

**TERMINAL FACILITIES AND SERVICES CORPORATION, PETITIONER,
VS. PHILIPPINE PORTS AUTHORITY AND PORT MANAGER, AND PORT
DISTRICT OFFICER OF DAVAO CITY, RESPONDENTS.***G.R. No. 135639. February 27, 2002*

Ponente: DE LEON, JR., J.

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Before us are two (2) consolidated petitions for review, one filed by the Terminal Facilities and Services Corporation (TEFASCO) (G.R. No. 135639) and the other by the Philippine Ports Authority (PPA) (G.R. No. 135826), of the Amended Decision^[1] dated September 30, 1998 of the former Special Second Division of the Court of Appeals in CA-G.R. CV No. 47318 ordering the PPA to pay TEFASCO: (1) Fifteen Million Eight Hundred Ten Thousand Thirty-Two Pesos and Seven Centavos (P15,810,032.07) representing fifty percent (50%) wharfage dues and Three Million Nine Hundred Sixty-One Thousand Nine Hundred Sixty-Four Pesos and Six Centavos (P3,961,964.06) representing thirty percent (30%) berthing fees from 1977 to 1991, which amounts TEFASCO could have earned had not PPA illegally imposed one hundred percent (100%) wharfage and berthing fees, and (2) the sum of Five Hundred Thousand Pesos (P500,000.00) as attorney's fees. No pronouncement was made as to costs of suit.

In G.R. No. 135639 TEFASCO assails the declaration of validity of the government share and prays for reinstatement in toto of the decision of the trial court. In G.R. No. 135826 PPA impugns the Amended Decision for awarding the said two (2) amounts for loss of private port usage fees as actual damages, plus attorney's fees.

TEFASCO is a domestic corporation organized and existing under the laws of the Philippines with principal place of business at Barrio Ilang, Davao City. It is engaged in the business of providing port and terminal facilities as well as arrastre, stevedoring and other port-related services at its own private port at Barrio Ilang.

Sometime in 1975 TEFASCO submitted to PPA a proposal for the construction of a specialized terminal complex with port facilities and a provision for port services in Davao City. To ease the acute congestion in the government ports at Sasa and Sta. Ana, Davao City, PPA welcomed the proposal and organized an inter-agency committee to study the plan. The committee recommended approval thereof and its report stated that -

TEFASCO Terminal is a specialized terminal complex. The specialized matters intended to be captured are: (a) bananas in consideration of the rate of spoilage; (b) sugar; (c) fertilizers; (d) specialized movement of beer in pallets containerized handling lumber and plywood.

3.2 Limitations of the government facilities -

The government port facilities are good for general cargoes only. Both ports are not equipped to handle specialized cargoes like bananas and container cargoes. Besides the present capacity, as well as the planned improvements, cannot cope with the increasing volume of traffic in the area. Participation of the private sector, therefore, involving private financing should be encouraged in the area.

3.3 Project Viability -

3.3.1 Technical Aspect - From the port operations point of view, the project is technically feasible. It is within a well-protected harbor and it has a sufficient depth of water for berthing the ships it will service. The lack of back up area can be supplied by the 21-hectare industrial land which will be established out of the hilly land area which is to be scrapped and leveled to be used to fill the area for reclamation.

3.3.2 Economic Aspect - The international port of Sasa and the domestic port of Sta. Ana are general cargo type ports. They are facing serious ship and cargo congestion problems brought about mainly by the faster growth of shipping industry than the development of the ports. They do not possess the special cargo handling facilities which TFSC plans to put up at the proposed terminal.

xxx The proposed project expects to get a 31% market slice. It will service domestic and foreign vessels. Main products to be handled initially will be bananas in the export trade and beer in the domestic traffic. Banana exporters in Davao, like Stanfilco and Philippine Packing Corporation have signified their intentions to use the port. Negotiations between TFSC and banana exporters on whether the former or the latter should purchase the mechanical loading equipment have not yet been formed up xxx.

Easing the problems at these two ports would result in savings on cost of the operation as cargo storage and on damages and losses. It would also give relief to passengers from time-delay, inconvenience and exposure to hazards in commuting between the pier and ship at anchor.

Furthermore, it would redound to better utilization of the government piers, therefore greater revenue from port operations.

At the bigger scale, more economic benefits in terms of more employment, greater productivity, increased per capita income in the Davao region, and in light of the limited financial resources of the government for port development the TFSC proposal would be beneficial to the country.

On April 21, 1976 the PPA Board of Directors passed Resolution No. 7 accepting and approving TEFASCO's project proposal. PPA resolved to -

xxx [a]pprove, xxx the project proposal of the Terminal Facilities and Services Corporation, Inc. for the construction of specialized port facilities and provision of port services in Davao City, subject to the terms and conditions set forth in the report of the Technical Committee created by the Board in its meeting of January 30, 1975, and to the usual government rules and regulations.

PPA relayed its acceptance of the project terms and conditions to TEFASCO in the letter[2] dated May 7, 1976 of Acting General Manager Mariano Nicanor which affirmed that -

We are pleased to inform you that the Board of Directors, Philippine Ports Authority, approved the project proposal of the Terminal Facilities and Services Corporation to construct a specialized port facilities and provision of port services in Davao City as follows:

1)

Docking Facilities for Ocean Going and Interisland vessels with containerized cargo.

2)

Stevedoring and Arrastre for above.

3)

Warehousing;

4)

Container yard and warehouse for containerizing cargoes or breaking up cargoes for containers.

5)

Bulk handling and silos for corn, in cooperation with the NGA.

6)

Bulk handling for fertilizer.

7)

Bulk handling or conveyor system for banana exports.

8)

Bulk handling for sugar.

9)

Bonded warehousing.

The approval is subject to the terms and conditions set forth at enclosure.

You are hereby authorized to start work immediately taking into account national and local laws and regulations pertaining to the project construction and operation.

The enclosure referred to in the letter above-quoted stipulated the "Terms and Conditions of PPA Board Approval of the Project Proposal,"[3] particularly -

(1)

That all fees and/or permits pertinent to the construction and operation of the proposed project shall be paid to and/or secured from the proper authorities.

(2)

That the plans shall not be altered without the prior approval of the Bureau of Public Works in coordination with the PPA.

(3)

That [any] damage to public and private property arising from the construction and operation of the project shall be the sole responsibility of the applicant-company.

(4)

That the Director of Public Works shall be notified five (5) days before the start of the construction works and that the Director of Public Works or his representative shall be authorized to inspect the works and premises while the work is in progress and even after the completion thereof.

(5)

That the applicant shall construct and complete the structure under the proposed project within eighteen (18) months after the approval of the permit, otherwise the permit shall be null and void.

(6)

That the facility shall handle general cargoes that are loaded as filler cargoes on bulk/container ships calling at the facility.

(7)

That the applicant shall build up its banana export traffic to replace the probable loss of its container traffic five (5) years from now because of the plan of PPA to put up a common user type container terminal at the port of Sasa.

(8)

That all charges payable to the Bureau of Customs will continue to apply upon take over of port operations by the PPA of the Port of Davao from the Bureau of Customs and direct control and regulations of operations of private port facilities in the general area of that port.

