

**CESAR VIRATA, IN HIS CAPACITY AS SECRETARY OF FINANCE;
ROLANDO G. GEOTINA, IN HIS CAPACITY AS COMMISSIONER OF
CUSTOMS; AND DOMINADOR GANGOSO, ALEJANDRO F. DIZON,
ARTURO LEAÑO AN...**

G.R. Nos. L-33426 and L-35014. April 30, 1973

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

On April 16, 1966, a Management Contract was executed between the Bureau of Customs and E. Razon, Inc. for the operation of the arrastre service at Piers 3 and 5, Manila South Harbor for six (6) months or 180 days commencing on May 1, 1966.

On the same date, a similar contract was executed between the Bureau of Customs and Guacods, Inc. for the operation of Piers 9, 13 and 15, also of the Manila South Harbor.

On January 27, 1967, the parties executed a Revised Management Contract duly approved on September 12, 1967 by the Secretary of Finance for the period of five (5) years commencing on May 1, 1966, unless sooner terminated in accordance with its provisions, subject among others to the following conditions:

"Within one (1) year before the expiration of this Contract, the BUREAU shall decide and make known whether the arrastre service shall be taken over by the BUREAU itself, or be subject to a new bidding, or that the CONTRACTOR shall be allowed to continue under such terms and conditions as may be agreed upon. In the event that the BUREAU has decided not to extend the contract, the necessary arrangements between the BUREAU and the CONTRACTOR to assess and inventory all properties and equipment and perform such other related matters, shall be made within said period of one (1) year, the assessment and inventory to be made by a committee of three composed of the representative of the GAO as Chairman, and a representative each of the BUREAU and the CONTRACTOR as member." (Par. LXII, p. 81, rec., Vol. I; p. 665, rec. Vol. II).

"The CONTRACTOR agrees that in the event that Congress of the Philippines enacts a law creating a government entity, agency or instrumentality to manage, control, operate, and supervise port operations in all or any port of entry in the Philippines, the terms and conditions of the management contract shall be reconsidered to conform to express provisions of such law, and this Contract shall therefore be amended accordingly; PROVIDED FINALLY that both contracting parties may alter, amend and cancel any of the above terms and provisions of this Contract subject to the approval of the Secretary of Finance." (Par. LXIII, p. 81, rec., Vol. I; p. 665, rec., Vol. II).

Pursuant to the Memorandum of Understanding executed on November 12, 1968 by Guacods, Inc., E. Razon, Inc., Associated Workers Union, Associated Water Supervisors Union, Arrastre Checkers Association and Associated Port Checkers Union, E. Razon, Inc. and the Bureau of Customs executed on May 9, 1969 an amendment to the Revised Management Contract under which the share of the government in the total monthly gross income derived from the arrastre operation was reduced from 46% to 40%, subject, among others, to the

following conditions:

"3. That the CONTRACTOR shall utilize the balance (70%) of the reduction of the government share, for the modernization of its equipment including fire-fighting equipment and other facilities to improve the efficiency of the arrastre service; PROVIDED, however, that the CONTRACTOR shall render to the BUREAU, a quarterly statement of accounts reflecting the disbursements of said 70% of the reduction of the government share." (Annex A-1, pp. 85-91, rec., Vol. I).

On July 27, 1970, a second amendment to the Revised Management Contract was executed between the parties under which the Bureau of Customs increased the handling charges on imported cargo for lighter deliveries, export cargo, transit cargo for inter-island and foreign ports, heavy cargo, shipping charges, pier lighting services, water services, other services, special services including overtime and personal services in order to enable the contractor E. Razon, Inc. to give across-the-board increases of salaries and wages to its employees and laborers in the amount of P2.00 per day for daily wage workers and P60.00 per month for the monthly paid employees, in view of the increase of the minimum wages for industrial workers from P6.00 to P8.00 daily under Republic Act No. 6131 (see Annex A-2, pp. 93-101, rec. of L-33426, Vol. I).

In a Memorandum dated May 6, 1969 reiterating his letter dated April 30, 1969, Mr. Geronimo Velasco as Chairman of the Board of Directors of E. Razon, Inc., requested that they be allowed to renew their contract or continue operating the arrastre service after the expiration of the contract on April 30, 1971 (Exhs. 1, 1-A & 1-B, p. 212, rec. of L-33426, Vol. I) in view of the fact that they are going to adopt a containerization program for the operation of the arrastre service on Piers 3 and 5.

In a letter dated May 7, 1969, then Secretary of Finance Eduardo Z. Romualdez replied that the proposed containerization program is "very reassuring and deserves the full support of the government" and that "the Department of Finance is prepared to consider your proposal at the opportune time for the extension or renewal of your present Revised Management Contract x x x in accordance with paragraph LXII of the Contract, provided full and satisfactory compliance of your Contract has been experienced during the lifetime of the existing Contract" (Annex C, p. 103, Exhs. 1 & 1-B, pp. 212-218, rec. of L-33426, Vol. I).

