

CARLOS A. GOTHONG LINES, INC., PETITIONER, VS. COURT OF APPEALS, HON. PACIENCIO M. BALBON, & COKALIONG SHIPPING LINES, INC., RESPONDENTS.

G.R. No. 113576. July 01, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court are two petitions for review on certiorari. The first petition, docketed as G.R. No. 118235, assails the Decision[1] of the Court of Appeals in CA-G.R. SP No. 32307. The second petition, docketed as G.R. No. 113576, assails the Resolution[2] of the Court of Appeals in CA-G.R. SP No. 33174.

The Antecedents

Carlos A. Gothong Lines, Inc. (Gothong, for brevity), filed an application, docketed as Case No. 93-036, with the Maritime Industry Authority (MARINA) for provisional authority to re-route its vessel M/V Our Lady of Guadalupe.[3] In due course, Gothong was granted a special permit by the MARINA to operate its vessel in the Cebu–Cagayan–Cebu–Cagayan–Cebu–Cagayan–Jagna–Cagayan route. Gothong prayed in its application, viz:

WHEREFORE, in view of the foregoing, it is respectfully prayed of this Honorable Authority:

- That a Provisional Authority be immediately granted the applicant for the vessel M/V OUR LADY OF GUADALUPE in the route herein applied for, to wit: Cebu–Surigao–Cebu–Surigao–Cebu–Surigao–Cebu–Maasin–Cebu;
- That upon due notice and hearing, this Authority grant the herein applicant Certificate of Public Convenience for the vessel M/V OUR LADY OF GUADALUPE in the route applied for; and
- That Applicant be granted such other relief and remedies just, fair, and equitable under the circumstances.[4]

Cokaliong Shipping Lines, Inc. (Cokaliong, for brevity), the owner-operator of two vessels, the M/V Filipinas-Tandag and M/V Filipinas-Surigao, opposed the application, alleging that the MARINA had previously issued in its favor a permit to operate its vessels serving the Cebu–Surigao-Tandang link and the Cebu–Maasin link. It also alleged that to allow Gothong to operate its vessel along the said routes could be a cause of over-tonnage and a big possibility of a cut-throat competition.[5]

After Gothong’s documentary evidence was admitted, the MARINA considered the application for a provisional authority submitted for resolution on July 22, 1993.

On August 10, 1993, the MARINA issued an Order denying the application of Gothong for a provisional authority until such time that MARINA had conducted the necessary actual market study/survey in the applied route. The dispositive portion of the Order reads:

In view thereof, the applicant’s request for Provisional Authority to operate the vessel M/V “OUR LADY OF GUADALUPE” in the Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu route is hereby

DENIED, until such time that this Authority has conducted the necessary actual market study/survey in the applied route to verify if additional shipping services/frequency of trips are warranted therein.

SO ORDERED.[6]

Gothong filed a motion for the reconsideration of the order, to which Cokaliong filed an opposition. Gothong complained that the denial of its application for a provisional authority effectively dismissed its application without any countervailing evidence being submitted by the oppositor. It asserted that the order was based solely on Cokaliong's opposition, and that its evidence was sufficient for the MARINA to grant its application for provisional authority. In an Urgent Motion dated September 29, 1983, Cokaliong submitted documents showing that the M/V Our Lady of Guadalupe was unseaworthy.[7]

On October 1, 1993, the MARINA issued an Order granting the application of Gothong for provisional authority to carry passengers and cargoes for the Cebu–Surigao–Cebu–Surigao–Cebu–Surigao–Cebu–Maasin–Cebu route of its vessel, the M/V Our Lady of Guadalupe.[8] The provisional authority granted to Gothong was subject to several conditions, one of which reads:

- That this PROVISIONAL AUTHORITY shall be valid for a period of THREE (3) MONTHS from date hereof.

