

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., in its own behalf and in representation of its members, Petitioner, vs. PHILIPPINE PORTS AUTHORITY, Respondent.

G.R. No. 157484. March 06, 2008

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before the Court is a petition for review[1] of the 20 May 2002 Decision[2] and 27 February 2003 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 68212. The assailed decision set aside the trial court's issuance of a writ of preliminary injunction in favor of the Association of International Shipping Lines, Inc. (petitioner). The resolution denied the petitioner's motion for reconsideration.

The Facts

Created by virtue of Presidential Decree No. 857 (PD 857),[4] the Philippine Ports Authority (PPA) is a government corporation specially charged with the financing, management, and operations of public ports throughout the Philippines.[5] The PPA has the duty, among others, to (1) supervise, control, regulate, construct, maintain, operate, and provide facilities or services which are necessary in the ports vested in, or belonging to it;[6] (2) control, regulate, and supervise pilotage and the conduct of pilots in any Port District;[7] and (3) levy dues, rates, or charges for services provided by it. [8]

On 21 March 1985, the PPA issued Administrative Order No. 03-85 (AO 03-85), setting forth the rules and regulations governing pilotage services, the conduct of pilots and pilotage fees in Philippine ports. Section 2 of AO 03-85 lays down the statement of policy on pilotage, to wit:

Statement of Policy on Pilotage – It is hereby declared and recognized that pilotage service plays a vital and complementary role in the efficient operations of the port and the responsibility to undertake the same is inherently vested in the Authority though it may authorize the discharge of such responsibility to the Pilotage Association. As such, it shall be incumbent upon the Authority to effectively regulate, supervise and control, in the public interest, pilotage, the conduct of pilots and the fees for their services. (Emphasis supplied)

Section 23 of the same administrative order states that:

Government Share – Pilotage Service is one of the port services which is inherently vested in the Authority which, by its Charter, it may render on its own or authorize a Pilots' Association or firm to undertake the service. When it is rendered by the latter, the government shall, in consideration of the grant of such privilege and/or the use of port facilities be entitled to a government share out of the gross income realized or receivable from the rendition of purely pilotage service. Said share shall be determined and implemented simultaneously with the rationalization of pilotage rates, and shall be remitted by the Association not later than the tenth (10[th]) day of each month.

In 1995, the PPA issued Administrative Order No. 15-95 (AO 15-95), modifying the above provision in AO 03-85. Section 5.3 of AO 15-95 reads:

PPA revenue – In consideration of the privilege to render pilotage services and to use port facilities, all Harbor Pilots/Pilots' Associations shall remit to the Authority, through the Port Management Office (PMO), a government share of not less than ten (10%) percent of their gross income derived from purely pilotage service. The 10% government share for billings which have already been realized/collected shall be remitted to the PMO not later than the tenth (10th) day of the succeeding month. Billings which are still to be collected by the pilots (receivables) shall subsequently, be subject to 10% government share upon collection and shall also be remitted to the PMO not later than the tenth (10th) day of the succeeding month. In either case, late payments by the harbor pilots/pilots' associations shall be subject to interest and penalties as prescribed in PPA AO No. 08-82.

The above remittance scheme shall be without prejudice to PPA's right to subsequently impose, if warranted, a direct collection system (on a per vessel basis) in any pilotage district. (Emphasis supplied)

AO 15-95 proved to be inadequate since there were still late remittances and failure to remit on the part of some pilots associations of the 10% government share.[9] Hence, to prevent the accumulation of accounts receivable accruing from the 10% government share,[10] the PPA issued on 24 July 2000 Administrative Order No. 09-2000 (AO 09-2000), mandating the direct collection from the shipowners of the 10% government share.

Section 5.3 of PPA Administrative Order No. 15-95 is hereby amended to read as follows:

5.3 PPA Revenue – In consideration of the privilege to render pilotage service and to use port facilities, all Harbor Pilots/Pilots' Associations shall remit to the Authority, through the Port Management Office (PMO), a government share of not less than ten (10%) percent of their gross income derived from purely pilotage service.

5.3.1 The ten (10%) percent government share from regular pilotage services rendered shall be assessed and directly collected by PPA from shipping companies/agents on a per vessel basis in accordance with the prescribed pilotage rates specified under Section 5.1 of PPA Administrative Order No. 15-95. Said 10% government share, together with payments for vessel charges, shall be collected by PPA before issuance of the vessel Department Clearance.

