

**RODOLFO B. ALBANO, PETITIONER, VS. HON. RAINERIO O. REYES,
PHILIPPINE PORTS AUTHORITY, INTERNATIONAL CONTAINER
TERMINAL SERVICES, INC., E. RAZON, INC., ANSCOR CONTAINER
CORPORAT...**

G.R. No. 83551. July 11, 1989

Ponente: PARAS, J.

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PARAS, J.:

This is a Petition for Prohibition with prayer for Preliminary Injunction or Restraining Order seeking to restrain the respondents Philippine Ports Authority (PPA) and the Secretary of the Department of Transportation and Communications Rainerio O. Reyes from awarding to the International Container Terminal Services, Inc. (ICTSI) the contract for the development, management and operation of the Manila International Container Terminal (MICT).

On April 20, 1987, the PPA Board adopted its Resolution No. 850 directing PPA management to prepare the Invitation to Bid and all relevant bidding documents and technical requirements necessary for the public bidding of the development, management and operation of the MICT at the Port of Manila, and authorizing the Board Chairman, Secretary Rainerio O. Reyes, to oversee the preparation of the technical and the documentation requirements for the MICT leasing as well as to implement this project.

Accordingly, respondent Secretary Reyes, by DOTC Special Order 87-346, created a seven (7) man "Special MICT Bidding Committee" charged with evaluating all bid proposals, recommending to the Board the best bid, and preparing the corresponding contract between the PPA and the winning bidder or contractor. The Bidding Committee consisted of three (3) PPA representatives, two (2) Department of Transportation and Communications (DOTC) representatives, one (1) Department of Trade and Industry (DTI) representative and one (1) private sector representative. The PPA management prepared the terms of reference, bid documents and draft contract which materials were approved by the PPA Board.

The PPA published the Invitation to Bid several times in a newspaper of general circulation which publication included the reservation by the PPA of "the right to reject any or all bids and to waive any informality in the bids or to accept such bids which may be considered most advantageous to the government."

Seven (7) consortia of companies actually submitted bids, which bids were opened on July 17, 1987 at the PPA Head Office. After evaluation of the several bids, the Bidding Committee recommended the award of the contract to develop, manage and operate the MICT to respondent International Container Terminal Services, Inc. (ICTSI) as having offered the best Technical and Financial Proposal. Accordingly, respondent Secretary declared the ICTSI consortium as the winning bidder.

Before the corresponding MICT contract could be signed, two successive cases were filed against the respondents which assailed the legality or regularity of the MICT bidding. The first was Special Civil Action 55489 for

"Prohibition with Preliminary Injunction" filed with the RTC of Pasig by Basilio H. Alo, an alleged "concerned taxpayer", and, the second was Civil Case 88-43616 for "Prohibition with Prayer for Temporary Restraining Order (TRO)" filed with the RTC of Manila by C.F. Sharp Co., Inc., a member of the nine (9) firm consortium -- "Manila Container Terminals, Inc." which had actively participated in the MICT Bidding.

Restraining Orders were issued in Civil Case 88-43616 but these were subsequently lifted by this Court in Resolutions dated March 17, 1988 (in G.R. No. 82218 captioned "Hon. Rainerio O. Reyes etc., et al. vs. Hon. Doroteo N. Caneba, etc., et al.") and April 14, 1988 (in G.R. No. 81947 captioned "Hon. Rainerio O. Reyes etc., et al. vs. Court of Appeals, et al.")

On May 18, 1988, the President of the Philippines approved the proposed MICT Contract, with directives that "the responsibility for planning, detailed engineering, construction, expansion, rehabilitation and capital dredging of the port, as well as the determination of how the revenues of the port system shall be allocated for future port works, shall remain with the PPA; and the contractor shall not collect taxes and duties except that in the case of wharfage or tonnage dues and harbor and berthing fees, payment to the Government may be made through the contractor who shall issue provisional receipts and turn over the payments to the Government which will issue the official receipts." (Annex "I").

