

ANGLO-FIL TRADING CORPORATION, ADUANA STEVEDORING CORPORATION, ANDA STEVEDORING CORPORATION, BEN PAZ PORT SERVICE, INC., MANILA STEVEDORING CORPORATION, WATERFRONT STEVEDORING A...

G.R. No. 54958. September 02, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

These two petitions for certiorari seek to annul the order of the Court of First Instance of Manila issued ex-parte, lifting the restraining orders it had previously issued. The setting aside of the restraining orders enabled the implementation of the Management Contract executed by and between respondents, providing for respondent Ocean Terminal Services, Inc. as the exclusive stevedoring contractor at the South Harbor, Port of Manila.

Involved in these two petitions is the operation of stevedoring work in the South Harbor of the Port of Manila. Stevedoring, as the term is understood in the port business, consists of the handling of cargo from the hold of the ship to the dock, in case of pier-side unloading, or to a barge, in case of unloading at sea. The loading on the ship of outgoing cargo is also part of stevedoring work. Stevedoring charges at rates approved by the Government are assessed and collected for the services.

The Philippine Ports Authority (PPA), the government agency charged with the management and control of all ports, was created by Presidential Decree No. 505, promulgated on July 11, 1974, later superseded by Presidential Decree No. 857 dated December 23, 1975. The PPA's function is to carry out an integrated program for the planning, development, financing, and operation of ports and port districts throughout the country. Among other things, the powers, duties, and jurisdiction of the Bureau of Customs concerning arrastre operations were transferred to and vested in the PPA.

The Philippine Integrated Port Services, Inc., (PIPSI), petitioner in G. R. No. 54966, is a stevedoring operator at the Manila South Harbor. Anglo-Fil Trading Corporation, Aduana Stevedoring Corporation, Anda Stevedoring Corporation, Ben Paz Port Service, Inc., Manila Stevedoring and Arrastre Services, Inc., (Anglo-Fil, et al.,) petitioners in G.R. No. 54958, are stevedoring and arrastre operators and contractors, likewise at Manila South Harbor, Port of Manila. Anglo-Fil, et al., are members of the Philippine Association of Stevedoring Operators and Contractors, Inc. (PASOCI).

Prior to the present controversy which arose as a result of the actions of the PPA, twenty-three (23) contractors competed at the South Harbor for the performance of stevedoring work. The licenses of these contractors had long expired when the PPA took over the control and management of ports but they continued to operate afterwards on the strength of temporary permits and hold-over authorities issued by PPA.

On May 4, 1976, the Board of Directors of PPA passed Resolution No. 10, approving and adopting a set of policies on Port Administration, Management and Operation. The PPA adopted as its own the Bureau of Customs'

policy of placing on only one organization the responsibility for the operation of arrastre and stevedoring services in one port.

On April 11, 1980, President Ferdinand E. Marcos issued Letter of Instruction No. 1005-A which, among other things, directed PPA:

To expeditiously evaluate all recognized cargo-handling contractors and port-related service operators doing business in all Port Districts in the country under such criteria as PPA may set and to determine the qualified contractor or operator under said criteria in order to ensure effective utilization of port facilities, prevent pilferage and/or pinpoint responsibility for it and provide optimum services to major ports vital to the country's trade and economy.

This was followed by the President's memorandum to respondent Baclig dated April 18, 1980, directing submission of a report on the integration of the stevedoring operations in Manila South Harbor and emphasizing the need for such integration as well as the strengthening of the PPA in order to remedy the problems therein. In compliance therewith, PPA made a study and evaluation of the arrastre and stevedoring industry in the ports where integration had not yet been achieved. A special committee was created on April 25, 1980 to make a final evaluation of existing operators in the South Harbor and to select the most qualified among them.

On April 28, 1980, the committee submitted its report recommending the award of an exclusive contract for stevedoring services in the South Harbor to respondent Ocean Terminal Services, Inc. (OTSI) after finding it the best qualified among the existing contractors. The committee report and recommendation were indorsed by respondent Primitivo Solis, Jr., Port Manager of Manila, to respondent Baclig on April 30, 1980. On May 14, 1980, the latter approved the recommendation.

In accordance with the President's memorandum dated April 18, 1980, PPA submitted the committee report to him. On May 24, 1980, the President approved the recommendation to award an exclusive management contract to OTSI.

On June 27, 1980, PPA and OTSI entered into a management contract which provided, among others, for a five-year exclusive operation by OTSI of stevedoring services in the South Harbor, renewable for another five (5) years. The contract set the commencement of the exclusive operation by OTSI upon proper determination by PPA which shall not be earlier than two (2) months from the approval of the contract by the Board of Directors of the PPA. The latter gave its approval on June 27, 1980.

On July 23, 1980, petitioner PIPSI instituted an action against PPA and OTSI for the nullification of the contract between the two, the annulment of the 10% of gross stevedoring revenue being collected by PPA, and injunction with preliminary injunction. The case was docketed as Civil Case No. 133477 in the Court of First Instance of Manila, presided over by respondent Judge Alfredo Lazaro. On July 29, 1980, the respondent court issued a restraining order ex-parte, enjoining respondents PPA and OTSI from implementing the exclusive contract of stevedoring between them.

On August 21, 1980, with leave of court, petitioners, Anglo-Fil, et al., filed their complaint in intervention. The motion was granted and on August 22, 1980, respondent court issued another ex-parte restraining order in the case to include the petitioners Anglo-Fil, et al., under the benefits of such order.

