

FIRST DIVISION

[G.R. No. 220832, February 28, 2018]

BUREAU OF CUSTOMS (BOC), REPRESENTED BY COMMISSIONER ALBERTO D. LINA, AND DEPARTMENT OF BUDGET AND MANAGEMENT-PROCUREMENT SERVICE, (DBM-PS), REPRESENTED BY EXECUTIVE DIRECTOR JOSE TOMAS C. SYQUIA, PETITIONERS, V. HON. PAULINO Q. GALLEGOS, IN HIS CAPACITY AS PRESIDING JUDGE, REGIONAL TRIAL COURT, MANILA, BRANCH 47, AND THE PURPORTED JOINT VENTURE OF OMNIPRIME MARKETING, INC. AND INTRASOFT INTERNATIONAL, INC., REPRESENTED BY ANNABELLE A. MARGAROLI, RESPONDENTS.

R E S O L U T I O N

TIJAM, J.:

We resolve this petition for *certiorari*^[1] under Rule 65 of the Rules of Court, assailing the Omnibus Order^[2] dated August 24, 2015 of the Regional Trial Court (RTC) of the City of Manila, Branch 47, in Civil Case No. 15-134333.

Antecedent Facts

On December 20, 2006, the Association of Southeast Asian Nation (ASEAN) member-countries, including the Philippines, signed the Protocol to Establish and Implement the ASEAN Single Window (ASW Protocol),^[3] under which the member-countries agreed to develop and implement their National Single Windows (NSW) based on international standards and best practices as established in international agreements and conventions concerning trade facilitation and modernization of customs techniques and practices.

Phase One of the Philippines' NSW project (PNSW 1) started in 2009 and completed in October 2010. Thereafter, Phase Two of the PNSW with Enhanced Customs Processing System project (PNSW 2) was undertaken.^[4] The project was dubbed as Selection of System Integrator for Design, Implementation, Operation and Maintenance of Integrated Enhanced Customs Processing System and National Single Window for the Government of the Philippines: Component I: Design, Implementation, Operation and Maintenance of Enhanced Customs Processing System for the Bureau of Customs (BOC); and Component II: Development and Operationalization of PNSW 2 Project for the Government of the Philippines for the Bureau of Customs (Public Bidding No. 14-082). It is an information technology project which is aimed at integrating the existing Electronic to Mobile Customs System and the PNSW 1 into a single system that will serve all the existing functionalities under the BOC's current electronic or mobile transaction system. Its purpose is to achieve a fully electronic, paperless, man-contact-free processing of Customs transactions while allowing traders a single submission of data and

information, and for the BOC a single and synchronous processing of data and information and a single decision-making point for Customs release and clearance of cargo.^[5]

Utilizing the funds appropriated by Congress in the General Appropriations Act (GAA) for calendar year (CY) 2010 and for CY 2012, petitioner BOC, through its procuring entity,^[6] petitioner Department of Budget and Management-Procurement Service (DBM-PS), issued on October 15, 2014 a Request for Expression of Interest (RFEI),^[7] inviting prospective bidders (consultants) in the eligibility screening and to be shortlisted for the competitive bidding of the PNSW 2 project with a total approved budget for the contract of P650 Million.^[8] Among the bidders that submitted the eligibility documents were: (1) Joint Venture of Omniprime Marketing, Inc. and Intrasoftware International, Inc. (private respondent); and (2) E-Konek & ILS & FS JV, whose biggest shareholder is petitioner BOC Commissioner Alberto D. Lina (Commissioner Lina).^[9]

The announcement of the shortlist of eligible consultants and of the Highest Rated Bid (HRB) was delayed, due among others, to the interview of private respondent's Project Team Members, requested by former Deputy Commissioner Primo Aguas. The said interview, however, was neither required by law nor regulation.^[10]

After the evaluation and determination of shortlisted bidders, the DBM-PS Bids and Awards Committee (BAC) issued on April 13, 2015, a Notice of HRB^[11] and an Invitation to Negotiate^[12] to private respondent, as the highest bidder.

