

PHILIPPINE PORTS AUTHORITY, PETITIONER, VS. HON. MARCELO R. OBIEN, JUDGE OF THE REGIONAL TRIAL COURT OF MANILA (BRANCH 44) AND METROSTAR PORT AND ALLIED SERVICES, INC., RESPONDE...

G.R. No. 79003. October 30, 1987

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PER CURIAM:

The Solicitor General has filed the instant petition for certiorari and prohibition in behalf of the Philippine Ports Authority, hereafter simply referred to as PPA, praying chiefly for the setting aside and nullification of the Order issued on July 14, 1987 by respondent Judge Marcelo R. Obien in Civil Case No. 87-40960. That case was instituted in the Regional Trial Court of Manila by Metrostar Port and Allied Services, Inc., hereafter, simply METROSTAR, seeking to prohibit PPA from terminating, and indeed to compel it to extend, its permit to render cargo handling services at the Port of Manila's International Container Terminal. On July 14, 1987, Judge Obien issued an Order which inter alia granted METROSTAR's application for preliminary injunction "enjoining the defendant (PPA) from holding and/or proceeding with the scheduled bidding on July 15, 1987 (among applicants to render said cargo handling services) until further order * * *." A temporary restraining order was in turn issued by this Court on July 15, 1987 "RESTRAINING respondent Judge * * * Obien from implementing his order of July 14, 1987 * * * and from INTERFERING with the public bidding of July 15, 1987."

Established or admitted by the parties in their pleadings and at the hearing of METROSTAR's "Urgent Motion to Lift Restraining Order, etc."" on July 20, 1987, are the following material facts, to wit:

P.D. No. 634 allocated a 375-hectare area in the North Harbor, Manila, by the mouth of the Pasig River, for the construction of a modern port. The PPA has been charged with the task of construction and development of the port, inclusive of the management of cargo handling services. On July 21, 1986, the PPA granted to METROSTAR a one-year permit, beginning on July 21, 1986 and ending on July 20, 1987, to render cargo handling services at the Port of Manila's International Container Terminal.

In April, 1987, the PPA adopted a "more aggressive policy on the privatization of ports * * * (to) allow the private sector to manage and develop entire terminals or port facilities," and inter alia laid down the minimum qualifications of the private

contractor to be chosen by public bidding to undertake the project, as well as the terms and conditions under which the bidding would be conducted.

METROSTAR thereafter presented a detailed proposal for cargo handling services for the Manila International Container Terminal for a ten-year period, from 1987 to 1996. The PPA created a committee to evaluate the proposal. It appears however that no report and recommendation on METROSTAR's proposal has to date been completed or submitted by the committee.

In the meantime, the following events transpired:

(1) On May 15, 1987, the PPA announced that there would be a public bidding to select a party to be awarded a contract to undertake "the full complement of services essential in a container terminal" inclusive not only of "cargo handling services in the expanded port but also * * * pilotage and tug assistance, craneage, container marshalling, yard and freight station, warehousing, weighing, checking and surveying, trucking, supply of fuel and water, bunker and chandling supply, container clearing and repair, and others required by users and clients of the port."

(2) On May 28, 1987, METROSTAR formally applied in writing "for the issuance of instructions, forms, requirements and other information regarding the proposed bid." Its name is in fact the first that appears in the "List of Registered Bidders" subsequently published. On the same day, May 28, 1987, a meeting was held between officials of the PPA and the Vice-President (Pasamba) and other representatives of METROSTAR, at which the matter of the public bidding was discussed, among other things, and during which METROSTAR requested, and the PPA agreed, that the public bidding scheduled on June 17 would be postponed to July 15, 1987.

(3) And on June 19, 1987, the PPA wrote to METROSTAR terminating its "Permit for Cargo Handling Services" (No. 43 86) effective on July 20, 1987.