On August 30, 1980, PPA filed an urgent motion to lift the restraining orders "in view of the long delay in the resolution of the injunction incident and the countervailing public interest involved." On September 1, 1980, respondent Judge issued an order, which reads:

"AS PRAYED FOR, the restraining orders issued by this Court on July 29, 1980 and August 20, 1980, are

hereby dissolved, lifted, and set aside without prejudice to the Court's resolution on the propriety of issuing the writ of preliminary injunction prayed for by the petitioners."

On September 5, 1980, PPA sent a letter to the General Manager of PIPSI informing him that due to the lifting of the temporary restraining order, it was withdrawing PIPSI's hold-over authority to operate or provide stevedoring services at South Harbor effective September 7, 1980.

Petitioners Anglo-Fil, et al., and PIPSI, therefore, filed the present petitions for certiorari with preliminary injunction alleging that the lifting of the restraining orders ex-parte by respondent Judge was clearly effected with grave abuse of discretion amounting to lack of jurisdiction. They also applied for the issuance in the meantime of a restraining order.

On September 9, 1980, we ordered the consolidation of the two cases and on August 12, 1980, heard the petitioners' motions for a restraining order.

On September 15, 1980, the respondent court issued an order in Civil Case No. 133477 denying the application of petitioners for a writ of preliminary injunction and affirming its order of September 1, 1980 lifting the temporary restraining orders issued in the case.

On the same day, the Katipunan ng mga Manggagawa sa Daungan (KAMADA), a labor federation and its thirteen (13) member labor organizations filed a petition to intervene in the consolidated cases. According to KAMADA, its members would lose their jobs if the contract was implemented. It also alleged that the collective bargaining contract between OTSI and PWUP would be prejudicial to workers because KAMADA members received greater benefits from the ousted contractors.

On September 29, 1980, PIPSI filed a supplemental petition to annul the order of the respondent judge denying the application for preliminary injunction and affirming the orders issued on July 29 and August 22, 1980.

On October 14, 1980, PPA filed its comment with opposition to preliminary injunction stating that the lifting of the restraining orders by respondent judge was intended to preserve the status quo pending resolution of the preliminary injunction; that said orders were issued without hearing or bond, therefore, the dissolution was proper considering that it had been in force for one month and an early resolution of the motion for injunction was not in sight, and that in dissolving an injunction already issued, the court cannot be considered as having acted without jurisdiction or in excess thereof even if dissolution had been made without previous notice to the adverse party and without a hearing. Furthermore, it argued that when the purpose of an administrative determination is to decide whether a right or privilege which an applicant does not possess shall be granted to him or withheld in the exercise of a discretion vested by statute, notice and hearing are not necessary. It also added that the policy of integration in the award by PPA to OTSI is impressed with public interest while what is involved as far as petitioners were concerned was merely their alleged right to operate stevedoring services, a property right the denial of which could easily be restored in the event the respondent court decided that petitioners are entitled to it.

In their consolidated reply, Anglo-Fil, et al., argued that the temporary order in their favor was not issued ex-parte for the following reasons: a) it was issued when PIPSI and PPA were already conducting hearings on the petition for preliminary injunction; b) it was announced in open court; and c) PPA did not object to such issuance. Likewise, they argued that although a permit to operate is a privilege, its withdrawal must comply with due process of law just like the practice of law, medicine, or accountancy, and that not only property rights are involved but their very livelihood, their right to live.

On October 21, 1980, we issued a resolution granting the temporary mandatory restraining order "effective immediately ordering respondents to allow the workers represented by said petitioners-intervenors to render the

stevedoring services performed by them on foreign vessels in the Manila South Harbor before the execution of the exclusive stevedoring contract of June 27, 1980 until further orders of the Court, the order of respondent Judge, dated September 1 and 15, 1980 as well as the implementing letter of (Philippine Ports Authority of September 5, 1980 to the contrary notwithstanding."

On October 24, 1980, PPA issued Memorandum Order No. 23 providing for guidelines in implementing the temporary mandatory restraining order of the Supreme Court dated October 21, 1980, to wit:

- The Office of the Harbor Master shall determine which union has serviced a particular vessel for the period from January 1, 1980 to June 26, 1980. The number of services performed by a particular union for a given vessel shall be quantified for the said period after which each union shall be identified whether they are affiliated with PWUP or KAMADA.
- The most number of times that a union has serviced a particular vessel with its affiliation properly considered shall continue to service said vessel for all its incoming calls or arrivals.
- If there is a tie in the number of services performed by both PWUP and KAMADA affiliated unions, the last union that service said vessel shall be allowed to continue servicing the same on all its incoming calls or arrivals.
- Once the union has been properly identified during the berthing meeting, the Harbor Master shall inform Ocean Terminal Services, Inc. accordingly and shall be authorized to negotiate with the union or the gang leader concerned on the number of gangs as may be required by the vessel or its agent.
- All unions in this order shall refer only to South Harbor stevedoring union.
- KAMADA shall have the duty and responsibility to certify that the stevedores deployed in any given vessel allowed for their work are bona fide members of their group and that they were the same stevedores who serviced assigned vessel prior to the stevedoring services' integration.