Under the foregoing terms and conditions, TEFASCO contracted dollar loans from private commercial institutions abroad to construct its specialized terminal complex with port facilities and thereafter poured millions worth of investments in the process of building the port. Long after TEFASCO broke ground with massive infrastructure work, the PPA Board curiously passed on October 1, 1976 Resolution No. 50 under which TEFASCO, without asking for one, was compelled to submit an application for construction permit. Without the consent of TEFASCO, the application imposed additional significant conditions -

(1) This Permit to Construct (PTC) will entitle the applicant to operate the facility for a period of fifteen (15) years, without jeopardy to negotiation for a renewal for a period not exceeding ten (10) years. At the expiration of the permit, all improvements shall automatically become the property of the Authority. Thereafter, any interested party, including the applicant, may lease it under new conditions; (2) In the event that the Foreshore Lease Application expires or is disapproved/canceled, this permit shall also be rendered null and void; xxx (7) All other fees and/or permits pertinent to the construction and operation of the proposed project shall be paid to and/or secured from the proper authorities; xxx (9) Unless specifically authorized, no general cargo shall be handled through the facility; (10) All rates and charges to be derived from the use of said facility or facilities shall be approved by the Authority; xxx (12) An application fee in the amount of one-tenth or one percent of the total estimated cost of the proposed improvement/structure shall be paid upon advice; (13) Other requirements of the law shall be complied by the applicant.

NOTE: Subject further to the terms and conditions as approved by PPA Board under Resolution No. 7 of 21 April 1976, except that PPA shall take over the role of the Bureau of Public Works and of the Bureau of Customs stipulated in the said approval.

TEFASCO played along with this needless exercise as PPA approved the awkward application in a letter stating -

We are returning herewith your application for Permit to Construct No. 77-19 dated 18 October 1977, duly approved (validation of the original permit to construct approved by the PPA Board under Resolution No. 7 of 21 April 1976), for the construction of your port facilities in Bo. Ilang, Davao City, subject to the conditions stipulated under the approved permit and in accordance with the attached approved set of plans and working drawings.

It is understood that this permit is still subject to the terms and conditions under the original permit except that this Authority takes over the role of the Bureau of Public Works and of the Bureau of Customs as stipulated thereon.

The series of PPA impositions did not stop there. Two (2) years after the completion of the port facilities and the commencement of TEFASCO's port operations, or on June 10, 1978, PPA again issued to TEFASCO another permit, designated as Special Permit No. CO/CO-1-067802, under which more onerous conditions were foisted on

TEFASCO's port operations.[4] In the purported permit appeared for the first time the contentious provisions for ten percent (10%) government share out of arrastre and stevedoring gross income and one hundred percent (100%) wharfage and berthing charges, thus -

Pursuant to the provisions of Presidential Decree No. 857, otherwise known as the Revised Charter of the Philippine Ports Authority, and upon due consideration of the formal written application and its enclosures in accordance with PPA Memorandum Order No. 21 dated May 27, 1977, PPA Administrative Order No. 22-77 dated December 9, 1977, and other pertinent policies and guidelines, a Special Permit is hereby granted to TERMINAL FACILITIES AND SERVICES CORPORATION (TEFASCO), with address at Slip 3, Pier 4, North Harbor, Manila to provide its arrastre/stevedoring services at its own private wharf located at Barrio Ilang, Davao City, subject to the following conditions:

xxx xxx xxx

- Grantee shall render arrastre/stevedoring services on cargoes of vessels under the agency of Retla Shipping/Transcoastal Shipping, Solid Shipping, Sea Transport and other commercial vessels which cannot be accommodated in government piers at PMU-Davao due to port congestion which shall be determined by the Port Manager/Harbor Master/Port Operations Officer whose decision shall be conclusive;

- Grantee shall promptly submit its latest certified financial statement and all statistical and other data required by the Authority from time to time;

- Grantee shall strictly comply with all applicable PPA rules and regulations now in force or to be promulgated hereafter and other pertinent rules and regulations promulgated by other agency of the government and other applicable laws, orders or decrees;

- Grantee shall remit to the government an amount equivalent to ten (10%) percentum of the handling rates chargeable on similar cargo in government piers/wharves within the jurisdiction of PMU-Davao on or before the 5th working day of every month provided, however, that in case of delay, grantee shall pay a penalty of one (1%) percentum of the accumulated total amount due for every day of delay; provided, further, that said rate shall be reasonably adjusted if and when warranted by the financial conditions of the Grantee;

- Grantee shall settle with the Authority its back accounts on the 10% government share from the start of its arrastre/stevedoring operation plus 6% legal interest per annum as provided by law;

- That cargoes and vessels diverted to TEFASCO wharf shall be subject to 100% wharfage and berthing charges respectively;

- Grantee shall hold the Authority free from any liability arising out of the maintenance and operation thereof;

- Grantee shall not in any manner pose a competition with any port or port facility owned by the government. Rates of charges shall in no case be lower than those prevailing at the Government Port of Davao.

xxx xxx xxx

This Special Permit is non-transferable and shall remain valid from the date of issuance hereof until December 31, 1978; provided, however, that at any time prior to the expiration thereof, the same may be revoked for violation of any of the conditions herein set forth or for cause at the discretion of the PPA General Manager or his duly authorized representative.

Subsequent exactions of PPA included: (a) Admin. Order 09-81, s. 1981,[5] notifying all arrastre and stevedoring operators, whether they do business in government owned port facilities, that special services income be subjected to "government share" equivalent to ten percent (10%) thereof; and, (b) Memo. Circ. 36-82, s. 1982,[6] mandating an assessment of one hundred percent (100%) wharfage dues on commercial and third-party cargoes regardless of

extent of use of private port facilities and one hundred percent (100%) berthing charges on every foreign vessel docking at private wharves loading or discharging commercial or third-party cargoes. TEFASCO repeatedly asked PPA for extensions to pay these additional obligations and for reduction in the rates. But the PPA's response was final and non-negotiable statements of arrears and current accounts and threats of business closure in case of failure to pay them.[7] The trial court summed up the documentary evidence on this point -

xxx [w]hen TEFASCO requested for the structuring of its account of P3.5 million, resulting to a memorandum, issued by PPA General Manager to its internal control, to verify the specific assessment of TEFASCO, coming out in the specific amount of P3,143,425.67 which became a subject of TEFASCO various and series of letters-protest to PPA, for reconsideration of its ultimatum, to enforce TEFASCO's back account, dated June 1, 1983, marked Exh. "32" for defendant, after a series of letters for reconsideration of TEFASCO and reply of PPA, marked Exh. "26" to "31" for the defendants, an ultimatum letter of PPA was issued followed by another series of letters of protest, reconsideration and petition of TEFASCO and reply of PPA, correspondingly marked Exh. "40" – "51" for the defendants, until ultimately, the execution of a memorandum of agreement, marked Exh. "52" for the defendant, dated February 10, 1984.

Most alarming was the receipt of defendants communication by TEFASCO, in its letter dated June 1, 1983, a cease and desist order of PPA for TEFASCO, to stop its commercial port operation xxx.[8]

On February 10, 1984 TEFASCO and PPA executed a Memorandum of Agreement (MOA) providing among others for (a) acknowledgment of TEFASCO's arrears in government share at Three Million Eight Hundred Seven Thousand Five Hundred Sixty-Three Pesos and Seventy-Five Centavos (P3,807,563.75) payable monthly, with default penalized by automatic withdrawal of its commercial private port permit and permit to operate cargo handling services; (b) reduction of government share from ten percent (10%) to six percent (6%) on all cargo handling and related revenue (or arrastre and stevedoring gross income); (c) opening of its pier facilities to all commercial and third-party cargoes and vessels for a period coterminous with its foreshore lease contract with the National Government; and, (d) tenure of five (5) years extendible by five (5) more years for TEFASCO's permit to operate cargo handling in its private port facilities. In return PPA promised to issue the necessary permits for TEFASCO's port activities. TEFASCO complied with the MOA and paid the accrued and current government share.[9]

On August 30, 1988 TEFASCO sued PPA and PPA Port Manager, and Port Officer in Davao City for refund of government share it had paid and for damages as a result of alleged illegal exaction from its clients of one hundred percent (100%) berthing and wharfage fees. The complaint also sought to nullify the February 10, 1984 MOA and all other PPA issuances modifying the terms and conditions of the April 21, 1976 Resolution No. 7 above-mentioned.[10]

