

**OCCIDENTAL MINDORO ELECTRIC COOPERATIVE, INC. (OMECO),
AS REPRESENTED BY TIS GENERAL MANAGER, ENGR. ALFRED A.
DANTIS, PETITIONER, VS. THE HONORABLE EXECUTIVE JUDGE JOSE
S. JACIN...**

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

This is a Petition for Certiorari[1] under Rule 65 of the Rules of Court assailing on the ground of grave abuse of discretion the Order[2] dated 27 June 2012 and Order[3] dated 12 July 2012, both issued by the public respondent, Hon. Jose S. Jacinto, Jr.,[4] in his capacity as Presiding Judge, in a case for Injunction/Prohibition with Prayer for the Issuance of Writ of Preliminary Injunction and Temporary Restraining Order,[5] docketed as SP. Civil Action No. R-1723 and entitled "Island Power Corporation (IPC), represented by its President, Jose T. Villarosa, Petitioner v. Occidental Mindoro Electric Cooperative, Inc. (OMECO), Respondent."

The facts are as follows —

On 10 October 2011, petitioner Occidental Mindoro Electric Cooperative, Inc.[6] filed with the Regional Trial Court of San Jose, Occidental Mindoro a Complaint[7] for Rescission and Resolution of Contract and Damages against private respondent Island Power Corporation[8] involving the parties' agreement denominated as Energy Conversion Agreement for Occidental Mindoro Power Station[9] Allegedly, petitioner unilaterally rescinded the Agreement, which is bound to lapse in 2018, because of the serious breach of the terms and conditions therein by the private respondent, including its failure to supply power and energy to the petitioner and which constrained petitioner to purchase power or energy from the National Power Corporation at a higher price.

Petitioner prayed, inter alia, to be provisionally allowed to conduct a competitive selection process of a new power provider, in accordance with Department of Energy Circular Number DC-20040—01-001 and to accept offers for supply of electricity from any interested power producer, in the event that the National Power Corporation can no longer do so.

Without awaiting the resolution of such prayer, however, the petitioner caused the publication in the Philippine Daily Inquirer of an "Invitation For Expression of Interest, To Pre-qualify and To Bid"[10] and the posting of said invitation in its own website.

On the other hand, private respondent, seeking to enjoin petitioner from holding such activity, countered by filing with the same court a Petition[11] for Injunction and Prohibition with a prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order, arguing that said activity will be in gross violation of the parties' Agreement, to cause private respondent irreparable injury, if not restrained or prohibited.

A day after, the public respondent issued a Temporary Restraining Order (TRO) in favor of private respondent, elucidating that petitioner "has no factual or legal basis to simultaneously undertake the binding offer while asking for judicial relief for rescission or cancellation of the subject ECA." [12]

In the ensuing events, the public respondent issued the first assailed Order, granting a Writ of Preliminary Injunction in favor of private respondent. The dispositive portion of said Order reads —

"X x x

WHEREFORE, foregoing premises considered, this Court hereby GRANTS the prayer for the issuance of a Writ of Preliminary Injunction and ISSUES the said Writ in favor of the petitioner (IPC) and against the respondent (OMECO). ORDERING the latter to REFRAIN from proceeding with the 'Invitation for Expression of Interest to Pre-Qualify and To Bid' pending final resolution of this case or until otherwise ordered by the Court.

The Branch Court Sheriff is DIRECTED to effectively execute/implement the said writ upon posting of a bond by the petitioner (IPC) in the amount of TWO HUNDRED FIFTY THOUSAND (Php 250,000.00) PESOS which shall answer for any kind of damages that may be suffered by the respondent (OMEO) if and when found later on that the petitioner (IPC) is not entitled thereto to the said Writ.

Let copy of this ORDER be furnished the contending parties and their counsels for their respective information, guidance and compliance.

SO ORDERED.