On November 7 and 10, 1980 OTSI and PPA filed their separate answers to KAMADA's petition in intervention. They assured this Court that none of the legitimate stevedores who had joined the KAMADA would be displaced from work provided he joined PWUP. Written guarantees of this assurance were separately submitted to this Court by both OTSI and PWUP. OTSI further alleged in its answer that, contrary to the claim of KAMADA, the CBA signed by OTSI with PWUP represented the best terms of employment ever offered to the stevedores in the South Harbor.

On November 13, 1980, Anglo-Fil, et al., filed an urgent motion to cite PPA and OTSI in contempt on the following grounds; 1) issuance of PPA-POM Memorandum No. 23, series of 1980; 2) letter of October 29, 1980 of PPA to Anglo-Fil, et al., denying a "non-existing" request for permission to operate by the latter; and 3) refusal of PPA authorities to issue gate passes to KAMADA-affiliated stevedores to be used and employed by Anglo-Fil, et al., in their resumption of work, pursuant to the Supreme Court order of October 21, 1980.

On November 20, 1980, PPA filed a motion to lift the temporary mandatory restraining order but the same was denied by this Court.

On November 26, 1980, an urgent motion for clarification of the resolution of October 21, 1980 was filed by KAMADA seeking clarification as to which company its workers should work for, alleging that after Antranco Stevedores Union (Antranco) a KAMADA member, had received a letter from OTSI, to supply the necessary stevedores gang to service the S/S "Success," Anglo-Fil Trading Corporation prohibited its employees who are members of Antranco from working for OTSI in the light of the resolution of this Court and the existing collective bargaining agreement between said union and Anglo-Fil Trading Corporation. As a consequence, the union was

allegedly unable to service S/S "Success" and from October 21, 1980 up to the present, OTSI failed to allow members of KAMADA to service several vessels.

A joint manifestation was filed by respondents PPA and OTSI alleging compliance with the above resolution to the effect that KAMADA workers have been and are being employed on the vessels they used to serve prior to June 27, 1980, and justifying issuance of PPA-POM Memorandum No. 23, as a means to avert possible conflict among the competing union groups (PWUP and KAMADA) involved, to provide a reasonable and fair system for determining which group had previously worked on a vessel and should work on it on its subsequent calls, and to insure that only the bona fide stevedores contemplated by the order of this Court are allowed to work.

On December 2, 1980, another motion for clarification was filed by KAMADA regarding the phrase "foreign vessels" which it stated to be inaccurate as KAMADA members also work on vessels of Philippine registry like those operated by Sweet Lines and Lorenzo Shipping Lines whose vessels also dock at the Manila South Harbor. It suggested that the basis should not be the foreign vessels but the shipping agents or charterers and consignees and that the basis for determining and quantifying the vessels given to PWUP or KAMADA should be from January 1, 1978 to September 7, 1980.

This Court in a resolution dated December 9, 1980, granted the motion of KAMADA to wit:

" . . . (3) GRANT the motion for clarification by petitioners-intervenors issuing a resolution previously released, the pertinent portion of which reads, for while the order of October 21, 1980 is on its face quite definite as to what it purports to require, this resolution may remove any doubt as to its purpose and intent, thus assuring the utmost fidelity in its compliance. The order requires and mandates that all workers represented by said petitioners-intervenors can continue rendering stevedoring services performed by them on foreign vessels, in Manila South Harbor before the execution of the exclusive stevedoring contract of June 27, 1980, until further orders of the Court, without any reference to any particular vessel, the decisive factor being the shipping lines involved and the fact that they were at that time rendering stevedoring services, irrespective of the labor unions to which they are affiliated. . . ."

In spite of our clarificatory order, various problems in its implementation appear to have beset the parties. Repeated motions and manifestations and countermotions and counter-manifestations were filed with unbroken regularity, swelling the records of these petitions to unusual proportions. After requiring the parties to submit their respective positions, we issued on January 6, 1983, a resolution which modified our earlier orders as follows:

"G.R. No. 54958 (Anglo-Fil Trading Corporation, et al. vs. Hon. Alfredo Lazaro, et al.); and G.R. No. 54966 (Philippine Integrated Port Services, Inc. vs. Hon. Alfredo Lazaro, et al.). - Considering the urgent motion and manifestation of petitioners-intervenors filed on March 20, 1982, the comment of respondent Ocean Terminal Services, Inc., filed on June 7, 1982, the comment of respondent Philippine Ports Authority filed on June 8, 1982, the reply of petitioners-intervenors filed on June 28, 1982, the rejoinder of respondent Ocean Terminal Services, Inc., filed on July 27, 1982, the rejoinder of respondent Philippine Ports Authority filed on August 6, 1982 and the supplemental motion and manifestation filed by petitioners-intervenors on September 15, 1982, the Court Resolved to direct the parties concerned to observe the following guidelines in the allocation of stevedoring assignments: 1. Any vessel belonging to a shipping line shall be assigned for stevedoring work to the union that had served that shipping line the greatest number of times as appearing in the PPA records for the six-month period immediately preceding the execution of the stevedoring contract of OTSI. 2. The above notwithstanding, whenever a vessel destined to or proceeding from the Port of Manila has been chartered for a particular voyage by a consignee or any person having interest in the goods carried therein, such vessel shall be assigned for stevedoring work to the union that served the charterer the greatest number of times as appearing in the PPA records of the six-month period immediately preceding the execution of the stevedoring contract of OTSI. In case there are two or more charterers of a vessel, the identity of the charterer who pays the highest freight charges shall be the determining fact in the assignment. 3. Vessels of new shipping lines calling at the

Port of Manila for the first time as well as vessels contracted by new charterers shall be assigned to the union of choice of the new shipping line or charterer as the case may be."