The RTC, Branch 17, Davao City, in its decision dated July 15, 1992 in Civil Case No. 19216-88, ruled for TEFASCO, (a) nullifying the MOA and all PPA issuances imposing government share and one hundred percent (100%) berthing and wharfage fees or otherwise modifying PPA Resolution No. 7, and, (b) awarding Five Million Ninety-Five Thousand Thirty Pesos and Seventeen Centavos (P5,095,030.17) for reimbursement of government share and Three Million Nine Hundred Sixty-One Thousand Nine Hundred Sixty-Four Pesos and Six Centavos (P3,961,964.06) for thirty percent (30%) berthing charges and Fifteen Million Eight Hundred Ten Thousand Thirty-Two Pesos and Seven Centavos (P15,810,032.07) for fifty percent (50%) wharfage fees which TEFASCO could have earned as private port usage fee from 1977 to 1991 had PPA not collected one hundred percent (100%) of these fees; Two Hundred Forty-Eight Thousand Seven Hundred Twenty-Seven Pesos (P248,727.00) for dredging and blasting expenses; One Million Pesos (P1,000,000.00) in damages for blatant violation of PPA Resolution No. 7; and, Five Hundred Thousand Pesos (P500,000.00) for attorneys fees, with twelve percent (12%) interest per annum on the total amount awarded.[11]

PPA appealed the decision of the trial court to the Court of Appeals. The appellate court in its original decision recognized the validity of the impositions and reversed in toto the decision of the trial court.[12] TEFASCO moved for reconsideration which the Court of Appeals found partly meritorious. Thus the Court of Appeals in its Amended Decision partially affirmed the RTC decision only in the sense that PPA was directed to pay TEFASCO (1) the amounts of Fifteen Million Eight Hundred Ten Thousand Thirty-Two Pesos and Seven Centavos (P15,810,032.07) representing fifty percent (50%) wharfage fees and Three Million Nine Hundred Sixty-One Thousand Nine Hundred Sixty-Four Pesos and Six Centavos (P3,961,964.06) representing thirty percent (30%) berthing fees which TEFASCO could have earned as private port usage fee from 1977 to 1991 had PPA not illegally imposed and collected one hundred percent (100%) of wharfage and berthing fees and (2) Five Hundred Thousand Pesos (P500,000.00) for attorney's fees. The Court of Appeals held that the one hundred percent (100%) berthing and wharfage fees were unenforceable because they had not been approved by the President under Secs. 19 and 20, P.D. No. 857, and discriminatory since much lower rates were charged in other private ports as shown by PPA issuances effective 1995 to 1997. Both PPA and TEFASCO were unsatisfied with this disposition hence these petitions.

In G.R. No. 135639 TEFASCO prays to reinstate in toto the decision of the trial court. Its grounds are: (a) PPA Resolution No. 7 and the terms and conditions thereunder constitute a contract that PPA could not change at will; (b) the MOA between PPA and TEFASCO indicating the schedule of TEFASCO arrears and reducing the rate of government share is void for absence of consideration; and, (c) government share is neither authorized by PPA Resolution No. 7 nor by any law, and in fact, impairs the obligation of contracts.

In G.R. No. 135826 PPA seeks to set aside the award of actual damages for wharfage and berthing fees and for attorney's fees. PPA anchors its arguments on the following: (a) that its collection of one hundred percent (100%) wharfage and berthing fees is authorized by Secs. 6 (b, ix) and 39 (a), P.D. No. 857, under which the impossible rates for such fees are within the sole power and authority of PPA; (b) that absence of evidentiary relevance of PPA issuances effective 1995 to 1997 reducing wharfage, berthing and port usage fees in private ports; (c) that TEFASCO's lack of standing to claim alleged overpayments of wharfage and berthing fees; and, (d) that lack of legal basis for the award of fifty percent (50%) wharfage and thirty percent (30%) berthing fees as actual damages in favor of TEFASCO for the period from 1977 to 1991, and for attorney's fees.

In a nutshell, the issues in the two (2) consolidated petitions are centered on: (a) the character of the obligations between TEFASCO and PPA; (b) the validity of the collection by PPA of one hundred percent (100%) wharfage fees and berthing charges; (c) the propriety of the award of fifty percent (50%) wharfage fees and thirty percent (30%) berthing charges as actual damages in favor of TEFASCO for the period from 1977 to 1991; (d) the legality of the imposed government share and the MOA stipulating a schedule of TEFASCO's arrears for and imposing a reduced rate of government share; and, (e) the propriety of the award of attorney's fees and damages.

Firstly, it was not a mere privilege that PPA bestowed upon TEFASCO to construct a specialized terminal complex with port facilities and provide port services in Davao City under PPA Resolution No. 7 and the terms and conditions thereof. Rather, the arrangement was envisioned to be mutually beneficial, on one hand, to obtain business opportunities for TEFASCO, and on the other, enhance PPA's services -

The international port of Sasa and the domestic port of Sta. Ana are general cargo type ports. They are facing serious ship and cargo congestion problems brought about mainly by the faster growth of shipping industry than the development of the ports. They do not possess the special cargo handling facilities which TFSC plans to put up at the proposed terminal.[13]

It is true that under P.D. No. 857 (1975) as amended,[14] the construction and operation of ports are subject to licensing regulations of the PPA as public utility.[15] However, the instant case did not arise out of pure

beneficence on the part of the government where TEFASCO would be compelled to pay ordinary license and permit fees. TEFASCO accepted and performed definite obligations requiring big investments that made up the valuable consideration of the project. The inter-agency committee report that recommended approval of TEFASCO port construction and operation estimated investments at Sixteen Million Pesos (P16,000,000.00) (1975/1976 price levels) disbursed within a construction period of one year^[16] and covered by foreign loans of Two Million Four Hundred Thirty-Four Thousand US Dollars (US\$2,434,000.00) with interests of up to Ten Million Nine Hundred Sixty-Five Thousand Four Hundred Sixty-Five Pesos (P10,965,465.00) for the years 1979 to 1985.^[17] In 1987 the total investment of TEFASCO in the project was valued at One Hundred Fifty-Six Million Two Hundred Fifty-One Thousand Seven Hundred Ninety-Eight Pesos (P156,251,798.00).^[18] The inter-agency committee report also listed the costly facilities TEFASCO would build, and which in fact it has already built -

xxx The terminal complex will provide specialized mechanical cargo handling facilities for bananas, sugar, beer, grain and fertilizer, and containerized cargo operations. The marginal wharf could accommodate two ocean-going ships and one inter-island vessel at a time. The essential structures and facilities to be provided are: (1) 400-meter concrete wharf; (2) Back-up area (3.8 hectare reclaimed area plus a 21-hectare inland industrial zone); (3) Two warehouses with total floor area of 5,000 sq. meters; (4) mechanized banana loading equipment; (5) container yard.^[19]

With such considerable amount of money spent in reliance upon the promises of PPA under Resolution No. 7 and the terms and conditions thereof, the authorization for TEFASCO to build and operate the specialized terminal complex with port facilities assumed the character of a truly binding contract between the grantor and the grantee.^[20] It was a two-way advantage for both TEFASCO and PPA, that is, the business opportunities for the former and the decongestion of port traffic in Davao City for the latter, which is also the cause of consideration for the existence of the contract. The cases of *Ramos v. Central Bank of the Philippines*^[21] and *Commissioner of Customs v. Auyong Hian*^[22] are deemed precedents. In *Ramos*, the Central Bank (CB) committed itself to support the Overseas Bank of Manila (OBM) and avoid its liquidation in exchange for the execution of a voting trust agreement turning over the management of OBM to CB and a mortgage of its properties to CB to cover OBM's overdraft balance. This agreement was reached in CB's capacity as the regulatory agency of banking operations. After OBM accepted and performed in good faith its obligations, we deemed as perfected contract the relation between CB and OBM from which CB could not retreat and in the end prejudice OBM and its depositors and creditors -

