

**PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION, PETITIONER,
VS. HON. WALFRIDO DE LOS ANGELES, JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL, BRANCH IV (QUEZON CITY) AND
TIMOTEO A. S...**

G.R. No. 27829. August 19, 1988

Ponente: PARAS, J.

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PARAS, J.:

In these petition and supplemental petition for Certiorari, Prohibition and Mandamus with Preliminary Injunction, petitioner Philippine Virginia Tobacco Administration seeks to annul and set aside the following Orders of respondent Judge of the Court of First Instance of Rizal, Branch IV (Quezon City) in Civil Case No. Q-10351 and prays that the Writ of Preliminary Injunction (that may be) issued by this Court enjoining enforcement of the aforesaid Orders be made permanent. (Petition, Rollo, pp. 1-9)

They are:

The Order of July 17, 1967:

“AS PRAYED FOR, the Prudential Bank & Trust Company is hereby directed to release and deliver to the herein plaintiff, Timoteo A. Sevilla, the amount of P800,000.00 in its custody representing the marginal deposit of the Letters of Credit which said bank has issued in favor of the defendant, upon filing by the plaintiff of a bond in the sum of P800,000.00, to answer for whatever damage that the defendant PVTA and the Prudential Bank & Trust Company may suffer by reason of this order.” (Annex “A”, Rollo, p. 12)

The Order of November 3, 1967:

“IN VIEW OF THE FOREGOING, the petition under consideration is granted, as follows: (a) the defendant PVTA is hereby ordered to issue the corresponding certificate of Authority to the plaintiff, allowing him to export the remaining balance of his tobacco quota at the current world market price and to make the corresponding import of American high-grade tobacco; (b) the defendant PVTA is hereby restrained from issuing any Certificate of Authority to export or import to any persons and/or entities while the right of the plaintiff to the balance of his quota remains valid, effective and in force; and (c) defendant PVTA is hereby enjoined from opening public bidding to sell its Virginia leaf tobacco during the effectivity of its contract with the plaintiff.

“x x x

“In order to protect the defendant from whatever damage it may sustain by virtue of this order, the plaintiff is hereby directed to file a bond in the sum of P20,000.00.” (Annex “K,” Rollo, pp. 4-5)

The Order of March 16, 1968:

“WHEREFORE, the motion for reconsideration of the defendant against the order of November 3, 1967 is hereby DENIED.” (Annex “M,” Rollo, p. 196)

The facts of the case are as follows:

Respondent Timoteo Sevilla, proprietor and General Manager of the Philippine Associated Resources (PAR) together with two other entities, namely, the Nationwide Agro-Industrial Development Corp. and the Consolidated Agro-Producers Inc. were awarded in a public bidding the right to import Virginia leaf tobacco for blending purposes and exportation by them of PVTA and farmer’s low-grade tobacco at a rate of one (1) kilo of imported tobacco for every nine (9) kilos of leaf tobacco actually exported. Subsequently, the other two entities assigned their rights to PVTA and respondent remained the only private entity accorded the privilege.

The contract entered into between the petitioner and respondent Sevilla was for the importation of 85 million kilos of Virginia leaf tobacco and a counterpart exportation of 2.53 million kilos of PVTA and 5.1 million kilos of farmer’s and/or PVTA at P3.00 a kilo. (Annex “A”, p. 55 and Annex “B”, Rollo, p. 59) In accordance with their contract respondent Sevilla purchased from petitioner and actually exported 2,101,470 kilos of tobacco, paying the PVTA the sum of P2,482,938.50 and leaving a balance of P3,713,908.91. Before respondent Sevilla could import the counterpart blending Virginia tobacco, amounting to 525,560 kilos, Republic Act No. 4155 was passed and took effect on June 20, 1964, authorizing the PVTA to grant import privileges at the ratio of 4 to 1 instead of 9 to 1 and to dispose of all its tobacco stock at the best price available.

