

ERNESTO B. FRANCISCO, JR., PETITIONER, VS. UEM-MARA PHILIPPINES CORPORATION, TOLL REGULATORY BOARD AND PUBLIC ESTATES AUTHORITY, RESPONDENTS.

G.R. Nos. 135688-89. October 18, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for review on certiorari[1] of a decision[2] and resolution[3] of the Court of Appeals (CA) dated July 28, 1998 and September 23, 1998, respectively, in the consolidated cases of CA-G.R. SP Nos. 48111 and 48145 which set aside the order[4] and writ of preliminary injunction[5] issued by the Regional Trial Court, Makati City, Branch 147 (RTC) dated June 23, 1998 and June 24, 1998, respectively, in Civil Case No. 98-1159.

Petitioner Ernesto B. Francisco, Jr. alleged that he is a taxpayer and resident of Cavite. He claimed that he instituted this suit in the RTC in his behalf and in behalf of the other users of the Coastal Road which is the principal road connecting Metro Manila and Cavite.[6]

Private respondent UEM-MARA Philippines Corporation (UMPC) is a corporation duly organized and validly existing under Philippine laws. It was incorporated by two Malaysian entities, namely, United Engineers (Malaysia) Berhad (UEM) and Majlis Amanah Rakyat (MARA).[7]

Public respondents are the Toll Regulatory Board (TRB), created under PD 1112[8] and the Public Estates Authority (PEA), a government owned and controlled corporation organized pursuant to PD 1084.[9]

On July 26, 1996,[10] UMPC entered into a Toll Operation Agreement (TOA) with the Republic of the Philippines, through the TRB and PEA, for the design, construction, operation and maintenance of the R-1 Expressway (Airport Road Junction to Zapote), the C-5 Link Expressway (link between the R-1 Expressway and the South Luzon Expressway) and the R-1 Expressway Extension (Zapote to Noveleta, Cavite), all three (3) expressways being components of the Manila-Cavite Toll Expressway Project (MCTEP). Pursuant to the TOA, UMPC was exclusively responsible for the design, construction and financing aspect of the expressways, while the PEA was exclusively responsible for the operation and maintenance thereof.[11]

Under the MCTEP, PEA was to operate the R-1 Expressway (also known as the Coastal Road)[12] as a toll facility and collect toll fees from its users. Part of these fees would be used to compensate UMPC for its investment and participation in the project. Toll collection commenced on May 24, 1998.[13]

On May 22, 1998, petitioner filed a petition for prohibition, injunction and declaration of nullity of the TOA, with prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction in the RTC praying that respondents be ordered to cease and desist from collecting the announced toll fees for the use of the MCTEP on the following grounds: (1) that the toll fees as fixed in the TOA were grossly exorbitant, unconscionable and violative of the allowable reasonable rate of return on investment and (2) that there was absence of notice and public hearing in the fixing of the rate of toll fees in contravention of public interest.[14]

On May 25, 1998, Judge Napoleon E. Inoturan, Vice-Executive Judge of the RTC, Makati City, Branch 133, issued an ex parte TRO effective for 72 hours enjoining respondents from charging and collecting the toll fees. The case was raffled to Judge Zeus C. Abrogar of Branch 150 who subsequently inhibited himself from hearing the case.[15] The case was re-raffled to Judge Teofilo L. Guadiz, Jr. of Branch 147.[16]

On May 27, 1998, Judge Guadiz, Jr. issued an order extending the TRO to 20 days. On June 9, 1998, he issued an order setting aside his May 27, 1998 order and set the case for summary hearing pursuant to Section 5, Rule 58 of the Rules of Court.[17]

On June 23, 1998, Judge Guadiz, Jr. issued an order granting petitioner's application for a writ of preliminary injunction, which writ was issued on June 24, 1998 after petitioner posted a surety bond in the amount of P100,000.[18]

On June 26, 1998, UMPC filed a petition for certiorari with application for TRO and/or writ of preliminary injunction in the CA. This was docketed as CA-G.R. SP No. 48111. On July 1, 1998, PEA and TRB likewise filed a petition for certiorari and this was docketed as CA-G.R. SP No. 48145. The cases were consolidated.[19]

In a decision promulgated on July 28, 1998, the CA nullified and set aside the writ of preliminary injunction issued by the RTC. It ruled that the writ was issued in contravention of PD 1818[20] and petitioner failed to prove that it satisfied the requisites for its issuance.[21] It denied reconsideration in a resolution dated September 23, 1998.[22]

Hence this petition.