The next day, the PPA and the ICTSI perfected the MICT Contract (Annex "3") incorporating therein by "clarificatory guidelines" the aforementioned presidential directives. (Annex "4")

Meanwhile, the petitioner, Rodolfo A. Albano filed the present petition as citizen and taxpayer and as a member of the House of Representatives, assailing the award of the MICT contract to the ICTSI by the PPA. The petitioner claims that since the MICT is a public utility, it needs a legislative franchise before it can legally operate as a public utility, pursuant to Article 12, Section 11 of the 1987 Constitution.

The petition is devoid of merit.

A review of the applicable provisions of law indicates that a franchise specially granted by Congress is not necessary for the operation of the Manila International Container Port (MICP) by a private entity, a contract entered into by the PPA and such entity constituting substantial compliance with the law.

1. Executive Order No. 30, dated July 16, 1986, provides:

WHEREFORE, I, CORAZON C. AQUINO, President of the Republic of the Philippines, by virtue of the powers vested in me by the Constitution and the law, do hereby order the immediate recall of the franchise granted to the Manila International Port Terminals, Inc. (MIPTI) and authorize the Philippine Ports Authority (PPA) to take over, manage and operate the Manila International Port Complex at North Harbor, Manila and undertake the provision of cargo handling and port related services thereat, in accordance with P.D. 857 and other applicable laws and regulations.

Section 6 of Presidential Decree No. 857 (the Revised Charter of the Philippine Ports Authority) states:

a) The corporate duties of the Authority shall be:

* * *

(ii) To supervise, control, regulate, construct, maintain, operate, and provide such facilities or services as are necessary in the ports vested in, or belonging to the Authority.

* * *

(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 of any vessel;
- loading or discharging any vessel;
- sorting, weighing, measuring, storing, warehousing, or otherwise handling goods

* * *

b) The corporate powers of the Authority shall be as follows:

* * *

(vi) To make or enter into contracts of any kind or nature to enable it to discharge its functions under this Decree.

* * *

[Emphasis supplied.]

Thus, while the PPA has been tasked, under E.O. No. 30, with the management and operation of the Manila International Port Complex and to undertake the providing of cargo handling and port related services thereat, the law provides that such shall be in accordance with P.D. 857 and other applicable laws and regulations." On the other hand, P.D. No. 857 expressly empowers the PPA to provide services within Port Districts "whether on its own, by contract, or otherwise" [Sec. 6(a)(v).] Therefore, under the terms of E.O. No. 30 and P.D. No. 857, the PPA may contract with the International Container Terminal Services, Inc. (ICTSI) for the management, operation and development of the MICP;

2. Even if the MICP be considered a public utility[1], or a public service[2] on the theory that it is a "wharf" or a "dock"[3] as contemplated under the Public Service Act, its operation would not necessarily call for a franchise from the Legislative Branch. Franchises issued by Congress are not required before each and every public utility may operate. Thus, the law has granted certain administrative agencies the power to grant licenses for or to authorize the operation of certain public utilities. (See E.O. Nos. 172 and 202)

That the Constitution provides in Art. XII, Sec. 11 that the issuance of a franchise, certificate or other form of authorization for the operation of a public utility shall be subject to amendment, alteration or repeal by Congress does not necessarily imply, as petitioner posits, that only Congress has the power to grant such authorization. Our statute books are replete with laws granting specified agencies in the Executive Branch the power to issue such authorization for certain classes of public utilities.[4]

As stated earlier, E.O. No. 30 has tasked the PPA with the operation and management of the MICP, in accordance with P.D. 857 and other applicable laws and regulations. However, P.D. 857 itself authorizes the PPA to perform the service by itself, by contracting it out, or through other means. Reading E.O. No. 30 and P.D. No. 857 together, the inescapable conclusion is that the lawmaker has empowered the PPA to undertake by itself the operation and management of the MICP or to authorize its operation and management by another by contract or other means, at its option. The latter power having been delegated to the PPA, a franchise from Congress to authorize an entity other than the PPA to operate and manage the MICP becomes unnecessary.

