

FIRST DIVISION

[G.R. No. 181293, February 23, 2015]

ANA THERESIA "RISA" HONTIVEROS-BARAQUEL, DANIEL L. EDRALIN, VICTOR M. GONZALES, SR., JOSE APOLLO R. ADO, RENE D. SORIANO, ALLIANCE OF PROGRESSIVE LABOR, BUKLURAN NG MANGGAGAWANG PILIPINO, LAHING PILIPINO MULTI-PURPOSE TRANSPORT SERVICE COOPERATIVE, PNCC SKYWAY CORPORATION EMPLOYEES UNION (PSCEU), AND PNCC TRAFFIC MANAGEMENT & SECURITY DEPARTMENT WORKERS ORGANIZATION (PTMSDWO), PETITIONERS, VS. TOLL REGULATORY BOARD, THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS (DOTC), PNCC SKYWAY CORPORATION, PHILIPPINE NATIONAL CONSTRUCTION CORPORATION, SKYWAY O & M CORPORATION, AND CITRA METRO MANILA TOLLWAYS CORP., RESPONDENTS.

D E C I S I O N

SERENO, C.J.:

This is an original petition for certiorari and prohibition under Rule 65 of the Rules of Court, with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, seeking the annulment of the following:

1. The Amendment to the Supplemental Toll Operation Agreement executed on 18 July 2007 between the Republic of the Philippines, the Philippine National Construction Corporation, and Citra Metro Manila Tollways Corporation;
2. The Memorandum dated 20 July 2007 of the Secretary of Transportation and Communications, approving the Amendment to the Supplemental Toll Operation Agreement;
3. The Memorandum of Agreement executed on 21 December 2007 between the Philippine National Construction Corporation, PNCC Skyway Corporation, and Citra Metro Manila Tollways Corporation; and
4. The Toll Operation Certificate issued by the Toll Regulatory Board on 28 December 2007 in favor of Skyway O & M Corporation.

The annulment of the above is sought for being unconstitutional, contrary to law, and grossly disadvantageous to the government. Petitioners also seek to prohibit Skyway O & M Corporation from assuming operations and maintenance responsibilities over the Skyway toll facilities.

ANTECEDENT FACTS

The Toll Regulatory Board (TRB) was created on 31 March 1977 by Presidential Decree No. (P.D.) 1112^[1] in order to supervise and regulate, on behalf of the government, the collection of toll fees and the operation of toll facilities by the private sector.

On the same date, P.D. 1113^[2] was issued granting to the Construction and Development Corporation of the Philippines (now Philippine National Construction Corporation or PNCC) the right, privilege, and authority to construct, operate, and maintain toll facilities in the North and South Luzon Toll Expressways for a period of 30 years starting 1 May 1977.

TRB and PNCC later entered into a Toll Operation Agreement,^[3] which prescribed the operating conditions of the right granted to PNCC under P.D. 1113.

P.D. 1113 was amended by P.D. 1894,^[4] which granted PNCC the right, privilege, and authority to construct, maintain, and operate the North Luzon, South Luzon and Metro Manila Expressways, together with the toll facilities appurtenant thereto. The term of 30 years provided under P. D. 1113 starting from 1 May 1977 remained the same for the North and the South Luzon Expressways, while the franchise granted for the Metro Manila Expressway (MME) provided a term of 30 years commencing from the date of completion of the project.

On 22 September 1993, PNCC entered into an agreement^[5] with PT Citra Lamtoro Gung Persada (CITRA), a limited liability company organized and established under the laws of the Republic of Indonesia, whereby the latter committed to provide PNCC with a pre-feasibility study on the proposed MME project. The agreement was supplemented^[6] on 14 February 1994 with a related undertaking on the part of CITRA. CITRA was to provide a preliminary feasibility study on the Metro Manila Skyways (MMS) project, a system of elevated roadway networks passing through the heart of the Metropolitan Manila area. In order to accelerate the actual implementation of both the MME and the MMS projects, PNCC and CITRA entered into a second agreement.^[7] Through that agreement, CITRA committed to finance and undertake the preparation, updating, and revalidation of previous studies on the construction, operation, and maintenance of the projects.

As a result of the feasibility and related studies, PNCC and CITRA submitted, through the TRB, a Joint Investment Proposal (JIP) to the Republic of the Philippines.^[8] The JIP embodied the implementation schedule for the financing, design and construction of the MMS in three stages: the South Metro Manila Skyway, the North Metro Manila Skyway, and the Central Metro Manila Skyway.^[9]

The TRB reviewed, evaluated and approved the JIP, particularly as it related to Stage 1, Phases 1 and 2; and Stage 2, Phase 1 of the South Metro Manila Skyway.

