

Republic of the Philippines  
**SUPREME COURT**  
Manila

EN BANC

**G.R. No. 85285 July 28, 1989**

**DANVILLE MARITIME, INC.**, petitioner,  
vs.  
**COMMISSION ON AUDIT**, respondent.

**G.R. No. 87150 July 28, 1989**

**COMMISSION ON AUDIT**, petitioner,  
vs.  
**REGIONAL TRIAL COURT, NATIONAL CAPITAL JUDICIAL REGION, Branch 140, Makati, Metro Manila, presided by HONORABLE JUDGE LETICIA P. MORALES, and DANVILLE MARITIME, INC.**, respondents.

RESOLUTION

**GANCAYCO, J.:**

In the petition for review in G.R. No. 85285, petitioner seeks to set aside the letter-directive of respondent Commission on Audit (COA for brevity) disapproving the result of the public bidding held by the Philippine National Oil Company (PNOC for brevity) of the sale of its tanker-vessel "T/T Andres Bonifacio" on the ground that only one bidder submitted a bid and to direct COA to approve the said sale.

In the early part of 1988, the PNOC, through its Board of Directors, passed a resolution authorizing the sale by public bidding of its fourteen-year old turbine tanker named "T/T Andres Bonifacio" due to old age and the high cost of maintenance. Accordingly, a Disposal Committee was created to undertake the auction sale subject to existing rules and regulations of the COA. Under the "Amended Terms and Conditions of the Bidding,"<sup>1</sup> its floor price was pegged at US\$14 million with sealed bids to be dropped at the designated bid box not later than the scheduled bidding date on September 1, 1988 together with the bid deposit at 10% of the floor price.

Notice of the bidding was advertised in newspapers of general circulation, here and abroad, for 3 consecutive days. Sixty-five foreign embassies were also formally notified.

The bidding did not take place as originally scheduled and instead it was held on September 15, 1988 with representatives of various local and international companies in attendance. Petitioner Danville Maritime, Inc., a Liberian corporation, was the sole bidder with a bid of US\$14,158,888.88. The Disposal Committee declared the bid of petitioner to be the winning bid and directed it to transmit to the PNOC 10% of their bid which they immediately complied with.

On September 17, 1988, the PNOC and petitioner executed a "Memorandum of Agreement" for the sale of the "T/T Andres Bonifacio" which provides among others that:

1. The sale of the Vessel is subject to the Seller obtaining all clean Philippine Government's approvals and/or clearances required under existing laws, rules and regulations including such approvals from the Office of the President of the Philippines, the Commission on Audit (COA), The Board of Directors of PNOC, the Maritime Industry Authority (MARINA), the Philippine Coast Guard (PCG), The Central Bank of the Philippines (CB), (Export Licence), and any Philippine documentation necessary, within thirty (30) calendar days from the date of this Agreement. In the event of the approvals from either of the government agencies mentioned above being unobtainable within the state period, or such request for approval is denied, then this Agreement shall be null and void and the Seller is not liable for any damages whatsoever. <sup>2</sup>

On September 20, 1988, the COA thru its State Auditor IV Tobias P. Lozada issued a memorandum to the Chairman of the Disposal Committee advising the latter to wit 1) that the proposed contract must first be submitted to COA for review before it is signed; 2) that the public bidding conducted suffers from the deficiency of lack of competition as there was only one bidder and; 3) that the alternative mode of award, i.e., negotiation with the lone bidder may not be resorted to as there has been less than two public biddings held. <sup>3</sup>

In a letter of September 28, 1988, the PNOC thru its President Manuel Estrella requested for the formal approval of the COA of the sale of the subject vessel in favor of petitioner. <sup>4</sup>

On October 6, 1988, the PNOC received a telex from Fearnly Finans, a Norwegian company, offering to buy the vessel on negotiated sale for a price of at least US\$1 million higher than the bid given on September 15, 1988 by petitioner. <sup>5</sup> This offer was rejected by the PNOC in a telex of the following day. <sup>6</sup>