In the instant case, the PPA, in the exercise of the option granted it by P.D. No. 857, chose to contract out the operation and management of the MICP to a private corporation. This is clearly within its power to do. Thus, PPA's acts of privatizing the MICT and awarding the MICT contract to ICTSI are wholly within the jurisdiction of the PPA under its Charter which empowers the PPA to "supervise, control, regulate, construct, maintain, operate and provide such facilities or services as are necessary in the ports vested in, or belonging to the PPA."

(Section 6(a) ii, P.D. 857)

The contract between the PPA and ICTSI, coupled with the President's written approval, constitute the necessary authorization for ICTSI's operation and management of the MICP. The award of the MICT contract approved by no less than the President of the Philippines herself enjoys the legal presumption of validity and regularity of official action. In the case at bar, there is no evidence which clearly shows the constitutional infirmity of the questioned act of government.

For these reasons the contention that the contract between the PPA and ICTSI is illegal in the absence of a franchise from Congress appears bereft of any legal basis.

3. On the peripheral issues raised by the party, the following observations may be made:

A. That petitioner herein is suing as a citizen and taxpayer and as a Member of the House of Representatives, sufficiently clothes him with the standing to institute the instant suit questioning the validity of the assailed contract. While the expenditure of public funds may not be involved under the contract, public interest is definitely involved considering the important role of the MICP in the economic development of the country and the magnitude of the financial consideration involved. Consequently, the disclosure provision in the Constitution^[5] would constitute sufficient authority for upholding petitioner's standing. [Cf. *Tanada v. Tuvera*, G.R. No. 63915, April 24, 1985, 136 SCRA 27, citing *Severino v. Governor General*, 16 Phil. 366 (1910), where the Court considered the petitioners with sufficient standing to institute an action where a public right is sought to be enforced.]

B. That certain committees in the Senate and the House of Representatives have, in their respective reports, and the latter in a resolution as well, declared their opinion that a franchise from Congress is necessary for the operation of the MICP by a private individual or entity, does not necessarily create a conflict between the Executive and the Legislative Branches needing the intervention of the Judicial Branch. The Court is not faced with a situation where the Executive Branch has contravened an enactment of Congress. As discussed earlier, neither is the Court confronted with a case of one branch usurping a power pertaining to another.

C. Petitioner's contention that what was bid out, i.e., the development, management and operation of the MICP, was not what was subsequently contracted, considering the conditions imposed by the President in her letter of approval, thus rendering the bids and projections immaterial and the procedure taken ineffectual, is not supported by the established facts. The conditions imposed by the President did not materially alter the substance of the contract, but merely dealt on the details of its implementation.

D. The determination of whether or not the winning bidder is qualified to undertake the contracted service should be left to the sound judgment of the PPA. The PPA, having been tasked with the formulation of a plan for the development of port facilities and its implementation [Sec. 6(a)(i)], is the agency in the best position to evaluate the feasibility of the projections of the bidders and to decide which bid is compatible with the development plan. Neither the Court, nor Congress, has the time and the technical expertise to look into this matter.

Thus, the Court in *Manuel v. Villena* (G.R. No. L-28218, February 27, 1971, 37 SCRA 745) stated:

[C]ourts, as a rule, refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions. This is so because such bodies are generally better equipped technically to decide administrative questions and that non-legal factors, such as government policy on the matter, are usually involved in the decisions. [at p. 750.]

In conclusion, it is evident that petitioner has failed to show a clear case of grave abuse of discretion amounting to lack or excess of jurisdiction as to warrant the issuance of the writ of prohibition.

WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Gancayco, Bidin, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Gutierrez, Jr., J., concur with a short separate opinion.

Feliciano, J., in the result.

Padilla and Sarmiento, JJ., no part.