In a "manifestation and motion (in compliance with the Honorable Court's resolution dated August 2, 2000 requiring submission of memorandum) with motion to cite in contempt of court" dated August 15, 2001, petitioner prayed that private respondent UMPC and its counsel be cited in contempt for misrepresenting to the Court that UEM and MARA were still the stockholders of UMPC.

First, we shall resolve the sole substantive issue raised: should the prayer for a writ of preliminary injunction be granted?

We need to determine if PD 1818 is applicable to this case. This law, dated January 16, 1981, states:

WHEREAS, Presidential Decree No. 605[23] prohibits the issuance by the courts of restraining orders or injunctions in cases involving concessions, licenses, and other permits issued by administrative officials or bodies for the exploitation, development and utilization of natural resources of the country;

WHEREAS, it is in the public interest to adopt a similar prohibition against the issuance of such restraining orders or injunctions in other areas of activity equally critical to the economic development effort of the nation, in order not to disrupt or hamper the pursuit of essential government projects;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, do hereby decree and order as follows:

Section 1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others[,] public utilities for the transport of goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

xxx xxx xxx

(Emphasis supplied)

PD 1818 proscribes the issuance of a writ of preliminary injunction in any case involving an infrastructure project of the government.[24] The aim of the prohibition, as expressed in its second whereas clause, is to prevent delay in the implementation or execution of government infrastructure projects (particularly through the use of provisional remedies) to the detriment of the greater good since it disrupts the pursuit of essential government projects and frustrates the economic development effort of the nation.[25]

Petitioner argues that the collection of toll fees is not an infrastructure project of the government. He cites the definition of "infrastructure projects" we used in *Republic v. Silerio*: [26]

The term "infrastructure projects" means "construction, improvement and rehabilitation of roads, and bridges, railways, airports, seaports, communication facilities, irrigation, flood control and drainage, water supply and sewage systems, shore protection, power facilities, national buildings, school buildings, hospital buildings, and other related construction projects that form part of the government capital investment." [27]

He contends that the MCTEP does not involve the construction of a road since the Coastal Road already existed since the early 1980s and UMPC merely upgraded it.[28] He also asserts that since the project was financed by a foreign group, it does not "form part of the government capital investment" that makes it a government infrastructure project as contemplated by PD 1818.

Respondents counter that the Coastal Road was repaired, rehabilitated and upgraded by UMPC, and thus falls under infrastructure projects as defined. Furthermore, the collection of toll fees is necessary to the execution and implementation of the MCTEP because part of the fees collected, after meeting the operation and maintenance expenses of the expressway, is used by UMPC to pay the commercial loans it incurred to finance the project. Therefore, if collection is enjoined, not only will the operation and maintenance of the Coastal Road be affected but the construction and completion of the other components of the project will also be disrupted.[29]

According to UMPC, the obligations of public respondents under the TOA undeniably show that the MCTEP is an infrastructure project that forms part of the government's capital investment. They are obliged to finance the acquisition of lands needed for the project.[30] The TOA also provides that the government of the Philippines owns the toll expressways comprising the project.[31]

The CA held that the MCTEP is a government project considering that the government, through the TRB, is one of the contracting parties of the TOA. It is an infrastructure project because it involves the construction, design, operation and maintenance of the expressways. The collection of toll fees is an activity necessary for the execution, implementation or operation of this infrastructure project of the government.[32]

We agree.

The definition of infrastructure projects specifically includes the improvement and rehabilitation of roads and not just its construction. Accordingly, even if the Coastal Road was merely upgraded and not constructed from scratch, it is still covered by the definition. Moreover, PD 1818 itself states that any person, entity or governmental official cannot be prohibited from continuing the execution or implementation of such project or pursuing any lawful activity necessary for such execution or implementation. Undeniably, the collection of toll fees is part of the execution or implementation of the MCTEP as agreed upon in the TOA.[33] The TOA is valid since it has not been nullified. Thus it is a legitimate source of rights and obligations. It has the force and effect of law between the contracting parties[34] and is entitled to recognition by this Court. The MCTEP is an infrastructure project of the government forming part of the government capital investment considering that under

the TOA, the government owns the expressways comprising the project.[35]

Next, petitioner argues that PD 1818 does not extend to injunctions or restraining orders against administrative acts in controversies involving facts or the exercise of discretion in technical cases.