Bearing in mind that the communications, xxx as well as the voting trust agreement xxx had been prepared by the CB, and the well-known rule that ambiguities therein are to be construed against the party that caused them, the record becomes clear that, in consideration of the execution of the voting trust agreement by the petitioner stockholders of OBM, and of the mortgage or assignment of their personal properties to the CB, xxx the CB had agreed to announce its readiness to support the new management "in order to allay the fears of depositors and creditors" xxx and to stave off liquidation "by providing adequate funds for the rehabilitation, normalization and stabilization" of the OBM, in a manner similar to what the CB had previously done with the Republic Bank xxx. While no express terms in the documents refer to the provision of funds by CB for the purpose, the same is necessarily implied, for in no other way could it rehabilitate, normalize and stabilize a distressed bank. xxx

The deception practiced by the Central Bank, not only on petitioners but on its own management team, was in violation of Articles 1159 and 1315 of the Civil Code of the Philippines:

Art. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the

fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.[23]

Auyong Hian involved an importation of old newspapers in four (4) shipments under a "no-dollar" arrangement pursuant to a license issued by the Import Control Commission. When the last shipment arrived in Manila, the customs authorities seized the importation on the ground that it was made without the license required by Central Bank Circular No. 45. While the seizure proceedings were pending before the Collector of Customs, the President of the Philippines through its Cabinet canceled the aforesaid license for the reason that it was illegally issued "in that no fixed date of expiration is stipulated." On review, this Court held -

xxx [W]hile the Cabinet, acting for the President, can pass on the validity of a license issued by the Import Control Commission, that power cannot be arbitrarily exercised. The action must be founded on good ground or reason and must not be capricious or whimsical. This principle is so clear to require further elaboration.

xxx In fact, if the cancellation were to prevail, the importer would stand to lose the license fee he paid amounting to P12,000.00, plus the value of the shipment amounting to P21,820.00. This is grossly inequitable. Moreover, "it has been held in a great number of cases that a permit or license may not arbitrarily be revoked xxx where, on the faith of it, the owner has incurred material expense."

It has also been held that "where the licensee has acted under the license in good faith, and has incurred expense in the execution of it, by making valuable improvements or otherwise, it is regarded in equity as an executed contract and substantially an easement, the revocation of which would be a fraud on the licensee, and therefore the licensor is estopped to revoke it xxx It has also been held that the license cannot be revoked without reimbursing the licensee for his expenditures or otherwise placing him in status quo."[24]

For a regulatory permit to be impressed with contractual character we held in *Batchelder v. Central Bank*[25] that the administrative agency in issuing the permit must have assumed such obligation on itself. The facts certainly bear out the conclusion that PPA passed Resolution No. 7 and the terms and conditions thereof with a view to decongesting port traffic in government ports in Davao City and engaging TEFASCO to infuse its own funds and skills to operate another port therein. As acceptance of these considerations and execution thereof immediately followed, it is too late for PPA to change the rules of engagement with TEFASCO as expressed in the said Resolution and other relevant documents.

The terms and conditions binding TEFASCO are only those enumerated or mentioned in the inter-agency committee report, PPA Resolution No. 7 and PPA letter dated May 7, 1976 and its enclosure. With due consideration for the policy that laws of the land are written into every contract,[26] the said documents stand to be the only source of obligations between the parties. That being the case, it was arbitrary, unreasonable and unfair for PPA to add new burdens and uncertainties into their agreement of which TEFASCO had no prior knowledge even in the context of regulation.

Lowell v. Archambault[27] is persuasive on this issue. In that case, the defendant was engaged in the business of an undertaker who wanted to erect on his land a stable to be used in connection therewith. He then applied to the board of health for a license to permit him to occupy and use the building when completed for the stabling of eight (8) horses. His application was granted and a license was issued to him permitting the exercise of this privilege. Upon receiving it, he at once had plans prepared and began the erection of a stable on a site from which he had, at a pecuniary loss, removed another building. After the work had begun but before its completion, the board of health acting on a petition of residents in the immediate vicinity rescinded their former vote and canceled the license. The court held -

xxx Upon application for permission to erect a stable, which, in the absence of a restricting statute, would be a legitimate improvement in the enjoyment of his property, the applicant is entitled to know the full measure of

immunity that can be granted to him before making the expenditure of money required to carry out his purpose. A resort to the general laws relating to the subject, or to ordinances or regulations made pursuant to them, should furnish him with the required information. When this has been obtained, he has a right to infer that he can safely act, with the assurance that, so long as he complies with the requirements under which it is proposed to grant the privilege, he has a constitutional claim to protection, until the legislature further restricts or entirely abolishes the right bestowed. A license should not be subjected to the uncertainties that constantly would arise if unauthorized limitations, of which he can have no knowledge, are subsequently and without notice to be read into his license, at the pleasure of the licensing board. Besides, all reasonable police regulations enacted for the preservation of the public health or morality, where a penalty is provided for their violation, while they may limit or prevent the use or enjoyment of property except under certain restrictions, and are constitutional, create statutory misdemeanors, which are not to be extended by implication. xxx. It was not within the power of the board of health, even after a hearing, in the absence of an authority conferred upon them by legislative sanction, to deprive him of the privilege they had unreservedly granted.[28]

The record shows that PPA made express representations to TEFASCO that it would authorize and support its port project under clear and categorical terms and conditions of an envisioned contract. TEFASCO complied with its obligation which ultimately resulted to the benefit of PPA. And the PPA accepted the project as completed and authorized TEFASCO to operate the same. Under these circumstances, PPA is estopped from reneging on its commitments and covenants as exclusively contained in the inter-agency committee report, PPA Resolution No. 7 and PPA letter dated May 7, 1976 and its enclosure. As this Court explained in *Ramos v. Central Bank of the Philippines* - [29]

xxx[A]n estoppel may arise from the making of a promise even though without consideration, if it was intended that the promise should be relied upon and in fact it was relied upon, and if a refusal to enforce it would be virtually to sanction the perpetration of fraud or would result in other injustice. In this respect, the reliance by the promisee is generally evidenced by action or forbearance on his part, and the idea has been expressed that such action or forbearance would reasonably have been expected by the promisor. xxx

But even assuming arguendo that TEFASCO relied upon a mere privilege granted by PPA, still the terms and conditions between them as written in the documents approving TEFASCO's project proposal should indubitably remain the same. Under traditional form of property ownership, recipients of privileges or largesses from the government could be said to have no property rights because they possessed no traditionally recognized proprietary interest therein. The cases of *Vinco v. Municipality of Hinigaran*[30] and *Pedro v. Provincial Board of Rizal*[31] holding that a license to operate cockpits would be a mere privilege belonged to this vintage. But the right-privilege dichotomy came to an end when courts realized that individuals should not be subjected to the unfettered whims of government officials to withhold privileges previously given them.[32] Indeed to perpetuate such distinction would leave the citizens at the mercy of State functionaries, and worse, threaten the liberties protected by the Bill of Rights. Thus in *Kisner v. Public Service Commission*[33] wherein the US Public Service Commission reduced the number of vehicles which appellant Kisner was authorized to operate under his certificate of convenience and necessity when no limit was stipulated therein, it was ruled -

It appears from the record in this case that after the issuance of the initial certificate the appellant took steps to procure vehicles in addition to the one he already owned. He changed his position in reliance upon the original certificate authorizing him to operate an unlimited number of vehicles. xxx For the purpose of due process analysis, a "property interest" includes not only the traditional notions of real and personal property, but also extends to those benefits to which an individual may be deemed to have a legitimate claim of entitlement under existing rules and regulations. xxx The right of the appellant in the case at bar to operate more than one vehicle under the certificate of convenience and necessity, as originally issued, clearly constituted a benefit to the appellant and that benefit may be deemed to be a legitimate claim of entitlement under existing rules and regulations.