5.3.2 For income derived by the Pilots' Associations or its members from other related special pilotage services, the Pilots' Associations shall be billed by the PPA and shall pay the 10% government share within fifteen (15) days from receipt of PPA billing. Late payments shall be subject to interest and penalties prescribed under PPA Administrative Order Nos. 08-82 and 01-91.

5.3.3 For purposes of counterchecking the pilots' gross income and payments made per vessel, the Pilots' Association shall furnish PPA with copies of their billings immediately after they are issued to the shipping companies/agents.[11]

The PPA cited as authority for the issuance of AO 09-2000 Sections 2(f), 6-a(viii), b(xv) and 20 of PD 857, as amended by LOI No. 1005-A,[12] which provide, thus:

SEC. 2. Declaration of Policies and Objectives – It is hereby declared to be the policy of the State to implement an integrated program for the planning, development, financing, and operation of Ports or Port Districts for the entire country in accordance with the following objectives:

x x x x

f) To ensure that all income and revenues accruing out of dues, rates, and charges for the use of facilities and services provided by the Authority are properly collected and accounted for by the Authority, that all such

income and revenues will be adequate to defray the cost of providing the facilities and services (inclusive of operating and maintenance cost, administration and overhead) of the Port Districts, and to ensure that a reasonable return on the assets employed shall be realized.

SEC. 6. Corporate Powers and Duties --

a) The corporate duties of the Authority shall be:

x x x x

(viii) To control, regulate, and supervise pilotage and the conduct of pilots in any Port District.

x x x x

b) The corporate powers of the Authority shall be as follows:

x x x x

(xv) To do all such other things and to transact all such business directly or indirectly necessary, incidental or conducive to the attainment of the purposes of the Authority.

SEC. 20. Rates and Charges--

a) The Authority may impose, fix, prescribe, increase or decrease such rates, charges or fees for the use of port premises, works, appliances or equipment belonging to the Authority and port facilities provided, and for services rendered by the Authority or by any private organization within a Port District.

x x x x

Petitioner and its respective members opposed the implementation of AO 09-2000. The PPA agreed to suspend temporarily the implementation of the direct collection system. However, petitioner subsequently received a letter from PPA informing petitioner of the implementation of AO 09-2000 starting 1 March 2001.

Therefore, on 28 February 2001, petitioner filed with the Regional Trial Court of Manila[13] a petition to nullify Section 5.3 of AO 15-95 and AO 09-2000 with a prayer for the issuance of a temporary restraining order and a writ of preliminary injunction.

On the same date, the trial court issued a temporary restraining order and extended it in an Order dated 2 March 2001.

On 7 March 2001, the Philippine Ship Agents' Association filed a motion to intervene in the case.

In an Order dated 16 March 2001,[14] the trial court approved the Philippine Ship Agents' Association's motion to intervene and granted petitioner's application for the issuance of a writ of preliminary injunction. The trial court stated thus:

After a thorough consideration of the arguments of the parties through their respective lawyers, this Court is convinced that there appears sufficient reasons to justify the issuance of a writ of preliminary injunction. From the pleadings filed by petitioners and intervenors, this Court finds that grave and irreparable injury will be suffered by petitioners and intervenors should a preliminary injunction not issue.

x x x x

ACCORDINGLY, the application of the petitioners and the intervenors for the issuance of a writ of preliminary injunction is GRANTED, and respondent Philippine Ports Authority and its agents and/or representatives are hereby restrained and enjoined from implementing and enforcing the last paragraph of

Section 5.3 of Administrative Order No. 15-95 and Administrative Order No. 09-2000. This is conditioned upon the filing by the petitioners and the intervenors of separate bonds in the amount of P100,000.00 which bond shall be approved by this Court. The injunctive bonds which petitioners and intervenors in the amount of P100,000.00 which each will post shall be executed in favor of the Philippine Ports Authority and all damages that the latter may suffer by reason of the injunction if the Court should finally decide that they (petitioners and intervenors) are not entitled thereto.

SO ORDERED.[15]

The PPA filed a motion for reconsideration, which the trial court denied in an Order dated 8 October 2001.