On October 12, 1988, the PNOC received the now questioned letter- directive of the COA dated October 10, 1988 denying the request of PNOC for approval of the proposed sale to the petitioner which reads as follows:

October 10, 1988

President Manuel A. Estrella

Philippine National Oil Company

Makati, Metro Manila

Dear President Estrella:

This refers to your letter dated September 28, 1988 requesting the approval of this Commission of the sale of the vessel 'Andres Bonifacio' in favor of Danville Maritime Ltd. of Liberia.

The only issue to be resolved is whether a single bid, which satisfies the minimum price requirement, may be accepted without undertaking a second bid solicitation as required in COA Circular No. 86-264 as follows:

- b. If the first bidding fails, readvertise and conduct a second bidding.
- c. If the second bidding fails, a negotiated sale may be resorted to subject to the approval of the Commission on Audit.' (Sec. 4.1.4, COA Circular No. 86-264).

#### *Bidding Failure*

The aforesaid COA Circular No. 86-264, which is entitled 'General Guidelines on the divestment of assets of government-owned and/ or controlled corporations, and their subsidiaries,' does not provide what constitute a failure in public bidding. However, the 1988 Amendments to the Implementing Rules and Regulations to P.D. No. 1594 (Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts) provides, in so far as pertinent, as follows:

#### IB 2-3 EVALUATION OF BIDS

x x x

At the time of opening of bids, there shall be at least two (2) competing bidders. In case there is only one bidder, the bid shall be returned unopened and the project shall be advertised anew for bidding. Should after rebidding, there be still only one bidder, the project, may be undertaken by administration or thru negotiated contract giving preference to the lone bidder.

While P.D. No. 1594 pertains only to infrastructure service contracts, its provisions governing the evaluation of bids partake of a National Government policy in the matter of public biddings, and hence are equally applicable to those conducted for assets disposition.

#### *Another Interested Buyer*

Only last week, I received a telex from Per Olav Karlsen, Managing Director, Fearnley Finans (Prosjekt), manifesting interest in buying the vessel T/T Andres

Bonifacio for a guaranteed price of at least US \$ 1 million higher than the bid offer of Danville Maritime Ltd. In the same telex it was informed that a separate communication was sent to the President, PNOG, quoted as follows:

RE: SALE OF T/T ANDRES BONIFACIO

WE WOULD LIKE TO REITERATE OUR INTEREST IN BUYING THE T/T ANDRES BONIFACIO. WE ARE WILLING TO GUARANTEE A PRICE OF AT LEAST US\$ 1 MILLION HIGHER THAN THE BID GIVEN ON SEPTEMBER 15,1988, ON A NEGOTIATED SALE.

On the same day you will recall that we discussed over the phone the matter of Mr. Karlsen's offer, which you described as a 'nuisance offer,' and to which I replied that the only way to find out if such is so, is to accept Mr. Karlsen's offer. It, therefore, surprises us no end to receive a copy of your cable replay to Mr. Karlsen dated October 7, 1988 categorically rejecting his offer of at least US\$ 1 million over and above the bid of Danville Maritime Ltd., purportedly for the reason that existing government policy as well as the disposal rules approved by ... Board do not allow PNOG to accept the terms and conditions under which you have offered to buy the tanker.

*COA Position*

This Commission cannot see its way clear why the Disposal Committee took upon itself to award the vessel, in apparent haste, to the lone bidder Danville Maritime, Ltd. in spite of the aforesaid regulations. On top of this is your perfunctory rejection of a bid offer which will benefit your Corporation with US\$ 1 million more in terms of sales proceeds. In order, therefore, to cast aside any cloud of doubt as to the motives of the management of PNOG especially in view of the significantly higher price offer of Fearnly Finans, coupled with the fact that the Government is presently so concerned about transparency in government transactions, this Commission hereby directs a public rebidding of the vessel 'Andres Bonifacio,' copy of the notice of such rebidding furnished Fearnly Finans.