Thereafter, there is no evidence that the contractor E. Razon, Inc. has made any specific proposal for the extension or renewal of the Revised Management Contract nor pursued the same.

Exercising its rights under the aforesaid paragraph LXII of the Revised Management Contract, in a letter dated March 9, 1971, the Bureau of Customs informed respondents E. Razon, Inc. and Guacods, Inc. that it decided to call for a new bidding on March 15, 1971 for the operation of the arrastre service upon the expiration on April 30, 1971 of the Revised Management Contract (Annexes 1 and A, pp. 24, 566, rec. of L-33426, Vols. I & II). Said letter was received by both respondents on the same day, March 9, 1971. Accordingly, the acting Commissioner of Customs issued an invitation to bid for the operation of arrastre service for any and all piers on the Manila South Harbor including Piers 3 and 5 dated February 10, 1971 setting the bidding for March 15, 1971 from 8:00 to 10:00 A.M. in the office of the Commissioner of Customs and caused the publication of the same and issued likewise instructions to bidders dated February 8, 1971 together with a form for a bid proposal to be submitted by qualified bidders (Annex D, pp. 102, 104-116, rec. of L-33426, Vol. I).

The acting Commissioner of Customs, in his letter dated March 9, 1971 to E. Razon, Inc. and Guacods, Inc. informing the latter of his decision to call for a new bidding for the operation of the arrastre service for the entire Manila South Harbor beginning May 1, 1971, requested both firms to name their respective representative who shall be a member of a committee of three, chairmanned by a representative of the General Auditing Office with the third representative coming from the Bureau, to assess and inventory all properties and equipment which shall

be turned over to the winning bidder.

It seems that E. Razon, Inc. had knowledge of the invitation to bid even before March 9, 1971, because on March 5, 1971, it already prepared its petition for certiorari, prohibition, mandamus and injunction with preliminary and mandatory injunction and/or restraining order (see p. 38, rec. of L-33426, Vol. I), which petition was filed actually on March 11, 1971, entitled as "E. Razon, Inc. vs. Honorable Cesar Virata, et al." and docketed as Civil Case No. 82531, before Branch XV of the Manila Court of First Instance presided over by respondent Judge Juan L. Bocar, who issued a restraining order enjoining the respondents Secretary of Finance and acting Commissioner of Customs and the members of the Bidding Committee from proceeding with the bid scheduled on March 15, 1971, commanding the respondents to allow petitioner to continue arrastre services on Piers 3 and 5 and respondents to issue clearance in accordance with Administrative Order No. 66 of the President to petitioner to qualify and enable the petitioner to participate in the bidding for Piers 9, 13 and 15 also. The same order set the hearing on the application for preliminary injunction for March 27, 1971 (Annex 3, pp. 118-119, rec. of L-33426, Vol. I).

Despite the opposition of the Solicitor General in behalf of the respondent officials and bidding committee at the hearing on March 27, 1971, respondent Judge Juan L. Bocar issued a preliminary mandatory injunction dated March 30, 1971, upon the filing of a bond in the amount of P10,000.00 by petitioner E. Razon, Inc., enjoining the respondent officials and Bidding Committee from proceeding with the announced public bidding and commanding them to allow petitioner E. Razon, Inc. to continue arrastre services on Piers 3 and 5 "pursuant to its right to a contract renewal" (Annexes 5 and 6, pp. 132-133, rec. of L-33426, Vol. I).

On March 30, 1971, the Solicitor General in behalf of the respondents in Civil Case No. 83521 filed an urgent motion to dismiss the petition with opposition to the issuance of a writ of preliminary mandatory injunction (Annex 4, pp. 120-121, rec. of L-33426, Vol. I).

In a pleading dated April 1, 1971, petitioner E. Razon, Inc. filed an urgent motion to defer hearing on respondents' urgent motion to dismiss with opposition to the issuance of a writ of preliminary mandatory injunction dated March 30, 1971 on the ground that petitioner received a copy of said urgent motion to dismiss and the notification requesting the clerk of court for the setting of the consideration and resolution of respondents' said urgent motion to dismiss for April 3, 1971 respectively on the afternoon of March 30 and March 31, 1971, and that the Court in an order dated April 1, 1971 granted petitioner an extension of ten (10) days to file its reply to respondents' aforesaid urgent motion to dismiss (Annex 7, pp. 134-136, rec. of L-33426, Vol. I).

The main ground of E. Razon, Inc. in filing its petition before the lower court is that it invested about P3,382,999.37 for the acquisition of equipment and machineries for the operation of the arrastre services on Piers 3 and 5, including containerization equipment worth about 1.2 million pesos; carefully recruited and trained an able management team for the arrastre services for Piers 3 and 5 at a substantial cost; pushed to final conclusion the introduction of containerization in the Philippines; introduced projects principally geared towards the elimination of time waste, pilferage and other practices that usually result in heavy losses of arrastre revenues; and maintained industrial peace at the waterfront, all of which produced millions of pesos in revenues to the government and benefits to the shippers, exporters, importers and the general public due to the efficient arrastre handling, which entitle E. Razon, Inc. to an extension or renewal of the Revised Management Contract as a matter of equity since it had not yet recovered its investments in the acquisition of the aforementioned equipment and machineries, although it admits it realized profits from the operation in 1968, 1969 and the first six months ending December 31, 1970, with a reduced deficit of P14,381.72 compared to the net loss of P287,984.17 for the first two years of operation ending June 30, 1967 (pp. 9-10, Answer of respondent E. Razon, Inc. to the present petition filed on April 26, 1971; pp. 4, 10, Annexes A and B to Answer, rec. of L-33426, Vol. I).