The main issue in these petitions is whether or not the respondent judge acted with grave abuse of discretion when he lifted ex-parte the temporary restraining order he had earlier issued also ex-parte.

From the viewpoint of procedure, we see no grave abuse of discretion or want of jurisdiction. Subsequent to the issuance of the questioned order, the respondent court heard the parties on the petitioners' application for a writ of preliminary injunction and, after hearing the parties' evidence and arguments, denied the application for the writ. We also agree with the respondents that it is not grave abuse of discretion when a court dissolves ex-parte a restraining order also issued ex-parte. (*Calaya v. Ramos*, 79 Phil. 640; *Clarke v. Philippine Ready Mix Concrete Co.*, 88 Phil. 460; *Larap Labor Union v. Victoriano*, 97 Phil. 435)

The restraining orders dated July 29, 1980 and August 22, 1980 respectively provide:

"Finding the allegations in the complaint to be sufficient in form and in substance, a temporary restraining order is hereby issued. . . .

"and to maintain the status quo until further orders from this court. . . .

"It appearing that on July 29, 1980, this Court issued an order granting the prayer of the original plaintiff for a temporary restraining order, the same order is hereby reiterated and to include Anglo-Fil Trading Corporation, . . .

"plaintiffs-intervenors herein and for the parties to serve the status quo until further orders from this Court."
(Italics supplied)

A restraining order is an order to maintain the subject of controversy in status quo until the hearing of an application for a temporary injunction. Unless extended by the court, a restraining order ceases to be operative at the expiration of the time fixed by its terms. In cases where it has been granted ex-parte, it may be dissolved upon motion before answer. (See the Revised Rules of Court, Francisco, pp. 184-186, citing 43 CJS, 28 Am. Jur.)

From the aforequoted dispositive portions, it is beyond doubt that the duration of the restraining orders was "until further orders from the court." In lifting said restraining orders on September 1, 1980, respondent judge merely exercised the prerogative he earlier reposed upon himself to terminate such orders when circumstances so warranted. Considering again that the previous grants of the restraining orders in favor of petitioners were made ex-parte and without bond, the need for a notice and hearing in regard to such lifting was not necessary, much less mandatory.

The petitioners' contention that the lifting of the restraining order had rendered moot and academic the injunction case in the trial court is likewise untenable. A restraining order is distinguished from an injunction in that it is intended as a restraint on the defendant until the propriety of granting an injunction pendente lite can be determined, and it goes no further than to preserve the status quo until such determination. Therefore, the grant, denial, or lifting of a restraining order does not in anyway pre-empt the court's power to decide the issue in the main action which in the case at bar, is the injunction suit. In fact, the records will show that the trial court proceeded with the main suit for injunction after the lifting of the restraining orders.

Petitioner PIPSI also maintains that there were no considerations of public interest which supported the lifting. On the contrary, the lifting allegedly permitted a situation palpably against public interest, that is, confiscation of petitioners' business and those similarly situated. This, again, is untenable.

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. They are as follows:

"WHEREAS, it is a declared national policy to support and accelerate the development of government port facilities as well as vital port development projects and services;

"WHEREAS, it is a prime concern of government to protect the interests of legitimate port workers and port users in the country;

"WHEREAS, there is need to rationalize and integrate cargo-handling and other port-related services as may have been contracted out or authorized by the PPA in the various ports of the country;

"WHEREAS, the procedures of voluntary merger, consolidation and/or bidding for the awarding or contracting of cargo-handling and other port-related services have heretofore proven ineffective and resulted in prolonged and unproductive wrangling, all to the detriment of efficient port operations and development; and

"WHEREAS, it now becomes necessary to revitalize and streamline the PPA to carry out its functions and duties as a vital link in the governmental machinery and the thrust for national economic development";

Clearly, there is a reasonable relation between the undeniable existence of an undesirable 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; *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. He stated:

"While in the main this Court is not insensitive to the plight of the petitioners, the overriding considerations of public interest, as impressed by the Office of the Solicitor General, must be given greater weight and importance. This is compounded by the way and manner by which the parties are now fashioning and shaping their respective positions. The proceedings, to say the least, have become accented with a myriad of contentious facts and intercalated with complex legal issues. For the matter is not a simple determination of right and wrong but a collision of ideas and viewpoints. All these, indeed, militate against an early resolution of the application for a writ of preliminary injunction.

The above statements are sufficient bases for the lifting of the order. It is clear that not only did the respondent judge base the lifting on considerations of public interest but also on the fact that the restraining orders were issued ex-parte without bond and that the resolution of the motion for preliminary injunction was still far from being decided.

The statement of the respondent judge that "it cannot sit in judgment, without prejudice to public interest, on the truth and wisdom of the allegation in support of the Urgent Motion" should not be interpreted to mean that courts cannot pass upon the greater issue of whether or not public interest is served or is prejudiced. The determination by PPA that the measure sought to be enforced is justified by public interest and the PPA manner of implementing a Presidential Decree and Letters of Instruction are subject to judicial review.