In a spate of cases, this Court declared that although [PD 1818] prohibits any court from issuing injunctions in cases involving infrastructure projects, the prohibition extends only to the issuance of injunctions or restraining orders against administrative acts in controversies involving facts or the exercise of discretion in technical cases. On issues clearly outside this dimension and involving questions of law, this Court declared that courts could not be prevented from exercising their power to restrain or prohibit administrative acts.[36]

It is founded on the principle that to allow the courts to determine such matters would disturb the smooth functioning of the administrative machinery.[37]

Considering the co-equal status of the three branches of government, courts may not tread into matters requiring the exercise of discretion of a functionary or office in the executive and legislative branches, unless it is clearly shown that the government official or office concerned abused his or its discretion.[38] Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law or where power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[39]

Futhermore,

xxx courts, 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.[40]

The imposition of toll fees, fixing the amount thereof and its proper collection are technical matters public respondents are surely more knowledgeable about than the courts. This is clear from the powers and duties conferred on them by their charters.

Under Section 5 (k), PD 1084, PEA is authorized to collect tolls:

Sec. 5. Powers and functions of [PEA]. â€- [PEA] shall, in carrying out the purposes for which it is created, have the following powers and functions:

xxx xxx xxx

k.

To issue such regulations as may be necessary for the proper use by private parties of any or all of the highways, roads, utilities, buildings and/or any of its properties and to impose or collect fees or tolls for their use provided that all receipts by [PEA] from fees, tolls and other charges are automatically appropriated for its use.

Under Section 3 of PD 1112, the TRB was tasked to supervise the collection of toll fees:

Sec. 3. Powers and Duties of the [TRB]. The [TRB] shall have in addition to its general powers of administration the following powers and duties:

xxx xxx xxx

d.

Issue, modify and promulgate from time to time the rates of toll that will be charged the direct users of toll facilities and upon notice and hearing, to approve or disapprove petitions for the increase thereof. xxxx

In *Padua v. Hon. Ranada*,^[41] we stated:

The TRB, as the agency assigned to supervise the collection of toll fees and the operation of toll facilities, has the necessary expertise, training and skills to judiciously decide matters of this kind. As may be gleaned from the petition, the main thrust of petitioner Zialcita's argument is that the provisional toll rate adjustments are exorbitant, oppressive, onerous and unconscionable. This is obviously a question of fact requiring knowledge of the formula used and the factors considered in determining the assailed rates. Definitely, this task is within the province of the TRB.^[42]

The arguments petitioner advances to show that public respondents committed grave abuse of discretion already go into the validity of the TOA itself or its terms, which was the subject of the main case in the court below.^[43] The issue that we are tackling here -- the propriety of the issuance of an injunction -- merely involves the collection of toll fees in the Coastal Road. Petitioner also claims that there were irregularities committed by the respondents. While it is true that PD 1818 was not intended to shield irregularities committed by administrative agencies from judicial scrutiny,^[44] petitioner has not proven the supposed anomalies and they remain as mere unsubstantiated claims. These factual issues were not passed upon by the courts below and we decline to resolve them now considering that we are not a trier of facts. In any event, as a rule, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.

Consequently, there is no showing that public respondents abused their discretion in imposing and collecting the toll fees. These are provided for in the TOA which, as mentioned earlier, remains valid since it has not been declared invalid by any court. Also, the presumption that official duty was performed regularly has not been overturned.

We now rule on the motion to cite in contempt filed by petitioner against UMPC and its counsel, Castillo and Poblador Law Offices, particularly Atty. Napoleon J. Poblador and Atty. Manuel Joseph R. Bretaña III. Petitioner alleges that they should be cited for contempt for misrepresenting to the Court in their memorandum dated November 17, 2000 that UEM and MARA were still the stockholders of UMPC when in fact the Coastal Road Corporation (CRC) had already bought their shares.^[45] UMPC stated:

87. Contrary to petitioner's malicious assertions, the Republic of the Philippines and public respondent PEA selected private respondent (then represented by its stockholders MARA and UEM) based on established guidelines of the national government on joint venture agreements between government agencies and the private sector. xxx Private respondent, therefore, could only assume, as it reasonably assumed, that these government agencies performed their functions in accordance with law and only after scrutinizing the qualifications of private respondent's stockholders - UEM and MARA.