It may be cancelled, revoked or modified at any time as public interest may require and is without prejudice to whatever decision this Authority may finally render on the basic application for a Certificate of Public Convenience.[9]

On October 6, 1993, Cokaliong filed a Motion for Revocation of the provisional authority on the following grounds:

- Market condition does not warrant additional capacities;
- There has been an increase in vessels plying the subject route, therefore, the route is over-tonnaged;
- The route is being adequately served by oppositor, as well as by Trans-Asia Shipping lines, Inc. and Escano Lines and therefore there is no urgent public need; and
- M/V "OUR LADY OF GUADALUPE" is unseaworthy.[10]

However, Cokaliong failed to serve copies of its motion on Gothong and to set the same for hearing on a specific date and time.

On October 8, 1993, the MARINA issued an Order setting the motion of Cokaliong for hearing on October 21, 1993 at 9:30 a.m.[11] However, the MARINA also suspended the provisional authority it issued in Gothong's favor pending the said hearing, on account of the therein alleged unseaworthiness of the vessel. It ordered Gothong to cease and desist from operating the vessel until the motion shall have been resolved. The MARINA also ordered Gothong to file its reply to Cokaliong's pleading.

Instead of doing so, Gothong filed a petition for certiorari and prohibition on October 12, 1993 with the Court of Appeals with a prayer for a temporary restraining order and for writ of preliminary injunction assailing the October 8, 1993 Order of the MARINA. Gothong claimed that the MARINA acted with grave abuse of discretion amounting to excess or lack of jurisdiction when it suspended the operation of the M/V Our Lady of Guadalupe ex parte and without any notice of hearing of Cokaliong's motion and the proper and timely service thereof on it. The petition was docketed as CA-G.R. SP No. 32307 and was raffled to the 16th Division of the CA. On October 15, 1993, the Court of Appeals issued a Resolution requiring the respondents MARINA and Cokaliong to file their comment thereon and ordering them to desist from enforcing or directing the enforcement of the assailed

order.[12] The Court set for hearing the petitioner's plea for a preliminary injunction on November 16, 1993. During the hearing the parties agreed to maintain the status quo until the resolution of Gothong's plea for a writ of preliminary injunction.[13]

On December 20, 1993, Gothong filed a motion with the MARINA for an extension of its provisional authority to operate the vessel for a period of three months from January 1, 1994. The MARINA issued the Order granting the motion on December 29, 1993.[14]

In the meantime, the respondent MARINA filed in CA-G.R. SP No. 32307 its comment and supplement thereto.[15] Respondent Cokaliong, likewise, filed its comment.[16]

On February 1, 1994, Cokaliong filed a petition for certiorari and prohibition in the Court of Appeals with a prayer for a temporary restraining order and/or writ of preliminary injunction for the nullification of the December 29, 1993 Order of the MARINA granting an extension of Gothong's provisional authority to operate its vessel. The case was docketed as CA-G.R. SP No. 33174 and raffled to the 13th Division of the Court of Appeals.

On February 22, 1994, the Court of Appeals issued a temporary restraining order in CA-G.R. SP No. 33174 directing the respondents to cease and desist from enforcing the assailed Order of the MARINA. It also issued a resolution in the same case, holding that there was no need to consolidate the case with CA-G.R. SP No. 32307 pending in the 16th Division of the appellate court, since the issues raised therein were different. The CA also granted in the same Order Cokaliong's plea for a writ of preliminary injunction on a bond of P500,000.00.[17]

On February 11, 1994, Gothong filed a petition for review on certiorari in this Court, docketed as G.R. No. 113576, for the nullification of the February 3, 1994 Resolution of the Court of Appeals in G.R. SP No. 33174 and for the Court to order the CA to consolidate CA-G.R. No. 33174 with CA-G.R. No. 32307 pending in the 16[th] Division of the CA. On February 28, 1994, the Court issued a temporary restraining order in G.R. No. 113576 and required the respondents to comment on the petition.

On March 9, 1994, the Court of Appeals rendered judgment in CA-G.R. SP No. 32307 dismissing the petition for the petitioner's failure to file a motion for reconsideration of the assailed order with the MARINA before filing its petition in the Court of Appeals.[18] Gothong filed a motion for reconsideration of the decision, but the CA denied the same. Gothong then filed its petition for review on certiorari with this Court for the reversal of the CA decision. The case was docketed as G.R. No. 118235. The two petitions were then consolidated for resolution.