The PPA filed a petition for certiorari with the Court of Appeals, arguing that the trial court abused its discretion in issuing a writ of preliminary injunction without stating clearly and distinctly the facts and law on which the order was based. The PPA claimed that the assailed rules and regulations implementing the direct collection system are valid. Moreover, the enforcement of the questioned administrative orders was already fait accompli as the collection system had already been implemented as early as 13 August 2000. The PPA further alleged that there was neither impairment of any contract nor a violation of due process in the issuance of the assailed administrative orders mandating the direct collection system.

The Court of Appeals disposed of the case as follows:

WHEREFORE, the instant petition is given due course. The Order of the court a quo dated March 16, 2001 granting the writ of preliminary injunction is hereby DISSOLVED and SET ASIDE. This includes the Order dated October 8, 2001, denying the motion for reconsideration for utter lack of factual and legal basis.

SO ORDERED.[16]

Petitioner filed a motion for reconsideration, which the Court of Appeals denied in a Resolution dated 27 February 2003.[17]

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals set aside the trial court's issuance of a writ of preliminary injunction, holding that petitioner failed to establish its right to injunction. The Court of Appeals ruled that it was just and proper for the PPA to issue AO 15-95 and AO 09-2000 as these were devised to address the problem of the PPA in collecting the 10% government share from the different pilots associations. The Court of Appeals added that the PPA may issue such administrative regulations as may be necessary to meet changing circumstances surrounding the collection of the 10% government share.

The Issues

In its Memorandum,[18] petitioner basically challenges the validity of the assailed administrative orders for (1) being ultra vires; (2) violating the principle of autonomy of contract; and (3) amounting to deprivation of property without due process.

Considering that these issues are essentially questions of law, the Court deems it proper and necessary not only to determine the validity of the issuance of the writ of preliminary injunction but more importantly the legality of the assailed administrative orders in order to finally and completely dispose of the instant case.

The Ruling of this Court

The petition has no merit.

On the validity of Section 5.3 of AO 15-95

and AO 09-2000

There is no dispute that the PPA has the power to provide pilotage services. The PPA, however, may authorize pilots associations to provide pilotage services, which is what the PPA precisely did. The PPA contracted out the provision of pilotage services to various pilots associations. In consideration of the privilege to render pilotage services and to use port facilities, the different pilots associations are required to remit to the PPA a government share of at least 10% of the pilots' (members of the associations) gross income derived from purely pilotage service.

Before the introduction of the direct collection system, the different pilots associations used to remit the 10% government share to the PPA. With the issuance of AO 09-2000, specifically under Section 5.3.1, "[t]he ten (10%) percent government share from regular pilotage services rendered shall be assessed and directly collected by the PPA from shipping companies/agents on a per vessel basis." The shipowners are obliged to withhold this amount from the fees payable to the pilots for their general services, and remit the withheld amount to the PPA. In other words, the shipowners will withhold the 10% government share from the fees they have to pay the pilots, which amount will then be collected by the PPA. Is the PPA empowered to appoint the shipowners as its withholding agent to collect the 10% government share?

The Court holds that the PPA has sufficient authority to constitute the shipowners as withholding agent for the 10% government share. Under its charter, the PPA has the authority to impose, fix, prescribe, increase or decrease such rates, charges or fees for the use of port facilities, and for services rendered by the PPA or by any private organization.[19] This power necessarily includes the authority to issue rules and regulations on the manner of collection of the 10% government share. The power to impose or fix rates or charges is definitely much broader than enforcing a different manner of collection of the 10% government share.

Moreover, in Section 6(b)(xv) of PD 857, the PPA has the power to do things and to transact business directly or indirectly necessary, incidental or conducive to the attainment of the purposes of the PPA. One of the PPA's objectives is the proper collection and accounting of all income and revenues accruing out of dues, rates, and charges for the use of facilities and services provided by the PPA and the realization of a reasonable return on the PPA's assets. Since the assailed administrative orders were issued to prevent the accumulation of accounts receivable accruing from the 10% government share, the assailed administrative orders are clearly within the PPA's power to do things necessary to the attainment of PPA's objectives. A restrictive and unreasonable interpretation of the PPA's charter would render the PPA powerless in introducing reforms on the manner of collecting the government share.

Further, being the government corporation in charged of the operation and maintenance of Philippine ports, including the provision of pilotage services, the PPA has the power to devise effective ways and means to properly collect and recover the government share. As the Court of Appeals held, an administrative body's (such as the PPA) power to issue regulations is not, once exercised, deemed exhausted. On the contrary, this power may be exercised as often as it becomes necessary to adjust the regulation to the changing circumstances surrounding the subject thereof or the problem sought to be solved or alleviated by the rule.[20] The PPA admits encountering difficulties in collecting the 10% government share from the pilots associations, prompting the PPA to implement the direct collection system. The direct collection system, which is essentially the withholding at source of the government share for remittance to the PPA, is certainly more efficient than the old collection system.