88. Private respondent is more than qualified to be the joint venture partner of public respondent PEA based on the track record of its aforementioned stockholders.

88.1

MARA is an instrumentality or corporate agency of the Malaysian government. The Malaysian government specifically designated MARA to realize its agreement with the Philippine government "to pursue and enter into joint and cooperative development undertakings." (cf., Annex "D," supra).

88.2

On the other hand, UEM is a Malaysian company publicly listed on the Kuala Lumpur Stock Exchange

("KLSE") since 1975. It has an authorized capital stock of RM500,000,000 or approximately P5,000,000,000.00. It is one of Malaysia's largest engineering, design and construction groups with direct and indirect interests in five (5) publicly listed companies on the KLSE. xxxx[46] (Emphasis supplied)

In their comment on the motion, Attys. Poblador and Bretaña stated that they had nothing to do with the sale of UEM and MARA of their 283,744 shares in UMPC as other law firms, namely, Castillo Laman Tan Pantaleon & San Jose Law Offices representing UEM and Sycip Salazar Hernandez & Gatmaitan Law Offices representing CRC were involved. The sale was approved by the TRB on November 18, 1999.[47]

We do not think that UMPC and its counsels should be sanctioned for contempt.

Counsels can be held in contempt of court[48] for making false statements in the pleadings they file[49] tending to mislead the Court and to degrade the administration of justice. We cannot see any deliberate falsehood or misrepresentation in the aforequoted statements of Attys. Poblador and Bretaña. On the contrary, they truthfully indicated that UEM and MARA were the former stockholders of UMPC. This is the clear import of the phrase "then represented by its stockholders MARA and UEM." This also implied that they had been replaced as such. Besides, the ownership structure of UMPC as a party in this case was never material to the issue for resolution which is the issuance of a writ of injunction for the collection of toll fees. Hence, the Court was not deceived in any way.

Petitioner also insists that they be cited in contempt for showing disrespect and resorting to offensive language against RTC Judge Guadiz, Jr. when they stated:

Despite the obvious legality of the project, petitioner, either by sheer arrogance or a malicious refusal to acknowledge the truth - that the [MCTEP] and the imposition of toll fees for the use of the Coastal Road are legal and above board - initiated what is no more than a nuisance suit and secured from an insufficiently-informed judge an illegal writ of preliminary injunction which public respondent, the Honorable [CA], subsequently reversed.[50]

Attys. Poblador and Bretaña, in their defense, countered that there was nothing insulting or disparaging in describing someone as "insufficiently informed." This was not intemperate language amounting to vilification.[51]

They are correct. In criticizing a judge's decision, the test is whether it is done in good faith:

While the Court recognizes a litigant's right to criticize judges and justices in the performance of their functions, "it is the cardinal condition of all such criticism that it shall be bona fide and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges (or justices) thereof, on the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts." [52]

We cannot say that the use of the adjective "insufficiently-informed" is disrespectful, abusive or slanderous. Besides,

[it] is well settled that the power to punish a person in contempt of court is inherent in all courts to preserve order in judicial proceedings and to uphold the due administration of justice. Judges however are enjoined to exercise such power judiciously and sparingly, with utmost restraint, and with the end in view of utilizing the same for correction and preservation of the dignity of the court, and not for retaliation or vindictiveness.[53]

Therefore, we deny petitioner's motion to cite in contempt for lack of merit.

