

PERNITO ARRASTRE SERVICES, INC., APOLONIO BACALLA, DOING BUSINESS UNDER THE STYLE “BACALLA ARRASTRE SERVICES”; ARISTON AGUILAR, DOING BUSINESS UNDER THE STYLE “AGUILAR ARRASTRE ...

G.R. No. 53492. December 29, 1986

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

These petitions which are resolved in a consolidated decision seek to permanently restrain the Philippine Ports Authority from taking over the arrastre and stevedoring operations in the port of Tacloban, Leyte. The petitioners invoke the constitutional right to due process of law and to non-impairment of contract.

The background of these cases is as follows:

In November, 1972, an Ad Hoc Committee on Waterfront Services was created by the Government to study the problems of arrastre and stevedoring operations in various ports in the Philippines. Among the problems pinpointed were the proliferation of the oppressive "cabo system" and the increase in the incidence of violence and thefts in the ports. There was also recognized a need to streamline port operations, ensure the smooth flow of water borne commerce in international and domestic trade, and promote regional development through improved port facilities.

On April 23, 1973, the Committee recommended the integration of arrastre and stevedoring operations in each port so that ultimately only one contractor would be authorized to service that port. On May 8, 1975, the Bureau of Customs issued Memorandum Order No. 28-75, providing for the merger of all existing cargo-handling contractors in each port.

To effect the gradual integration of the several arrastre and stevedoring labor contractors then operating in the Port of Tacloban, the Bureau of Customs decided to require the merger of the thirty-six (36) existing labor contractors into four corporations, and then to just one. Accordingly, four organizations were formed, namely: (1) Tacloban Waterfront Labor and Arrastre Service Cooperative, Inc., or TWALSCI which absorbed herein petitioner Eastern Leyte Arrastre Service; (2) San Juanico Pumpboats and Motor Launches Stevedoring and Delivery Service, Inc., (3) Sealand, Inc.; and (4) Tacloban Port Services, Inc.

On December 23, 1975, Presidential Decree No. 857 took effect as a result of which the powers, duties, and jurisdiction of the Bureau of Customs with regard to arrastre and stevedoring operations were transferred to and vested in the respondent Philippine Ports Authority (PPA). Pursuant to said decree, PPA was authorized among others, to "regulate the rates or charges for port services or port related services so that, taking one year with another, such rates or charges furnish adequate working capital and produce an adequate return on the assets of the Authority" (PPA) [Sec. 20 (b)] and "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." [Sec. 6(b) (ix)].

Pursuant to said decree, respondent PPA imposed a ten percent (10%) charge on the monthly gross earnings of the operators of arrastre and stevedoring services.

Through its Memorandum Order No. 21, series of 1977, PPA also adopted as its own, the Bureau of Customs' policy of integrating the operation of arrastre and stevedoring services in each port. This policy was applied to the port of Tacloban where the four arrastre/stevedoring operators, mentioned earlier, agreed to merge and form one of the petitioners herein, the Leyte Integrated Port Service, Inc. (LIPSI)

On January 31, 1978, PPA issued a temporary permit to petitioner LIPSI, subject to several conditions, one of which was:

"7. That this temporary permit is non-transferrable and shall remain valid until a special permit shall be issued by PPA Manila, provided, however, that the same may be revoked for violation of any of the conditions herein set or justifiable cause(s) at the discretion of this Authority."

Meanwhile, on February 27, 1978, petitioner Pernito Arrastre Services, Inc. and other arrastre operators filed with the then Court of First Instance of Cebu an action for declaratory relief and mandamus against the PPA, assailing the validity of the integration policy which would, in effect, authorize only one arrastre operator in each port in the Philippines and the authority of PPA to collect ten percent (10%) of the gross arrastre and stevedoring charges paid to operators.

On March 31, 1978, the trial court issued a writ of injunction, prohibiting the PPA, *pendente lite*, from enforcing its policy of integration in the Cebu City port and directing it to allow the petitioners to operate individually and independently as arrastre and stevedoring contractors. However, with respect to the collection of the ten percent (10%) charge by PPA, the court ruled that it was going to presume its reasonableness in the meantime since PPA was merely following the rate fixed by the Bureau of Customs.

Not satisfied with the court's order, respondent PPA filed a petition for certiorari before this Court as a result of which a temporary restraining order was issued enjoining the trial court from enforcing its order. We, however, subsequently allowed the trial court to proceed with the case. Consequently, the petitioners filed a sup-plemental application for preliminary injunction seeking to stop respondent PPA from collecting the aforestated ten percent (10%) charge. The trial court denied the peti-tioners' supplemental application on the ground that the reason relied upon does not appear to be indubitable. Hence, petitioners filed the present petition for certiorari, G. R. No. 53492, with this Court.