The Issues

From our review of the records, the issues for resolution in the two petitions are (a) whether the private respondent Cokaliong is guilty of forum shopping in filing its petition in the Court of Appeals, docketed as CA-G.R. SP No. 33174, despite the pendency of the petition filed by Gothong, docketed as CA-G.R. SP No. 32307; (b) whether the Court of Appeals erred in not consolidating CA-G.R. SP No. 33174, raffled to its 13[th] Division, with CA-G.R. SP No. 32307 pending before the 16[th] Division; (c) whether the Court of Appeals erred in issuing a temporary restraining order in CA-G.R. SP No. 33174; and, (d) whether the 16[th] Division of the appellate court erred in dismissing the petition for certiorari in CA-G.R. SP No. 32307 filed by Gothong, for its failure to file a motion for reconsideration of the assailed order.

The Ruling of the Court

On the first issue, petitioner Gothong asserts that the respondent was present during the hearing in CA-G.R. SP No. 32307 on November 16, 1993 and agreed to maintain the status quo, yet it filed its petition, docketed as CA-G.R. SP No. 33174, in the CA. It contends that the act of respondent Cokaliong constitutes forum shopping or

malpractice proscribed by Section 17 of the Interim Rules, because it violated the status quo agreement of the parties during the hearing of November 16, 1993 in the Court of Appeals. The petitioner avers that the extension of the provisional authority granted to it by the MARINA was ministerial, in view of the status quo order of the CA in CA-G.R. SP No. 32307. It avers that if the MARINA erred in extending its provisional authority, it behooved the respondent to have assailed the same in CA-G.R. SP No. 32307, instead of filing its petition in CA-G.R. SP No. 33174.

On the issue of forum shopping, the Court of Appeals ruled as follows:

There is forum shopping when a party seek (sic) to obtain remedies in an action in one court which had already been solicited and, what is worse, already refused in other actions and proceedings in other tribunal (MB Finance Corp. v. Abesamis, G.R. No. 93875, March 22, 1991) 195 SCRA 592.

In GSIS v. Rebecca Panlilio, et al., G.R. No. 83385, Nov. 26, 1990, 191 SCRA 655, it was held that: “forum shopping” exists “whenever, as a result of an adverse opinion in one forum, a party seeks a favorable opinion (other than by appeal or certiorari) in another.” However, as held in another case, “both actions, (must) involve the same transactions, same essential facts and circumstances.” (citing Palm Avenue Realty Dev’t. Corp. v. PCGG, 153 SCRA 579, 591).

In the present case, COKALIANG (sic) does not seek to obtain a remedy against the original three months provisional authority granted by MARINA to GO THONG. The action in this case seeks a remedy against the Order granting GO THONG an extension of its Provisional Authority. In the first case, GO THONG claims that there was a violation of due process. In this case, it is COKALIONG that is claiming lack of due process. The two actions involve different events, facts and circumstances.[19]

We agree with the Court of Appeals. The subject of the petition in CA-G.R. SP No. 32307 was the Order issued by the MARINA dated October 8, 1998, suspending, ex parte, the provisional authority it issued on October 1, 1993 in favor of the petitioner. The petitioner alleged therein that the MARINA violated its right to due process by suspending its provisional authority ex parte and declaring the suspension order immediately effective until the motion for reconsideration of the respondent shall have been resolved by it. On the other hand, the subject of the respondent’s petition in CA-G.R. SP No. 33174, was the Order of the MARINA dated December 29, 1993, extending the provisional authority of the petitioner for another three months from January 1, 1994. Any judgment of the Court of Appeals in CA-G.R. SP No. 32307 would not then constitute res judicata in CA-G.R. SP No. 33174, and vice versa. The reliefs prayed for in CA-G.R. SP No. 32307 are different from those in CA-G.R. SP No. 33174. As such, the pendency of one case did not bar the filing of the petition in the other case. Thus, the prescription against forum shopping is not applicable in the case at bar.[20]

On the second issue, the petitioner avers that the Court of Appeals erred in denying the consolidation of CA-G.R. SP No. 32307 and CA-G.R. SP No. 33174, on its claim that the petitions in the said cases involved the same parties and the same basic issues. The petitioner posits that the MARINA extended its provisional authority for another three months from the expiry of the original period therefor precisely because of the pendency in the Court of Appeals of CA-G.R. SP No. 32307, and the existence of the parties’ status quo agreement allowing the operation of the vessel pending the CA’s resolution of its petition for a writ of preliminary injunction.