Even if PPA granted TEFASCO only a license to construct and operate a specialized complex terminal with port facilities, the fact remains that PPA cannot unilaterally impose conditions that find no basis in the inter-agency committee report, PPA Resolution No. 7 and PPA letter dated May 7, 1976 and its enclosure.

Secondly, we hold that PPA's imposition of one hundred percent (100%) wharfage fees and berthing charges is void. It is very clear from P.D. No. 857 as amended that wharfage and berthing rates collectible by PPA "upon the coming into operation of this Decree shall be those now provided under Parts 1, 2, 3 and 6 of Title VII of Book II of The Tariff and Customs Code, until such time that the President upon recommendation of the Board may order that the adjusted schedule of dues are in effect." [34] PPA cannot unilaterally peg such rates but must rely on either The Tariff and Customs Code or the quasi-legislative issuances of the President in view of the legislative prerogative of rate-fixing. [35]

Accordingly, P.D. No. 441 (1974) amending The Tariff and Customs Code fixed wharfage dues at fixed amounts per specified quantity brought into or involving national ports or at fifty percent (50%) of the rates provided for herein in case the articles imported or exported from or transported within the Philippines are loaded or unloaded offshore, in midstream, or in private wharves where no loading or unloading facilities are owned and maintained by the government. Inasmuch as the TEFASCO port is privately owned and maintained, we rule that the applicable rate for imported or exported articles loaded or unloaded thereat is not one hundred percent (100%) but only fifty percent (50%) of the rates specified in P.D. No. 441.

As regard berthing charges, this Court has ruled in *Commissioner of Customs v. Court of Tax Appeals* [36] that "subject vessels, not having berthed at a national port but at the Port of Kiwalan, which was constructed, operated, and continues to be maintained by private respondent xxx are not subject to berthing charges, and petitioner should refund the berthing fees paid by private respondent." The berthing facilities at Port of Kiwalan were constructed, improved, operated and maintained solely by and at the expense of a private corporation, the Iligan Express. On various dates, vessels using the berthing facilities therein were assessed berthing fees by the Collector of Customs which were paid by private respondent under protest. We nullified the collection and ordered their refund -

The only issue involved in this petition for review is: Whether a vessel engaged in foreign trade, which berths at a privately owned wharf or pier, is liable to the payment of the berthing charge under Section 2901 of the Tariff and Customs Code, which, as amended by Presidential Decree No. 34, reads:

Sec. 2901. Definition. - Berthing charge is the amount assessed against a vessel for mooring or berthing at a pier, wharf, bulk-head-wharf, river or channel marginal wharf at any national port in the Philippines; or for mooring or making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of any national port of the Philippines: Provided, however, That in the last instance, the charge shall be fifty (50%) per cent of rates provided for in cases of piers without cargo shed in the succeeding sections. The owner, agent, operator or master of the vessel is liable for this charge.

Petitioner Commissioner of Customs contends that the government has the authority to impose and collect berthing fees whether a vessel berths at a private pier or at a national port. On the other hand, private respondent argues that the right of the government to impose berthing fees is limited to national ports only.

The governing law classifying ports into national ports and municipal ports is Executive Order No. 72, Series of 1936 (O.G. Vol. 35, No. 6, pp. 65-66). A perusal of said executive order discloses the absence of the port of Kiwalan in the list of national ports mentioned therein.

Furthermore, Paragraph 1 of Executive Order No. 72 expressly provides that "the improvement and maintenance of national ports shall be financed by the Commonwealth Government, and their administration and operation shall be under the direct supervision and control of the Insular Collector of Customs." It is undisputed that the

port of Kiwalan was constructed and improved and is operated and maintained solely by and at the expense of the Iligan Express Corporation, and not by the National Government of the Republic or any of its agencies or instrumentalities. xxx The port of Kiwalan not being included in the list of national ports appended to Customs Memorandum Circular No. 33-73 nor in Executive Order No. 72, it follows inevitably as a matter of law and legal principle that this Court may not properly consider said port as a national port. To do otherwise would be to legislate on our part and to arrogate unto ourselves powers not conferred on us by the Constitution. xxx

Plainly, therefore, the port of Kiwalan is not a national port. xxx

Section 2901 of the Tariff and Customs Code prior to its amendment and said section as amended by Presidential Decree No. 34 are hereunder reproduced with the amendments duly highlighted:

Sec. 2901. Definition. - Berthing charge is the amount assessed against a vessel for mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf at any port in the Philippines; or for mooring or making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of any port of the Philippines (old TCC).

Sec. 2901. Definition. - Berthing charge is the amount assessed a vessel for mooring or berthing at a pier, wharf, bulkhead-wharf, river or channel marginal wharf AT ANY NATIONAL PORT IN THE PHILIPPINES; for mooring or making fast to a vessel so berthed; or for coming or mooring within any slip, channel, basin, river or canal under the jurisdiction of ANY NATIONAL port of the Philippines; Provided, HOWEVER, THAT IN THE LAST INSTANCE, THE CHARGE SHALL BE FIFTY (50%) PER CENT OF RATES PROVIDED FOR IN CASES OF PIERS WITHOUT CARGO SHED IN THE SUCCEEDING SECTIONS. (emphasis in the original).

It will thus be seen that the word “national” before the word “port” is inserted in the amendment. The change in phraseology by amendment of a provision of law indicates a legislative intent to change the meaning of the provision from that it originally had (Agpalo, supra, p. 76). The insertion of the word “national” before the word “port” is a clear indication of the legislative intent to change the meaning of Section 2901 from what it originally meant, and not a mere surplusage as contended by petitioner, in the sense that the change “merely affirms what customs authorities had been observing long before the law was amended” (p. 18, Petition). It is the duty of this Court to give meaning to the amendment. It is, therefore, our considered opinion that under Section 2901 of The Tariff and Customs Code, as amended by Presidential Decree No. 34, only vessels berthing at national ports are liable for berthing fees. It is to be stressed that there are differences between national ports and municipal ports, namely: (1) the maintenance of municipal ports is borne by the municipality, whereas that of the national ports is shouldered by the national government; (2) municipal ports are created by executive order, while national ports are usually created by legislation; (3) berthing fees are not collected by the government from vessels berthing at municipal ports, while such berthing fees are collected by the government from vessels moored at national ports. The berthing fees imposed upon vessels berthing at national ports are applied by the national government for the maintenance and repair of said ports. The national government does not maintain municipal ports which are solely maintained by the municipalities or private entities which constructed them, as in the case at bar. Thus, no berthing charges may be collected from vessels moored at municipal ports nor may berthing charges be imposed by a municipal council xxx.[37]

PPA has not cited - nor have we found - any law creating the TEFASCO Port as a national port or converting it into one. Hence, following case law, we rule that PPA erred in collecting berthing fees from vessels that berthed at the privately funded port of petitioner TEFASCO.

It also bears stressing that one hundred percent (100%) wharfage dues and berthing charges are void for failing to comply with Sec. 19, P.D. No. 857[38] as amended, requiring presidential approval of any increase or decrease of

such dues.