Thus, on September 14, 1965 subject contract which was already amended on December 14, 1963 because of the prevailing export or world market price under which respondent will be exporting at a loss, (Complaint, Rollo, p. 3) was further amended to grant respondent the privileges under aforesaid law, subject to the following conditions: (1) that on the 2,101,470 kilos already purchased, and exported, the purchase price of about P3.00 a kilo was maintained; (2) that the unpaid balance of P3,713,908.91 was to be liquidated by paying PVTA the sum of P4.00 for every kilo of imported Virginia blending tobacco and; (3) that respondent Sevilla would open an irrevocable letter of credit No. 6232 with the Prudential Bank and Trust Co. in favor of the PVTA to secure the payment of said balance, drawable upon the release from the Bureau of Customs of the imported Virginia blending tobacco.

While respondent was trying to negotiate the reduction of the procurement cost of the 2,101,479 kilos of PVTA tobacco already exported which attempt was denied by petitioner and also by the Office of the President, petitioner prepared two drafts to be drawn against said letter of credit for amounts which have already become due and demandable. Respondent then filed a complaint for damages with preliminary injunction against the petitioner in the amount of P5,000,000.00. Petitioner filed an answer with counterclaim, admitting the execution of the contract. It alleged however that respondent violated the terms thereof by causing the issuance of the preliminary injunction to prevent the former from drawing from the letter of credit for amounts due and payable and thus caused petitioner additional damage of 6% per annum.

A writ of preliminary injunction was issued by respondent judge enjoining petitioner from drawing against the letter of credit. On motion of respondent, Sevilla, the lower court dismissed the complaint on April 19, 1967 without prejudice and lifted the writ of preliminary injunction but petitioner’s motion for reconsideration was

granted on June 5, 1967 and the Order of April 19, 1967 was set aside. On July 1, 1967 Sevilla filed an urgent motion for reconsideration of the Order of June 5, 1967 praying that the Order of dismissal be reinstated. But pending the resolution of respondent's motion and without notice to the petitioner, respondent judge issued the assailed Order of July 17, 1967 directing the Prudential Bank & Trust Co. to make the questioned release of funds from the Letter of Credit. Before petitioner could file a motion for reconsideration of said order, respondent Sevilla was able to secure the release of P300,000.00 and the rest of the amount. Hence this petition, followed by the supplemental petition when respondent filed with the lower court an urgent ex-parte petition for the issuance of preliminary mandatory and preventive injunction which was granted in the resolution of respondent Judge on November 3, 1967, above quoted. On March 16, 1968, respondent Judge denied petitioner's motion for reconsideration. (Supp. Petition, Rollo, pp. 128-130)

Pursuant to the resolution of July 21, 1967, the Supreme Court required respondent to file an answer to the petition within 10 days from notice thereof and upon petitioner's posting a bond of fifty thousand pesos (P50,000.00), a writ of preliminary mandatory injunction was issued enjoining respondent Judge from enforcing and implementing his order of July 17, 1967 and private respondents Sevilla and Prudential Bank and Trust Co. from complying with and implementing said order. The writ further provides that in the event that the said order had already been complied with and implemented, said respondents are ordered to return and make available the amounts that might have been released and taken delivery of by respondent Sevilla. (Rollo, pp. 16-17)

In its answer, respondent bank explained that when it received the Order of the Supreme Court to stop the release of P800,000.00 it had already released the same in obedience to an earlier Order of the lower Court which was reiterated with an admonition in a subsequent Order. (Annex "C", Rollo, pp. 37-38) A Manifestation to that effect has already been filed by respondent bank (Rollo, pp. 19-20) which was noted by this Court in the resolution of August 1, 1967, a copy of which was sent to the Secretary of Justice. (Rollo, p. 30)

