582 Phil. 197

SECOND DIVISION

[G.R. No. 166785, July 28, 2008]

OROPORT CARGOHANDLING SERVICES, INC., REPRESENTED BY ITS PRESIDENT FRANKLIN U. SIAO, PETITIONER, VS. PHIVIDEC INDUSTRIAL AUTHORITY, RESPONDENT.

D E C I S I O N

QUISUMBING, J.:

Can Phividec[1] Industrial Authority (PIA) temporarily operate as a seaport cargo-handler upon agreement with the Philippine Ports Authority (PPA)[2] *sans* a franchise or a license from Congress or PPA?

Petitioner Oroport Cargohandling Services, Inc. (Oroport) impugns in this petition for review on certiorari the Decision[3] dated January 5, 2005 of the Court of Appeals in CA-G.R. SP No. 84147 annulling the orders[4] of the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 39 which enjoined the cargo-handling operations of respondent PIA at the Mindanao Container Terminal (MCT).

Oroport is a cargo-handling contractor[5] at the Cagayan de Oro International Port (CDOIP) while PIA is a Phividec subsidiary created to uplift the socio-economic condition of war veterans, military retirees and their children by allowing them to participate in its development undertakings as employees, developers and business partners with the mission to establish, develop and professionally administer industrial areas, ports and utilities.[6]

In 2003, Oroport bid for the management and operation of MCT, a P3.24 billion government infrastructure project at Phividec Industrial Estate in Tagoloan, Misamis Oriental. MCT was funded by a loan contracted by the Philippine government with the Japan Bank for International Cooperation (JBIC).[7] It was later renamed Mindanao Container Terminal Sub-Port and placed under the jurisdiction of the Bureau of Customs as a sub-port entry.[8]

As no bidder won in the two public biddings, PIA took over MCT operations.

On April 19, 2004, Oroport sued PIA and Phividec in the RTC for injunction and damages. It accused PIA of illegally operating MCT without a license from PPA or a franchise from Congress. It also alleged unfair competition since PIA handled cargoes of the general public. It further invoked unlawful deprivation of property as it stands to incur investment losses with PIA's take over of MCT operations. It contended that PIA's operation of MCT will cause it damage and irreparable injury as PIA would eventually siphon the cargo traffic of CDOIP to MCT. It prayed that PIA be stopped from handling cargoes not owned or consigned to its industrial estate locators.[9]

During the hearings for its application for preliminary injunction, Oroport claimed that PIA's operation of MCT is highly adverse to the country since it does not have experience in seaport cargo-handling. It contended that since the core business of PIA and Phividec is the establishment and operation of industrial estates, their authority to build and operate ports should be construed merely as a complement of their primary function. Thus, the ports they built should accommodate only cargoes owned or consigned to its industrial estate locators or else it can build ports and handle cargoes anywhere, directly competing with PPA.

PIA and Phividec invoked Republic Act No. 8975[10] which prohibits lower courts from issuing temporary restraining orders or preliminary injunctions on government infrastructure projects especially where an injunction in this case would mean wasting P3.24 billion resulting in a loan default. They highlighted the fact that PIA's operation of MCT is endorsed by the government and by various groups.[11] They added that preventing PIA from operating MCT will aggravate the huge financial deficit of the national government and contribute to the collapse of the economy.

On April 27, 2004, the RTC enjoined PIA and Phividec from handling cargoes not owned or consigned to its industrial estate locators.[12] PIA sought to reverse the order and dismiss the complaint which Oroport opposed.

On May 11, 2004, the RTC issued the two orders, thus:

> **WHEREFORE,** in view of the foregoing and for lack of merit, the Motion for Reconsideration filed by defendants of the Order of this Court dated April 27, 2004 ... with Urgent Motion for the Dismissal of the instant complaint, is hereby **DENIED.**
>
> SO ORDERED.[13]
>
> **. . .**
>
> **WHEREFORE**, in view of the foregoing, the injunctive writ prayed for by plaintiff is hereby **GRANTED** for being meritorious. Accordingly, defendants PHILIPPINE VETERANS INVESTMENT DEVELOPMENT CORP. (PHIVIDEC) and PHIVIDEC INDUSTRIAL AUTHORITY (PIA), and any or all persons acting for and in its behalf, [are] hereby ordered to **CEASE** and **DESIST** from engaging in cargo handling operations of cargoes at the Mindanao Container Terminal which are not owned or consigned to locators inside the Phividec Industrial Estate, until further orders from this Court.
>
> To answer for whatever damages that defendants may sustain by reason of this preliminary injunction, if the Court should finally decide that plaintiff is not entitled thereto, plaintiff is hereby ordered to put up a bond of TWO MILLION (2,000,000.00) PESOS.
>
> SO ORDERED.[14]