The Constitution defines the powers of government. Who is to determine the nature, scope, and extent of such powers? The Constitution has provided for the instrumentality of the judiciary as the rational way. In determining whether or not the exercise of powers vested by the Constitution truly serves the general welfare or is affected by public interest, the judiciary does not assert any superiority over the other departments but only fulfills the solemn and sacred obligation assigned to it by the Constitution to determine conflicting claims of authority and to establish for the parties in an actual controversy the rights which that instrument secures and guarantees to them. This is in truth all that is involved in what is termed "judicial supremacy" which properly is the power of judicial

review under the Constitution. (See *Angara v. Electoral Commission*, 63 Phil. 139) This is why in questions of expropriation of private lands, we have upheld the court's authority to make inquiry on whether or not the lands were private and whether the purpose was in fact, public (*City of Manila v. Chinese Community of Manila*, 40 Phil. 340). Similarly, in the present cases, the question of whether or not the lifting of the restraining orders will prejudice public interest and will run counter to the protection to labor provision of the Constitution is determinable by the judiciary under the power of judicial review.

From the records of these petitions, it is evident that the writ of certiorari cannot be granted. The respondent judge's action was not tainted by any capricious or whimsical exercise of judgment amounting to lack of jurisdiction.

It is settled to the point of being elementary that the only question involved in certiorari is jurisdiction, either want of jurisdiction or excess thereof, and abuse of discretion shall warrant the issuance of the extra-ordinary remedy of certiorari only when the same is grave as when the power is exercised in an arbitrary or despotic manner. . . (FS. *Divinagracia Agro Commercial, Inc. v. Court of Appeals*, 104 SCRA 180; *Abig v. Constantino*, 3 SCRA 299; *Abad Santos v. Province of Tarlac*, 67 Phil. 480; *Alafriz v. Nable*, 72 Phil. 278; *Travers Luna, Inc. v. Nable*, 72 Phil. 278; and *Villa Rey Transit, Inc. v. Bello*, 75 SCRA 735).

It is not sufficient, however, to resolve these petitions on whether or not there was grave abuse of discretion tantamount to lack or excess of jurisdiction.

The larger issue remains. Behind the maneuvering and skirmishing of the parties lies a question of power. Does the PPA have the power and authority to award an exclusive stevedoring contract in favor of respondent OTSI? Is the PPA-OTSI Management Contract executed pursuant to P.D. No. 857 and LOI No. 1005-A, valid?

The facts bearing on this issue are not in dispute and are worth reiterating. They are summarized by the respondent court as follows:

"Before the advent of Presidential Decree No. 505, as amended by Presidential Decree No. 857, the administration and management of the South Harbor, Port of Manila, was under the Bureau of Customs. It appears that the plaintiffs, among others, were engaged in and allowed to operate stevedoring services on the basis of special permits granted by the Bureau of Customs (Exhibit 'A')-

"It further developed that the number of stevedoring operators or contractors made it difficult for the Bureau of Customs to maintain order and discipline among them to the detriment of efficiency and the desired performance at the South Harbor. This appears to be true with other ports. Thus, an in-depth study and analysis of the problems attendant to arrastre and stevedoring operations was initiated. The only solution appeared to be the integration of contractors engaged in stevedoring services with the ultimate objective of having only one stevedoring contractor to engage in cargo-handling service in a given port. Accordingly, on May 8, 1975, the Bureau of Customs issued Customs Memorandum Order No. 28-75 providing guidelines for the merger of the multi-operators in the same ports (Exhibit '1').

"On December 23, 1975, Presidential Decree No. 857 was promulgated superseding Presidential Decree No. 505 whereby the jurisdiction of the Bureau of Customs concerning arrastre operations, among others, were transferred and vested in the PPA.

"On May 4, 1976, the PPA, pursuant to its avowed objectives, approved the PPA policies on port administration, management and operation, adopting as a policy the horizontal and vertical integration of existing operators at each port (Exhibits '2' and '3').

"On January 19, 1977, a memorandum order was issued whereby the different port operators or contractors who have existing permits, licenses, contracts, and other kinds of memorandum agreement issued by the

Bureau of Customs were, temporarily allowed the continuance of their services on a hold-over capacity until such time when the PPA implements its own pertinent policy guidelines on the matter (Exhibits '5' and '6').

"On May 27, 1977, PPA Memorandum Order No. 21, series of 1977, was passed reiterating the implementation of the policy on integration to 'insure efficiency and economy in cargo-handling operation and provide better service to port users and to amply protect the interest of labor and the government as well.' It is the declared policy that there should only be one stevedoring contractor to engage in cargo-handling services in a given port.

"On April 11, 1980, the President issued Letter of Instruction No. 1005-A (Exhibit '7') which directed the PPA to accelerate the rationalization of all cargo-handling services and to expeditiously evaluate all recognized cargo-handling contractors and port related service operators under such criteria as the PPA may set and to determine the qualified contractor or operator in order to insure effective utilization of port facilities, prevent pilferage and/or pinpoint responsibility for it and provide services to major ports vital to the country's trade and economy. This Letter of Instruction was dictated by experience where the 'procedures of voluntary mergers, consolidation and/or bidding for the awarding or contracting of cargo-handling and other port related services have heretofore proven ineffective and resulted in prolonged and unproductive wrangling, all to the detriment of efficient port operations and development.'