The Court rejects petitioner's contention that the direct collection system is unreasonable. The direct collection system has a reasonable relationship[21] to PPA's objective of ensuring the effective collection and accounting of all income and revenues accruing out of dues, rates, and charges for the use of facilities and services provided by the PPA, whether on its own or by contract. Nothing shows that the direct collection system produces burdensome

and inequitable results since the shipowners will simply withhold the 10% government share and remit the same together with the regular vessel charges. Significantly, the direct collection system aims to simplify and integrate the collection of the 10% government share with the regular vessel fees and charges. Likewise, the 10% government share is easily ascertainable as it shall be in accordance with the prescribed pilotage rates specified under Section 5.1 of AO 15-95.[22]

There is also no merit in petitioner's argument that the direct collection system violates the principle of autonomy of contract.[23] Petitioner insists that since it is not a party to the contract between the PPA and the pilots associations, petitioner can not be required to withhold and remit the 10% government share to the PPA. It must be emphasized that there is no new party in the contract between the PPA and the pilots associations regarding the provision of pilotage services and the payment of the government share. The Court agrees with the PPA that the only difference between the old and new collection system is the manner of collection. Whether under the old or new system of collecting the 10% government share, the pilots, who are members of the various pilots associations, are the ones legally liable for the payment of the 10% government share. The PPA merely appointed the shipowners as its withholding agent for the 10% government share. No new fees or charges were imposed upon the shipowners. What the shipowners will remit to the PPA is actually a portion of the fees they used to pay the pilots under the old collection system.

Petitioner also points out that it is not objecting to the payment of the pilotage fees. Petitioner is even willing to pay to the PPA the full pilotage fees if the PPA chose to render pilotage services itself and not through petitioner's contractors or the pilots associations.

Under Section 6(a)(v) of PD 857, one of the corporate duties of the PPA is to provide services (whether on its own, by contract, or otherwise) within the Port Districts and the approaches thereof. Paragraph (b)(vi) of the same section empowers the PPA to make or enter into contracts of any kind or nature to enable it to discharge its functions under PD 857.[24] Clearly, petitioner cannot validly complain and refuse to comply with the direct collection system simply because the PPA chose to contract out the provision of pilotage services to different pilots associations.

Petitioner likewise argues that since the 10% government share is based on the actual gross income of the pilots, this amount is demandable only after the pilots have become entitled to the pilotage fees, and that is when they have performed the service. Since the pilots are not entitled to the pilotage fees until after completion of the service, it follows that the PPA is not yet entitled to the 10% government share.

Based on Section 5.2 of AO 15-95, the term "gross income" shall be understood to mean as total gross billings (whether already realized or still to be collected) assessed the shipping agents/vessel owners for the conduct of regular and other related special pilotage services. However, it is clear from the words of AO 09-2000 that its purpose is "to revise the guidelines by requiring shipping lines/agents to pay directly to PPA the 10% government share from pilotage service actually rendered (excluding overtime) by Harbor Pilots/Harbor Pilots' Associations." Thus, the withholding of the 10% government share applies only for pilotage services actually rendered.

On petitioner's assertion that the assailed administrative orders amount to deprivation of property without due process, suffice it to state that this Court will not rule on constitutional issues if the case can be disposed of on some other grounds. Thus, even if all the requisites for judicial review of a constitutional matter are present in a case, this Court will not pass upon a constitutional question unless it is the *lis mota* of the case.[25] Anyway, petitioner failed to substantiate its claim of deprivation of property without due process. Nothing shows how petitioner was deprived of its property or which property was taken from petitioner. To repeat, there is no new or additional fee or charges which petitioner has to pay. Even before the introduction of the direct collection system,

petitioner used to pay the 10% government share as part of the fees it pays the pilots.

On the propriety of the issuance
of a writ of preliminary injunction

Petitioner argues that the shipowners will suffer “grave and irreparable injury” because of the non-issuance of departure clearances to vessels for non-payment of the 10% government share. Petitioner maintains that “the vessels that call to the Philippine ports have a tight schedule to follow in order to meet their commitments here and abroad. x x x The penalty of non-issuance of vessel’s departure clearance to the shipowners and ship agents would certainly wreak havoc to their operations.”