Respondents Secretary of Finance, acting Commissioner of Customs and Bidding Committee now file this petition in L-33426 for certiorari and prohibition with preliminary injunction on April 17, 1971 to which, as heretofore stated, respondents E. Razon, Inc. and Judge Juan L. Bocar filed an Answer on April 26, 1971.

After the parties in L-33426 filed their respective memoranda, WE issued the following resolution dated May 13 1971:

"The motion of respondents to be given a period of at least ten (10) days from receipt of the copy of the petitioners' memorandum to file their reply thereto is granted. Respondents' compliance with the requirements indicated by this Court during the oral argument last April 28, 1971 is noted; but respondents are required to complete its compliance by furnishing this Court and the Solicitor General (1) a breakdown of the specific amounts realized for 1969, 1970 and the first four months of 1971 corresponding to the 70% allotment for modernization of equipment and other facilities to improve the efficiency of the arrastre service and 30% allotment for labor from the 6% reduction of share of the government from 46% to 40% under the amendment of May 9, 1969 to the Revised Management Contract of January 27, 1967 and (2) a list of the various equipment and other facilities purchased by E. Razon, Inc. after May 9, 1969 to improve the arrastre operation including the dates of purchase and prices therefor.

"The Court further resolved that pending the decision on whether or not the respondent Judge committed a grave abuse of discretion in issuing the questioned writ of preliminary injunction, and in order not to prejudice the public at large and the parties involved and/or affected by the operation of the arrastre services of Piers 3 and 5 as well as of the other piers in the entire Manila South Harbor, the preliminary mandatory injunction, issued on March 30, 1971 by the respondent Judge, is hereby modified as follows:

"(1) Petitioners may proceed in accordance with existing laws and regulations with the public bidding for the operation of the arrastre services for all the piers of the entire Manila South Harbor; without, however, making any final award or awards until further orders from this Court;

"(2) Petitioners are directed to permit Respondent E. Razon, Inc. to participate in such public bidding upon the filing by said Respondent E. Razon, Inc. of bonds with sufficient sureties to guarantee payment of the claims of the government against it, including its claims: (a) for P439,140.35 representing alleged unauthorized deductions in the government share, and (b) for P474,256.57, representing the 50% for monthly salaries, overtime pays, maintenance expenses, etc. of customs police, arrastre superintendent and staff, or of such amounts as may be finally determined by the proper authority or admitted by the parties;

"(3) Petitioners shall forthwith submit to this Court copies of all the bids submitted pursuant to the above authority; and

"(4) There being no objection on the part of petitioners, respondent E. Razon, Inc. is hereby allowed to continue operating the arrastre services for Piers 3 and 5 under the terms of the Revised Management Contract of January 27, 1967, as amended on May 9, 1969 and on July 27, 1970, until further orders from this Court."

On May 25, 1971, this case was considered submitted for decision on the merits (p. 292, rec. of L-33426, Vol. I).

However, respondents filed on May 28, 1971 their reply to petitioners' memorandum (pp. 307-308, rec. of L-33426, Vol. I).

On the same date, May 28, 1971, respondents filed a motion to allow the trial court in Civil Case No. 82531 to resume proceedings therein (pp. 299-304, rec. of L-33426, Vol. I), which was granted on Our resolution dated June 3, 1971 (p. 319, rec. of L-33426, Vol. I).

After hearing, the trial judge in Civil Case No. 82531 rendered on February 18, 1972 a partial decision sustaining the right of E. Razon, Inc. and directing the Secretary of Finance and the Commissioner of Customs to renew the

contract with E. Razon, Inc. for another period of five years under the same terms and conditions as those provided in the Revised Management Contract, from which decision herein petitioners appealed by certiorari on March 24, 1972, which appeal is entitled "Cesar Virata, et al. vs. E. Razon, Inc., et. al." and docketed as G.R. No. L-35014 (Annexes A & B, pp. 3-8, rec. of L-35014).

On March 29, 1972, herein petitioners manifested that pursuant to the resolution dated May 13, 1971, a public bidding for the operation of the arrastre services for all the piers of the entire Manila South Harbor was held on June 28, 1971, at which ten (10) bidders, including E. Razon, Inc., Guacods Marine Terminal, Inc. and Philippine Marine-Express Terminal, Inc. submitted their bids; and that the Bureau of Customs, upon the recommendation of the Arrastre Bidding Evaluation and Implementation Committee, is now ready to award the operation of the arrastre services of Piers 3, 5, 9, 13 and 15 to E. Razon, Inc. for submitting the best and most advantageous bid offer in accordance with the terms and conditions set forth in the Instruction to Bidders and the bid offers (pp. 415-417, rec. of L-33426, Vol. I).