The RTC ruled that Rep. Act No. 8975 is inapplicable as Oroport does not seek to restrain the operation of MCT but that it must be operated legally since PIA's right to

operate is limited to cargoes owned or consigned to its industrial estate locators. The RTC emphasized that before PIA could operate as a public utility, it should be properly authorized by PPA since cargo-handling is a regulated activity. In imposing low tariff rates and accepting third-party cargoes, PIA unlawfully deprived Oroport of its property.[15] The RTC explained that the act sought to be enjoined will cause Oroport prejudice and serious damage as the existing cargo-handling operations at the CDOIP will be adversely affected if PIA is allowed to operate MCT.[16]

On May 18, 2004, PIA sought to dismiss the complaint and filed a P30 million-counterclaim.[17] On May 28, 2004, PIA moved to lift and dissolve the preliminary injunction due to the alleged defective and invalid plaintiff's bond and insufficiency of the P2 million bond to cover for its projected damage.[18] Oroport opposed.[19] The RTC upheld the opposition.[20]

On June 1, 2004, PIA filed with the Court of Appeals a Petition for Certiorari and Prohibition[21] invoking Section 3[22] of Rep. Act No. 8975, arguing that the RTC had no jurisdiction to issue writs of preliminary injunction against operations of government infrastructure projects. Assuming it had, it issued the writ without hearing and Oroport was not entitled thereto. It prayed *ex parte* for a TRO.[23] Oroport countered that Rep. Act No. 8975 exempts urgent constitutional issues from the prohibition to issue injunctive relief.[24]

On January 5, 2005, the Court of Appeals annulled the subject orders, ruling that the RTC committed grave abuse of discretion in issuing them. Hence, this petition, raising two issues:

I.

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAD ERRED IN RULING THAT THE REGIONAL TRIAL COURT, BRANCH 39, HAD NO JURISDICTION TO ISSUE THE TWO (2) ORDERS OF MAY 11, 2004; AND

II.

> WHETHER OR NOT THE HONORABLE COURT OF APPEALS HAD ERRED IN GRANTING THE RELIEF IN FAVOR OF PIA DESPITE THE FACT THAT IT HAD NOT SHOWN ANY CLEAR RIGHT TO THE RELIEF PRAYED FOR.[25]

Simply, the issues are: (1) Did the Court of Appeals err in ruling that the RTC had no jurisdiction to issue the writ of preliminary injunction? and (2) Can PIA temporarily operate as a seaport cargo-handler upon agreement with PPA *sans* a franchise or a license?

Oroport contends that PIA's operation of MCT is illegal as it has no license or franchise to operate as a public utility. It also constitutes unfair competition because PIA offered lower tariff rates than those recommended at the failed public biddings, prejudicing the loan agreement with JBIC to the disadvantage of the taxpayers. PIA likewise engaged a third-party in hiring stevedores, which is prohibited under PPA rules and regulations. Oroport also argues that PIA's operation of MCT constitutes unlawful deprivation of property due to potential investment losses in modernizing CDOIP as required by its two-year probationary contract with PPA. It contends that

the appellate court erred in reversing the RTC's finding of fact which is a mere error of judgment, not an error of jurisdiction, and which is reviewable by ordinary appeal and not by certiorari as it is not necessarily equivalent to grave abuse of discretion. Oroport stresses that the appellate court did not categorically rule that the RTC acted without or in excess of jurisdiction or with grave abuse of discretion.

