

SIXTEENTH DIVISION

[CA-G.R. SP NO. 126800, November 27, 2014]

**OCCIDENTAL MINDORO ELECTRIC COOPERATIVE, INC. (OMECO),
AS REPRESENTED BY TIS GENERAL MANAGER, ENGR. ALFRED A.
DANTIS, PETITIONER, VS. THE HONORABLE EXECUTIVE JUDGE
JOSE S. JACINTO, JR., BRANCH 45, REGIONAL TRIAL COURT,
SAN JOSE, OCCIDENTAL MINDORO, AND ISLAND POWER
CORPORATION (IPC), REPRESENTED BY HON. MAYOR JOSE T.
VILLAROSA, RESPONDENTS.**

DECISION

ZALAMEDA, R.V., J.:

This is a Petition for Certiorari^[1] under Rule 65 of the Rules of Court assailing on the ground of grave abuse of discretion the Order^[2] dated 27 June 2012 and Order^[3] dated 12 July 2012, both issued by the public respondent, Hon. Jose S. Jacinto, Jr.,^[4] in his capacity as Presiding Judge, in a case for Injunction/Prohibition with Prayer for the Issuance of Writ of Preliminary Injunction and Temporary Restraining Order,^[5] docketed as SP. Civil Action No. R-1723 and entitled "Island Power Corporation (IPC), represented by its President, Jose T. Villarosa, Petitioner v. Occidental Mindoro Electric Cooperative, Inc. (OMECO), Respondent."

The facts are as follows —

On 10 October 2011, petitioner Occidental Mindoro Electric Cooperative, Inc.^[6] filed with the Regional Trial Court of San Jose, Occidental Mindoro a Complaint^[7] for Rescission and Resolution of Contract and Damages against private respondent Island Power Corporation^[8] involving the parties' agreement denominated as Energy Conversion Agreement for Occidental Mindoro Power Station^[9] Allegedly, petitioner unilaterally rescinded the Agreement, which is bound to lapse in 2018, because of the serious breach of the terms and conditions therein by the private respondent, including its failure to supply power and energy to the petitioner and which constrained petitioner to purchase power or energy from the National Power Corporation at a higher price.

Petitioner prayed, *inter alia*, to be provisionally allowed to conduct a competitive selection process of a new power provider, in accordance with Department of Energy Circular Number DC-20040—01-001 and to accept offers for supply of electricity from any interested power producer, in the event that the National Power Corporation can no longer do so.

Without awaiting the resolution of such prayer, however, the petitioner caused the publication in the Philippine Daily Inquirer of an "Invitation For Expression of

Interest, To Pre-qualify and To Bid"^[10] and the posting of said invitation in its own website.

On the other hand, private respondent, seeking to enjoin petitioner from holding such activity, countered by filing with the same court a Petition^[11] for Injunction and Prohibition with a prayer for the Issuance of a Writ of Preliminary Injunction and Temporary Restraining Order, arguing that said activity will be in gross violation of the parties' Agreement, to cause private respondent irreparable injury, if not restrained or prohibited.

A day after, the public respondent issued a Temporary Restraining Order (TRO) in favor of private respondent, elucidating that petitioner "has no factual or legal basis to simultaneously undertake the binding offer while asking for judicial relief for rescission or cancellation of the subject ECA."^[12]

In the ensuing events, the public respondent issued the first assailed Order, granting a Writ of Preliminary Injunction in favor of private respondent. The dispositive portion of said Order reads —

"X x x

WHEREFORE, foregoing premises considered, this Court hereby **GRANTS** the prayer for the issuance of a Writ of Preliminary Injunction and **ISSUES** the said Writ in favor of the petitioner (IPC) and against the respondent (OMECO). ORDERING the latter to **REFRAIN** from proceeding with the 'Invitation for Expression of Interest to Pre-Qualify and To Bid' pending final resolution of this case or until otherwise ordered by the Court.

The Branch Court Sheriff is **DIRECTED** to effectively execute/implement the said writ upon posting of a bond by the petitioner (IPC) in the amount of TWO HUNDRED FIFTY THOUSAND (Php 250,000.00) PESOS which shall answer for any kind of damages that may be suffered by the respondent (OMEO) if and when found later on that the petitioner (IPC) is not entitled thereto to the said Writ.

Let copy of this **ORDER** be furnished the contending parties and their counsels for their respective information, guidance and compliance.

SO ORDERED.

X x x"^[13]

As petitioner's Motion for Reconsideration^[14] of said Order proved futile, petitioner is now before Us through the instant Petition, anchored on this sole issue, viz. —

WHETHER OR NOT THE PUBLIC RESPONDENT, THE HONORABLE EXECUTIVE JUDGE JOSE S. JACINTO, JR. PRESIDING JUDGE OF BRANCH 45 OF THE REGIONAL TRIAL COURT AT SAN JOSE, OCCIDENTAL

MINDORO COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, BY GRANTING A WRIT OF PRELIMINARY INJUNCTION WHICH RESTRAINED THE PETITIONER FROM CONDUCTING ITS CSP.^[15]

Generally, "[t]he grant or denial of a writ of preliminary injunction in a pending case rests on the sound discretion of the court taking cognizance of the case, since the assessment and evaluation of evidence towards that end involves findings of fact left to the said court for its conclusive determination. Hence, the exercise of judicial discretion by a court in injunctive matters must not be interfered with, except when there is grave abuse of discretion."^[16] "Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power in an arbitrary or despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. The burden is thus on petitioner to show in his application that there is meritorious ground for the issuance of a TRO in his favor."^[17]

That being said, "every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. *It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.*"^[18] In the absence of a clear legal right, the issuance of the writ constitutes grave abuse of discretion.^[19]

After a meticulous review of the facts on hand, We are convinced that petitioner was able to successfully discharge its burden of proving grave abuse of discretion on the part of the public respondent in issuing the injunctive writs and petitioner is thus entitled to a writ of certiorari, as prayed for.

Under Section 5, Rule 58 of the 1997 Rules of Civil Procedure, a temporary restraining order may be issued only if it appears from the facts shown by affidavits or by the verified application that great or irreparable injury would result to the applicant before the writ of preliminary injunction could be heard. In addition, Section 4(a) of Rule 58 of the Rules of Court is clear regarding the procedure to be followed in the issuance of writs of preliminary injunction, *i.e.*, a preliminary injunction or temporary restraining order may be granted only when the application in the action or proceeding is verified, and shows facts entitling the applicant to the relief demanded.^[20]

In a line of cases, this Court has emphasized that the "xxx sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* until the merits of the case can be heard. It is usually granted when it is made to appear that there is a substantial controversy between the parties; one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy before a full hearing can be had on the merits of the case."^[21]

This injunction case, to recall, is an offshoot of the pending Complaint for Rescission of the Agreement for power supply between the parties. Since the Agreement