[1] A "public utility" is a business or service engaged in regularly supplying the public with some commodity or service of public consequence such as electricity, gas, water, transportation, telephone or telegraph service. Apart from statutes which define the public utilities that are within the purview of such statutes, it would be difficult to construct a definition of a public utility which would fit every conceivable case. As its name indicates, however, the term public utility implies a public use and service to the public. (Am. Jur. 2d V. 64, p. 549)

[2] The Public Service Act (C.A. No. 146, as amended) provides that the term public service "includes every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, sub-way motor vehicle, either for freight or passenger, or both with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries, and water craft, engaged in the transportation of passengers and freight or both, shipyard, marine railway, refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power, petroleum, sewerage system, wire or wireless communications system, wire or wireless broadcasting stations and other similar public services . . ." [Sec. 13 (b).]

[3] Under P.D. 857 the term dock "includes locks, cuts entrances, graving docks, inclined planes, slipways, quays, and other works and things appertaining to any dock", while wharf "means a continuous structure built parallel to along the margin of the sea or alongside riverbanks, canals, or waterways where vessels may lie alongside to receive or discharge cargo, embark or disembark-passengers, or lie at rest." [Sec. 3(j) and (o).]

[4] Examples of such agencies are:

1. The Land Transportation Franchising and Regulatory Board created under E.O. No. 202, which is empowered to "issue, amend, revise, suspend or cancel Certificates of Public Convenience or permits authorizing the operation of public land transportation services provided by motorized vehicles, and to prescribe the appropriate terms and conditions therefor" [Sec. 5(b).]

2. The Board of Energy, reconstituted into the Energy Regulatory Board created under E.O. No. 172, is empowered to license refineries and regulate their capacities and to issue certificates of public convenience for the operation of electric power utilities and services, except electric cooperatives [Sec. 9(d) and (e), P.D. No. 1206.]

[5] Art. II, Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a policy of full disclosure of all its transactions involving public interest.

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CONCURRING OPINION

GUTIERREZ, JR., J.:

I concur in the Court's decision that the determination of whether or not the winning bidder is qualified to undertake the contracted service should be left to the sound judgment of the Philippine Ports Authority (PPA). I agree that the PPA is the agency which can best evaluate the comparative qualifications of the various bidding contractors and that in making such evaluation it has the technical expertise which neither this Court nor Congress possesses.

However, I would feel more comfortable in the thought that the above rulings are not only grounded on firm legal foundations but are also factually accurate if the PPA shows greater consistency in its submissions to this Court.

I recall that in *E. Razon, Inc. v. Philippine Ports Authority* (151 SCRA 233 [1977]), this Court decided the case in favor of the PPA because, among others, of its submissions that: (1) the petitioner therein committed violations as to outside stevedoring services, inadequate equipment, delayed submission of reports, and non-compliance with certain port regulations; (2) respondent Marina Port Services and not the petitioner was better qualified to handle arrastre services; (3) the petitioner being controlled by Alfredo Romualdez could not enter into a management contract with PPA and any such contract would be null and void; and (4) even if the petitioner may not have shared in the illegal intention behind the transfer of majority shares, it shared in the benefits of the violation of law.

I was surprised during the oral arguments of the present petition to hear the counsel for PPA submit diametrically different statements regarding the capabilities and worth of *E. Razon, Inc.*, as an arrastre operator. It now turns out that the Manila International Container Terminal will depend a great deal on the expertise, reliability and competence of *E. Razon, Inc.*, for its successful operations. The time difference between the two petitions is insubstantial. After going over the pleadings of the present petition, I am now convinced that it is the submissions of PPA in this case and not its contentions in *G. R. No. 75197* which are accurate and meritorious. There is the distinct possibility that we may have been unfair in the earlier petition because of assertions made therein which are contradictory to the submissions in the instant petition. No such doubts would exist if the Government is more consistent in its pleadings on such important factual matters as those raised in these two petitions.

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