In *Philippine Interisland Shipping Association of the Philippines v. CA*[39] we ruled that PPA cannot override the statutory rates for dues by lowering rates of pilotage fees and leaving the fees to be paid for pilotage to agreement of parties, and further stated that -

There is, therefore, no legal basis for PPA's intransigence, after failing to get the new administration of President Aquino to revoke the order by issuing its own order in the form of A.O. NO. 02-88. It is noteworthy that if President Marcos had legislative power under Amendment No. 6 of the 1973 Constitution so did President Aquino under the Provisional (Freedom) Constitution who could, had she thought E.O. No. 1088 to be a mere "political gimmick," have just as easily revoked her predecessor's order. It is tempting to ask if the administrative agency would have shown the same act of defiance of the President's order had there been no change of administration. What this Court said in *La Perla Cigar and Cigarette Factory v. Capapas*, *mutatis mutandis*, - may be applied to the cases at bar:

Was it within the powers of the then Collector Ang-angco to refuse to collect the duties that must be paid? That is the crucial point of inquiry. We hold that it was not.

Precisely, he had to give the above legal provisions, quite explicit in character, force and effect. His obligation was to collect the revenue for the government in accordance with existing legal provisions, executive agreements and executive orders certainly not excluded. He would not be living up to his official designation if he were permitted to act otherwise. He was not named Collector of Customs for nothing...

Certainly, if the President himself were called upon to execute the laws faithfully, a Collector of Customs, himself a subordinate executive official, cannot be considered as exempt in any wise from such an obligation of fealty. Similarly, if the President cannot suspend the operation of any law, it would be presumptuous in the extreme for one in the position of then Collector Ang-angco to consider himself as possessed of such a prerogative...[40]

Thirdly, PPA argues that the courts a quo wrongly awarded to TEFASCO fifty percent (50%) and thirty percent (30%) of the wharfage dues and berthing charges, respectively, as actual damages representing private port usage fees from 1977 to 1991. It claims that TEFASCO has no cause of action to ask for a portion of these fees since they were collected from "the owner, agent, operator or master of the vessel" for the berthing charge and "the owner or consignee of the article, or the agent of either" for the wharfage dues.

We find no merit in this argument. The cause of action of TEFASCO is the injury it suffered as a result of the illegal imposition on its clientele of such dues and charges that should have otherwise gone to it as private port usage fee. TEFASCO is asserting injury to its right to collect valuable consideration for the use of its facilities and wrongdoing on the part of PPA prejudicing such right. This is especially true in the light of PPA's practice of collecting one hundred percent (100%) of the wharfage and berthing dues by cornering the cargoes and vessels, as it were, even before they were landed and berthed at TEFASCO's privately owned port. It is aggravated by the fact that these unlawful rates were collected by PPA long after the port facilities of TEFASCO had been completed and functioning. Considering these pleaded facts, TEFASCO's cause of action has been sufficiently alleged and proven. We quote with approval the following ruling of the Court of Appeals -

xxx As earlier stated, TEFASCO is only trying to recover income it has to forego because of the excessive collections imposed by PPA. By doing what it was prohibited to do under an existing law, PPA cannot be allowed to enjoy the fruits of its own illegal act. To be sure, TEFASCO suffered real damage as a result of such illegal act requiring indemnification xxx.[41]

There is also no basis for PPA's assertion that there was lack of evidence to support the award in favor of TEFASCO of Fifteen Million Eight Hundred Ten Thousand Thirty-Two Pesos and Seven Centavos

(P15,810,032.07) representing fifty percent (50%) wharfage dues and Three Million Nine Hundred Sixty-One Thousand Nine Hundred Sixty-Four Pesos and Six Centavos (P3,961,964.06) for thirty percent (30%) berthing charges from 1977 to 1991. According to the appellate court, the determination was based on the "actual summarized list of cargoes and vessels which went through TEFASCO's port, which were under obligation to pay usage fees, multiplied by the applicable tariff rates." [42] The trial court explained in more detail the preponderant evidence for the judgment -

Another harassment is the issuance of Memorandum Circular No. 36-82, authorizing collection of 100% wharfage fees, instead of only 50% and also 100% berthing fees, instead of only 70% as provided for in PD 441, marked Exh. "LL" for plaintiff, and a copy of Letter of Instruction No. 8001-A, marked Exh. "NN" for plaintiff, in the process, the total collection of PPA for wharfage fees, amounted to P10,582,850.00 and berthing fee, amounted to P6,997,167.00 in the latter case, berthing fee collected was marked Exh. "PP" for plaintiff, otherwise if PPA collected only 70% as provided, it could have collected only P4,898,018.03, equally TEFASCO could have earned the remainder of P2,099,150.90 while in the case of wharfage fee, if PPA collected only 50%, TEFASCO would have earned the other half of P5,291,042.00, 50% by way of rentals. xxx

In cases of berthing and wharfage fees prior to the issuance of the injunction order from this court, PPA charges 100% the totality or summary of claims from PPA, from 1977 to 1991, was shown and marked Exhibit KKK and submarkings, showing TEFASCO is supposed to collect, if PPA collects only 50% wharfage, the other 50% goes with TEFASCO in case of berthing 70%, the remainder of 30% could have been collected by TEFASCO. [43]

Under Arts. 2199 and 2200 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained. [44] They proceed from a sense of natural justice and are designed to repair the wrong done. In *Producers Bank of the Philippines v. CA* [45] we succinctly explain the kinds of actual damages, thus-

There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him x x x. In the latter instance, the familiar rule is that damages consisting of unrealized profits, frequently referred as "ganacias frustradas" or "lucrum cessans," are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experience, or direct inference from known circumstances xxx.

It is not necessary to prove with absolute certainty the amount of ganacias frustradas or lucrum cessans. In *Producers Bank of the Philippines* we ruled that -

xxx the benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied for this reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. [46]

Applying the test aforequoted, we find that TEFASCO has proved with clear and convincing evidence its loss of wharfage and berthing fees. There was basis for the courts a quo in awarding to TEFASCO, as actual damages, the sums equivalent to fifty percent (50%) and thirty percent (30%) of the wharfage dues and berthing charges, respectively. It has not been denied that TEFASCO was forced to reluctantly let go of such fees to avoid the unwise business practice of financially overburdening the users of its port by requiring them to pay beyond one hundred percent (100%) of such dues. It has not also been disproved that this loss of TEFASCO was the direct result of the collection of one hundred percent (100%) wharfage and berthing dues by PPA, an imposition that left

nothing more for TEFASCO to charge for the use of its port and terminal facilities. Consequently, there is merit in TEFASCO's claim that had the PPA imposition been limited to the fifty percent (50%) wharfage dues and seventy percent (70%) berthing charges, TEFASCO could have received the remainder as port usage fees since the amounts were disbursed by its clients for that purpose. Significantly, in regard to berthing charges, TEFASCO's cause of action and evidence presented before the trial court as well as its assigned error on appeal on that point were limited to thirty percent (30%) of such charges.

Fourthly, we also declare void the imposition by PPA of ten percent (10%), later reduced to six percent (6%), government share out of arrastre and stevedoring gross income of TEFASCO. This exaction was never mentioned in the contract, much less is it a binding prestation, between TEFASCO and PPA. What was clearly stated in the terms and conditions appended to PPA Resolution No. 7 was for TEFASCO to pay and/or secure from the proper authorities "all fees and/or permits pertinent to the construction and operation of the proposed project." The government share demanded and collected from the gross income of TEFASCO from its arrastre and stevedoring activities in TEFASCO's wholly owned port is certainly not a fee or in any event a proper condition in a regulatory permit. Rather it is an onerous "contractual stipulation"[47] which finds no root or basis or reference even in the contract aforementioned.