On 30 August 1995, PNCC and CITRA entered into a Business and Joint Venture Agreement^[10] and created the Citra Metro Manila Tollways Corporation (CMMTC). CMMTC was a joint venture corporation organized under Philippine laws to serve as a channel through which CITRA shall participate in the construction and development of the project.

On 27 November 1995, the Republic of the Philippines – through the TRB – as Grantor, CMMTC as Investor, and PNCC as Operator executed a Supplemental Toll Operation Agreement (STOA)^[11] covering Stage 1, Phases 1 and 2; and Stage 2, Phase 1 of the South Metro Manila Skyway. Under the STOA, the design and construction of the project roads became the primary and exclusive privilege and responsibility of CMMTC. The operation and maintenance of the project roads became the primary and exclusive privilege and responsibility of the PNCC Skyway Corporation (PSC), a wholly owned subsidiary of PNCC, which undertook and performed the latter's obligations under the STOA.

CMMTC completed the design and construction of Stage 1 of the South Metro Manila Skyway, which was operated and maintained by PSC.^[12]

On 18 July 2007, the Republic of the Philippines, through the TRB, CMMTC, and PNCC executed the assailed Amendment to the Supplemental Toll Operation Agreement (ASTOA).^[13] The ASTOA incorporated the amendments, revisions, and modifications necessary to cover the design and construction of Stage 2 of the South Metro Manila Skyway. Also under the ASTOA, Skyway O & M Corporation (SOMCO) replaced PSC in performing the operations and maintenance of Stage 1 of the South Metro Manila Skyway.

Pursuant to the authority granted to him under Executive Order No. (E.O.) 497^[14] dated 24 January 2006, Department of Transportation and Communications (DOTC) Secretary Leandro Mendoza approved the ASTOA through the challenged Memorandum dated 20 July 2007.^[15]

On 21 December 2007, PNCC, PSC, and CMMTC entered into the assailed Memorandum of Agreement (MOA)^[16] providing for the successful and seamless assumption by SOMCO of the operations and maintenance of Stage 1 of the South Metro Manila Skyway. Under the MOA, PSC received the amount of ₱320 million which was used for the settlement of its liabilities arising from the consequent retrenchment or separation of its affected employees.

The TRB issued the challenged Toll Operation Certificate (TOC)^[17] to SOMCO on 28 December 2007, authorizing the latter to operate and maintain Stage 1 of the South Metro Manila Skyway effective 10:00 p.m. on 31 December 2007.

Meanwhile, on 28 December 2007, petitioner PNCC Traffic Management and Security Department Workers Organization (PTMSDWO) filed a Notice of Strike against PSC on the ground of unfair labor practice, specifically union busting.^[18] The Secretary of Labor and Employment^[19] assumed jurisdiction over the dispute in an Order dated 31 December 2007 and set the initial hearing of the case on 2 January 2008.^[20]

On 3 January 2008, petitioners PTMSDWO and PNCC Skyway Corporation Employees Union (PSCEU) filed before the Regional Trial Court of Parañaque City, Branch 258 (RTC), a complaint against respondents TRB, PNCC, PSC, CMMTC, and SOMCO. The complaint was for injunction and prohibition with a prayer for a writ of preliminary injunction and/or a temporary restraining order, and sought to prohibit the

implementation of the ASTOA and the MOA, as well as the assumption of the toll operations by SOMCO.^[21] Petitioners PSCEU and PTMSDWO also sought the subsequent nullification of the ASTOA and the MOA for being contrary to law and for being grossly disadvantageous to the government.^[22] They later filed an Amended Complaint^[23] dated 8 January 2008, additionally praying that PSC be allowed to continue the toll operations. With the exception of TRB, all defendants therein filed their Opposition.

On 23 January 2008, the RTC issued an Order^[24] denying the prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. According to the RTC, petitioners were seeking to enjoin a national government infrastructure project. Under Republic Act No. (R.A.) 8975,^[25] lower courts are prohibited from issuing a temporary restraining order or preliminary injunction against the government – or any person or entity acting under the government's direction – to restrain the execution, implementation, or operation of any such contract or project. Furthermore, the RTC ruled that it could no longer issue a temporary restraining order or preliminary injunction, considering that the act sought to be restrained had already been consummated.^[26] The ASTOA, the MOA, and the assumption of the toll operations by SOMCO took effect at 10:00 p.m. on 31 December 2007, while petitioners PSCEU and PTMSDWO sought to prohibit their implementation only on 3 January 2008.