X x x"[13]

As petitioner's Motion for Reconsideration[14] of said Order proved futile, petitioner is now before Us through the instant Petition, anchored on this sole issue, viz. —

WHETHER OR NOT THE PUBLIC RESPONDENT, THE HONORABLE EXECUTIVE JUDGE JOSE S. JACINTO, JR. PRESIDING JUDGE OF BRANCH 45 OF THE REGIONAL TRIAL COURT AT SAN JOSE, OCCIDENTAL MINDORO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, BY GRANTING A WRIT OF PRELIMINARY INJUNCTION WHICH RESTRAINED THE PETITIONER FROM CONDUCTING ITS CSP.[15]

Generally, "[t]he grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion." [16] "Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of a TRO in his favor." [17]

That being said, "every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it." [18] In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion. [19]

After a meticulous review of the facts on hand, We are convinced that petitioner was able to successfully discharge its burden of proving grave abuse of discretion on the part of the public respondent in issuing the injunctive writs and petitioner is thus entitled to a writ of certiorari, as prayed for.

Under Section 5, Rule 58 of the 1997 Rules of Civil Procedure, a temporary restraining order may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would

result to the applicant before the writ of preliminary injunction could be heard. In addition, Section 4(a) of Rule 58 of the Rules of Court is clear regarding the procedure to be followed in the issuance of writs of preliminary injunction, i.e., a preliminary injunction or temporary restraining order may be granted only when the application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded.[20]

In a line of cases, this Court has emphasized that the "xxx sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the status quo until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the parties; one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the status quo of the controversy before a full hearing can be had on the merits of the case." [21]

This injunction case, to recall, is an offshoot of the pending Complaint for Rescission of the Agreement for power supply between the parties. Since the Agreement remains valid until 2018 and considering that the propriety of the unilateral rescission by petitioner of said Agreement is still subject of judicial scrutiny, private respondent seemingly has a right in esse to be protected under the said Agreement. As the records show, the public respondent, based on these facts, justified his grant of an writ of preliminary injunction in this wise —

"X x x

Contrary to respondent's contention that CSP will not in any way molest petitioner's right under ECA, the essence and eventual effect of the CSP which includes the making and publishing the Invitation for Expression of Interest to Pre-Qualify and To Bid is to obtain a power supply agreement. Such agreement already exists with the petitioner. In fact, this arrangement/venture is mentioned/admitted in the Sworn Statement executed on June 4, 2012 by Engr. Alfred Dantis, General Manager of OMECO. This factual circumstance is further affirmed by OMECO's filing of a Civil Case for Rescission of Contract. Indeed, a contract between the herein contending parties still exists and only when the same is declared terminated or rescinded that the respondent can proceed with the CSP. While the herein respondent claims that the invitation only calls on all interested parties to respectfully submit their Duly Sworn Letters/Expression of Interest and does not, in and of itself, create new and binding legal relationships between the respondent and other parties, and in a manner that would put it in breach of its contract with the petitioner, this Court judiciously believes that such invitation serves as prelude to apparent attempt to replace if not terminate the existing power supply agreement with the herein petitioner. Ergo, the probability of irreparable injury is imminent on the part of petitioner whose right under the ECA still exists.

X x x"[22]

There can be no quibbling that to be entitled to the injunctive writ, the applicant must show that there exists a right to be protected which is directly threatened by an act sought to be enjoined. It should not be forgotten, however, that it is likewise imperative to establish that the invasion of the right is material and substantial and there is an urgent and paramount necessity for the writ to prevent serious damage.[23] Apart from that, the applicant must likewise show proof of probability of irreparable injury, inadequacy of pecuniary compensation and the prevention of the multiplicity of suits. Where facts are not shown to bring the case within these conditions, the relief of injunction should be refused.[24]

The facts and evidence on record do not convince Us on the existence of the other requisites for an injunctive writ to issue.

Private respondent claims, and the public respondent agrees, that the former's right as the exclusive power supplier of the petitioner under the Agreement will be violated if a writ of injunction will not be issued. It bears to point out, however, that the act sought to be enjoined by private respondent is only a pre-qualification process of another power supplier. It may be true that, as pointed out by the public respondent, the said act could lead to an

execution of contract between the petitioner and the chosen qualified bidder, which could ultimately violate the right of private respondent as the exclusive power supplier of petitioner. Then again, none of these may happen considering that petitioner has reserved the right "to annul the bidding process and reject all bids at any time prior to the award of the PSA xxx"[25] and given the lingering possibility that the parties may be able to iron out their differences and continue with their contract any time soon. Furthermore, even if the event is allowed to proceed to its conclusion, it cannot be gainsaid that petitioner may decide not to enter into a contract with the winning bidder.