On May 12, 1972, We authorized the Bureau of Customs to make the final award for the operation of the arrastre services of Piers 3, 5, 9, 13 and 15 of the Manila South Harbor, thereby lifting the writ of preliminary injunction issued by respondent Judge Bocar on March 13, 1971.

On June 10, 1972, respondent E. Razon, Inc. filed a manifestation and motion dated June 8, 1972 praying that the Secretary of Finance and/or Commissioner of Customs be directed to immediately make the final award in its favor (pp. 427-435, rec. of L-33426, Vol. I), on which the Solicitor General in behalf of herein petitioners commented on July 7, 1972 that:

(a) on April 21, 1972, Judge Florendo P. Aquino of Branch XIX of the Manila Court of First Instance issued a restraining order in Civil Case No. 82743 entitled Guacods, Inc. vs. Honorable Cesar Virata, et al. enjoining herein petitioners from implementing their decision to award the arrastre services to E. Razon, Inc.;

(b) that, aside from filing on March 30, 1971 Civil Case No. 82743 for certiorari, prohibition and mandamus with preliminary injunction, Guacods, Inc., claiming right to contract renewal, filed a similar petition on April 21, 1971 entitled Guacods, Inc. vs. Honorable Cesar Virata, and docketed as Civil Case No. 86828 before Branch IV of the Manila Court of First Instance presided over by Judge Serafin R. Cuevas, asserting the same right to contract renewal raised by E. Razon, Inc. in Civil Case No. 82531 before Branch XVI;

(c) that in Civil Case No. 86828, Judge Cuevas issued a restraining order on April 22, 1972, enjoining herein petitioners from implementing the award of the arrastre services to E. Razon, Inc.;

(d) that any implementation of the award might be a violation of the aforementioned restraining order issued by Judges Aquino and Cuevas;

(e) that while E. Razon, Inc. is willing to accept the final award, it has not abandoned its claim to a right to renew the revised Management Contract nor waive the beneficial effects of the partial decision dated February 18, 1972 rendered by Judge Juan L. Bocar in Civil Case No. 82531; and

(f) that therefore the Bureau of Customs is not in a position to make the award in favor of E. Razon, Inc. (pp. 440-443, rec. of L-33426, Vol. I).

In reply to the foregoing comment of petitioners through the Solicitor General, respondent E. Razon, Inc. stated on July 12, 1972 that on July 10, 1972, Judge Florendo P. Aquino lifted and dissolved the restraining order of April 21, 1972 in Civil Case No. 82743 and dismissed said case for being moot and academic, in view of Our resolution of May 12, 1972 (pp. 449-460, rec. of L-33426, Vol. I).

As a consequence, on July 14, 1972, We issued a resolution directing among others, to implead Guacods, Inc. as

party respondent (p. 463, rec. of L-33426, Vol. I).

In the amended petition dated October 18, 1972 and filed by herein petitioners on October 20, 1972, petitioners included as party respondents, aside from Guacods, Inc., Philippine Marine-Express Terminal, Inc. or Filmater for short, as the latter filed on June 10, 1972 a petition in intervention in Civil Case No. 86828, which was initiated by Guacods, Inc., on the ground that said Filmater also claims that it was the winning bidder at the public bidding on June 28, 1971.

The amended petition alleges among others:

"(11) In the early part of 1971, the Bureau of Customs notified respondent Guacods, Inc. through newspaper publication and personal notice of its decision to subject the operation of the arrastre services in all the piers of the South Harbor of Manila to a new bidding in accordance with paragraph LXII of the Revised Management Contract;

"(12) On March 30, 1971 before the announced public bidding was to take place, respondent Guacods, Inc. filed with the Court of First Instance of Manila a petition for certiorari, prohibition, mandamus and injunction against herein petitioners docketed as Civil Case No. 82743 and assigned to Branch XIX of said court. This petition contains substantially the same allegations and raises the same issues as that filed by respondent E. Razon, Inc. in Branch XVI of the same court (Annex '2'). A copy of the petition in Civil Case No. 82743 is attached hereto as Annex '10';

"(13) On June 28, 1971, the Bureau of Customs pursuant to the authority extended by this Honorable Court as contained in its resolution dated May 13, 1971, and after notifying all prospective bidders, including respondent Guacods, Inc. and Filmater, that the public bidding was being held pursuant to the said authority, conducted a public bidding for the operation of the arrastre services in all piers of the South Harbor of Manila;

x x x x x x x x

"(16) On or about April 10, 1972, upon petition of respondent Guacods, Inc. in Civil Case No. 82743 of the Court of First Instance of Manila (Branch XIX), an ex-parte restraining order was issued by Judge Florendo P. Aquino enjoining respondents (Secretary of Finance Cesar Virata, acting Commissioner of Customs Rolando G. Geotina and the Chairman and Members of the Bidding Evaluation and Implementation Committee of the Bureau of Customs) from implementing their decision to give the award for arrastre services over the piers at the South Harbor, Manila, to E. Razon, Inc. or to any other person or persons, entity, corporations or other juridical entity; and from disturbing in any way the status quo with respect to the subject matter of the said Civil Case No. 82743, and from disturbing or interfering with the petitioner in its present handling and management of arrastre services in Piers 9, 13 and 15 in any manner whatsoever;