In sum, PD 1818 prohibits the issuance of a writ of preliminary injunction to enjoin the collection of toll fees for the use of the Coastal Road. None of the exceptions to this proscription is applicable here. The collection of toll

fees for R-1 Expressway, one of the components of the MCTEP, is an activity necessary for the execution of a government infrastructure project covered by the protective mantle of PD 1818. It is noteworthy that the MCTEP was identified by the government as an "urgent necessity to support the rapid development of the Calabarzon[54] area, particularly the province of Cavite." [55] Accordingly, no preliminary injunction can be issued enjoining or preventing its implementation. We need not go into a discussion of whether petitioner was able to prove the requisites for its issuance.[56]

To emphasize, we have limited ourselves to the issue of propriety of the issuance of a writ of preliminary injunction. We are not resolving the substantive issues presented such as the validity of the TOA. We leave this to the RTC for resolution after trial on the merits.[57]

WHEREFORE, the petition is hereby DENIED. The July 28, 1998 decision and September 23, 1998 resolution of the Court of Appeals in CA-G.R. SP Nos. 48111 and 48145 are AFFIRMED. Petitioner's motion to cite Attys. Napoleon J. Poblador and Manuel Joseph R. Bretaña III in contempt of court is likewise DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos and concurred in by Associate Justices Conchita Carpio Morales (now Supreme Court Associate Justice) and Renato C. Dacudao (retired) of the Special Seventeenth Division of the Court of Appeals; rollo, pp. 147-153.

[3] Id., pp. 155-156.

[4] Penned by Judge Teofilo L. Guadiz, Jr.; id., pp. 495-499.

[5] Id., p. 500.

[6] Id., p. 37.

[7] Id., p. 791.

[8] Entitled "Authorizing the Establishment of Toll Facilities on Public Improvements, Creating a Board for the Regulation thereof and for Other Purposes." Section 3 (a) of PD 112 provides that TRB can "enter into contracts for the construction, operation and maintenance of toll facilities such as but not limited to national highways, roads, bridges and public thoroughfares."

[9] PEA was granted authority to reclaim lands and to operate and manage lands owned by the Republic of the Philippines including the construction and operation of highways, roads, utilities and buildings thereon and to impose or collect tolls or fees for their use. [id., p. 216, sections 4 and 5 (k) of PD 1084]

[10] Rollo, p. 374.

[11] Sec. 2.02 (1), TOA; id., p. 385.

[12] Id., p. 1186.

[13] *Id.*, p. 1126.

[14] *Id.*, pp. 148-149.

[15] On the ground that he was a regular user of the Coastal Road and understood the apprehension of petitioner; *id.*, pp. 75, 176 and 1172.

[16] *Id.*, p. 149.

[17] *Id.*

[18] *Id.*

[19] *Id.*, pp. 81-84.

[20] Entitled "Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public Utilities Operated by the Government."

[21] *Rollo*, p. 152.

[22] *Id.*, pp. 70-71.

[23] PD 605 (Banning the Issuance by Courts of Preliminary Injunctions in Cases Involving Concessions, Licenses, and other Permits Issued by Public Administrative Officials or Bodies for the Exploitation of Natural Resources) stated:

SECTION 1. No court of the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case involving or growing out of the issuance, approval or disapproval, revocation or suspension of, or any action whatsoever by the proper administrative official or body on concessions, licenses, permits, patents, or public grants of any kind in connection with the disposition, exploitation, utilization, exploration and/or development of the natural resources of the Philippines.

[24] It is noteworthy that according to *GV Diversified International, Incorporated v. Court of Appeals* (G.R. No. 159245, 31 August 2006, 500 SCRA 589, 596), RA 8975 (An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and For Other Purposes) effectively superseded PD 1818, citing *Bangus Fry Fisherfolk v. Lanzanas* (G.R. No. 131442, July 10, 2003, 405 SCRA 530, 537-538). RA 8975 was approved on November 7, 2000 and took effect on November 26, 2000. Thus, PD 1818 was the law in force at the time of the institution of this case.

[25] *Hernandez v. National Power Corporation*, G.R. No. 145328, 23 March 2006, 485 SCRA 166, 183.

[26] G.R. No. 108869, 6 May 1997, 272 SCRA 280.

[27] *Id.*, pp. 286-287, citing Letter of Instruction No. 1186, promulgated January 13, 1982, 83 VLD 79.

[28] *Rollo*, pp. 94-97.

[29] *Id.*, pp. 1141-1143.

[30] Sec. 5.04 (1), TOA; *id.*, pp. 393 and 1189.

[31] Sec. 5.12, TOA; *id.*, p. 396.

[32] *Id.*, pp. 151-152.

[33]Sec. 7.02, TOA; id., p. 402.