We stress that the cause of the contract between TEFASCO and PPA was, on the part of the former, to engage in the business of operating its privately owned port facilities, and for the latter, to decongest port traffic in Davao City and concomitantly to enhance regional trade. The records of the project acceptance made by PPA indicate that the contract was executed not to earn income for PPA or the government as justification for the subsequent and unfair imposition of government share in the arrastre and stevedoring gross income of TEFASCO. Hence this charge was obviously an after-thought conceived by PPA only after the TEFASCO port had already begun its operations. The sharing scheme only meant that PPA would piggy back unreasonably on the substantial investment and labor of TEFASCO. As the scheme was subsequently stipulated on percentage of gross income, it actually penalized TEFASCO for its hand work and substantial capital expenditures in the TEFASCO port and terminal.

Moreover, PPA is bereft of any authority to impose whatever amount it pleases as government share in the gross income of TEFASCO from its arrastre and stevedoring operations. As an elementary principle of law, license taxation must not be "so unreasonable to show a purpose to prohibit a business which is not itself injurious to public health or morals." [48] In the case at bar, the absurd and confiscatory character of government share is convincingly proved by PPA's decision itself to abandon the disadvantageous scheme through Administrative Order No. 06-95 dated 4 December 1995, Liberalized Regulation on Private Ports Construction, Development, and Operation. [49] The PPA issuance scrapped government share in the income of private ports where no government facilities had been installed and in place thereof imposed a one-time privilege fee of P20,000.00 per annum for commercial ports and P10,000.00 yearly for non-commercial ports. In passing, we believe that this impost is more in consonance with the description of government share as consideration for the "supervision inherent in the upgrading and improvement of port operations, of which said services are an integral part." [50]

We do not also agree that TEFASCO subsequently acceded to paying the government share in its gross income from its arrastre and stevedoring operations, and in recognizing arrears for such charge. The Memorandum of Agreement (MOA) which it subsequently signed with PPA did not give TEFASCO any benefit so that we cannot conclude that there was indeed a voluntary settlement between them. Rather it could be described aptly as an imposition under actual threats of closure of TEFASCO's port. Verily the MOA was meant to cloak semblance of validity upon that particular charge since there was nothing in the original TEFASCO-PPA contract authorizing the PPA to collect any share in the gross income of TEFASCO in its arrastre and stevedoring operations.

The MOA is invalid for want of consideration and consent.[51] As such, it is an invalid novation[52] of the original agreement between TEFASCO and PPA as embodied in the inter-agency committee report, PPA Resolution No. 7 and PPA letter dated May 7, 1976 and its enclosure. Truly, the MOA was a set of stipulations executed under undue pressure on TEFASCO of permanent closure of its port and terminal. As the TEFASCO investment was worth millions of dollars in loans and equities, PPA's posture of prohibiting it from engaging in the bulk of its business presented it with no reasonable freedom of choice but to accept and sign the MOA. Furthermore, the MOA suffers from utter want of consideration since nothing more could have been stipulated in the agreement when every detail of port operation had already been previously spelled out and sanctioned in the original contract. The belated MOA citations of PPA's recognition of TEFASCO's facility as a private port and provision of arrastre and stevedoring and repair services were all part of the agreement from 1976 when the project proposal was approved by the PPA Board. Under these circumstances, it cannot be said that TEFASCO embraced voluntarily the unfair imposition in the MOA that inevitably would cause, as it did, its own bankruptcy.

In sum, TEFASCO is entitled to Five Million Ninety-Five Thousand Thirty Pesos and Seventeen Centavos (P5,095,030.17) for reimbursement of what PPA illegally collected as "government share" in the gross income of TEFASCO's arrastre and stevedoring operations for 1977 to 1991.

Fifthly, we affirm the award of Five Hundred Thousand Pesos (P500,000.00) as attorney's fees. Attorney's fees may be awarded when a party is compelled to litigate or incur expenses to protect his interest by reason of an unjustified act of the other party.[53] In the instant case, attorney's fees were warranted by PPA's unfair exaction of exorbitant wharfage and berthing dues from TEFASCO and threats to close its port. These adverse actions correctly drove the latter to institute the present proceedings to protect its rights and remedy the unfair situation.

However, we set aside the award of Two Hundred Forty-Eight Thousand Seven Hundred Twenty-Seven Pesos (P248,727.00) for dredging and blasting expenses. The trial court justified the award on the ground that this activity was allegedly the responsibility of PPA under Sec. 37 of P.D. No. 857[54] as amended which TEFASCO in good faith undertook. This is not correct. More precisely, the law obliged PPA to fund construction and dredging works only in "public ports vested in the Authority." Clearly the construction of the TEFASCO port was not the responsibility of the PPA and does not fall under Sec. 37 of P.D. No. 857. The dredging and blasting done by TEFASCO augmented the viability of its port, and therefore the same were part and parcel of the contractual obligations it agreed to undertake when it accepted the terms and conditions of the project.

It is also erroneous to set legal interest on the damages awarded herein at twelve percent (12%) yearly computed from the filing of the complaint. In *Crismina Garments, Inc. v. CA*[55], it was held that interest on damages, other than loan or forbearance of money, is six percent (6%) annually computed from determination with reasonable certainty of the amount demanded. Thus, applying that rule in the case at bar, the interest would be six percent (6%) per annum from the date of promulgation of the decision of the trial court in Civil Cases Nos. 19216-88 on July 15, 1992.

To recapitulate: PPA is liable to TEFASCO for Fifteen Million Eight Hundred Ten Thousand Thirty-Two Pesos and Seven Centavos (P15,810,032.07) representing fifty percent (50%) wharfage fees and Three Million Nine Hundred Sixty-One Thousand Nine Hundred Sixty-Four Pesos and Six Centavos (P3,961,964.06) for thirty percent (30%) berthing charges from 1977 to 1991 and Five Million Ninety-Five Thousand Thirty Pesos and Seventeen Centavos (P5,095,030.17) for reimbursement of the unlawfully collected government share in TEFASCO's gross income from its arrastre and stevedoring operations during the same period. The said principal amounts herein ordered shall earn interest at six percent (6%) annually from July 15, 1992, date of promulgation of the Decision of the Regional Trial Court of Davao in Civil Cases Nos. 19216-88. The PPA shall also pay TEFASCO the amount of Five Hundred Thousand Pesos (P500,000.00) for and as attorney's fees.

Henceforth, PPA shall collect only such dues and charges as are duly authorized by the applicable provisions of The Tariff and Customs Code and presidential issuances pursuant to Sec. 19, P.D. No. 857. PPA shall strictly observe only the legally imposable rates. Furthermore, PPA has no authority to charge government share in the gross income of TEFASCO from its arrastre and stevedoring operations within its subject private port in Davao City.

TEFASCO's port operations including cargo handling services shall be co-terminous with its foreshore lease contract with the National Government and any extension of the said foreshore lease contract shall similarly lengthen the duration of its port operations. It is clear from the inter-agency committee report, PPA Resolution No. 7 and PPA letter dated May 7, 1976 and its enclosure that the intention of the parties under their contract is to integrate port operations of TEFASCO so that all services therein, including arrastre and stevedoring operations, shall end at the same time. The subsequent and onerous MOA did not change the tenure of its port operations, there being no clear and convincing showing of TEFASCO's free and voluntary amenability thereto. In no case, however, shall such port operations of TEFASCO exceed fifty (50) years which is the maximum period of foreshore lease contracts with the National Government.