In view of its denial of the ancillary prayer, the RTC required defendants to file their respective Answers to the Amended Complaint.^[27]

On 28 January 2008, petitioners PSCEU and PTMSDWO filed a Notice of Dismissal with Urgent Ex-Parte Motion for the Issuance of Order Confirming the Dismissal,^[28] considering that no Answers had yet been filed. On the basis thereof, the RTC dismissed the case without prejudice on 29 January 2008.^[29]

On 4 February 2008, petitioners filed the instant Petition^[30] before this Court. On 13 February 2008, we required respondents to comment on the same.^[31]

Meanwhile, defendants PNCC^[32] and PSC^[33] filed their respective Motions for Partial Reconsideration of the Order of the RTC dismissing the case without prejudice. Both argued that the RTC should have dismissed the case with prejudice. They pointed out that petitioners PSCEU and PTMSDWO had acted in bad faith by filing the complaint before the RTC, despite the pendency of a labor case over which the Secretary of Labor and Employment had assumed jurisdiction. Defendant CMMTC joined PNCC and PSC in moving for a partial reconsideration of the RTC Order.^[34]

The RTC denied the Motions for Partial Reconsideration in an Order dated 13 June 2008.^[35]

Before this Court, SOMCO,^[36] PSC,^[37] PNCC,^[38] CMMTC,^[39] and TRB^[40] filed their respective Comments on the Petition.

THE PARTIES' POSITIONS

Petitioners argue that the franchise for toll operations was exclusively vested by P.D. 1113 in PNCC, which exercised the powers under its franchise through PSC in accordance with the STOA. By agreeing to the arrangement whereby SOMCO would replace PSC in the toll operations and management, PNCC seriously breached the terms and conditions of its undertaking under the franchise and effectively abdicated its rights and privileges in favor of SOMCO.

Furthermore, the TOC granted to SOMCO was highly irregular and contrary to law, because 1) it did not indicate the conditions that shall be imposed on SOMCO as provided under P.D. 1112;^[41] 2) none of the requirements on public bidding, negotiations, or even publication was complied with before the issuance of the TOC to SOMCO; 3) applying the stricter "grandfather rule," SOMCO does not qualify as a facility operator as defined under R.A. 6957,^[42] as amended by R.A. 7718;^[43] and 4) there were no public notices and hearings conducted wherein all legitimate issues and concerns about the transfer of the toll operations would have been properly ventilated.

Petitioners also claim that the approval by the DOTC Secretary of the ASTOA could not take the place of the presidential approval required under P.D. 1113^[44] and P.D. 1894^[45] concerning the franchise granted to PNCC.

Finally, petitioners claim that the assumption of the toll operations by SOMCO was grossly disadvantageous to the government, because 1) for a measly capital investment of P2.5 million, SOMCO stands to earn P400 million in gross revenues based on official and historical records; 2) with its measly capital, SOMCO would not be able to cover the direct overhead for personal services in the amount of P226 million as borne out by Commission on Audit reports; 3) the net revenue from toll operations would go to private shareholders of SOMCO, whereas all earnings of PSC when it was still in charge of the toll operations went to PNCC – the mother company whose earnings, as an "acquired-asset corporation," formed part of the public treasury; 4) the new arrangement would result in the poor delivery of toll services by SOMCO, which had no proven track record; 5) PSC received only P320 million as settlement for the transfer of toll operations to SOMCO.

All respondents counter that petitioners do not have the requisite legal standing to file the petition. According to respondents, petitioner Hontiveros-Baraquel filed the instant petition as a legislator in her capacity as party-list representative of Akbayan. As such, she was only allowed to sue to question the validity of any official action when it infringed on her prerogative as a legislator.^[46] Presently, she has cited no such prerogative, power, or privilege that is adversely affected by the assailed acts.^[47]

While suing as citizens, the individual petitioners have not shown any personal or substantial interest in the case indicating that they sustained or will sustain direct injury as a result of the implementation of the assailed acts.^[48] The maintenance of the suit by petitioners as taxpayers has no merit either because the assailed acts do not involve the disbursement of public funds.^[49] Finally, the bringing of the suit by petitioners as people's organizations does not automatically confer legal standing, especially since petitioner-organizations do not even allege that they represent their