In resolving the issue, the CA ratiocinated that a consolidation of the two cases was inappropriate on the following grounds:

The Sixteenth Division had in effect already rejected this case when Justice Montenegro returned the case for reraffle. Under Section 7, Rule 3 of the RIRCA (Revised Internal Rules of the Court of Appeals), consolidation of cases which is merely permissive, should be with the conformity of all the Justices concerned and may be allowed when the cases to be consolidated involve the same parties and/or related questions of fact and/or law.

In this case, Justice Montenegro of the Sixteenth Division and who was a member of the Division who participated in CA-G.R. SP 32307 had in effect rejected consolidation when he asked that the case be reraffled.

In any event, there was no need of consolidation or referral to the Sixteenth Division, because the issues in the two (2) cases are different.

In CA-G.R. SP No. 32307, the petitioner is GO THONG. It seeks to restrain (sic) MARINA from implementing the order of October 8, 1993 suspending the provisional authority granted by MARINA for GO THONG to service the Cebu-Surigao Lines for a period of three months from October 3, 1993 to December 29, 1993. This is the order which it seeks to nullify for having been issued without due process. When the sixteenth division issued the first status quo resolution, the Court specifically mentioned the order of October 8. Otherwise stated, the status quo which the Court ordered to be maintained, was the Provisional Authority for GO THONG to service the Cebu-Surigao Lines from October 3, 1993 to December 29, 1993. With the expiration of this period, the contention of COKALIONG that SP No. 32307 may have already been rendered moot and academic is not without merit. But we leave this to the Sixteenth Division.

The present case is totally different. The petitioner here is COKALIONG. The petitioner do not seek to interfere with the status quo referred to in SP No. 32307 which is the Provisional Authority granted to GO THONG to operate subject route from October 3, 1993 to December 29, 1993. The Order sought to be herein annulled and restrained is totally different and was not yet in existence when the status quo order was issued in SP No. 32307. The Order sought to be annulled and restrained in this case as having been allegedly issued without due process is the Order of December 29, 1993 granting GO THONG an extension of its Provisional Authority to operate and service the Cebu-Surigao lines from January 1, 1994. This is a supervening event which is not within the status quo order in SP 32307.

The issue of due process raised by GO THONG in SP No. 32307 is not the same issue of due process raised by COKALIONG in this case. COKALIONG could not raise the issue of lack of due process in SP No. 32307 first because, it is not a petitioner in said case, and second, when the petition therein was filed, its right to due process have not yet been violated.[21]

We are in full accord with the Court of Appeals. Contrary to the petitioner's contention, it applied for an extension of its provisional authority on December 20, 1993 not because of the pendency of CA-G.R. SP No. 32307 in the Court of Appeals and the status quo agreement of the parties, but solely on the following allegation it made in its motion before the MARINA:

- That there is a continuing and insistent public demand for the operation of the vessel M/V OUR LADY OF GUADALUPE in the route: Cebu-Surigao-Cebu-Surigao-Cebu-Surigao-Cebu-Maasin-Cebu for the transportation of passengers and cargoes.
- Therefore, there is need to renew the subject Provisional Authority.
- The vessel M/V OUR LADY OF GUADALUPE has complete and valid certificate to attest to her seaworthiness.[22]

The MARINA, in the exercise of its discretion, found merit in the petitioner's motion and granted the same in an Order dated December 23, 1993. The Court has reviewed the said Order of the MARINA and found no showing therein that the order was issued precisely because of the pendency of CA-G.R. SP No. 32307 and the November 16, 1993 status quo agreement of the parties made before the Court of Appeals.