WHEREFORE, the Amended Decision of the Court of Appeals dated September 30, 1998 in case CA-G.R. CV No. 47318 is MODIFIED as follows:

- The Philippine Ports Authority (PPA) is held liable and hereby ordered to pay and reimburse to Terminal Facilities and Services Corporation (TEFASCO) the amounts of Fifteen Million Eight Hundred Ten Thousand Thirty-Two Pesos and Seven Centavos (P15,810,032.07) and Three Million Nine Hundred Sixty-One Thousand Nine Hundred Sixty-Four Pesos and Six Centavos (P3,961,964.06) representing fifty percent (50%) wharfage fees and thirty percent (30%) berthing charges respectively, from 1977 to 1991, and the sum of Five Million Ninety-Five Thousand Thirty Pesos and Seventeen Centavos (P5,095,030.17) representing PPA's unlawfully collected "government share" in the gross income of TEFASCO's arrastre and stevedoring operations during the said period;
- The said principal amounts herein ordered to be paid by PPA to TEFASCO shall earn interest at six percent (6%) per annum from July 15, 1992, date of promulgation of the Decision of the Regional Trial Court, Branch 17 of Davao City in Civil Case No. 19216-88; and
- The PPA is also ordered to pay TEFASCO the sum of Five Hundred Thousand Pesos (P500,000.00) for and as attorney's fees.

Costs against the Philippine Ports Authority.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Angelina Sandoval-Gutierrez (now Associate Justice of the Supreme Court) and concurred in by Associate Justices Omar U. Amin and Roberto A. Barrios. Rollo in G.R. No. 135639, pp. 70-96; Rollo in G.R. No. 135826, pp. 54-80.

[2] Records, p. 43.

[3] Records, p. 44.

[4] Records, pp. 46-47.

[5] Records, p. 48.

[6] Records, pp. 49-50.

[7] Records, pp. 51-53.

[8] Decision dated 15 July 1992 penned by Judge Renato A. Fuentes, RTC-Br. 17, Davao City; Rollo in G.R. No. 135639, pp.199-200.

[9] Rollo in G.R. No. 135639, p. 56, Records, pp. 54-60.

[10] Records, pp. 1-42

[11] See Note No. 8 ; Rollo in G.R. No. 135639, pp. 213-214.

[12] CA Decision dated July 31, 1997 of the Second Division; Rollo in G.R. No. 135639, pp. 53-68.

[13] Inter-agency Committee Report; Rollo in G.R. No. 135639, pp. 296-297.

[14] Albano v. Reyes, 175 SCRA 264 (1989).

[15] This is the revised Charter of the PPA. The relevant provisions are: Sec. 6. Corporate Powers and Duties - (a) the corporate duties of the Authority shall be: x x x (iii) To prescribe rules and regulations, procedures, and guidelines governing the establishment, construction, maintenance, and operation of all other ports, including private ports in the country; (iv) To license, control, regulate, supervise any construction or structure within any Port District; (v) To provide services (whether on its own, by contract, or otherwise) within the Port Districts and the approaches thereof, including but not limited to berthing, towing, mooring, moving, slipping, or docking any vessel; loading or discharging any vessel; sorting, weighting, measuring, storing, warehousing, or otherwise handling goods; Sec. 39. Bureau of Customs. - The Tariff and Customs Code is hereby modified or amended to the extent that all the powers, duties and jurisdictions of the Bureau of Customs concerning the following matters shall be transferred to matters and affairs that pertain to the operation of the issuance of permits or licenses to construct ports, ports facilities, warehouses, and other facilities within port districts; Sec. 40. Other Laws. - Any and all other powers and rights, duties and functions and jurisdiction vested pertaining to every matter concerning ports facilities, port operations, or port works shall be transferred to and be vested in the Authority; Sec. 43. Penalties. - x x x (b) Any license, franchise, authority or permit to exercise any right or privilege, which may have been issued by the Authority in accordance with this Decree or the rules and regulations issued or promulgated pursuant to this Decree, shall be deemed withdrawn and revoke upon conviction of the holder thereof.

[16] Rollo in G.R. No. 135639, p. 631.

[17] Rollo in G.R. No. 135639, pp. 145-146.

[18] Rollo in G.R. No. 135639, p. 151.

[19] Rollo in G.R. No. 135639, pp. 631-632.

[20] In *Victorias Milling v. CA*, 153 SCRA 317, 324 (1987), we affirmed that a permit would be binding as a contract when we said, “[t]his 10% government share of earnings of arrastre and stevedoring operators is in the nature of contractual compensation to which a person desiring to operate arrastre service must agree as a condition to the grant of the permit to operate.”

[21] 41 SCRA 565 (1971).

[22] 105 Phil. 561 (1959).

[23] See Note No. 21, pp. 587, 592.

[24] See Note No. 22, pp. 563-565.

[25] 46 SCRA 102, 104 (1972).

[26] Art. 1306, The Civil Code.

[27] 75 N.E. 65 (1905).

[28] Id., pp. 65-66.

[29] See Note No. 21, p. 588.

[30] 41 Phil. 790 (1917).

[31] 56 Phil. 123 (1931).

[32] Van Alstyne, "The Demise of the Right - Privilege Distinction in Constitutional Law," 81 Harvard L. R. 1439 (1968).

[33] 258 S.E. 2d 586, 588-589.

[34] Sec. 19.

[35] Philippine Interisland Shipping Association of the Philippines v. CA, 266 SCRA 489 (1997).

[36] 224 SCRA 665 (1993).

[37] See Note No. 36, pp. 667, 670, 671-672.

[38] Sec. 19. Dues. - The President of the Philippines may upon recommendation of the Authority increase or decrease such dues, collectible by the Authority to protect the interest of the Government and to provide a satisfactory return on the Authority's assets, and may adjust the schedule of such dues so as to reflect the costs of providing the services; Provided, however, that the rates of dues on all the ports of the Philippines upon the coming into operation of this Decree shall be those now provided under Parts 1, 2, 3, and 6 of the Title VII of Book II of the Tariff and Customs Code, until such time that the President upon recommendation of the Board may order that the adjusted schedule of dues are in effect.

[39] See Note. No. 35

[40] See Note No. 35, pp. 509-510.

[41] See Note No. 1, Rollo in G.R. No. 135639, pp. 94-95.

[42] See Note No. 1, Rollo in G.R. No. 135639, pp. 95, 152, 208.

[43] See Note No. 8, Rollo in G.R. No. 135639, pp. 10, 18-19.

[44] Art. 2199. Except as provided by law or by stipulation one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages. Art. 2200. Indemnification for damages shall comprehend not only the value of the loss

suffered but also that of the profits which the obligee failed to obtain.

[45] G.R. No. 111584, 17 September 2001.

[46] Ibid.

[47] Pernito Arrastre Services, Inc. v. Mendoza, 146 SCRA 430 (1986). Also see Note No. 20, Victorias Milling case, p. 324.

[48] Mayor & Aldermen of Birmingham v. Goldstein, 44 So. 113, 114; Fiscal Court v. F&A Cox Co., 117 S.W. 2d 296.

[49] Annexes “A”, “B”, and “C” of Motion For Judicial Notice filed with the Court of Appeals; Rollo in G.R. No. 135639, pp. 496-501.

[50] See Note No. 47, Pernito Arrastre Services, Inc. case, p. 444.

[51] Arts. 1330, 1337 and 1352, New Civil Code.

[52] One of the requisites for novation is the validity of the ensuing obligation.

[53] Ching Sen Ben v. CA, 314 SCRA 762 (1999).

[54] Sec. 37. Construction and Dredging Works. - a) The Bureau of Public Works shall be the executing agency of the Authority for the detailed design, contract document preparation and advertisement, construction supervision of port terminal facilities and port works, and the dredging of public ports vested in the Authority; Provided, That when there are no qualified bidders and for projects less than two hundred thousand pesos (P200,000.00), the Bureau of Public Works may undertake the construction through force account; Provided, further, That the Authority shall perform rehabilitation or maintenance works (including maintenance dredging) by its own personnel or private contractor, whichever arrangement is more advantageous to port and shipping operations.

[55] 304 SCRA 356 (1999).

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