

## THIRD DIVISION

[ G.R. No. 174136, December 23, 2008 ]

**PHILIPPINE PORTS AUTHORITY, REPRESENTED BY OSCAR SEVILLA, GENERAL MANAGER, BENJAMIN CECILIO, ASSISTANT GENERAL MANAGER, AND SISALI ARAP, PORT MANAGER, PETITIONERS, VS. NASIPIT INTEGRATED ARRASTRE AND STEVEDORING SERVICES, INC., REPRESENTED BY RAMON CALO, RESPONDENT.**

### DECISION

**REYES, R.T., J.:**

NO man is above the law and no man is below it; nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked as a favor.<sup>[1]</sup> **Walang taong nasa ibabaw o nasa ilalim ng batas; hindi hinihiling ang pahintulot ninuman upang sundin ito. Ang pagsunod sa batas ay hinihingi bilang isang karapatan, hindi isang pakiusap.**

This assertion finds relevance in this petition for review on *certiorari* of the Decision<sup>[2]</sup> of the Court of Appeals (CA), which nullified and set aside the Resolution<sup>[3]</sup> of the Regional Trial Court (RTC), dissolving the writ of preliminary injunction<sup>[4]</sup> it earlier issued in favor of petitioner Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI) against respondent Philippine Ports Authority (PPA).

### The Facts

Petitioner NIASSI is a domestic corporation duly organized and existing under Philippine laws with office address at Talisay, Nasipit, Agusan del Norte.<sup>[5]</sup> It has been operating in the stevedoring business for at least 15 years.<sup>[6]</sup>

Respondent PPA is a government agency charged with the management and control of all Philippine ports.<sup>[7]</sup> It is primarily tasked to carry out an integrated program for the planning, development, financing, and operation of ports throughout the country.<sup>[8]</sup>

In November 2000, the PPA, through its Pre-Qualification, Bids, and Awards Committee (PBAC) accepted bids for a ten-year contract for cargo handling services at the Port of Nasipit.<sup>[9]</sup> Per PBAC Resolution No. 005-2000, NIASSI was declared as the winning bidder. A Notice of Award<sup>[10]</sup> of the cargo handling contract was sent by fax to NIASSI. It expressly stated that: (1) A ten-year cargo handling contract is awarded to NIASSI in accordance with the terms and proposals contained in its bid;

(2) NIASSI must enter into and execute the formal contract with PPA after its compliance to the documentary requirements.<sup>[11]</sup>

The contract, however, was never executed.<sup>[12]</sup> Instead, PPA issued several hold-over permits to enable NIASSI to legally operate its cargo handling services at the Nasipit port.<sup>[13]</sup> The last of the hold-over permits was issued on October 13, 2004, which was set to expire on April 13, 2004, or six months after its issuance.<sup>[14]</sup> Yet, barely two months after, PPA revoked the hold-over authority entrusted to NIASSI.<sup>[15]</sup> Through a letter,<sup>[16]</sup> PPA informed the stevedoring company that it would take over the management and operations of the cargo handling services at the port of Nasipit starting December 10, 2006.<sup>[17]</sup>

Upon takeover, the PPA, through its Port Services-Special Take-over Unit, directly undertook operations at the Nasipit Port.<sup>[18]</sup> However, this composite group continued to utilize NIASSI's manpower and equipment.<sup>[19]</sup>

At the onset of the PPA takeover, NIASSI filed a petition for injunction with prayer for writ of preliminary injunction and/or temporary restraining order against PPA.<sup>[20]</sup> It later amended its petition to mandamus with prayer for the writ of preliminary mandatory injunction and/or temporary restraining order.<sup>[21]</sup> The amended petition sought to compel PPA to execute or cause the final execution of the cargo handling contract with NIASSI.<sup>[22]</sup> It likewise prayed for the return of the management and operations of the cargo handling services at the Nasipit port to NIASSI.<sup>[23]</sup>

### **RTC and CA Dispositions**

On March 18, 2005, the RTC issued a resolution granting the petition, the decretal portion of which reads:

WHEREFORE, premises considered, the prayer of a writ of preliminary mandatory injunction is granted.