PIA counters that it does not need a license from PPA to be a port operator or cargo-handler due to their Memoranda of Agreement (MOA) dated October 20, 1980 and October 16, 1995, which provide as follows:

> x x x x
>
> 5. CARGO-HANDLING SERVICES. - All cargo handling services on and off vessel shall be under the control, regulation and supervision of the PIA as well as rates and charges in connection therewith using as basis the PPA approved rates in Macabalan Wharf, Cagayan de Oro City or in private ports as the case may be but in no case shall said charges be higher than the rates prescribed by PPA. (MOA dated October 20, 1980).
>
> x x x x
>
> 4. CARGO-HANDLING SERVICES. - All cargo handling services, on and off vessel shall be under the control, regulation and supervision of the PIA as well as the rates and charges in connection therewith using as basis the rates prescribed by PPA. ([Amended] MOA dated October 16, 1995. ...) [26]

It claims that it operated MCT after the failed public biddings since the loan agreement with JBIC specified non-operation of MCT as a cause for default that will render the entire loan due and demandable. PIA argues that the RTC had no jurisdiction to issue a writ of preliminary injunction against the operation of MCT considering that such power and authority resides exclusively with this Court. Hence, the act of the RTC must be corrected by certiorari considering that it is an error of jurisdiction, not a mere error of judgment. It also argues that the MOA and its amendment embody PPA's concurrence with the exercise of PIA's power and authority to operate ports inside its estate that would cater to any client. PIA swears that its operation of MCT is only temporary to prevent being declared in default by JBIC.[27]

After painstakingly weighing the pros and cons presented in the records and the parties' memoranda, we deny the petition.

First. A preliminary injunction is an order granted at any stage of an action prior to the judgment or final order, requiring a party, court, agency or person to refrain from a particular act or acts.[28] A preservative remedy, its issuance lies upon the existence of a claimed emergency or extraordinary situation which should be avoided; otherwise, the outcome of litigation would be useless as far as the party applying for the writ is concerned. There must be a clear and material right to be protected and that the facts against which the injunction is to be directed violate said right.

In annulling the subject orders, the Court of Appeals explained that while Section 3

of Rep. Act No. 8975 exempts urgent constitutional issues from the prohibition to issue injunctive relief, it does not follow that a claim of unlawful deprivation of property involves such an issue in the same manner that a robbery victim unlawfully deprived of property cannot claim that his case involves a constitutional issue. It reasoned that Rep. Act No. 8975 is clear that it is not within the RTC's jurisdiction to issue an injunctive writ against the operation of a government infrastructure project. Since Oroport failed to specify what property was robbed of it, the appellate court ruled that PIA does not need a license from PPA to operate because the MOA[29] and its amendment granted PIA exclusive control and supervision of MCT on all cargo-handling services, including the discretion to impose rates and charges not higher than those PPA-prescribed.

Rep. Act No. 8975 reserves the power to issue injunctive writs on government infrastructure projects exclusively with this Court and the RTC cannot issue an injunctive writ to stop the cargo-handling operations at MCT. The issues presented by Oroport can hardly be considered constitutional, much more constitutional issues of extreme urgency. Hence, the appellate court did not err in annulling the writ of preliminary injunction and in ruling that the RTC had no jurisdiction to enjoin the operation of this multi-billion government infrastructure project.

Second. PPA was created for the purpose of, among others, promoting the growth of regional port bodies. In furtherance of this objective, PPA is empowered, after consultation with relevant government agencies, to make port regulations particularly to make rules or regulation for the planning, development, construction, maintenance, control, supervision and management of any port or port district in the country. With this mandate, the decision to bid out cargo-handling services is within the province and discretion of PPA which necessarily required prior study and evaluation. This task is best left to the judgment of PPA and cannot be set aside absent grave abuse of discretion on its part.[30] As long as the standards are set in determining the contractor and such standards are reasonable and related to the purpose for which they are used, courts should not inquire into the wisdom of PPA's choice.[31] In *Philippine Ports Authority v. Court of Appeals*[32] where PPA hired rival contractors to operate in a major port, we held:

> Entering into a contract for the operation of a floating grains terminal, notwithstanding the existence of other stevedoring contracts pertaining to the South Harbor, is undoubtedly an exercise of discretion on the part of the PPA. The exercise of such discretion is a policy decision that necessitates such procedures as prior inquiry, investigation, comparison, evaluation and deliberation. No other persons or agencies are in a better position to gauge the need for the floating grains terminal than the PPA; certainly, not the courts.[33]

Since PPA has given PIA the right to manage and operate MCT, we cannot simply abrogate it.

PIA properly took over MCT operations *sans* a franchise or license as it was necessary, temporary and beneficial to the public. We have ruled that franchises from Congress are not required before each and every public utility may operate because the law has granted certain administrative agencies the power to grant licenses for or to authorize the operation of certain public utilities. Article XII,