On July 22, 1980, this Court issued a temporary restraining order enjoining the PPA from collecting from petitioners the ten percent (10%) of their gross income from arrastre operations.

On June 14, 1983, the Nasipit Integrated Arrastre & Stevedoring, Inc. filed a motion for intervention asking that in view of the restraining order issued by this Court, it should not be required to pay ten percent (10%) of its gross earnings to PPA.

In the meantime, according to respondent PPA, in the course of the operation of arrastre services by the petitioner LIPSI, it noted a number of violations of the temporary permit. The violations consisted of inefficiency in providing services due to failure to acquire the needed cargo-handling equipment; inability to render night work; permitting illegal operations by unlicensed individual labor contractors or cabos whom petitioner was supposed to have absorbed by the process of merger; employment of child labor; and non-remittance of the government share of arrastre charges.

As a result, the respondent gave the petitioner several written and verbal warnings to carry out the needed reforms in its operations.

Meanwhile, on April 14, 1978, Jose M. Asturias, the Executive Vice-President and General Manager of petitioner wrote respondent PPA admitting petitioner's failure to comply with the conditions of its temporary permit. A portion of said letter reads:

"While there has been an integration on paper, the conditions existing at the Tacloban pier before the supposed integration remain the same. Labor contractors still cling to their overpowering position as lords of the lowly pier workers, getting a lion's share of the fees they collect and paying their workers measly sums which provide the laborers a sub-human level of existence at most. Moreover, the amounts they turn over to the supposedly integrated corporation are so miniscule and barely enough to pass the SSS, and ECC, the BIR and other governmental creditors, including the PPA which gets 10% of the gross receipts. While they verbally agree to integrate, they decline and refuse to relinquish control of their respective contracts with the pertinent shipping companies."

On April 26, 1979, respondent PPA issued Special Order No. 114-79 creating the Philippine Ports Authority-Tacloban Arrastre Ports Services (PPA-TAPS) within its own Tacloban port unit and ordering a take-over by PPA-TAPS of the entire arrastre and stevedoring services in the Port of Tacloban, effective not later than June 1, 1979. Petitioner LIPSI, as well as all port users were duly informed of the take-over by PPA-TAPS.

On June 1, 1979, PPA-TAPS took over the actual management and operations of arrastre and stevedoring services in the port of Tacloban. For this purpose, PPA-TAPS utilized the same dock labor force that existed at the time of the cancellation of the permit of petitioner LIPSI. According to respondent PPA, after such take-over, the dockworkers were placed on regular payrolls; their social security premiums were promptly paid and all illegal exactions from their pay were stopped; they were issued free uniforms and hard hats for safety and protection; and they organized a genuine labor organization, the Tacloban Port Service Labor Union (TAPSLU) for the protection of their rights.

As a result of the take-over, respondent PPA sent a notice to respondent International Copra Export Corporation (INTERCO), a corporation with a stevedoring contract with petitioner Eastern Leyte Arrastre Service (Eastern Leyte) reiterating the fact that effective June 1, 1979, PPA has taken over the cargo-handling operations in the port of Tacloban and therefore, all transactions and payments relevant to said cargo-handling operations should be coursed through the management of the PPA at Tacloban. Consequently, INTERCO, in turn, sent a formal letter to petitioner Eastern Leyte demanding a refund of the payments it made for the services rendered by said petitioner on June 2 and 16, 1979.

On July 5, 1979, petitioner Eastern Leyte filed an action with the then Court of First Instance of Leyte for injunction with preliminary injunction, prohibition and damages seeking to restrain respondent INTERCO from making any payment to respondent PPA-TAPS and to prevent the latter from taking over the operations of petitioner, alleging that the same was illegal, against public policy and an impairment of the contract executed by and between petitioner and INTERCO.

On August 16, 1979, the respondent judge issued a writ of preliminary injunction against respondent PPA. A motion for reconsideration was filed by the latter alleging among others, that under Presidential Decree No. 857, it has the authority to take over the operation of arrastre and stevedoring services to the exclusion of all private contractors, including the petitioner.

On January 28, 1980, the respondent judge granted respondent PPA's motion, stating that since there is no showing that P.D. No. 857 is unconstitutional and in view of the well known presumption of validity that every

statute has in its favor, there is no reason for not yielding to the motion of PPA to dissolve the writ of preliminary injunction.