"(17) On April 21, 1972 respondent Guacods, Inc. filed another petition dated April 19, 1972 for certiorari, prohibition, mandamus and injunction against herein petitioners in the Court of First Instance of Manila, docketed as Civil Case No. 86828 and assigned to Branch IV of said court presided over by Judge Serafin R. Cuevas. The petition contains the same allegations as those in Civil Case No. 82743 and, in addition, it avers that Guacods, Inc. was allegedly the winning bidder in the public bidding held on June 28, 1971 for the operation of the arrastre services in all piers of the South Harbor of Manila. A copy of the petition in Civil Case No. 86828 is attached hereto as Annex 11';

"(18) On April 22, 1971, also upon petition of respondent Guacods, Inc. Judge Serafin R. Cuevas, presiding over Branch IV of the Court of First Instance of Manila in Civil Case No. 86828, issued a restraining order enjoining and prohibiting respondents Secretary of Finance Cesar Virata, acting Commissioner of Customs Rolando Geotina and Chairman and Members of the Bureau of Customs Arrastre Bidding Committee from implementing and enforcing the award issued by them in favor of E. Razon, Inc. in connection with the operation of the arrastre services in Piers 3, 5, 13 and 15 of the Manila South Harbor until after the said Judge

shall have resolved the question of whether the writ of preliminary injunction prayed for should be issued or not; a copy of the restraining order is attached hereto as Annex 11-a';

"(19) In a subsequent order dated July 10, 1972, Judge Florendo P. Aquino, presiding Judge of Branch XIX of the Court of First Instance of Manila in Civil Case No. 82743, dissolved the restraining order he previously issued, denied the petition for the issuance of a writ of preliminary injunction and dismissed the main case for being moot and academic, respondent Guacods, Inc. filed a motion for reconsideration which is still pending resolution;

"(20) On May 15, 1972, herein petitioners filed a motion to dismiss Civil Case No. 86828 on the grounds that, among others, the court has no jurisdiction over the subject-matter of the action for the reason that the operation of the arrastre services in all piers and wharves in the country is strictly a governmental function and that the petition states no cause of action because, among other: (a) respondent Guacods, Inc. has no right to a contract renewal to operate the arrastre services under paragraph LXII of the Revised Management Contract; (b) the Bureau of Customs had duly and seasonably notified, by means of newspaper publication and personal notices, all the arrastre operators of its decision to subject the arrastre services to a new bidding in accordance with said paragraph LXII; (c) respondent Guacods, Inc.'s right to operate arrastre services at Piers 9, 13 and 15 also ceased on April 30, 1971 when the Bureau of Customs cancelled the Revised Management Contract on April 28, 1971 through the exercise of its right under the Automatic Cancellation Clause' under paragraph LIV (a) of said contract for repeated violations by respondent of the terms and conditions thereof, one of which is the habitual failure to remit government shares of the arrastre income; (d) respondent Guacods, Inc. is disqualified from participating in the June 28, 1971 public bidding for the operation of the arrastre services on account of its failure to secure the necessary clearance from the Bureau of Customs as required in the Invitation to Bid and by Administrative Order No. 66, dated June 26, 1967 of the President of the Philippines; and (e) since the Invitation to Bid and the Instruction to Bidders issued by the Bureau of Customs in connection with the June 28, 1971 bidding contain the reservations that the government has 'the right to reject any or all bids submitted' and that it will only accept 'the best and most advantageous bid,' respondent Guacods, Inc. is not entitled to the award as a matter of right. A copy of the motion to dismiss is attached hereto as Annex '12';

"(21) On June 13, 1972, Filipinas Marine-Express Terminal, Inc., filed a petition in intervention dated June 10, 1972 in Civil Case No. 86828 alleging therein, among others, that Filmater participated and was the highest bidder in the June 28, 1971 public bidding for the operation of arrastre services in all the piers of the South Harbor of Manila having bidden 50% as government share of the arrastre gross proceeds which is the same as the bid of Guacods, Inc. but that the latter is, however, disqualified from bidding, and, that since Filmater's bid was allegedly the best and most advantageous to the government, it is entitled to the award. A copy of the petition in intervention is attached hereto as Annex '13' and made an integral part hereof(;)." (Pp. 525-530, rec. of L-33426, Vol. II).