On the third issue, the Court of Appeals resolved to issue a temporary restraining order in favor of the respondent, later converting it into a writ of preliminary injunction on a bond of P500,000.00, ratiocinating as follows:

Whether or not it is the ministerial duty of MARINA to grant an extension of the Provisional Authority of GO

THONG is what this petition is all about. MARINA has not made this pretense but denied that there was denial of due process. Significantly, MARINA originally denied GO THONG's application only to reconsider it, and, thereafter to suspend it pending COKALIONG's Motion for Revocation in view of COKALIONG's allegation of Guadalupe's unseaworthiness, only to extend it, after the expiration of the provisional authority which it tried to suspend were it not for the status quo order of [the] 16th division. MARINA does not deny that there was no hearing on GO THONG's application for extension. Given the strong allegations of petitioner of the absence of due process and the denial – grant – suspension – extension stance of MARINA, this Court is of the considered view that it has to look into the verity of these allegations if it were to remain faithful to its sworn duty to uphold the constitution, in view of the primacy of due process in the hierarchy of constitutional rights. To do so, it has to delve deeper into the merits of the petition.

When MARINA issued the 3-month Provisional Authority, it sustained the erroneous argument of Go Thong in its "Manifestation with Urgent Motion for Reconsideration" that the August 10, 1993 denial of its application was based solely on oppositor's pleading.

This is far from the truth. The initial denial was based on.

Considering that the continuance of the acts complained of unless restrained, would render the judgment in this case ineffectual and probably work an injustice on petitioner, we resolve to issue the writ prayed for.[23]

The petitioner avers that the Court of Appeals should have dismissed outright the petition in CA-G.R. SP No. 33174 because of the pendency of CA-G.R. SP No. 32307 in the said court. Instead, the CA issued a temporary restraining order enjoining the enforcement of the MARINA's December 29, 1993 Order. The petitioner argues that the CA, thus, committed grave abuse of discretion amounting to excess or lack of jurisdiction.

We do not agree with the petitioner. With our ruling that the proceedings in CA-G.R. SP No. 32307 did not bar the filing of the petition in CA-G.R. SP No. 33174, it follows that the appellate court had to take cognizance of the petition in CA-G.R. SP No. 33174, and consider the plea for a temporary restraining order and a writ of preliminary injunction. It bears stressing that the matter of the issuance of a writ of preliminary injunction and a temporary restraining order is addressed to the sound judicial discretion of the court, and this Court will not interfere with the appellate court's exercise of its discretion unless of manifest abuse.[24] In this case, we find no abuse of discretion on the part of the CA in issuing a temporary restraining order and a writ of preliminary injunction. The Court notes that although the MARINA suspended on October 8, 1993 the efficacy of the provisional authority granted in favor of the petitioner pending resolution of the motion for reconsideration of the respondent, it later issued an Order on December 29, 1993 extending such provisional authority for a period of three months from January 1, 1994.

On the last issue, the petitioner contends that the CA erred when it dismissed its petition in CA-G.R. SP No. 32307 merely because it did not file a motion for reconsideration of the assailed Order of the MARINA before it filed its petition in the Court of Appeals. The petitioner argues that the procedural requirement of exhaustion of administrative remedies does not apply:

In the instant case, MARINA immediately suspended the petitioner's PA on the basis solely of the defective "motion for revocation" filed by defendant Cokaliong. No notice or opportunity to be heard was accorded Gothong. While MARINA required Gothong to file a reply to said "motion for revocation" which MARINA also set for hearing on October 21, 1993, the fact remains that without notice or opportunity to be heard the Gothong PA was suspended and rights thereunder created were peremptorily revoked. It was really a case of "shoot first, ask questions later." This is contrary to the essence of due process of law.[25]

The CA, on the other hand, dismissed the petition for prematurity, viz:

What is evident is that Petitioner opted to file the instant Petition and completely disregarded the principle of

“exhaustion of administrative remedies.” If any party like the petitioner feels aggrieved by any order, decision, ruling, regulation or policy promulgated by the Public Respondent MARINA, then such aggrieved party must first exhaust administrative remedies before invoking judicial intervention. Hence, what can be reasonably inferred from the action of Petitioner in filing the instant Petition is that it waived its opportunity to be heard and submit its evidence to refute Private respondent’s allegations by not complying with the directive contained in the disputed order being assailed by herein Petitioner. “Failure to exhaust administrative remedies when the same is available before filing an action for certiorari is fatal” (Ganub vs. Ramos, 27 SCRA 1174).