Petitioner Eastern Leyte filed a motion for reconsideration but the same was denied. Hence, it filed this petition in G. R. No. 54265.

On July 17, 1980, we issued a temporary restraining order enjoining the trial court from further proceeding with the trial of the case and the respondent PPA from taking over the arrastre operations of petitioner in the port of Tacloban.

On February 18, 1980, a similar petition was filed by Froilan Basio and other labor contractors with the Court of First Instance of Leyte, questioning the PPA-TAPS' take-over of the port of Tacloban and alleging that the same constituted an impairment of the contract between petitioners and the owners of motor launches and between petitioners and respondent PPA. As evidence of the latter 'allegation, the petitioners attached to their petition a copy of the "Memorandum" of the Leyte-Samar Labor Union and Benigno Magpale, Inc., the manager of the PPA-PMU of Tacloban whereby the latter agreed to remit ten percent (10%) of the gross income derived from the port users serviced by the Leyte-Samar Labor Union for the period July 1 to 31, 1979 to the petitioners as labor contractors.

Initially, the trial court issued a temporary restraining order. However, instead of deciding the petition on the merits, it called the parties to a series of conferences to find means and ways whereby the petitioners as labor contractors and the workers under them could be absorbed under the new set-up. The respondent PPA submitted its "Compliance", binding itself to absorb the aforementioned labor contractors and workers. It assured them that whoever would be the winning bidder of the arrastre service, he must utilize the services of the labor force who are all members of the waterfront union.

In view of this "Compliance" submitted by PPA, the trial court dismissed the petition and lifted the restraining order.

Petitioners filed a motion for reconsideration alleging that the decision of the trial court had no evidence to support itself and that trial should have been conducted because there were allegations raised by both sides which needed to be clarified and settled. They also sought the issuance of a restraining order against the PPA. The motion, however, was denied by said court. Thus, instead of waiting for the trial court to resolve the motion, the petitioners filed this petition for certiorari, G. R. No. 54394, with us, seeking to set aside the decision of the trial court on the ground that the same violated the petitioners' right to due process of law.

On August 5, 1980, this Court issued a temporary restraining order enjoining the respondent court from hearing the case and the PPA from taking over the work of petitioners as labor contractors.

On August 20, 1980, LIPSI filed a petition for certiorari with preliminary mandatory injunction, G. R. No. 54565, questioning the validity and constitutionality of portions of P.D. 505 and P.D. 857 (Sec. 6(a) (v) on the ground that said provisions from which the PPA derives its authority to take-over the port of Leyte violate the petitioners' right to due process of law. In the alternative, it asked that we define and clarify the extent of PPA's authority to take-over the port services of all ports in the country as well as to grant the same to an exclusive contractor, firm, or corporation.

On August 26, 1980, we issued a resolution consoli-dating the four petitions.

On September 30, 1980, TAPSLU filed a motion to intervene in the case of LIPSI v. PPA, et al., alleging that it has a legal interest in the matters in issue as it constitutes the entire labor force of the stevedoring and arrastre

services turned over by this Court to petitioner LIPSI.

The main thrust of the issues raised in these consolidated petitions is whether or not the respondent PPA's take-over through PPA-TAPS of arrastre operations in the port of Tacloban, Leyte is a valid exercise of police power and does not violate the constitutional right of the petitioners to non-impairment of contracts.

Petitioner Eastern Leyte contends that PPA's take over constitutes an impairment of the contract executed by and between itself and respondent INTERCO, which cannot be justified because a valid impairment of contract is only applicable to franchises issued by the government to operators of public utilities which involve public interest, public welfare, public health, and public safety. Petitioners Froilan Basio, et al., while assailing the procedural aspect of the proceedings in the trial court, also contend that PPA's take over constitutes an impairment of contract and a deprivation of property without due process of law. Petitioner LIPSI goes further and challenges the constitutionality of the repealed portion of P.D. 505[1] and Section 6(a) (v) of P.D. 857[2] as being violative not only of the due process and non-impairment clauses of the Constitution but also of the right to free enterprise by creating the dangerous blanket of a monopoly in restraint of trade, which creation is subject to the respondent PPA's whims and caprices. Petitioner Pernito Arrastre questions the validity of the ten percent (10%) charge imposed by PPA.