Please be guided accordingly.

Very truly yours,

(SGD.)EUFEMIO C. DOMINGO

Chairman<sup>7</sup>

The following day, petitioner was informed that the PNOG Board of Directors had ordered a rebidding for the sale of the vessel pursuant to the COA directive.

In a letter dated October 13, 1988, petitioner requested the PNOC to join them in a contemplated appeal to this Court to question the COA directive.<sup>8</sup> This request was not answered by the PNOC. Hence, this petition *forcertiorari* wherein petitioner questions the letter-directive of the COA dated October 10, 1988.

Simultaneously with this petition, a separate complaint for injunction and damages was filed by petitioner before the Regional Trial Court of Makati seeking to enjoin the PNOC from conducting a rebidding and/or from selling to other parties the vessel "T/T Andres Bonifacio" due to the COA directive disapproving the proposed sale to petitioner which is docketed as Civil Case No. 88-2194, to extend the period of compliance with paragraph No. 1 of the Memorandum Agreement and for damages.<sup>9</sup>

The principal question in this petition is whether or not the public respondent COA committed a grave abuse of discretion when it ruled that there was a failure of bidding when only one bid was submitted and subsequently ordered a rebidding.

Petitioner's argument is as follows: The COA was in grave error in its perception that when there is only one actual bid submitted, there is consequently no competition and thus there is a "failure of bidding." Competition as an essential element of public bidding merely means that the bidding be conducted fairly and openly, with equal opportunity among potential bidders to submit bids without being stifled by factors other than those contained in properly promulgated guidelines. In the bidding conducted on September 15, 1988, every potential bidder was given a fair and equal opportunity to bid. The fact that it was only petitioner which submitted a bid does not affect the validity of the bidding conducted, more so, since it was conducted in the presence of and without objections from the COA representative.

Petitioner further argues that the disposal of government assets is governed by Section 79 of P.D. 1445, otherwise known as "The Government Auditing Code of the Philippines" which provides:

SECTION 79. *Destruction or sale of unserviceable property.* — When government property has become unserviceable for any cause, or is no longer needed, it shall, upon application of the officer accountable therefor, be inspected by the head of the agency or his duly authorized representative in the presence of the auditor concerned and, if found to be valueless or unsaleable, it may be destroyed in their presence. If found to be valuable, it may be sold at public auction to the highest bidder under the supervision of the proper committee on award or similar body in the presence of the auditor concerned or other duly authorized representative of the Commission, after advertising by printed notice in the Official Gazette, or for not less than three consecutive days in any newspaper of general circulation, or where the value of the property does not warrant the expense of publication, by notices posted for a like period in at least three public places in the locality where the property is to be sold. In the event that the public auction fails, the property may be sold at a private sale at such

price as may be fixed by the same committee or body concerned and approved by the Commission.

and COA Circular No. 86-264, prescribing the general guidelines for the divestment or disposal of assets of government-owned and/or controlled corporation, and their subsidiaries, which sets forth the following procedure:

4. 1.4.

xxx xxx xxx

b. If the first bidding fails, readvertise and conduct a second bidding.

c. If the second bidding fails, a negotiated sale may be resorted to subject to the approval of the Commission on Audit.

Petitioner points out that both P.D. 1445 and COA Circular No. 86- 264 do not define "failure of public bidding," so the COA committed a grave error when it declared that a one-bidder situation constitutes such "failure of public bidding."