Before respondent Sevilla could file his answer, petitioner filed a motion to declare him and respondent bank in contempt of court for having failed to comply with the resolution to this court of July 21, 1967 to the effect that the assailed order has already been implemented but respondents failed to return and make available the amounts that had been released and taken delivery of by respondent Sevilla. (Rollo, pp. 100-102)

In his answer to the petition, respondent Sevilla claims that petitioner demanded from him a much higher price for Grades D and E tobacco than from the other awardees; that petitioner violated its contract by granting indiscriminately to numerous buyers the right to export and import tobacco while his agreement is being implemented, thereby depriving respondent of his exclusive right to import the Virginia leaf tobacco for blending purposes and that respondent Judge did not abuse his discretion in ordering the release of the amount of P800,000.00 from the Letter of Credit, upon his posting a bond for the same amount. He argued further that the granting of said preliminary injunction is within the sound discretion of the court with or without notice to the adverse party when the facts and the law are clear as in the instant case. He insists that petitioner cannot claim from him a price higher than the other awardees and that petitioner has no more right to the sum in controversy as the latter has already been overpaid when computed not at the price of tobacco provided in the contract which is inequitable and therefore null and void but at the price fixed for the other awardees. (Answer of Sevilla, Rollo, pp. 105-111)

In its Answer to the Motion for Contempt, respondent bank reiterates its allegations in the Manifestation and Answer which it filed in this case. (Rollo, pp. 113-114)

In his answer, (Rollo, pp. 118-119) to petitioner's motion to declare him in contempt, respondent Sevilla explains that when he received a copy of the Order of this Court, he had already disbursed the whole amount withdrawn, to

settle his huge obligations. Later he filed a supplemental answer in compliance with the resolution of this Court of September 15, 1967 requiring him to state in detail the amounts allegedly disbursed by him out of the withdrawn funds. (Rollo, pp. 121-123)

Pursuant to the resolution of the Supreme Court on April 25, 1968, a Writ of Preliminary Injunction was issued upon posting of a surety bond in the amount of twenty thousand pesos (P20,000.00) restraining respondent Judge from enforcing and implementing his orders of November 3, 1967 and March 16, 1968 in Civil Case No. Q-10351 of the Court of First Instance of Rizal (Quezon City).

Respondent Sevilla filed an answer to the supplemental petition (Rollo, pp. 216-221) and so did respondent bank (Rollo, p. 225). Thereafter, all the parties filed their respective memoranda (Memo for Petitioners, Rollo, pp. 230-244; for Resp. Bank, pp. 246-247; and for Respondents, Rollo, pp. 252-257). Petitioners filed a rejoinder (rollo, pp. 259-262) and respondent Sevilla filed an Amended Reply Memorandum (Rollo, pp. 266-274). Thereafter the case was submitted for decision in September, 1968 (Rollo, p. 264).

Petitioner has raised the following issues:

1. Respondent Judge acted without or in excess of jurisdiction or with grave abuse of discretion when he issued the Order of July 17, 1967, for the following reasons: (a) the letter of credit issued by respondent bank is irrevocable; (b) said Order was issued without notice and (c) said order disturbed the status quo of the parties and is tantamount to prejudicing the case on the merits. (Rollo, pp. 7-9)
2. Respondent Judge likewise acted without or in excess of jurisdiction or with grave abuse of discretion when he issued the Order of November 3, 1967 which has exceeded the proper scope and function of a Writ of Preliminary Injunction which is to preserve the status quo and cannot therefore assume without hearing on the merits, that the award granted to respondent is exclusive; that the action is for specific performance and that the contract is still in force; that the conditions of the contract have already been complied with to entitle the party to the issuance of the corresponding Certificate of Authority to import American high grade tobacco; that the contract is still existing; that the parties have already agreed that the balance of the quota of respondent will be sold at current world market price and that petitioner has been overpaid.
3. The alleged damages suffered and to be suffered by respondent Sevilla are not irreparable, thus lacking in one essential prerequisite to be established before a Writ of Preliminary Injunction may be issued. The alleged damages to be suffered are loss of expected profits which can be measured and therefore reparable.
4. Petitioner will suffer greater damages than those alleged by respondent if the injunction is not dissolved. Petitioner stands to lose warehousing storage and servicing fees amounting to P4,704,236.00 yearly or P392,019.66 monthly, not to mention the loss of opportunity to take advantage of any beneficial change in the price of tobacco.
5. The bond fixed by the lower court in the amount of P20,000.00 is grossly inadequate. (Rollo, pp. 128-151)

The petition is impressed with merit.

