

ASSOCIATION OF INTERNATIONAL SHIPPING LINES, INC., IN ITS OWN BEHALF AND IN REPRESENTATION OF ITS MEMBERS, APL CO. PTE LTD., CONSHIP CONTAINER LINES, LTD., AUSTRAL ASIA LINE, A...

G.R. NO. 158000. March 31, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

Being assailed via petition for review on certiorari is the March 31, 2003 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 69307 which dismissed the petition for certiorari[2] filed by petitioner Association of International Shipping Lines, Inc. (AISLI) and the petition for intervention[3] filed by petitioner Philippine Ship Agents Association (PSAA).

Sometime in October 2000, respondent Asian Terminals, Inc. (ATI) and respondent International Container Terminal Services, Inc. (ICTSI) applied with respondent Philippine Ports Authority (PPA) for increases in all stevedoring and arrastre charges including special services for containerized and non-containerized cargoes at South Harbor and Manila International Container Terminal (MICT), respectively.

ATI, exclusive cargo handling operator of South Harbor, requested for a 32% increase while ICTSI, exclusive cargo handler at the MICT, applied for a 30% increase.

Acting on the applications for increase, PPA Acting General Manager Benjamin B. Cecilio directed the Acting Port District Manager of Manila to set and conduct a public hearing thereon on October 27, 2000 to be participated in by concerned port users.[4]

Upon the request of ATI and ICTSI, the hearing was reset to November 8, 2000 at which representatives of ATI, ICTSI, the PPA, port users (particularly the AISLI, the PSAA, the Port Users Confederation or PUC, the Distributors Management Association of the Philippines or DMAP and the Philippine Exporters Confederation, Inc. or PECCI and the Philippine Wood Producers Association or PWPA), other concerned government agencies (particularly the Bureau of Customs and the Philippine Shippers' Bureau or PSB) and labor groups were in attendance.[5]

Meeting on December 19, 2000, the PPA Board Committee (BoardCom) "agreed in principle to grant an increase in the cargo handling rates nationwide (tentatively 10% in February [2001], and another 10% in July [2001])."[6]

In its January 11, 2001 meeting, the BoardCom thus adopted Resolution No. 2001-761 providing as follows:

BoardCom Resolution No. 2001-761

"RESOLVED, That on motion duly made and seconded, and taking into consideration the requests of the Philippine Chamber of Arrastre and Stevedoring Operations (PCASO) and other major cargo handling contractors for an across-the-board and nationwide increase in their cargo handling tariff, the same, after public hearings duly

conducted for the purpose, be, as it is hereby approved, as follows:

Arrastre Stevedoring

Foreign 10% 15%

Domestic 10% 10%

Resolved FURTHER, That the above increases, be made effective 1 February 2001, after the publication of its implementing circular in a newspaper of general circulation,”[7] (Emphasis supplied)

and on even date, the PPA Board of Directors, during its 264th Regular Meeting, adopted Board Resolution No. 1858[8] confirming BoardCom Resolution Nos. 2001-758 to 2001-761, “as adopted during the 130th Meeting of the Board Committee, held on 11 January 2001.”

On December 20, 2001, the PPA Board of Directors adopted Board Resolution No. 1897 reading as follows:

RESOLUTION NO. 1897

“RESOLVED, That on motion duly made and seconded, and subject to submission of the Productivity Report to the Board of the cargo handling performance of both Asian Terminals, Inc. (ATI) and the International Container Terminal Services, Inc. (ICTSI), Management, be, as it is hereby advised, to implement the ten (10%) percent rate increase in the cargo handling tariff of ATI and ICTSI as previously approved by the Board [of Directors] on 11 January 2001;

RESOVED (sic) FURTHER, That the implementation of the said ten (10%) percent rate increase be made effective fifteen (15) days after the completion of its publication in a newspaper of general circulation.”[9] (Underscoring supplied)

Pursuant to above-quoted December 20, 2001 Board of Directors Resolution No. 1897, the PPA issued the following day or on December 21, 2001 Memorandum Circular No. 47-2001, “Additional Ten Percent (10%) Increase in the Cargo Handling Tariff at South Harbor and MICT” reading:

Pursuant to PPA Board Resolution No. 1897 dated December 20, 2001, the terminal operators at PMO South Harbor and the Manila International Container Terminal are hereby authorized to implement the additional 10% increase as previously approved by the Board on January 11, 2001 as follows:

Vessel Charge Cargo Charge
(Stevedoring) (Arrastre)

Containerized and
Non-Containerized 10% 10%

This Circular shall take effect fifteen (15) days after the completion of its publication in a newspaper of general circulation.[10]

Memorandum Circular No. 47-2001, which was published in the Philippine Star and the Manila Standard on December 28, 2001, took effect on January 12, 2002.[11]

AISLI General Manager Julio C. Garcia, by letter dated January 16, 2002[12] addressed to PPA General Manager Alfonso G. Cusi (Cusi), soon requested that the implementation of the additional 10% increase mandated by Memorandum Circular No. 47-2001 be held in abeyance.