COA in its questioned letter-directive acknowledged the fact that COA Circular No. 86-264 does not define what constitutes a failure of public bidding. Nevertheless, as aforesaid COA applied the provisions of the 1988 Amendments to the Implementing Rules and Regulations to P.D. 1594 (Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts), hereinabove reproduced in the COA letter as follows-

#### IB 2-3 EVALUATION OF BIDS

x x x

At the time of opening of bids, there shall be at least two (2) competing bidders. In case there is only one bidder, the bid shall be returned unopened and the project shall be advertised anew for bidding. Should after rebidding, there be still only one bidder, the project may be undertaken by administration or thru negotiated contract giving preference to the lone bidder.

The COA opined that while P.D. No. 1594 pertains only to infrastructure contracts, its provisions governing the evaluation of bids partake of a national government policy in the matter of public bidding, and hence, are equally applicable to those conducted for disposition of government assets.

The COA earlier informed the PNO in its Memorandum dated September 20, 1988 that the award of the contract to a lone bidder suffers from the deficiency of lack of competition, which

is a condition *sine qua non* in public biddings. For this reason it declared the bidding conducted to be a failure in its subsequent letter of October 10, 1988.

We see no reason to disturb the interpretation given by the COA to the term "public bidding" and what constitutes its "failure." No less than the Constitution has ordained that the COA shall have exclusive authority to define the scope of its audit and examination, establish the techniques and methods required therefore, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or use of government funds and properties.<sup>10</sup>

The COA, realizing that the applicable law and rules and regulations as to the disposal of government assets failed to provide for a clear definition of "failure of public bidding," of government assets, properly considered the definition under the implementing rules of P.D. 1594 which governs infrastructure projects to be applicable in the disposition of government assets.

There is no doubt that awards of public contracts thru public bidding is a matter of public policy as can be gleaned from Section 4 of P.D. 1594 which provides that construction projects shall generally be undertaken by contract after "competitive public bidding." Section 79 of P.D. 1445 likewise requires public auction to be the primary mode of disposal of public assets. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition.<sup>11</sup> Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.<sup>12</sup> Public bidding of government contracts and for disposition of government assets have the same purpose and objectives. Their only difference, if at all, is that in the public bidding for public contracts the award is generally given to the lowest bidder while in the disposition of government assets the award is to the highest bidder.

It must be in this light, that the COA declared the subject public bidding to be a failure in this case, applying the same policy as in government infrastructure contracts.

The phrase "public auction" or "public bidding" imports a sale to the highest bidder with absolute freedom for competitive bidding.<sup>13</sup> Competitive bidding requires that there be at least two (2) bidders who shall compete with each other on an equal footing for winning the award. If there is only one participating bidder, the bidding is non-competitive and, hence, falls short of the requirement. There would, in fact, be no bidding at all since, obviously, the lone participant cannot compete against himself.<sup>14</sup>

Moreover, the "Amended Terms and Conditions of Bidding/ Sale" in this case provides.

6. If there is/are any other qualified bid(s) submitted lower than by not more than US\$500,000 from the highest qualified bid submitted, an open auction shall be conducted exclusively among all of such bidders, inclusive of the bidder

making the highest (sealed) bid; however, only those who submitted bids of at least US\$14,000,000 shall be qualified to participate therein. The open auction shall be conducted between 5:00 P.M. to 8:00 P.M. of the bidding date upon opening of the sealed bids; for this reason, it is suggested that all bidders be represented during the bid-opening processes, possessed of sufficient authorizations from their respective principals to bid the latter in the open auction, the original copies of which authorizations should be readily available for examination by the Seller as to the authenticity and sufficiency thereof.

xxx x x x xxx

9. The bid deposit of losing bidders will be returned to them as soon as the highest bid has been determined. However, the next highest bidder may elect to leave his deposit if he wishes to automatically succeed the highest bidder should the highest bidder default on its obligations under paragraph 12 hereof. <sup>15</sup>

From the foregoing terms and conditions of the bid one can easily glean that it is contemplated that there be at least two bidders. This is evident from the foregoing provisions that when the next highest qualified bid submitted is lower than by not more than \$ 500,000 from the highest qualified bid submitted, an open auction shall be conducted exclusively among all such bidders; and that the next highest bidder instead of withdrawing his bid deposit may elect to leave his deposit so he may automatically succeed the highest bidder should the latter default in his obligation.