On November 18, 1972, respondent E. Razon, Inc. filed a manifestation and motion for early resolution on the ground among others (1) that Guacods, Inc. submitted its bid without reservation regarding its claim to contract renewal and is now in estoppel to assert any such claim; (2) that Guacods, Inc. was in fact even disqualified to participate in the said public bidding of June 28, 1971 for failure to secure the appropriate tax clearance as required by Presidential Administrative Order No. 66, series of 1967; (3) that E. Razon, Inc. has waived the benefits under the partial decision of Judge Bocar dated February 18, 1972 in Civil Case No. 82531; and (4) that further delay in the implementation of the award in favor of E. Razon, Inc. means continuing prejudice to the public welfare (pp. 740-746, rec. of L-33426, Vol. II).

On March 28, 1972, petitioners reiterated their previous motions for early resolution on the ground, among others, that an integrated system with only one arrastre contractor for the operation of all the piers of the Manila South Harbor will achieve maximum efficiency in cargo handling and realize increased revenues for the government;

that the long delay in the immediate implementation of the program of integrated arrastre operations is costing the government millions in unrealized revenues and depriving the public of better service; that the delay also would prejudice labor because no collective bargaining agreements can be executed until after the award to the winning bidder of the management contract; and that respondent Guacods, Inc., by its failure to make any qualification or reservation in its bid proposal as to its alleged right to a contract renewal in Civil Case No. 82743, forfeited its right by estoppel to raise such issue as against the award in favor of E. Razon, Inc.; and further pray for judgment or order dissolving the restraining order issued by respondent Judge Cuevas in Civil Case No. 86828 and permanently enjoining the continuation of the proceedings in Civil Cases Nos. 82743 and 86828 as well as respondents Guacods Marine Terminal, Inc. and Filipinas Marine-Express Terminal, Inc., including those acting for and in their behalf, from committing any act that may directly impede the implementation by petitioners of the final award of the arrastre services to E. Razon, Inc. for all the piers of the Manila South Harbor (pp. 932-937, rec. of L-33426, Vol. II).

Herein petitioner Secretary of Finance in his 2nd Indorsement dated March 23, 1972 (Annex C to Memo of petitioners dated January 13, 1973, p. 863, rec. of L-33426, Vol. II) approved the following findings and recommendation dated January 8, 1972 of the Arrastre Evaluation and Implementation Committee (Annex A to Memo of petitioners dated January 3, 1973, pp. 857-861, rec. of L-33426, Vol. II):

"I - In the bidding conducted on June 28, 1971 in the Office of the Commissioner (Conference Room) there were ten (10) bidders, in accordance with the time their respective bids were received as follows:

"1. Philippine Arrastre Service, Inc. - 8:00 A.M.

2. Filipinas Marine-Express Terminal - - do -

3. Guacods, Inc. - - do -

4. Transport Contractors, Inc. - - do -

5. E. Razon, Inc. - 8:01

6. Teves Brothers Enterprises - 8:25

7. Vetbusa Arrastre Service, Inc. - 9:45

8. Delgado Bros. Terminals Corp. - 9:50

9. Eastern Marine Terminals, Inc. - 9:50

10. Mr. Hermilo Rodis - 9:55 A.M.

"As scheduled, the bidding started at 8:00 o'clock and closed at 10:00 o'clock in the morning. All bids were immediately opened, stamped received and initialed by the committee members in the presence of all bidders and/or their representatives. As a precaution against tampering and/or substitution of records and documents, a special invisible crayon was used by the Chairman.

"II - Of the ten (10) bidders, the Committee found that Guacods, Inc. failed to post the necessary bond required to guaranty payment of his accounts - thus considered Guacods, Inc. disqualified.

"III - In accordance with the Instruction to Bidders, the criteria which shall be followed in determining the most advantageous bid to the government, are as follows:

"(a) Experience, training, organization and operational capability in cargo handling 30%

(b) Financial capacity 25%

(c) Arrastre equipment and materials 25%

(d) Proposed government share 20%

"The above criteria were further subdivided and itemized with corresponding points in order to derive a proportionate numerical equivalent for rating purposes and therefore achieve maximum objectivity.

"IV - In accordance with the above criteria and considering almost all conceivable factors affecting the arrastre operation, the Committee has finally arrived at the following over-all ratings:

- "1. E. Razon, Inc. 91.46%
2. Philippine Arrastre Service 91.90%
3. Delgado Bros. Terminal Corp. 89.63%
4. Filipinas Marine-Express Terminal, Inc. 83.28%
5. Transport Contractors, Inc. 82.33%
6. Vetbusa Arrastre Service, Inc. 82.33%
7. Teves Bros. Enterprises 80.63%
8. Eastern Marine Terminal 77.00%
9. Hermilo Rodis 71.30%

"After the second evaluation conference, the Committee picked out the three (3) highest rated bidders. The Committee decided that on the last and final evaluation, whoever gets the highest rating after getting the average of all points shall be the UNANIMOUS choice. By a small margin, E. Razon, Inc. outpointed both Philippine Arrastre Service and Delgado Brothers Terminal Corp. Thus, E. Razon, Inc. was the unanimous choice.