Besides, petitioner’s allegation that the sole reason or consideration which served as the basis of the issuance of the 08 October 1993 Order was herein private respondent’s motion for revocation is not well founded, it appearing clearly that public respondent was guided by considerations of “public interest” and “public safety” in suspending the provisional authority contained in the 01 October 1993 Order, in view of the call to consider the issue of “seaworthiness” raised by herein private respondent.[26]

We agree with the Court of Appeals. We note that the provisional authority granted to the petitioner may be cancelled, revoked or modified at any time by the MARINA as public interest may require. The respondent alleged that the vessel of the petitioner, the M/V OUR LADY OF GUADALUPE, was unseaworthy and submitted documentary evidence to prove its claim. In light of such evidence, the MARINA resolved to suspend the efficacy of the provisional authority it earlier granted to the petitioner, pending the resolution of Cokaliong’s motion for the revocation of the provisional authority granted to the petitioner. Instead of filing its petition for certiorari in the Court of Appeals, the petitioner should have filed a motion for the reconsideration of the assailed Order, and adduced documentary evidence to controvert that of the respondent’s to enable the MARINA to reconsider the suspension of the provisional authority granted to the petitioner. It bears stressing that certiorari will not lie if the aggrieved party has a speedy and adequate remedy at law.

Certiorari is an extraordinary remedy and will not issue in the absence of a grave abuse of discretion on the part of the public respondent, in this case, the MARINA. Since the MARINA, in the interest of the public service, is authorized to cancel, revoke or modify, at any time, the provisional authority granted to the petitioner, it cannot be claimed that it committed a grave abuse of its discretion in suspending the efficacy of the provisional authority issued to the petitioner pending resolution of the respondent’s claim that the M/V OUR LADY OF GUADALUPE was unseaworthy.

IN LIGHT OF ALL THE FOREGOING, the petitions in G.R. No. 113576 and G.R. No. 118235 are DENIED for lack of merit.

Costs against the petitioner.

SO ORDERED.

Puno, (Chairman), Quisumbing, and Tinga, JJ., concur.

Austria-Martinez, J., on leave.

[1] Penned by Associate Justice George S. Imperial, with Associate Justices Pacita Cañizares-Nye and Eduardo G. Montenegro concurring.

[2] Penned by Associate Justice Oscar M. Herrera, with Associate Justices Consuelo Ynares-Santiago and Corona Ibay-Somera concurring.

[3] Annex “C,” Petition, G.R. No. 118235.

- [4] Rollo, p. 57 (G.R. No. 113576).
- [5] Id. at 28-32.
- [6] Id. at 41.
- [7] Id. at 52-69.
- [8] Id. at 70-77.
- [9] Rollo, p. 532 (G.R. No. 118235).
- [10] Rollo, p. 83 (G.R. No. 113576).
- [11] Id. at 105-106.
- [12] Id. at 150-151.
- [13] Id. at 323-324.
- [14] Id. at 204-205.
- [15] Id. at 152-186.
- [16] Id. at 187.
- [17] Id. at 369-380.
- [18] Rollo, pp. 40-48 (G.R. No. 118235).
- [19] Id. at 382.
- [20] See *Gochan v. Gochan*, 372 SCRA 256 (2001).
- [21] Rollo, pp. 498-499 (G.R. No. 113576).
- [22] Id. at 420.
- [23] Id. at 500-502.
- [24] *Reyes v. Court of Appeals*, 321 SCRA 368 (1999).
- [25] Rollo, p. 31 (G.R. No. 111832).
- [26] Id. at 46-47.

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