Under COA Circular No. 88-264 hereinabove reproduced, it is provided that if the first bidding fails, a second bidding must be conducted after advertising same. It is only when the second bidding fails that a negotiated sale may be undertaken. Thus a negotiated sale with a single bidder is allowed only after the second bidding fails. The only logical conclusion therefrom is that in the 1st and 2nd bidding, there should at least be two (2) bidders, otherwise there is a failure of bidding.

Petitioner acknowledges that in a public bidding there must be competition that is legitimate, fair and honest invoking the following citations:

Competition must be legitimate, fair and honest. In the field of government contract law, competition requires, not only bidding upon a common standard, a common basis, upon the same thing, the same subject matter, the same undertaking,' but also that it be legitimate, fair and honest; and not designed to injure or defraud the government. Any form of agreement entered into between bidders which has a tendency to restrain natural rivalry and competition of the parties, or operates to stifle or suppress competition is against public policy and therefore void. As stated by the Court in *Re Salmon*, 145 Fed. 649, 652. 'It is a uniform, inflexible rule of law that all such combinations, the effect of which is to

stifle competition in bidding at public or private sales, or in the letting of public works ... are immoral, vicious, and void." (Lucenario, *Ibid*, pp. 70-71; citing Flynn Const., et al., Leininger, et al., *supra* 43 Am. Jur. 774; Hunt v. Elliot, 80 Ind. 245, 41 Am. Repl. 794; Pike v. Balch, 38 Mc. 302, 61 Am. Dec. 248; Smith v. Ullman, 58 Md. 183, 42 Am. Rep. 329; 2 R.C.L. Sec. 18, p. 134; 45 A.L.R. 549; As to the rule on the matter in England and Canada, see annotation in 45 A.L.R. 553; 20 Ann. Cas. 387.)

Competitive bidding is an essential element of an auction sale, and such a sale should be conducted fairly and openly with full and free opportunity for competition among bidders. It is the policy of the law that a fair price be received by the parties interested in the property sold and that this be not prevented by the stifling of competition among bidders.' (7 Am. Jur. 2d p. 246).<sup>16</sup>

It is imperative that such "extraneous" factors as "any conduct, artifice, agreement or combination the purpose and effect of which is to stifle fair competition and chill bidding"<sup>17</sup> must be avoided in public bidding. Examples of these stifled biddings are the following:

- 1) Agreement to combine interest and divide the profit;
- 2) Agreement to withdraw from the bidding;
- 3) Agreement to bid on separate portion of the work;
- 4) Pre-arranged or rigged bidding;
- 5) Combination among bidders and a public official; and
- 6) Agreement to submit identical or uniform bids.<sup>18</sup>

No doubt a one bidder situation tends to stifle fair competition. The requirement of having at least two bidders prevents any such conduct, artifice, agreement or combination that jeopardizes the integrity of the bidding.

Well settled is the rule that the construction by the office charged with implementing and enforcing the provisions of a statute should be given controlling weight.<sup>19</sup> In the absence of error or abuse of power or lack of jurisdiction or grave abuse of discretion already conflicting with either the letter or the spirit of a legislative enactment creating or charging a governmental agency with the administration and enforcement thereof, the action of the agency would not be disturbed by the judicial department.<sup>20</sup>

In the case at bar, there is no showing that the COA committed grave abuse of discretion. COA has clearly shown its position to the PNOC in its questioned letter-directive advising the latter

of its misgivings as to why the award was given to the lone bidder inspite of regulations previously made known to PNOC and to top it all, why the PNOC perfunctorily rejected a much higher bid which appears to be more beneficial to the corporation. Rather than condemn the COA as petitioner proposes, the COA should be commended for its zeal and care in insuring that the disposition of the subject vessel would be in a manner most advantageous to the government. A rebidding removes any suspicion that may arise out of the sale of the vessel to petitioner under present circumstances.