"V - Observations and Justifications

"In the first criterion (experience, etc.) there is no doubt that E. Razon, Inc. and Guacods, Inc., as a corporate entity, outrank all others. This criterion carried a 30% weight. However, Guacods, Inc. is disqualified.

"There is not such variance nor a wide gap among the qualified bidders in so far as financial capacity is concerned. All had the backing and support of reputable banking institutions. It is likewise observed that financial support will be extended by any bank to any bidder who will be awarded the arrastre operation. Experience, training, organization and operational capability and sufficiency of arrastre equipment and materials certainly guarantee more the efficiency of the arrastre operations than a projected financial capacity. It is enough that the financial capacity as presented is sufficient to carry on the arrastre service.

"On the aspect of arrastre equipment and materials all projections, program of procurement, maintenance, repair and replenishment are well presented by all bidders. However, on the actual existing 'ready-line' equipment and materials, E. Razon, Inc., Delgado Brothers Terminal Corp. and Transport Contractors, in that order, outpoint the rest. Furthermore, E. Razon, Inc. has available pier equipment worth P3,418,516.07 acquisition cost in addition to the minimum requirement under the Instruction to Bidders. E. Razon, Inc. is superior to the other bidders in its program equipment renewal, purchase of additional cargo handling equipment and its special offers of other equipment such as self-contained container yard, stand-by generating plant, a cold storage facility and others.

"On the government share offered by the bidders, the range is from thirty-nine (39%) to Fifty (50)% of the gross income as follows:

"1. Filipinas Marine Express Terminal

50%

2. Transport Contractors

48%

3. Delgado Bros. Terminal Corp.

45.71%

4. Philippine Arrastre Service

43%

5. Teves Brothers Enterprises.

40%

6. Vetbusa Arrastre Service Inc.

40%

7. Eastern Marine Terminal

40%

8. E. Razon, Inc.

39%

9. Hermilo Rodis

33%

"It will be recalled that the original government share offered by the present arrastre contractors of Forty-six (46%) per centum of the gross income. This was later reduced to Forty (40%) per centum and further recommended for reduction down to Thirty-six (36%) per centum of the gross income. After studying the various factors affecting the operational expense of the arrastre service and the returns on investment, the committee is of the opinion that any offer more than Forty-six (46%) per centum of the gross income is 'unrealistic.'

"It is unrealistic in the sense that the offeror will certainly lose; or in order to the arrastre operation, the Bureau will then again reduce the government share to a percentage which may even be lower than any of the present offers, which the Committee desires to avoid.

"The Committee is aware that the percentage of government share offered has a great bearing and effect on the financial stability of the arrastre operator in the actual arrastre operation. In determining the most advantageous bid, it does not therefore necessarily mean that the higher offer of government share will enjoy a higher rating.

"VI - Other factors although not considered in the rating but which the Committee unanimously agreed in favor of E. Razon, Inc. as well as for the best interest of the Bureau, are as follows:

"(a)

In the take-over of the arrastre service, E. Razon's take-over of the whole South Harbor will be the least inconvenient (considering the inventory to be done on cargoes, both existing and incoming) during the transition period. The turnover will take into account not only the sharing of the arrastre charges but also cargo losses;

"(b)

There will be the least speculations on how the new arrastre operator would run the piers. Such speculation will bring doubt in the mind of the public and the importers will not bring in goods unless the port operations have been stabilized and brought back to normal. The same factor will be considered by shipping companies;

"(c)

There is more assurance of industrial peace at the waterfront. Labor's behavior will be much subdued in case of E. Razon's assumption than that of any other new contractor;

"(d) It is the thinking of the Committee that there will be more stability in labor-management relations;

"(e)

Continuity of expansion and development program of port facilities and port operation itself. There is no need of 'getting-to-know' or any other orientations;

"(f) The present court litigations can be terminated.

"In view of all the foregoing, and in as much as the Committee has unanimously decided that the offer of E. Razon, Inc. is the best and most advantageous to the government, it is respectfully recommended that the arrastre service in the South Harbor, Port of Manila be awarded to E. Razon, Inc.

"If this recommendation is favorably considered, the Committee will thereafter implement the award by the preparation of the necessary contract which would reflect the policy and thinking of the Bureau of Customs and the rights as well as the obligations of the awardee, in accordance with the terms of the Instructions to Bidders and the bid offer." (Pp. 857-861, rec. of L-33426, Vol. II).

WE cannot disagree with the well-reasoned assessment and appraisal of the bid offers submitted by the ten (10) bidders as delineated in the aforequoted evaluation, especially with respect to respondents E. Razon, Inc., Guacods, Inc. and Filipinas Marine-Express Terminal, Inc. No fraud or arbitrariness vitiates such evaluation and the approval of petitioner Secretary of Finance.