In issuing the Order of July 17, 1967, respondent Judge violated the irrevocability of the letter of credit issued by respondent Bank in favor of petitioner. An irrevocable letter of credit cannot during its lifetime be cancelled or modified without the express permission of the beneficiary (Miranda and Garrovilla, Principles of Money Credit and Banking, Revised Edition, p. 291). Consequently, if the finding after the trial on the merits is that respondent Sevilla has an unpaid balance due the petitioner, such unpaid obligation would be unsecured.

In the issuance of the aforesaid Order, respondent Judge likewise violated: Section 4 of Rule 15 of the Revised

Rules of Court which requires that notice of a motion be served by the applicant to all parties concerned at least three days before the hearing thereof; Section 5 of the same Rule which provides that the notice shall be directed to the parties concerned, and shall state the time and place for the hearing of the motion; and Section 6 of the same Rule which requires proof of service of the notice thereof, except when the Court is satisfied that the rights of the adverse party or parties are not affected. (*Sunga vs. Lacson*, L-26055, April 29, 1968, 23 SCRA 393) A motion which does not meet the requirements of Sections 4 and 5 of Rule 15 of the Revised Rules of Court is considered a worthless piece of paper which the Clerk has no right to receive and the respondent court a quo has no authority to act thereon. (*Vda. de A. Zaria v. Maddela*, 38 SCRA 35; *Cledera v. Sarmiento*, 39 SCRA 552; and *Sacdalan v. Bautista*, 56 SCRA 175). The three-day notice required by law in the filing of a motion is intended not for the movant's benefit but to avoid surprises upon the opposite party and to give the latter time to study and meet the arguments of the motion (*J.M. Tuason and Co., Inc. v. Magdangal*, L-15539, 4 SCRA 84).

More specifically, Section 5 of Rule 58 requires notice to the defendant before a preliminary injunction is granted unless it shall appear from facts shown by affidavits or by the verified complaint that great or irreparable injury would result to the applicant before the matter can be heard on notice. Once the application is filed with the Judge, the latter must cause an Order to be served on the defendant, requiring him to show cause at a given time and place why the injunction should not be granted. The hearing essential to the legality of the issuance of a preliminary injunction. It is an abuse of discretion on the part of the court to issue an injunction without hearing the parties and receiving evidence thereon (*Associated Watchmen and Security Union, et al. v. United States Lines, et al.*, 101 Phil. 896).

In the issuance of the Order of November 3, 1967, with notice and hearing notwithstanding the discretionary power of the trial court to issue a preliminary mandatory injunction is not absolute as the issuance of the writ is the exception rather than the rule. The party applying for it must show a clear legal right of the violation of which is so recent as to make it vindication an urgent one (*Police Commission v. Bello*, 37 SCRA 230). It is granted only on a showing that (a) the invasion of the right is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damages (*Pelejo v. Court of Appeals*, 117 SCRA 665). In fact, it has always been said that it is improper to issue a writ of preliminary mandatory injunction prior to the final hearing except in cases of extreme urgency, where the right of petitioner to the writ is very clear; where considerations of relative inconvenience bear strongly in complainant's favor; where there is a willful and unlawful invasion of plaintiff's right against his protest and remonstrance, the injury being a contributing one, and where the effect of the mandatory injunctions is rather to re-establish and maintain a pre-existing continuing relation between the parties, recently and arbitrarily interrupted by the defendant, than to establish a new relation (*Alvaro v. Zapata*, 118 SCRA 722; *Lemi v. Valencia*, February 28, 1963; 7 SCRA 469; *Com. of Customs v. Cloribel*, L-20266, January 31, 1967, 19 SCRA 234).