On April 17, 2015, private respondent's financial proposal and contract negotiation commenced.^[13]

On April 23, 2015, Commissioner Lina was appointed as BOC Commissioner.^[14] He wrote a Letter^[15] dated May 6, 2015 addressed to petitioner DBM-PS Executive Director Jose Tomas C. Syquia (Director Syquia). Commissioner Lina requested for the discontinuance of the procurement process of the PNSW 2 project, in line with Section 41(c)^[16] of Republic Act (R.A.) No. 9184,^[17] otherwise known as the Government Procurement Reform Act. This provision grants to the head of the procuring agency the right to reject bids for justifiable and reasonable grounds where the award of the contract will not redound to the benefit of the government.

Acting upon Commissioner Lina's letter, Director Syquia issued on May 7, 2015, a Notice of Cancellation,^[18] aborting the bidding process for PNSW 2 project.

Private respondent, through a Letter dated May 22, 2015, moved for a reconsideration^[19] of the Notice of Cancellation, but the same was denied in petitioner BOC's Resolution dated July 31, 2015.^[20]

This prompted the private respondent to file a Petition for *Certiorari and Mandamus*^[21] with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Prohibitory Injunction (WPPI) and Writ of Preliminary Mandatory Injunction (WPMI), before the RTC against the petitioners. The petition prayed that a judgment be rendered annulling the decision of Director Syquia embodied in his Notice of Cancellation, made pursuant to Commissioner Lina's May 6, 2015 Letter and commanding the petitioners to refrain from cancelling, and,

instead to continue the last remaining process of the competitive bidding for the PNSW 2 project, which is the signing of the contract and issuance of the Notice to Proceed. Pending such proceedings, the private respondent likewise prayed that the RTC restrain the petitioners from withholding or reducing the appropriation, or returning the appropriation for the project to the Bureau of Treasury, so as not to render ineffectual any judgment that may be issued by the RTC.

Ruling of the RTC

In its Order^[22] dated July 28, 2015, the RTC issued a TRO in favor of the private respondent.

Consequently, on August 24, 2015, the RTC issued the assailed Omnibus Order,^[23] granting private respondent's application for the issuance of an injunctive writ, the dispositive portion of which, reads:

WHEREFORE, premises considered, the Court rules:

- a. Denying [petitioners'] Motion to Dismiss;
- b. Granting [private respondent's] application for the issuance of a Writ of [P]reliminary [I]njunction and accordingly let an injunctive writ issue:
 1. Enjoining all the [petitioners] from implementing both the (a) 6 May 2015 Letter of [petitioner] Lina aborting the competitive bidding of the PNSW2 Project and the (b) 7 May 2015 Cancellation Notice of [petitioner] Syquia in the meantime that the case is heard upon its merit;
 2. Enjoining all the [petitioners] from initiating any other procurement, sourcing of funds and conducting any other procurement whether thru public bidding or negotiation to replace or upgrade the present customs system subject matter of this bid; and
 3. Ordering [petitioners] to continue with the remaining procurement process of signing the contract and to issue to [private respondent] the Notice to Proceed;
- c. Ordering the [private respondent] to post an Injunctive writ Bond to be immediately done in cash, following this Order in the amount of Five Hundred Thousand Pesos (P500,000.00) and be made answerable to any damage which [petitioners] may suffer by reason of issuing the Writ; and
- d. Ordering the [petitioners] to file their Comment on the Petition pursuant to Section 6, Rule 65 of the Revised Rules of Court.

SO ORDERED.^[24]

On August 26, 2015, the RTC issued the writ of preliminary injunction (WPI).^[25]

The BOC, represented by Commissioner Lina, and DBM-PS, represented by Director Syquia (collectively, the petitioners) dispensing with the filing of a motion for reconsideration or any form of redress in the court *a quo*, filed this instant petition.

Issue

The main issue for this Court's resolution is whether Judge Paulino Q. Gallegos (respondent Judge) gravely abused in his discretion when he issued the omnibus order and the injunctive writ.

Ruling of the Court

The petition fails.