Garcia complained that there was no public hearing conducted for the purpose of discussing the rate increase in the cargo handling tariff and that port users were not given prior notice thereof. He further complained that the

grant of additional 10% increase was the decision of the PPA BoardCom, and not of the Board of Directors, hence, null and void, for under P.D. No. 857 (the Revised Charter of the PPA), the agency's corporate powers are vested exclusively in its Board of Directors.

In fine, Garcia averred that a power vested by law in the PPA Board of Directors cannot be delegated to its BoardCom.

Cusi thus suspended on January 22, 2002 the implementation of the additional 10% increase for fifteen (15) days or until February 5, 2002 "in the spirit of transparency and to be able to give all concerned more time to air and discuss pertinent issues on the matter." [13]

By letter dated January 30, 2002, [14] addressed to the PPA, AISLI ventilated its objections to the additional 10% increase, to wit: there was no Board of Directors Resolution authorizing the additional 10% increase to take effect on January 12, 2002; there was no notice of the additional increase given to port users; and there was no public hearing prior to the imposition thereof.

The PPA thereupon held on February 1, 2002 a meeting which was attended by representatives from AISLI, PSAA and PUC to clarify the issues raised by the parties. [15]

By letter of February 4, 2002 [16] to AISLI General Manager Garcia, the PPA, addressing Garcia's complaint that there was no Board of Directors Resolution authorizing the additional 10% increase to take effect on January 12, 2002, wrote:

This increase is covered by Board Resolution No. 1897 passed by the PPA Board of Directors on December 20, 2001. Said adjustment is part of the deliberations made as early as December 2000 and January 2001. Although the nationwide increase which was effected last 1 February 2001 was formerly confirmed by a Board Resolution, the second increase, which was limited to Manila (foreign cargoes only) was subject to certain conditions on productivity. Thus, the formal Board resolution [Board of Directors Resolution No. 1897] was adopted on 20 December 2001 when it was discussed by the Board. [17] (Underscoring supplied)

Respecting Garcia's complaint about lack of notice to port users of the additional cargo handling rate increase, the PPA, denying the same, advised Garcia in the same letter of February 4, 2002 that after due notice to concerned port users, a public hearing was conducted on November 8, 2000 on account of which the Board of Directors decided to implement the increase in two tranches, the second of which being limited to Manila only, "conditioned on the improved productivity by MICT and South Harbor and which was deliberated only last December 2001 (instead of July as originally intended)."

On February 6, 2002, the suspension of the implementation of the additional 10% increase was lifted. [18]

AISLI was thus prompted to file a petition for certiorari under Rule 65 of the Rules of Court before the CA for the declaration of nullity of Memorandum Circular No. 47-2001 and illegality of the additional 10% increase on tariff rates for cargo handling based thereon.

Before the appellate court AISLI insisted that Memorandum Circular 47-2001 was not supported by a proper Board Resolution of the PPA Board of Directors and that there was no public hearing and notice to port users prior to the implementation of the increase.

PSAA filed a Petition for Intervention raising the same issue raised by AISLI and praying for identical reliefs.

By Decision of March 31, 2003, the appellate court dismissed the petition, ratiocinating as follows:

It is quite clear from the minutes [of the BoardCom meeting on January 11, 2001] that the approved tariff increase was of two tranches, one in February and the other one in July, but this last increase was made subject

to the reports on productivity improvement. This documentary report showing sufficient productivity to back up the increase slated for July 2001, was submitted on December 2001. Hence it was only on this month, that the PPA Board of Directors passed the said Board Resolution No. 1897 ratifying the implementation of the said additional 10% increase. xxx

Thus, the Memorandum Circular No. 47-2001 implementing the additional 10% increase in cargo handling tariff rates was duly ratified or approved by the Board of Directors of PPA, and therefore, valid and effective. The well known rule is that courts cannot undertake to control the discretion of the board of directors about administrative matters as to which they have legitimate power of action (*Gamboa vs. Victoriano*, 90 SCRA 40).