"On April 18, 1980, the President issued a memorandum to the PPA (Annex 'B' of the Answer and Opposition of OCEAN) to submit its report on the integration and rationalization of the stevedoring operation in Manila South Harbor and the submission for his approval of the resolution of the board regarding contracts entered into in connection therewith. This memorandum was dictated by 'heavy losses suffered by shippers as well as the smuggling of textiles in the South Harbor.'

"Pursuant to and in compliance with the Letter of Instruction of April 11, 1980 and the Memorandum of the President dated April 18, 1980, the PPA created a Special Evaluation Committee composed of Atty. David R. Simon, member of the Legal Department of PPA and concurrently Assistant to the Port of Manila, as Chairman; Mr. Leonardo Mejia, Chief of the Commercial Development Division, Port of Manila; and, Capt. Jovito G. Tamayo, Harbor Master and Chief of the Harbor Operations Division of the Port of Manila, as members. The respective and individual duties of the members of the Committee taken in their integral entirety could easily sum up to an almost complete overview of the functions of stevedoring contractors and place them in a vantage position as to provide proper evaluation and determination of the individual performance, qualification, and compliance of PPA requirements by each stevedoring operator.

"The Committee took into account certain factors with their corresponding percentage weights in its determination, who among the existing operators, is most qualified for an award of an exclusive contract. In connection therewith, OCEAN was rated 95%, topping all the rest by a wide margin.

"On April 28, 1980, the Evaluation Committee submitted its report recommending the conclusion of a management contract with OCEAN being the most qualified (Exhibit '8') which recommendation was adopted by the PPA.

"On June 27, 1980, a management contract was executed by and between PPA and OCEAN (Exhibit '11').

"On August 19, 1980, the President approved the exclusive management contract between PPA and OCEAN (Exhibit '10').

"In the meantime, in letters dated July 13, 1980 (Exhibit 'N') and July 14, 1980 (Exhibit 'F'), PIPSI and INTERVENORS were informed of the management contract with OCEAN as exclusive operator at the South Harbor, Port of Manila, beginning August 27, 1980."

The petitioners are on extremely shaky grounds when they invoke the non-impairment clause to sustain their charge of invalidity. According to the petitioners, contracts entered into with local and foreign clients or

customers would be impaired.

Even in the United States during the heyday of the laissez faire philosophy, we are informed that the American Supreme Court's interpretations have never allowed the contract clause to be an inflexible barrier to public regulation. According to Gerald Gunther, Professor of Constitutional Law at Stanford University, historians have probably exaggerated the impact of the early contract clause decisions on American economic and legal developments, that the protected position of corporations in the 19th century was due less to any shield supplied by the U.S. Supreme Court than to legislative unwillingness to impose restraints — an unwillingness reflecting the laissez faire philosophy of the day. After analyzing the leading cases on the contract clause from 1810 (*Fletcher v. Peck*, 6 Cranch 87) to 1880 (*Stone v. Mississippi*, 101 U.S. 814) he cites the 1914 decision in *Atlantic Coast Line R. Co. v. Goldsboro* (232 U.S. 548) where the U.S. Court ruled "It is settled that neither the contract clause nor the due process clause has the effect of overriding the power of the State to establish all regulations that are reasonably necessary to secure the health, safety, good order, comfort, or general welfare of the community; that this power can neither be abdicated nor bargained away, and is inalienable even by express grant; and that all contract and property rights are held subject to its fair exercise" and *Manigault v. Springs* (199 U.S. 473) where the same Court stated that "parties by entering into contracts may not estop the legislature from enacting laws intended for the public good." (See Gunther, *Cases and Materials On Constitutional Law*, 1980 Edition, pp. 554-570)

In the Philippines, the subservience of the contract clause to the police power enacting public regulations intended for the general welfare of the community is even more clear cut.

As pointed out by then Senior Associate, now Chief Justice Enrique M. Fernando, the laissez faire or let alone philosophy has no place in our scheme of things, not even under the 1935 Constitution. (See Fernando, *The Constitution of the Philippines*, Second Edition, pp. 111-114) In his concurring opinion in *Agricultural Credit and Cooperative Financing Administration v. Confederation of Unions* (30 SCRA 649, 682-683); Chief Justice Fernando stated:

"... With the decision reached by us today, the government is freed from the compulsion exerted by the Bacani doctrine of the 'constituent-ministrant' test as a criterion for the type of activity in which it may engage. Its constricting effect is consigned to oblivion. No doubts or misgivings need assail us that governmental efforts to promote the public weal, whether through regulatory legislation of vast scope and amplitude or through the undertaking of business activities, would have to face a searching and rigorous scrutiny. It is clear that their legitimacy cannot be challenged on the ground alone of their being offensive to the implications of the laissez-faire concept. Unless there be a repugancy then to the limitations expressly set forth in the Constitution to protect individual rights, the government enjoys a much wider latitude of action as to the means it chooses to cope with grave social and economic problems that urgently press for solution. . . ."

The Manila South Harbor is public property owned by the State. The operations of this 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.

Not only does the PPA, as an agency of the State enjoy the presumption of validity in favor of its official acts implementing its statutory charter, it has more than adequately proved that the integration of port services—is far from arbitrary and is related to the stated governmental objective.