A reservation in the advertisement for bids of the right of the government to reject any bid, generally vests in the authorities a wide discretion as to who is the best and most advantageous bidders, and this involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions and, when honestly exercised, may not be reviewed by the court. In such cases, there is no binding obligation to award the contract to any bidder and in the exercise of such discretion the award may be made validly to a bidder, who is the highest one, because the latter is the most advantageous bidder.[1] It is apparent from the aforequoted evaluation of the various bids, that the winning bid of E. Razon, Inc. is indisputably the best and most advantageous to the government; and respondents Guacods, Inc. and Filipinas Marine-Express Terminal, Inc. have no reason to complain, especially Guacods, Inc. who was disqualified for failure to secure a tax clearance in view of its subsisting accountability in the amount of over a million pesos to the Bureau of Customs.[2]

The Supreme Court, in the exercise of its supervisory power over inferior courts, has the authority to direct petitioners to make the final award to the best and most advantageous bidder and implement the same, to terminate once and for all cases involving the same subject matter, viz., the integrated operation of the arrastre service of all piers on the Manila South Harbor and thus administer swift justice.

Guacods, Inc. had been validly disqualified by the Arrastre Evaluation and Implementation Committee for failure to post the necessary bond required for the payment of its accounts and to submit the tax clearance required by Presidential Administrative Order No. 66, series of 1967 (Annex 3 or Exh. C, p. 712, rec. of L-33426, Vol. II). On March 19, 1971, Guacods, Inc. requested for such tax clearance (Annex D or Exh. C-1, p. 864, rec. of L-33426, Vol. II). On March 23, 1971, the Commissioner of Customs rejected said request because Guacods, Inc. has an outstanding account with the Bureau of customs in the huge amount of P3,843,199.86 as of March 19, 1971 (Annex E or Exh. C-2, p. 865, rec. of L-33426, Vol. II), including unauthorized deductions of P358,864.77 from the government share in violation of the contract despite repeated demands therefor (Annex B, p. 668, rec. of L-33426, Vol. II). Said rejection of the request of Guacods, Inc. for tax clearance was affirmed by the Secretary of Finance in his 2nd Indorsement dated April 1, 1971 (Annex G or Exh. C-4, p. 867, rec. of L-33426, Vol. II).

In their Manifestation dated April 10, 1973 and filed on April 11, 1973, herein petitioners stated that the Bureau of Customs on March 30, 1973 assumed the operation of the arrastre service for Piers 9, 13 and 15 and terminated the service of Guacods, Inc., because of the latter's continued breach of the Management Contract by its failure to remit the government share and its defiance of Customs authority, aside from its failure to prevent pilferages (Annex A, p. 944, rec. of L-33426, Vol. II).

Respondent Judge Serafin R. Cuevas in Civil Case No. 86828 rightly recognized that this Court has jurisdiction to determine whether final award should be made as a result of the public bidding on June 28, 1971, when he issued his order dated September 12, 1972 suspending until further orders, upon petition of intervenor E. Razon, Inc. (in said Civil Case No. 86828), praying for the suspension of the "preliminary hearing on said intervenor's Affirmative Defenses against Guacods, Inc. and Filipinas Marine-Express Terminal, Inc. in view of the pendency before the Supreme Court of the case of Honorable Cesar Virata, et al. vs. Honorable Juan Bocar, et al., G.R. No. L-33426, which involves almost identical issues of fact and law as those of the other case, there being no objection from Guacods, Inc. and Filipinas Marine-Express Terminal, Inc. x x x" (Annex 14 to Motion to Dismiss of herein petitioners in Civil Case No. 86828 dated May 15, 1972, pp. 684-722, rec. of L-33426, Vol. II).

Because, as stated in the aforesaid order of respondent Judge Cuevas, Guacods, Inc. and Filipinas Marine-Express Terminal, Inc. did not interpose any objection to the suspension of the preliminary hearing, they too concede, as they must, the authority of this Court to direct herein petitioners to make the final award.

Moreover, Guacods, Inc. is estopped from proceeding with Civil Case No. 86828 by reason of its failure to reserve its claim therein to a contract renewal when it unconditionally submitted its bid at the public auction on June 28, 1971.

The integrated operation of the arrastre services in all the piers of the Manila South Harbor had been long delayed to the prejudice of the government and the public.

IN VIEW OF ALL THE FOREGOING, HEREIN PETITIONERS ARE HEREBY DIRECTED TO MAKE THE FINAL AWARD IN FAVOR OF E. RAZON, INC. AS THE BEST AND MOST ADVANTAGEOUS BIDDER OF THE CONTRACT TO OPERATE THE ARRASTRE SERVICES FOR ALL THE PIERS IN THE MANILA SOUTH HARBOR; AND G.R. NO. L-35014 IS HEREBY DISMISSED. WITHOUT COST IN BOTH CASES.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, and Esguerra, JJ., concur.

Teehankee, J., concurs in the result.

Antonio, J., took no part.

[1] A.C. Esguerra & Sons vs. Aytona, April 28, 1962, L-18751, 4 SCRA 1245, 1250; Ocampo vs. Municipal Council, L-9393, May 31, 1967; Jalandoni vs. NARRA, May 30, 1960, L-15198, 108 Phil. 486, 491-492.

[2] A.C. Esguerra & Sons vs. Aytona, supra.

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