

FIRST DIVISION

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

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

D E C I S I O N

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.**

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(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]. • [PEA] shall, in carrying out the purposes for which it is created, have the following powers and functions:

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- 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.