In the case of *Anglo-Fil Trading Corporation v. Lazaro* (124 SCRA 494, 512, 513 and 519), we have already under-scored the fact that the arrastre operations in the various ports in the Philippines are affected with public interest. We ruled:

"The streamlining of the stevedoring activities in the various ports of the Philippines was undertaken by PPA to implement LOI No. 1005-A. The public interest, public welfare, and public policy sought to be subserved by said LOI are clearly set forth in its whereas clauses x x x.

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"Clearly, there is reasonable relation between the undeniable existence of an undersirable situation and the statutory attempt to avoid it. 'Public welfare, then, lies at the bottom of the enactment of said law, and the state in order to promote the general welfare may interfere with personal liberty, with property, and with business and occupations.' (See *Alalayan v. National Power Corporation*, 24 SCRA 172; and *Ermita-Malate Hotel and Motel Owners Association v. City Mayor*, 20 SCRA 849). These considerations were considered by the respondent judge when he issued his questioned order dated September 1, 1980. x x x.

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"The Manila South Harbor is public property owned by the State. The operations of the premiere port of the country, including stevedoring work, are affected with public interest. Stevedoring services are subject to regulation and control for the public good and in the interest of general welfare."

Undoubtedly, therefore, the State in the exercise of its police power through its agency, the PPA, has the power to revoke the temporary permits of petitioners, assuming the existence of valid temporary permits, and take over the operations of the port of Tacloban whenever the need to promote the public interest and welfare both of the stevedoring industry and the workers therein justifies such take over. This Court has already ruled that the statute which gives PPA the authority to implement the take over cannot be assailed on the constitutional grounds raised by the petitioners. Thus, whatever right, if any, that the petitioners may have acquired on the basis of the temporary permits earlier given them must yield to the State's valid exercise of police power. As we have ruled in *Bautista v. Juinio* (127 SCRA 329, 338):

"4. In the interplay between such a fundamental right and police power, especially so where the assailed governmental action deals with the use of one's property, the latter is accorded much leeway. That is settled

law. What is more, it is good law. Due process, therefore, cannot validly be invoked. As stressed in the cited Ermita-Malate Hotel decision (127 Phil. 306, 315), "To hold otherwise would be to unduly restrict and narrow the scope of police power which has been properly characterized as the most essential, insistent and the least limitable of powers, extending, as it does 'to all the great public needs' x x x."

Neither can petitioners argue that their right to non-impairment of contract had been violated. In the same case of *Anglo-Fil Trading Corporation v. Lazaro* (supra, p. 519), we held that the subservience of the contract clause to the police power enacting public regulations intended for the general welfare of the community has been settled by this Court.

Furthermore, the records will bear out the fact that only petitioner LIPSI has a temporary permit issued by PPA. The rest of the petitioners were either merely allowed or tolerated to operate in the port of Tacloban. However, even on the assumption that all of them were able to secure temporary permits from PPA, still, this does not vest any property right on them and hence, petitioners cannot allege a violation of their right to non-deprivation of property without due process of law.

In the case of *Anglo-Fil Trading Corporation v. Lazaro*, (supra, pp. 520-521), we ruled:

"The contention of petitioners *Anglo-Fil, et al.*, that due process was violated resulting to a confiscatory effect on private property is likewise without merit.

"In the first place, the petitioners were operating merely on 'hold-over' permits x x x."

"Clearly, all hold-over permits were by nature temporary and subject to subsequent policy guidelines as may be implemented by PPA. Such should have served as sufficient notice to petitioners that, at any time, their authorities may be terminated.

"Whether or not the petitioner would be issued a PTO depended on the sound discretion of PPA and on the policies, rules and regulations that the latter may implement in accordance with the statutory grant of power. Petitioners, therefore, cannot be said to have been deprived of property without due process of law because, in this respect, what was given them was not a property right but a mere privilege and they should have taken cognizance of the fact that since they have no vested right to operate in the South Harbor, their permits can be withdrawn anytime the public welfare deems it best to do so."

As to the contention of petitioner Pernito Arrastre that ten percent (10%) is excessive for regulatory purposes and that the power to regulate does not, include the power to impose fees for revenue purposes, we likewise find the same unmeritorious.