In the case at bar there appears no urgency for the issuance of the writs of preliminary mandatory injunctions in the Orders of July 17, 1967 and November 3, 1967; much less was there a clear legal right of respondent Sevilla that has been violated by petitioner. Indeed, it was an abuse of discretion on the part of respondent Judge to order the dissolution of the letter of credit on the basis of assumptions that cannot be established except by a hearing on the merits nor was there a showing that R.A. 4155 applies retroactively to respondent in this case, modifying his importation/exportation contract with petitioner. Furthermore, a writ of preliminary injunction's enjoining any withdrawal from Letter of Credit 6232 would have been sufficient to protect the rights of respondent Sevilla should the finding be that he has no more unpaid obligations to petitioner.

Similarly, there is merit in petitioner's contention that the question of exclusiveness of the award is an issue raised by the pleadings and therefore a matter of controversy, hence a preliminary mandatory injunction directing

petitioner to issue respondent Sevilla a certificate of authority to import Virginia leaf tobacco and at the same time restraining petitioner from issuing a similar certificate of authority to others is premature and improper.

The sole object of a preliminary injunction is to preserve the status quo until the merit can be heard. It is the last actual peaceable uncontested status which precedes the pending controversy (*Rodulfo v. Alfonso*, L-144, 76 Phil. 225), in the instant case, before the Case No. Q-10351 was filed in the Court of First Instance of Rizal. Consequently, instead of operating to preserve the status quo until the parties' rights can be fairly and fully investigated and determined (*De los Reyes v. Elepano, et al.*, 93 Phil. 239), the Orders of July 17, 1966 and March 3, 1967 serve to disturb the status quo.

Injury is considered irreparable if it is of such constant and frequent recurrence that no fair or reasonable redress can be had therefore in a court of law (*Allundorff v. Abrahanson*, 38 Phil. 585) or where there is no standard by which their amount can be measure with reasonable accuracy, that is, it is not susceptible of mathematical computation (*SSC v. Bayona, et al.*, L-13555, May 30, 1962).

Any alleged damaged suffered or might possibly be suffered by respondent Sevilla refers to expected profits and claimed by him in this complaint as damages in the amount of FIVE Million Pesos (P5,000,000.00), a damage that can be measured, susceptible of mathematical computation, not irreparable, nor do they necessitate the issuance of the Order of November 3, 1967.

Conversely, there is truth in petitioner's claim that it will suffer greater damage than that suffered by respondent Sevilla if the Order of November 3, 1967 is not annulled. Petitioner's stock if not made available to other parties will require warehouse storage and servicing fees in the amount of P4,704,236.00 yearly or more than P9,000,000.00 in two years time.

Parenthetically, the alleged insufficiency of a bond fixed by the Court is not by itself an adequate reason for the annulment of the three assailed Orders. The filing of an insufficient or defective bond does not dissolve absolutely and unconditionally an injunction. The remedy in a proper case is to order party to file a sufficient bond (*Municipality of La Trinidad v. CFI of Baguio-Benguet, Br. I*, 123 SCRA 81). However, in the instant case this remedy is not sufficient to cure the defects already adverted to.

PREMISES CONSIDERED, the petition is given due course and the assailed Orders of July 17, 1967 and November 3, 1967 and March 16, 1968 are ANNULLED and SET ASIDE, and the preliminary injunctions issued by this Court should continue until the termination of Case No. Q-10351 on the merits.

SO ORDERED.

Melencio-Herrera (Chairperson) and Padilla, JJ., concur.

Sarmiento, J., no part; related to the respondent within the sixth degree of affinity.

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