained by the grantee. (Sutherland Statutory Construction, Vol, II, Section 3404, p. 240) And rights which exist only by virtue of such statutes come into being only after strict compliance with all the conditions found in those statutes. (Id., Vol. III, Sec. 5812, p. 94) These rules should apply to the case at bar where the law invoked grants a preference to locally produced products or materials. Since Republic Act 912 grants preference only upon the certification of availability, practicability and usability of locally produced materials by the Director of Public Works, that certification must be existing and effective before any right arising therefrom may be claimed to have been violated. Notwithstanding the clear nationalistic policy of the law aforementioned, We can-not, by any

mistaken sympathy towards herein appellee, recognize the existence of its right under the law alleged to have been violated which the C & C Commercial Corporation has miserably failed to prove in this case."

Furthermore, the private respondent is disqualified to participate in public biddings by virtue of Administrative Order No. 66 issued by the President of the Philippines on June 26, 1967:

"ADMINISTRATIVE ORDER NO. 66"

DISQUALIFYING ANY PERSON, NATURAL OR JURIDICAL, WITH PENDING CASE WITH THE BUREAU OF INTERNAL REVENUE OR BUREAU OF CUSTOMS OR CRIMINAL OR CIVIL CASE AGAINST HIM OR IT INVOLVING NONPAYMENT OF TAX DUTY OR UNDERTAKING WITH THE GOVERNMENT FROM PARTICIPATING IN PUBLIC BIDDING OR ANY CONTRACT WITH THE GOVERNMENT OR ANY OF ITS BRANCHES, SUBDIVISIONS OF INSTRUMENTALITIES."

it appearing that as alleged in the petition, which is not traversed, the private respondent has tremendous tax liabilities with the government and for which several cases have been filed in court against it.

Private respondent, however, assails the constitutionality of said Administrative Order No. 66 without giving any reason, and considering the well-settled rule that the constitutionality of a law or executive order may not be collaterally attacked, and they shall be deemed valid unless declared null and void by a competent court, the contention deserves no merit.

FOR ALL THE FOREGOING, the writ is granted, and the writ of preliminary injunction issued by the respondent judge, dated June 18, 1968, is set aside. Costs against private respondent C & C Commercial Corporation.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur. Fernando, J., concurs in the result.

[1] Cudiamat, et al. v. Torres, et al., L-24225.

[2] See C & C Commercial Corporation v. NAWASA, L-27275, Nov. 18, 1967.

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