A single contractor furnishing the stevedoring requirements of a port has in its favor the economy of scale and the maximum utilization of equipment and manpower. In turn, effective supervision and control as well as collection and accounting of the government share of revenues are rendered easier for PPA than where there are 23 contractors for it to oversee. As respondent court found from the evidence, the multiple-contractor system has

bred cut-throat competitions in the port. Understandably, most contractors had been unable to acquire sufficient modern facilities, observe labor standards for their workers, maintain efficiency in services, and pay PPA dues. The questioned program would accelerate the rationalization and integration of all cargo-handling activities and port-related services in major ports and the development of vital port facilities, projects, and services.

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. These permits which were based on PPA Memorandum Order No. 1, dated January 19, 1977 provide:

"In view thereof and pending proper evaluation by this Office of all existing permits, licenses, contracts, and other kinds of memorandum agreements issued by the Bureau of Customs to the different port operators or contractors, you may temporarily allow the continuance of their services on a hold-over capacity until such time when the PPA implements its own pertinent policy guidelines on the matter."

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.

Petitioners PIPSI would also impress upon this Court that the certification issued to it and its fellow contractors by PPA, dated August 30, 1979, showed that they were not only kept in the dark as to PPA's subsequent move to award OTSI an exclusive contract, but that they were actually lulled into believing that their temporary permits were being given pending issuance of their PTO or Permit to Operate.

We do not believe so. The second paragraph of the certification states that the hold-over permit was still subject to the memorandum quoted above. The certification provided that: "In accordance with PPA Memo Circular No. I, dated January 9, 1977 . . . , the said firm is allowed to continue operating at the South Harbor, Port of Manila." (Italics supplied)

Whether or not the petitioners 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 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.

The absence of arbitrariness or bad faith is manifest in the selection procedure adopted. The award in favor of OTSI was the result of an evaluation of performance of existing contractors made by a special committee created by the PPA. The respondent court found from the evidence that the members of that committee were "in a vantage position as to provide proper evaluation and determination of the individual performance, qualification, and compliance of PPA requirements by each stevedoring operator." The committee rated OTSI with the highest grade of 95% in its evaluation. And significantly, since no less than the President of the Philippines approved the award of the management contract to OTSI presumptively after thorough consideration of all factors relevant to efficient stevedoring services, it is difficult for this Court to find a violation of due process in the selection procedure. In the language of the Chief Justice in *Lim v. Secretary* (34 SCRA 751) if the task of overturning a decision of a department head is attended with difficulty, the burden of persuasion becomes much heavier when the challenged action is encased in the armor of an explicit presidential approval. In the case at bar, there is nothing in the record remotely assailing the motives of the President in giving his imprimatur to the award.

In seeking the nullification of the management contract, the petitioners also invoke the constitutional provision on monopolies and combinations. Section 2, Article XIV of the Constitution provides:

The State shall regulate or prohibit private monopolies when the public interest so requires. No combinations in restraint of trade or unfair competition shall be allowed.

Private monopolies are not necessarily prohibited by the Constitution. They may be allowed to exist but under State regulation. A determination must first be made whether public interest requires that the State should regulate or prohibit private monopolies. A distinction prevails as regards combinations in restraint of trade and unfair competition which are prohibited outright by the Constitution.

By their very nature, certain public services or public utilities such as those which supply water, electricity, transportation, telephone, 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. (58 Corpus Juris Secundum 958-964)

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 by law to 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. The criterion used by PPA namely, the identification of a contractor with the highest potential for operating an exclusive service, appears reasonable. The factors which were taken into account in determining the exclusive contractor are indicia of reasonableness. They are:

Productivity

15%

Equipment Requirement Capability

25%

Financial Capability

15%

Promptness in Paying Government share

25%

Compliance with other PPA Requirements

20%

100%

It is a settled rule that unless the case justifies it, the judiciary will not interfere in purely administrative matters. (*Monark International, Inc. v. Noriel*, 83 SCRA 114) Such discretionary power vested in the proper administrative body, in the absence of arbitrariness and grave abuse so as to go beyond the statutory authority, is not subject to the contrary judgment or control of others. (See *Meralco Securities Corporation v. Savellano*, 117 SCRA 804) In general, courts have no supervisory power over the proceedings and actions of the administrative departments of the government. This is particularly true with respect to acts involving the exercise of judgment or discretion, and to findings of fact. (*Pajo v. Ago and Ortiz*, 108 Phil. 9tb,

In view of the foregoing, we find the PPA-OTSI Management Contract executed on June 27, 1980, valid and devoid of any constitutional or legal infirmity. The respondents, however, should maintain the policy of absorption of bona fide displaced port workers in the integration scheme as mandated not only by LOI No. 1005-A but by the policy of the State to assure the rights of workers to security of tenure. (Sec. 9, Art. II, Constitution) We note that both PPA and OTSI have given assurance in their answers that none of the legitimate stevedores would be displaced from work although they added that these bona fide stevedores should join PWUP. Which union a worker or various workers should join cannot be ordained by this Court in these petitions where the basic issue is the validity of the exclusive stevedoring contract given to one operator for one port. This matter will have to be eventually threshed out by the workers themselves and the Ministry of Labor and Employment before it may be elevated to us, if ever. However, we reiterate the guidelines earlier issued that no bona fide stevedore or worker should be deprived of employment he used to enjoy simply because of the execution and implementation of the disputed Management Contract. This absorption of bona fide workers is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary and unjust deprivation of his job. (See *Bondoc v. People's Bank and Trust Company*, 103 SCRA 599)