Let a Writ of Preliminary Injunction be issued against respondent PPA, its agents, and commanding respondents to restore, return the management and operations of arrastre stevedoring services of the Port of Nasipit to Nasipit Integrated Arrastre and Stevedoring Services, Inc. (NIASSI), and to refrain and desist from further implementing the takeover of the management and operations of the stevedoring and arrastre services of the Port.

The petitioner is hereby ordered to execute a bond in the amount of One Million Pesos (P1,000,000.00) to answer and pay such damages in favor of the respondent PPA by reason of the injunction if the court will really decide that the applicant is not after all entitled thereto.

Upon approval of the requisite bond, a writ of preliminary injunction be issued. The Deputy Sheriff assigned to this Court is hereby ordered to immediately serve this order upon all parties, particularly the respondents, and their counsels, for their compliance.

SO ORDERED.<sup>[24]</sup>

The RTC recognized the need to protect NIASI's right to continued cargo handling operations. It ratiocinated:

It is undeniable that **petitioner spent a considerable capital outlay, in the form of equipment, machineries and appliances in the establishment of its port operation.** Moreover, it has also supplied the necessary manpower to wheel its operation.

When the PPA took an active part in the management, control and supervision of the port operations, **it practically utilized all the available sources supplied by the petitioner.**

What actually happened was that PPA made only adjustment/correction in the port operation to improve the delivery of basic services. No additional capital outlay was spent.<sup>[25]</sup> (Emphasis supplied)

The RTC held that the continued takeover of PPA would work injustice and cause irreparable damage to NIASI.<sup>[26]</sup> To serve the better ends of justice, the court declared that the state of affairs be maintained prior to the takeover until the main action is resolved.<sup>[27]</sup>

NIASI posted the required and duly approved surety bond.<sup>[28]</sup> Accordingly, a writ of preliminary mandatory injunction was issued against PPA.<sup>[29]</sup> PPA, in turn, immediately moved for a reconsideration of the resolution granting the prayer for injunctive relief.<sup>[30]</sup> It likewise filed a supplemental motion alleging that the bond filed was not between NIASI and the surety company as mandated by the RTC, but with Ramon Calo as principal.<sup>[31]</sup> PPA thus prayed for the dissolution or quashal of the writ.<sup>[32]</sup> It also filed a manifestation stating its willingness to post a counter bond in connection with its motion for reconsideration.

The RTC set the hearing on the manifestation and omnibus motion for reconsideration on April 1, 2005 at 2:30 p.m. However, the hearing was subsequently cancelled and moved to March 31, 2005. The confusion on hearing dates only became worse when the court issued an order on April 1, 2005, which reads:

Appearances: Atty. James T. Reserva and Atty. Jorge T. Esparagoza, for the petitioner, are absent. Atty. Francisqui O. Mancile for the respondents.

The setting today is for the hearing on the Manifestation and Omnibus Motion for Reconsideration filed by the respondents in this case. In their motion, respondents originally asked that this case be set for resolution and consideration on April 6. However, the court noted that since this case involves public interest, it has set this case to be heard today for consideration as to resolve the motion. The records also disclosed that as early as March 10, 2005, the court has already ordered the petitioner to file a comment or reply to the motion to dismiss as well as on the

affirmative defenses. The petitioner has filed the necessary reply. However, the court would like to receive evidence on the new allegation on the motion for reconsideration which consist of certain facts that were not taken during the summary hearing for the issuance of preliminary injunction.

Set this case anew for consideration of the said motion on April 6, 2005 at 2:30 o'clock in the morning.

SO ORDERED.<sup>[33]</sup>

Surprisingly, on April 11, 2005, the RTC issued the assailed resolution which, *inter alia*, dissolved the writ of preliminary injunction it earlier granted NIASSI. The dispositive portion reads:

WHEREFORE, premises considered, the motion for reconsideration is **GRANTED**.