It is obviously highly premature, as well as purely speculative and anticipatory, to say that the act against which the writ is to be directed is violative of the right of private respondent. Certainly, it would have been different if private respondent sought to restrain the execution of a power contract with a third party/qualified bidder, for that may amount to an encroachment of private respondent's right as exclusive power supplier of petitioner. Until that time comes, though, private respondent cannot claim any direct and personal injury of its right under the Agreement. As it is, therefore, the public respondent is thinking way ahead even if everything is still up in the air, so to speak.

From this premise, it is starkly clear that there is no pressing necessity to enjoin the act; there being no injurious consequences that may transpire even if the act sought to be enjoined is allowed to proceed. Furthermore, private respondent obviously still has some legal remedies at his disposal on any injury that it may suffer therefrom, assuming there be any. For one, private respondent may seek indemnification for damages it may suffer as a result of petitioner's breach of the terms of the contract. To be sure, [t]he provisional remedy of preliminary injunction may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard of compensation."[26]

All things considered, We hold that the public respondent committed grave abuse of discretion in granting private respondent a writ of mandatory injunction despite private respondent's failure to adequately show that it is in clear danger of being irreparably injured unless the status quo between the parties is observed while the case for rescission is pending.

WHEREFORE, premises considered, the instant Petition is GRANTED and the assailed Order dated 27 June 2012 and Order dated 12 July 2012 are hereby VACATED AND SET ASIDE.

Accordingly, the writ of preliminary injunction issued by the RTC is declared dissolved and of no effect.

SO ORDERED.

Bato, Jr., (Chairperson), and Sempio Diy, JJ., concur.

[1] Rollo, pages 03 to 34.

[2] Penned by Executive Judge Jose S. Jacinto, Jr.; Rollo, pages 38 to 42, Annex "B."

[3] Id. at 43 to 44, Annex "C."

[4] "Public respondent," for brevity.

[5] "TRO," for brevity.

[6] "Petitioner," for brevity.

[7] Rollo, pages 45 to 68, Annex "D."

[8] "Private respondent," for brevity.

- [9] "Agreement," for brevity.
- [10] Rollo, pages 107 to 11.
- [11] Rollo, pages 69 to 77, Annex "E."
- [12] Id. at 112, Annex "F". See Order dated 18 May 2012.
- [13] Id. at 41 to 42.
- [14] Id. at 126 to 132.
- [15] Rollo, page 11.
- [16] Australian Professional Realty, Inc. et al. vs. Municipality of Padre Garcia Batangas Province, G. R. No. 183367, 14 March 2012.
- [17] Id.
- [18] Equitable PCI Bank, Inc. v. OJ-Mark Trading, Inc., et al. G.R. No. 165950, 11 August 2010; citation omitted.
- [19] Felix de Guzman Ocampo v. Alicia Sison vda. de Fernandez, et al., G.R. No. 164529, 19 June 2007.
- [20] Universal Motors Corporation vs. Judge Francisco G. Rojas, Sr. A.M. No. RTJ-03-1814, 26 May 2005.
- [21] Felix de Guzman Ocampo vs. Alicia Sison vda. de Fernandez, et al., G.R. No. 164529, 19 June 2007.
- [22] Rollo, pages 43 to 44.
- [23] Felix de Guzman Ocampo vs. Alicia Sison vda. de Fernandez, et al., G.R. No. 164529, 19 June 2007.
- [24] Herminio Tayag vs. Amancia Lacson, et al., G.R. No. 134971, 25 March 2004.
- [25] Rollo, pages 107 to 110.
- [26] Philippine National Bank vs. Castalloy Technology Corporation, et al., G.R. No. 178367, 19 March 2012.

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