Procedural Aspect

Certiorari under Rule 65 inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself.^[26] The plain and adequate remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision, which in this case, is the RTC's omnibus order. The purpose of the motion is to enable the court or agency to rectify its mistakes without the intervention of a higher court. To dispense with this requirement, there must be a concrete, compelling, and valid reason for the failure to comply with the requirement.^[27]

Here, petitioners maintain that since the petition raises purely questions of law, their failure to file a motion for reconsideration is not fatal. Except for this bare allegation, however, petitioners failed to show sufficient justification for dispensing with the requirement of a prior motion for reconsideration. Indeed, "petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not."^[28]

Likewise, the direct filing of this petition in this Court is in disregard of the doctrine of hierarchy of courts. The concurrence of jurisdiction among the Supreme Court, CA and the RTC to issue the writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction did not give petitioners the unrestricted freedom of choice of court forum.^[29] Stated differently, although this Court has concurrent jurisdiction with the CA and the RTC in issuing the writ of *certiorari*, direct resort is allowed only when there are special, extraordinary or compelling reasons that justify the same.^[30] The Court enforces the observance of the hierarchy of courts in order to free itself from unnecessary, frivolous and impertinent cases and thus afford time for it to deal with the more fundamental and more essential tasks that the Constitution has assigned to it.^[31] Absent any showing of any special, important or compelling reason to justify the direct filing of the petition will cause the dismissal of the recourse, as in this case.

Based on the foregoing, it is clear that this petition is procedurally infirm, and thus, dismissible.

Substantive Aspect

Even if petitioners' direct resort to this Court is allowed, the dismissal of their petition remains.

For *certiorari* to lie, it must be shown that the respondent Judge acted with grave abuse of discretion, or more specifically, that he exercised his power arbitrarily or despotically when he issued the omnibus order and the WPI, by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law.^[32] Petitioners, however, failed in this respect.

For one thing, the authority to issue writs of *certiorari*, prohibition, and *mandamus* involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law.^[33] Under Section 21^[34] of Batas Pambansa Bilang 129 (BP 129),^[35] otherwise known as The Judiciary Organization Act of 1980, the RTC had the original jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of its respective region.

Contrary to petitioners' insistence, R.A. No. 8975^[36] does not apply in this case because the procurement of PNSW 2 is not considered as an "infrastructure project" as defined under R.A. No. 8975. As aptly put by the RTC, thus:

Furthermore, an infrastructure project is also defined under the law as to include the construction improvement, rehabilitation, demolition, repair restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works, components of information technology projects, x x x. Thus, this does not include non-civil works components of consultancy service contracts an information technology project, like the project PNSW 2 Project and accordingly the prohibition under R[.]A[.] No. 8975 hardly applies to the instant case where the subject matter is limited to information technology consultancy services, as explicitly stated and described in the Bidding Documents, where the classification is consulting Services, the category is Information Technology and participants are called upon as consultants.

Indeed, in the case of DFA versus Falcon x x x, the Supreme Court ruled that the term infrastructure project was limited to only the civil works component of information technology projects and the non-civil works component of information technology projects would be treated as an acquisition of goods or consulting services.^[37]

Likewise, private respondent correctly pointed out that the nature of the procurement, subject of the competitive bidding, is one involving a "consulting service contract" for the PNSW 2 project of petitioner BOC, which is beyond the contemplation of R.A. No. 8975.^[38] The project includes design, implementation, operation, maintenance, and consulting services. In fact, even the RFEI issued by petitioner DBM-PS classified the project merely as "consulting services", indicating therein that the said project will be governed by R.A. No. 9184 and its Implementing Rules and Regulations (IRR).^[39]

For another thing, the petitioners failed to show that respondent Judge gravely abused his discretion when he issued the injunctive writ, pursuant to his omnibus order, which effectively enjoined the implementation of Director Syquia's May 7, 2015 Notice of Cancellation, which in turn was issued as a consequence of Commissioner Lina's May 6, 2015 Letter requesting for the cancellation of the