On the allegation that public hearing was never conducted, suffice is (sic) to say that *res ipsa loquitur* (sic). The minutes of the public hearing (p. 128, rollo) held on November 8, 2000 at PDO-Manila Conference Room, 3rd Floor, PDO-Manila Building called for the purpose of deliberating on the request of ATI and ICTSI for tariff increase adjustment, would show that Julio Garcia and Cora Bautista, respectively the General Manager and Assistant General Manager of petitioner AISLI, and Bobby Lim, Director of intervenor PSAA, attended and actively participated in the discussion of the issues taken up in said hearing. xxx

But the foregoing discussion is really only for the nonce, for the fact is that “due process” and “notice and hearing” does (sic) not even come into play. As a general rule, notice and hearing, as the fundamental requirements of procedural due process, are essential only when an administrative body exercises its quasi-judicial function. In the performance of its executive or legislative functions, such as issuing rules and regulations, an administrative body need not comply with the requirements of notice and hearing (*Corona vs. United Harbor Pilots Assn. of the Phil.*, G.R. No. 111953, Dec. 12, 1997).[19] (*Italics in the original; emphasis and underscoring supplied*)

Hence, the present petition for certiorari[20] faulting the appellate court as follows:

- THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR IN FINDING THAT THE TEN PERCENT (10%) INCREASE BEING IMPLEMENTED IN JANUARY 2002 THROUGH MEMORANDUM CIRCULAR NO. 47-2001 IS SUPPORTED BY A VALID PPA BOARD RESOLUTION, BECAUSE –

THE BOARD COM RESOLUTION NO 2001-761 GRANTING SAID INCREASE WHICH WAS CONFIRMED BY THE PPA BOARD IN ITS RESOLUTION 1858 WAS ALREADY IMPLEMENTED IN FEBRUARY 2001, AND THEREFORE, CANNOT BE USED AGAIN TO SUPPORT PPA BOARD RESOLUTION 1897 WHICH GRANTS ANOTHER ROUND OF INCREASE IN JANUARY 2002.

- THE COURT OF APPEALS COMMITTED SERIOUS AND REVERSIBLE ERROR WHEN IT RULED THAT THERE WAS DUE NOTICE AND HEARING BEFORE THE INCREASE IN JANUARY 2002 WAS GRANTED AND IMPLEMENTED, BECAUSE SAID NOTICE AND HEARING WERE FOR THE INCREASE IN FEBRUARY 2001.[21]

The petition is bereft of merit.

The Revised Charter of the PPA, which took effect on December 23, 1975, transferred the powers, duties and jurisdiction of the Bureau of Customs with regard to arrastre and stevedoring operations to the PPA.[22]

Under Section 6 (a)(v) of the Charter, the PPA has the duty to provide services (whether by itself, 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, weighing, measuring, storing, warehousing, or otherwise handling goods.

Under Section 6 (b)(ix), the PPA has the power to levy dues, rates, or charges for the use of the premises, works, appliances, facilities, or for services provided by or belonging to the Authority, or any other organization concerned with port operations.

And under Section 20 (a), the PPA may impose, fix, prescribe, increase or decrease such rates, charges or fees for the use of port premises, works, appliances or equipment belonging to it and port facilities provided, and for services rendered by it or by any organization within a Port District.

Indubitably, it is within the sound discretion of the PPA to impose a reasonable increase in the rate of arrastre and stevedoring charges.

Petitioners insist, however, that PPA BoardCom Resolution 2001-761 granting an increase in cargo handling rates which resolution was confirmed on January 11, 2001 by the PPA Board of Directors in Board Resolution 1858 was already implemented in February 2001 and, therefore, could not be used again to support PPA Board Resolution 1897 which granted another round of increases in January 2002. They thus argue that there was no valid Board of Directors Resolution in support of the January 2002 round of increases as Board Resolution 1897 was merely a reiteration of BoardCom Resolution 2001-761.

The minutes of the PPA BoardCom meeting held on January 11, 2001 belie petitioners' stance, however.

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VI. PROPOSED CARGO HANDLING RATE INCREASE - Asian Terminals, Inc. and International Container Terminals Services, Inc. requested for a 32% and 30% rate increase, respectively, for all stevedoring and arrastre charges including special services for containerized and non-containerized cargoes. The Philippine Chamber of Arrastre and Stevedoring Operators (PCASO) also submitted a similar request for a 20.61% increase in their tariff. AISL, on the other hand, informed PPA that the association will only support the request if the productivity at South Harbor and MICT is improved. There were earlier complaints about port inefficiency both at South Harbor and MICT.