As to the contempt charges, we note that the Order of this Court dated October 21, 1980 allowed "petitioners-intervenors" meaning KAMADA workers to work at the South Harbor pending resolution of this case, "the orders of respondent judge . . . as well as the implementing letter of Philippine Ports Authority . . . to the contrary notwithstanding." It is not clear from said orders that the petitioners who are stevedoring operators and contractors were also specifically included. There was no mention of them being included and allowed with KAMADA workers to resume operations at the South Harbor. The petitioners read into the order something which was not there. The only clear import of the Order was that KAMADA workers must be allowed to work notwithstanding any contrary provisions in the Management Contract, a situation brought about by the lifting of the restraining orders, the denial of the petition for preliminary injunction, and the implementing letter of PPA. It was for the benefit of workers and not their employers. It is a settled rule that a party cannot be punished for contempt in failing to do something not specified in the order. A person cannot, for disobedience, be punished for contempt unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required. (*Lee Yick Hon v. Collector of Customs*, 41 Phil. 548, citing *U. S. v. Achi-son, etc. R. Co.*, 146 Fed. 176, 183; 13 CJ 15)

WHEREFORE, the petitions in G. R. No. 54958 and G. R. No. 54966 are hereby DISMISSED for lack of merit.

The respondents are, however, directed to comply with the guidelines in the above decision on the absorption of bona fide stevedores and as thus modified, the temporary restraining order dated October 21, 1980 is made PERMANENT. No costs.

SO ORDERED.

Concepcion Jr., Guerrero, Abad Santos, Melencio-Herrera, Plana, Escolin, and Relova, JJ., concur.
Fernando, C.J., concurs and adds a brief statement on the rights of labor entitled to full respect.
Teehankee, J., files a brief dissent.
Makasiar and Aquino, JJ., in the result.
De Castro, J., is on leave.
Vasquez, J., took no part.

CONCURRING

FERNANDO C.J.:

I concur in full with the learned and exhaustive opinion of Justice Gutierrez, Jr. It is precisely because of its thoroughness embodied in 24 pages that I feel I should add emphasis to the full respect that must be accorded the constitutional rights of laborers belonging to other labor organizations, as they could be affected by the contract between the Philippine Ports Authority and the Ocean Terminal Services, Inc. The Court finds "PPA-OTSI Management Contract executed on June 27, 1980, valid and devoid of any constitutional or legal infirmity." [1]

There is in addition, and this I commend, a reiteration of the Court that "the guidelines earlier issued that no bona fide stevedore or worker should be deprived of employment he used to enjoy simply because of the execution and implementation of the disputed Management Contract. This absorption of bona fide workers is an act of social justice. When a person has no property, his job may possibly be his only possession or means of livelihood. Therefore, he should be protected against any arbitrary and unjust deprivation of his job." [2] That is as it should be. Anything less would be to fail to live up to what the Constitution ordains.

Let me add that in so ruling, we reaffirm our resolution of December 9, 1980, which granted a motion for clarification filed by petitioners-intervenors and which insofar as pertinent reads as follows: "[Grant] the motion for clarification by petitioners-intervenors issuing a resolution previously released, the pertinent portion of which reads, 'for while the order of October 21, 1980 is on its face quite definite as to what it purports to require, this resolution may remove any doubt as to its purpose and intent, thus assuring the utmost fidelity in its compliance. The order requires and mandates that all workers represented by said petitioners-intervenors can continue rendering stevedoring services performed by them on foreign vessels, in Manila South Harbor before the execution of the exclusive stevedoring contract of June 27, 1980, until further orders of the Court, without any reference to any particular vessel, the decisive factor being the shipping lines involved and the fact that they were at that time rendering stevedoring services, irrespective of the labor unions to which they are affiliated.'" [3]

It bears repeating that such resolution requires and mandates that the rights of the workers represented by petitioners-intervenors, the Katipunan ng mga Manggagawa sa Daungan (KAMADA), a labor federation and its thirteen member labor organizations, would not in any way be affected by such contract. They can continue rendering stevedoring services performed by them on foreign vessels in Manila South Harbor before the execution of the exclusive stevedoring contract on June 27, 1980, "until further orders of the Court, without any reference to any particular vessel, the decisive factor being the shipping lines involved and the fact that they were at that time"

rendering stevedoring services, irrespective of the labor unions to which they are affiliated." [4]

So it must be. Only thus may the constitutional rights of labor to state protection and social justice be accorded full respect.

Let me express anew my full concurrence with the scholarly opinion of Justice Gutierrez, Jr.

[1] Opinion of the Court, 23.

[2] Ibid, 24.

[3] Ibid, 8-9.

[4] Ibid, 9.

DISSENTING

TEEHANKEE, J.:

I dissent on the ground that the Court's majority judgment has prematurely pre-judged in this special civil action of certiorari, the serious and substantive questions raised by petitioners in their complaint filed and pending in the court below for nullification of the exclusive stevedoring contract granted by PPA to OTSI which they assert to have been executed not in the public interest and in confiscation of the established businesses of petitioners and their fellow stevedoring companies in violation of due process and their right to equal protection of the law. These serious questions involve factual questions which involve presentation and evaluation of evidence and determination of the facts and figures, which seem to have been preempted and foreclosed by the Court's majority judgment - when all that is before us in this special action is whether or not respondent judge acted with grave abuse of discretion in lifting the temporary restraining order he had previously issued against the implementation of the question exclusive stevedoring contract. I reserve the right to file an extended dissenting opinion.

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