[34] CIVIL CODE, Art. 1159.

[35]Supra note 29.

[36] Supra note 24 at 176-177, citing *Zamora v. Caballero*, G.R. No. 147767, 14 January 2004, 419 SCRA 384, 392; *Malaga v. Penachos, Jr.*, G.R. No. 86695, 3 September 1992, 213 SCRA 516, 523-524; *G & S Transport Corporation v. Court of Appeals*, 432 Phil. 7, 22 (2002).

[37] *Philippine Ports Authority v. Court of Appeals*, 323 Phil. 260, 288 (1996), citing *Malaga v. Penachos, id.*, in turn citing *Datiles and Co. v. Sucaldito*, G.R. No. 42380, 22 June 1990, 186 SCRA 704.

[38]See *Malayan Integrated Industries, Corporation v. Court of Appeals*, G.R. No. 101469, 4 September 1992, 213 SCRA 640, 651.

[39] *G & S Transport Corp v. CA*, supra note 36, citations omitted.

[40]Id., p. 21, citing *Manuel v. Villena*, G.R. No. L-28218, 27 February 1971, 37 SCRA 745, 750.

[41] 439 Phil. 538 (2002).

[42]Id., p. 551.

[43] Petitioner argues:

- by failing to conduct a public hearing before imposing the toll fees, they violated Section 1, Article III or the "due process clause" of the Constitution;
- by keeping the TOA from the public, they violated Section 7, Article III of the Constitution which guarantees the right of people to information;
- the award of MCTEP to Renong Berhad (predecessor of UMPC) did not undergo the usual procedures under the RA 6975, as amended by RA 7718 (the Build-Operate-Transfer Law);
- instead of the TRB, the negotiations with Renong Berhad and evaluation of its proposal were done by a small group in the Department of Public Works and Highways;
- the TOA violated the terms of the toll operation certificate (TOC) granted by TRB to PEA;
- the TOA also violated Section 2, Article XII of the Constitution on the 25 year-restriction on agreements for the development and utilization of lands of the public domain;
- there was a violation of PD 1112 and the TOC because under the TOA, PEA effectively transferred, granted the usufruct of, and/or assigned its rights and privileges under its TOC;
- there's another violation of the TOC and the Public Service Law which prescribes a limit of 12% allowable maximum return on investment;
- they could not justify the claimed P1.1 billion cost of the upgrading of the Coastal Road and
- by making itself a party to the TOA, the TRB had abdicated its role as a regulatory body and denied relief to the users of the Coastal Road. (Rollo, pp. 99-123.)

[44] *Malaga v. Penachos, Jr.*, supra note 36, p. 526.

[45]Rollo, pp. 1447 and 1492.

[46] Id., pp. 61-63.

[47] Id., p. 1597.

[48] Indirect contempt under Section 3, of Rule 71 of the Rules of Court:

Section 3. Indirect contempts to be punished after charge and hearing. – After charge in writing has been filed, and an opportunity given to the accused to be heard by himself or counsel, a person guilty of any of the following acts may be punished for contempt:

(a)

Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b)

Disobedience of or resistance to lawful writ, process, order, judgment, or command of a court, or injunction granted by a court or judge, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c)

Any abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt under section 1 of this rule;

(d)

Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e)

Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f)

Failure to obey a subpoena duly served;

(g)

The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him. But nothing in this section shall be so construed as to prevent the court from issuing process to bring the accused party into court, or from holding him in custody pending such proceedings.

[49] Perea v. Almadro, A.C. No. 5246, 2 May 2006.

[50] Rollo, pp. 1170 and 1447.

[51] Id., p. 1599.

[52] United BF Homeowners v. Sandoval-Gutierrez, A.M. No. CA-99-30, 16 October 2000, 343 SCRA 162, 168-169, citing Maglasang v. People, 190 SCRA 306, 313 (1990) and In re Almacen, 31 SCRA 562 (1970).

[53] Ruiz v. Judge How, 459 Phil. 728, 739 (2003).

[54] Includes Cavite, Laguna, Batangas, Rizal and Quezon.

[55] Whereas clause, TOA, rollo, p. 375.

[56] See note 44 at 439.

[57] We note that none of the parties had informed the Court about the status of the main case in the RTC.

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