Aside from petitioner’s bare allegation of the “grave and irreparable injury” it will suffer, there is nothing in the records which shows the existence of petitioner’s clear and unmistakable right that must be protected, and an urgent and paramount necessity for the writ to prevent serious damage.[26] Therefore, as the Court of Appeals ruled, petitioner is not entitled to the injunction writ.

Moreover, this Court views the non-issuance of a vessel’s departure clearance for non-payment of the 10% government share as an essential part of a procedure, contrary to petitioner’s claim that it is a harsh penalty. The withholding of the 10% government share for remittance to the PPA for actual pilotage services rendered is a reasonable condition for the issuance of the vessel’s departure clearance. It is not an additional fee or charge for which the shipowners are liable.

It is also worthy to note that, as the PPA claims, except for the pilotage district of Manila (North Harbor, Bataan, MICT, and South Harbor), the direct collection system was implemented by the respective Port Management Offices of the PPA nationwide. The shipping companies, both foreign and local, as well as shipping agents have already complied with AO 09-2000 as reported by the Port Operations and Services Department.[27]

WHEREFORE, the Court DENIES the petition. The Court AFFIRMS the 20 May 2002 Decision and 27 February 2003 Resolution of the Court of Appeals in CA-G.R. SP No. 68212.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Rollo, pp. 37-47. Penned by Associate Justice Eugenio S. Labitoria with Associate Justices Teodoro P. Regino and Juan Q. Enriquez, Jr. concurring.

[3] Id. at 49-50.

[4] Dated 23 December 1975. Otherwise known as the Revised Charter of the Philippine Ports Authority created under Presidential Decree No. 505 dated 11 July 1974.

[5] From the PPA website, <http://www.ppa.com.ph/>.

[6] Sec. 6(a)(ii) of PD 857.

[7] Sec. 6(a)(viii) of PD 857.

[8] Sec. 6(b)(ix) of PD 857.

[9] Rollo, p. 133.

[10] Id. at 116.

[11] Id. at 116-117.

[12] Id. at 116.

[13] Ruffled to Branch 36 and docketed as Civil Case No. 01-100248.

[14] Rollo, pp. 93-95. Penned by Judge Wilfredo D. Reyes.

[15] Id. at 95.

[16] Id. at 47.

[17] Id. at 49-50.

[18] Id. at 179-196.

[19] Section 20(a) of PD 857.

[20] Carlo L. Cruz, PHILIPPINE ADMINISTRATIVE LAW, 69, 2003 Edition.

[21] See HECTOR DE LEON AND HECTOR DE LEON, JR, ADMINISTRATIVE LAW: TEXT AND CASES, 98, 2001 Edition.

[22] The following guidelines are hereby issued for the compliance of all concerned:

5.1 Pilotage Rates – The applicable rates for regular pilotage services rendered to vessels are as follows:

5.1.1 Foreign Vessels -

RATES IN US\$

OR ITS PESO

EQUIVALENT

less than 500 GRT

US\$ 30.00

500 GRT and up to 2,500 GRT

43.33

2,500 GRT and up to 5,000 GRT

71.33

5,000 GRT and up to 10,000 GRT

133.67

10,000 GRT and up to 15,000 GRT

181.67

15,000 GRT and up to 20,000 GRT

247.00

20,000 GRT and up to 30,000 GRT

300.00

30,000 GRT and up to 40,000 GRT

416.67

40,000 GRT and up to 60,000 GRT

483.33

60,000 GRT and up to 80,000 GRT

550.00

80,000 GRT and up to 100,000 GRT

616.67

100,000 GRT and up to 120,000 GRT

666.67

120,000 GRT and up to 130,000 GRT

716.67

130,000 GRT and up to 140,000 GRT

766.67

over 140,000 GRT - \$0.05 or its peso equivalent

for every excess tonnage

[23] Embodied in Article 1311 of the Civil Code which provides:

Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

[24] See *Philippine Ports Authority v. CA*, 323 Phil. 260, 293-294 (1996).

[25] *Lalican v. Vergara*, 342 Phil. 485, 498 (1997).

[26] See *Philippine National Bank v. RJ Ventures Realty and Development Corporation*, G.R. No. 164548, 27 September 2006, 503 SCRA 639.

[27] *Rollo*, p. 75.

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