The Writ of Preliminary Injunction dated 28 March 2005 **is hereby DISSOLVED**.

The bond is declared cancelled without force and effect.

The petitioner, its agents and any or all persons acting under its authority is hereby ordered to peacefully surrender, return the management, operation and control of the arrastre and stevedoring operation of the Port of Nasipit to PPA, and to refrain and desist from disturbing the same.

The Deputy Sheriff assigned to this Court or in his absence the Deputy Sheriff assigned at the Office of the Provincial and City Sheriff is ordered to immediately serve and enforce the order upon all the parties particularly the petitioner and respondents and their counsels for their information and strict compliance.

SO ORDERED.<sup>[34]</sup> (Underscoring supplied)

In dissolving the writ, the trial court held that the State has the power to revoke the temporary permits issued to arrastre and stevedoring operators whenever there is a need to promote the public interest and the welfare of the stevedoring industry.<sup>[35]</sup> Whatever right a private operator may have acquired on the basis of the temporary permit issued to it shall yield to the State's valid exercise of police power.<sup>[36]</sup>

NIASSI filed a petition for *certiorari* with the CA under Rule 65 of the Revised Rules of Court.<sup>[37]</sup> It alleged that the RTC gravely abused its discretion when it dissolved the writ of preliminary injunction it earlier issued and did so without the benefit of a hearing.<sup>[38]</sup> It also pointed out that the second resolution contained orders that were immediately executory which was contrary to law and prejudicial to its interests.<sup>[39]</sup>

The PPA, through the Office of the Solicitor General (OSG), prayed for the dismissal of the petition on the ground that NIASSI failed to file the necessary and

appropriate remedy of a motion for reconsideration.<sup>[40]</sup> The OSG contended that a petition for *certiorari* can only be resorted to if there is no appeal or there is no plain, speedy, and adequate remedy available. The OSG likewise contended that the RTC correctly reversed itself in the assailed resolution since NIASI was not entitled to the injunctive relief.<sup>[41]</sup> NIASI did not have a cargo handling contract with the PPA.<sup>[42]</sup> Instead what it had was a hold-over authority or a mere privilege which can be withdrawn at any time when the public welfare demands it.<sup>[43]</sup>

On August 8, 2006, the CA decided in favor of NIASI, disposing as follows:

WHEREFORE, finding merit in the petition for *certiorari*, the same is GRANTED. Accordingly, the assailed Order dated 11 April 2005 is hereby NULLIFIED and SET ASIDE for having been issued with grave abuse of discretion amounting to lack or in excess of jurisdiction. Consequently, the Order dated 18 March 2005 granting the Writ of Preliminary Mandatory Injunction is hereby REINSTATED.

SO ORDERED.<sup>[44]</sup>

The CA sustained NIASI's argument that the motion for reconsideration filed by PPA was a mere rehash of the same grounds contained in its opposition to NIASI's application for preliminary injunction. As a pro-forma motion, it should not have been entertained.

More significantly, the appellate court held that the RTC failed to conduct a hearing to enable it to determine whether the continuance of the writ of injunction might cause irreparable damage to PPA.<sup>[45]</sup>

Finally, the CA held that the non-filing of a motion for reconsideration by NIASI is justified. The need for relief was extremely urgent and a motion for reconsideration was not a plain and adequate remedy under the circumstances of the case as the court *a quo* seemed to have acted with precipitate haste in granting respondent's motion for reconsideration.<sup>[46]</sup> Under the circumstances, the motion for reconsideration would be useless since the assailed resolution was immediately executory. Furthermore, NIASI was denied due process and there is apparent extreme urgency for relief. Hence, the filing of a motion for reconsideration would be an exercise in futility.<sup>[47]</sup>

### **Issues**

Left with no other recourse, PPA appeals to this Court and ascribes to the CA the following errors:

#### **I**

THE HONORABLE COURT OF APPEALS ERRED IN DECIDING A QUESTION OF SUBSTANCE WHICH IS NOT IN ACCORD WITH LAW AND THE PREVAILING JURISPRUDENCE.

#### **II**