The BoardCom, during its last meeting on 19 December 2000, had agreed in principle to grant an increase in the cargo handling rates nationwide (tentatively 10% in February and another 10% in July). However, the BoardCom asked for more figures on some specific items as well as commitment on the part of ATI and ICTSI to improve their productivity. In this regard, ATI, in its letter to PPA dated 8 January 2001 reported that it has already achieved and will continue to improve its productivity of 20 moves per gross crane hour.

After due deliberation on the matter, the BoardCom APPROVED the request for an across-the-board increase in the cargo handling tariff, effective 01 February 2001, to wit:

Arrastre Stevedoring

Foreign 10% 15%

Domestic 10% 10%

Director Ordoñez, however, suggested that the approved increase be subject to the condition that the productivity requirement which the Manila contractors' (sic) have committed (20 moves/gross crane hour) is already in place. Further, by July 1 they will commit a further improvement of productivity rate by no less than 10% or 22 moves/gross crane hour.[23] (Emphasis and underscoring supplied)

As shown above, the PPA BoardCom approved an increase in cargo handling rates to be implemented in two tranches, the first in February 2001, and the other in July 2001. Since the productivity report required for the

second tranche was submitted in December 2001,[24] the Board of Directors, pursuant to the powers granted to it by the PPA Charter, passed Board Resolution No. 1897 ratifying the second or additional 10% increase approved by the BoardCom only on December 20, 2001.

As for petitioners' argument that there was no notice and hearing prior to the implementation of the second tranche of increases and, therefore, PPA Memorandum Circular No. 47-2001 is null and void, the same fails.

The fixing of rates is generally a legislative power, whether exercised by the legislature itself or delegated through an administrative agency.[25]

Where the rules and/or rates imposed by an administrative agency apply exclusively to a particular party, predicated upon a finding of fact, the agency performs a function partaking of a quasi-judicial character[26] and prior notice and hearing are essential to the validity thereof.[27]

If the agency is in the exercise of its legislative functions or where the rates are meant to apply to all enterprises of a given kind throughout the country, however, the grant of prior notice and hearing to the affected parties is not a requirement of due process[28] except where the legislature itself requires it.

In the case at bar, even if the subject additional increase in cargo handling rates is deemed to have been imposed by the PPA in the exercise of its quasi-judicial function, the requirements of prior notice and hearing have been adequately complied with. For, as above-mentioned, the PPA conducted a public hearing participated in by petitioners, respondents ATI and ICTSI and other port users on November 8, 2000. The highlights of said hearing as recorded in the Minutes thereof reflect so:

- Mr. Leopoldo F. Bungubung, Port District Manager of PPA PDO-Manila xxx acknowledged the presence of the participants and the company/associations they represent and informed them that the Public Hearing is being conducted due to the request of Asian Terminals, Inc. of South Harbor (ATI) as well as the International Container Terminal Services, Inc. (ICTSI) of Manila International Container Terminal (MICT) for a tariff adjustment for stevedoring and arrastre charges for containerized and non-containerized cargo for the Port of Manila, because of the increase in LP fuel, wages and depreciation of the peso. As a matter of procedure, he called the proponents to present their proposal and corresponding justification for tariff adjustment.

- Mr. Manny Guarin, ATI Assistant Vice-President for Corporate Finance, commenced his presentation by giving a brief background on the prevailing, unstable business condition in the country. He stressed that ATI, like other businesses, has been severely affected by rising costs which hampered their operational and financial performance for the past six (6) months. As such, in order to render optimum services as well as not to derail its aim of modernizing the facilities and equipment at the Manila South Harbor, Mr. Guarin stressed that ATI seeks an across the board adjustment in the existing tariff structure by 32%. To justify this, he discussed in detail the impact of the various factors which are the root causes of the cost increment, namely, the continuing peso depreciation, the increases in the prices of oil, increase in cost of power and electricity and the interest expense; which schedules were provided to the attendees. xxx

- Mr. Leopoldo de la Cruz, ICTSI Controller, presented the ICTSI's reason for its request for 30% across-the-board tariff increase for stevedoring and arrastre. He zeroed in on the impact of the peso depreciation, xxx the ICTSI's dollar obligations of \$161M which was used for Berth 5 and equipment acquisition, the interest expense of its long term loan of P1.7B, xxx the depreciation computation comparing the depreciation expense account in CY 1999 at \$12,000,513 and \$12,000,816 for CY 2000. xxx

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6. Mr. Julio Garcia, Association of International Shipping Lines (AISL) General Manager commented on the productivity of both service providers which is deteriorating and has no improvement whatsoever. He said that they are willing to contribute in every way they can to address the problem on productivity which is affecting the whole Port of Manila. Regarding the increase, he requested that AISL be given up to the end of the month to submit its position paper. They will support it but maybe not the amount as requested because of the timing of the request. In order for them to evaluate the requested increase in rates, he asked for the copy of the 1999 financial statements.