METROSTAR thereafter instituted in the Manila Regional Trial Court, as aforesaid, an action against the PPA and its

General Manager for "specific performance and damages with injunction, etc." docketed as Civil Case No. 87-40960. It submits before this Court that the case involved a meritorious cause of action; and that the preliminary injunction issued therein at its instance by Judge Marcelo R. Obien is proper, and should not have been temporarily restrained by this Court, as it did by the Resolution dated July 15, 1987. It argues that its permit or contract to operate cargo handling services had been impliedly renewed by the PPA when two (2) out of the five (5) members of the committee evaluating its proposal for a ten-year extension of its permit, had signed a report favorable to it, as well as by the failure of the PPA to "exercise one of three options thirty (30) days prior to the expiration of the permit," as explicitly stipulated, to wit: "a. take over the cargo handling services itself; or b. conduct a public bidding therefor; or c. allow * * * (METROSTAR) to continue under terms and conditions as may be agreed upon." It also contends that equitable considerations impel concession, to it of relief, considering that it has not yet recovered the not inconsiderable sums that it had invested in carrying out its commitments under its one-year permit; that the predecessors of the incumbent officials of the PPA had induced it to continue to make additional investments by verbal statements evincing satisfaction with its services and inferring assurances of extension of its permit; and that many Filipino physicians and professionals based in the United States had invested in METROSTAR in the belief that it was a worthy business enterprise and out of a desire to help in the rehabilitation of the country's economy. It finally pleads for its employees, who would be rendered jobless by the cancellation of its permit.

METROSTAR's arguments are, on their face and in the light of all the attendant facts, without cogency or persuasiveness.

Its claim of implied renewal of its permit should be rejected out of hand. Admittedly, the "favorable report and recommendation" of the committee has not to this day been completed, having been signed by only two out of the five members thereof, and has never been submitted to the PPA for official action. Considering its incomplete state, it is intriguing, to say the least, that a copy of the report should have found its way into METROSTAR's hands. In any event, as the PPA points out, the report is not favorable to METROSTAR at all. It is noncommittal, in that it leaves the ultimate decision to the PPA itself, although it urges that METROSTAR's capacity be inquired

into with some care in view of the tremendous capital entailed by the undertaking of all essential and necessary services in the international container port terminal. Its claim of failure by the PPA to effectively terminate its contract cannot be accorded weight, for under the circumstances above set forth, the PPA had plainly and unmistakably made known its intention against any extension of METROSTAR's one-year permit which expired on July 20, 1987, and that METROSTAR should submit itself, together with other interested applicants, to public bidding to be conducted precisely for the purpose of selecting the party to which the permit to operate the services in question for the succeeding years would be awarded.

Neither does METROSTAR's invocation of equity induce persuasion as to the validity of its position. When its stockholders and its supporters decided to invest money in the project covered by the permit granted to METROSTAR, they knew, or ought to have known, that the permit was for a definite term of one year, ending on July 20, 1987, and that renewal thereof was not by any means a certain thing but entirely dependent upon future negotiations and developments. They may not therefore plead their investment as cause for entitling them to an automatic renewal of their corporation's permit. And the alleged verbal representations of the former head of the PPA, assuming correctness of METROSTAR's understanding thereof, cannot of course bind the incumbent officials.

What has become clear from a consideration of all the relevant factors and circumstances is that METROSTAR's remedy is not in any judicial process but in the procedures laid down by the PPA in relation to generally accepted business usages germane thereto. Also clear is that under the facts, METROSTAR in the first place was not entitled to a preliminary injunction against the public bidding set by the PPA.

As regards METROSTAR's avowed concern for its employees, it needs but be pointed out that the new contractor, chosen by public bidding, is obliged "to utilize and employ members of the existing labor force as may be needed * * *."

Upon the foregoing premises, the Court Resolved to GRANT the petition and to annul and set aside the challenged Order of respondent Judge Obien dated July 14, 1987 in Civil Case No. 87-40960 and the corresponding writ of preliminary injunction, for having been issued with grave abuse of discretion. The "Urgent Motion to Lift Restraining Order" filed by METROSTAR on July 16, 1987 is accordingly DENIED.

SO ORDERED.

Teehankee, C.J.. Narvasa, Cruz, Paras,[*] and Gancayco, JJ., concur.

[*] Designated as special member of the First Division.

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