It is within the sound discretion of the PPA to impose a reasonable charge or rate on arrastre and stevedoring operators which it deems to be most appropriate and advantageous to the government under the circumstances. In the case of *Anglo-Fil Trading Corporation v. Lazaro*, supra (pp. 522-523), we held that the award of PPA to Ocean Terminal Services, Inc. (OTSI) of the stevedoring contract is not violative of the Anti-Graft Law since said contract, for one, embodied sufficient consideration which is the payment by OTSI to the government of ten percent (10%) of its gross income. We ruled:

"Neither is the management contract violative of the Anti-Graft Law. It is a contract executed in pursuance to law and the instructions of the President to carry out government objectives to promote public interest. The act did not cause 'undue injury' to the petitioners who as explained earlier had no vested property rights entitled to protection. There is no undue injury to the government nor any unwarranted benefit to OTSI considering that the contract carried sufficient consideration for PPA which is the payment by OTSI of ten percent (10%) of its gross income, something which petitioner PIPSI is loathe to pay. The rationalization and effective utilization of port facilities is to the advantage of the Government. Furthermore, the discretion in choosing the stevedoring

contractor for the South Harbor, Port of Manila, belongs to the PPA. As long as standards are set in determining the contractor and such standards are reasonable and related to the purpose for which they are used, the courts should not inquire into the wisdom of PPA's choice x x x."

We have found the ten percent (10%) share of the government in the earnings from stevedoring and arrastre services a reasonable consideration for the use of government premises, works, facilities, and services, not to mention the supervision inherent in the upgrading and improvement of port operations, of which said services are an integral part.

Finally, in the matter of whether the take over by the PPA violates the prohibition against monopolies in restraint of trade, we hold that in industries affected with public interest, a regulated monopoly is not necessarily proscribed, if such is deemed necessary in order to protect and promote public interest. In the case of *Philippine Ports Authority v. Mendoza* (138 SCRA 496, 509-510), we ruled:

"Private monopolies are not necessarily prohibited. The use of the word 'regulate' in the Constitution indicates that some monopolies, properly regulated, are allowed. x x x 'Competition can best regulate a free economy. Like all basic beliefs, however, that principle must accommodate hard practical experience. There are areas where for special reasons the force of competition, when left wholly free, might operate too destructively to safeguard the public interest. Public utilities are an instance of that consideration.' (Oleck, *Modern Corporation Law*, Vol. IV, p. 197). By their very nature, certain public services or public utilities such as those which supply water, electricity, transportation, telegraph, etc. must be given exclusive franchises if public interest is to be served. Such exclusive franchises are not violative of the law against monopolies (*Anglo-Fil Trading Corporation v. Lazaro*, *supra*).

"In the case at bar, the area affected is maritime transportation in the port of Cebu. The operations there, particularly arrastre and stevedoring, affect not only the City of Cebu, the principal port in the South, but also the economy of the whole country as well. Any prolonged disjunction of the services being rendered there will prejudice not only inter-island and international trade and commerce. Operations in said port are therefore imbued with public interest and are subject to regulation and control for the public good and welfare. PPA's policy of integration through compulsory merger may not even be in this instance considered as promoting a monopoly because the fact of the matter is that while the sole operator permitted by PPA to engage in the arrastre and stevedoring operations in the port of Cebu is only USDI, actually USDI is comprised of the eleven (11) port services contractors that previously used said ports but decided to merge and ultimately constituted themselves as USDI."

In these present cases, as stated by respondent PPA, when PPA-TAPS took over arrastre operations, it also absorbed the entire labor force that existed at the time of the cancellation of LIPSI's permit. Hence, it can be safely said that PPA-TAPS is also composed of all the labor contractors and the workers under them which have been integrated to develop and improve the planning, growth, financing, construction, maintenance and operation of ports throughout the country and make them responsive to the needs of their individual localities.

WHEREFORE, IN VIEW OF THE FOREGOING, the petitions in G.R. Nos. 53492, 54265, 54394 and 54565 are hereby DISMISSED for lack of merit. The temporary restraining orders dated July 17, 1980, July 22, 1980, August 5, 1980 and August 21, 1980 are DISSOLVED.

SO ORDERED.

Feria, Yap, Narvasa, Melencio-Herrera, Alampay, Cruz, Paras, and Feliciano, JJ., concur.
Teehankee, C.J., reserves his vote.
Fernan, J., no part.

[1] SEC. 5. Powers and Functions of the Council. - The Philippine Port Authority Council shall have the following powers, functions and duties, among others:

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e. To recommend to the President, whenever the national interest demands it, that the State, through an agency the Authority may designate, take over the administration and operation of a specific port district or portion thereof;

f. To approve specific application of any person, firm or entity to operate, administer and establish an individual Port/Industrial Zone Authority in a particular area.

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[2] SEC. 6. Corporate Powers and Duties. -

a) The corporate duties of the Authority shall be:

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(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, weighing, measuring, storing, warehousing, or otherwise handling goods.

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