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9. Mr. Bobby Lim, Ship Agents' Association of the Philippines (PSAA) [Director] asked that they be also allowed to submit their position on the tariff adjustment by the end of the month to give them ample time to discuss this among their members and make their evaluation. Unlike the others who were asking for the 1999 audited financial statements, he requested instead for the "year to date (January-September 2000) financial statements confined to ATI's operations for South Harbor and ICTSI for MICT operations only. Like Mr. Garcia, he also urged the proponents to hold their request for a few months because he foresees that the factors that affect the profitability of ATI and ICTSI are only temporary and this will be resolved soon.

10. Mr. Sean Perez, ATI Vice President & General Manager of South Harbor General Stevedoring Division, thanked the body for recognizing that the issues earlier presented are part of the economic realities. He stressed that this public hearing was more of looking at the present tariff structure to make an adjustment based on what was presented and not just an issue of wait and see because these factors were the result of several months of economic disturbance ATI had been experiencing. With regards (sic) to the port's productivity earlier commented by Mr. Garcia, Mr. Perez said this is something they recognize and are taking actions to improve it.[29] (Underscoring supplied)

Furthermore, the minutes of the December 19, 2000 meeting of the PPA BoardCom show that petitioners were given the opportunity to ventilate their concerns as regards the proposed increase in cargo handling rates:

AISL informed PPA that the association will support the request only if productivity at MICT and South Harbor is improved. The Port Users Confederation, on the other hand, limited the increase to 25% and to be implemented on a staggered basis. PUC also complained on port inefficiency at South Harbor and MICT.

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After taking into consideration the various positions of the contractors and the port user groups to be affected, the BoardCom was of the opinion that an increase may be granted as a relief.[30] (Underscoring supplied)

The essence of due process is simply an opportunity to be heard, or as applied to administrative proceedings, a fair and reasonable opportunity to explain one's side.[31] That petitioners were afforded due process is unassailably documented.

WHEREFORE, the petition is DENIED.

Costs against petitioners.

SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

[1] Rollo at 42-57.

[2] Id. at 197-214.

[3] CA Rollo at 36-58.

[4] Rollo at 139.

[5] Id. at 79-83.

[6] Minutes of the January 11, 2001 BoardCom Meeting; Id. at 75.

[7] Id. at 60.

[8] Id. at 73.

[9] Id. at 59.

[10] Id. at 58.

[11] Ibid.

[12] Id. at 61.

[13] Id. at 62.

[14] Id. at 63-67.

[15] Id. at 71.

[16] Id. at 71-72.

[17] Id. at 71.

[18] CA Rollo at 147.

[19] Rollo at 54-56.

[20] Id. at 8-40.

[21] Id. at 21.

[22] Pernito Arrastre Services, Inc. v. Mendoza, 146 SCRA 430, 434 (1986).

[23] Rollo at 75-76.

[24] Id. at 54.

[25] Republic v. Manila Electric Company, 391 SCRA 701, 707 (2002) (citation omitted), Philippine Interisland Shipping Association of the Philippines v. Court of Appeals, 266 SCRA 489, 506 (1997) (citations omitted).

[26] Philippine Communications Satellite Corporation v. Alcuaz, 180 SCRA 218, 227 (1989) (citation omitted), Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture and Sports, 153 SCRA 622, 628 (1987) (citation omitted), Vigan Electric Light Co., Inc. v. Public Service Commission, 10 SCRA 46, 53 (1964).

[27] Philippine Communications Satellite Corporation v. Alcuaz, 180 SCRA 218, 227 (1989) (citation omitted), Vigan Electric Light Co., Inc. v. Public Service Commission, 10 SCRA 46, 53 (1964).

[28] Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture and Sports, 153 SCRA 622, 627 (1987).

[29] Rollo at 79, 80-83.

[30] Id. at 78.

[31] National Semiconductor (HK) Distribution, Ltd. v. NLRC, 291 SCRA 348, 354 (1998) (citation omitted), NFD International Manning Agents v. NLRC, 284 SCRA 239, 246 (1998) (citations omitted).

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