The Court holds that a second public bidding is ordained so that all government transactions would be competitive and above board.

Under COA Circular No. 86-257, a proposed contract for the disposal of capital assets shall be submitted for examination and review of the head of the auditing unit concerned before the same is signed by the contracting government official. The transaction constituting the disposal of capital assets shall be audited before the transaction is consummated.<sup>21</sup> COA had advised the PNOC in its memorandum of September 20, 1988 that the proposed contract of sale for the vessel should be reviewed by COA before it is signed. Unfortunately, PNOC proceeded with the execution of the Memorandum of Agreement much earlier, that is on September 17, 1988, before the COA was asked to pass upon the same. Nevertheless, it is therein stipulated that the sale of the vessel is subject to the seller (PNOC) obtaining all required clearances which includes approval of the COA, otherwise, the agreement shall be null and void.<sup>22</sup>

Petitioner cannot argue that the bidding was valid as the COA representative then present made no objections to the same. The role of said COA representative at the time of bidding was only as a witness to insure documentary integrity, i.e., by ensuring that every document is properly identified and/or marked and that the records of the bidding are securely kept.<sup>23</sup> Nevertheless as above stated, soon after the bidding, the COA sent its memorandum to the PNOC that there is a failure of public bidding due to the one-bidder situation. Moreover, said memorandum of agreement with the PNOC was still subject to COA approval as embodied in the same and in consonance with existing rules and regulations. Nonetheless, the subsequent disapproval of the sale by COA did not thereby bar petitioner from participating in the rebidding ordered by the COA.

The Court takes note of the fact that simultaneously with the filing of the instant petition on October 17, 1988, as above related petitioner filed a similar complaint for injunction and damages against the PNOC before the Regional Trial Court of Makati. This is clearly a case of forum shopping which calls for the dismissal of both actions, in this Court as well as in the lower court.<sup>24</sup> A reading of the allegations of the complaint filed with Regional Trial Court and those of the instant petition show that both actions arose from the same transaction, involving the same subject matter, facts and circumstances.

In the attempt to make the two actions appear to be different, petitioner impleaded different respondents therein — PNOC in the case before the lower court and the COA in the case before this Court and sought what seems to be different reliefs. Petitioner asks this Court to set aside

the questioned letter-directive of the COA dated October 10, 1988 and to direct said body to approve the Memorandum of Agreement entered into by and between the PNOC and petitioner, while in the complaint before the lower court petitioner seeks to enjoin the PNOC from conducting a rebidding and from selling to other parties the vessel "T/T Andres Bonifacio," and for an extension of time for it to comply with the paragraph I of the memorandum of agreement and damages. One can see that although the relief prayed for in the two (2) actions are ostensibly different, the ultimate objective in both actions is the same, that is, the approval of the sale of vessel in favor of petitioner, and to overturn the letter-directive of the COA of October 10, 1988 disapproving the sale.

Thus, on March 3, 1989, COA filed in this Court the petition for prohibition with prayer for a temporary restraining order, docketed as G.R. No. 87150, against RTC Judge Leticia P. Morales who is the Presiding Judge of Branch 40, of the RTC of Makati, Metro Manila to whom said RTC case (Civil Case No. 88-194) is assigned and the herein petitioner in G.R. No. 85285, on the ground that under the Constitution only this Court can pass upon a decision of the COA as the letter-directive in question<sup>25</sup> so that the respondent court has no jurisdiction over the subject matter. On March 8, 1989, this Court required respondents to comment on the petition and issued a restraining order enjoining the respondent judge from proceeding with the case. Said comment has been submitted.

In the meanwhile petitioner in G.R. No. 85285 asked leave to file a reply to the respondents' comment. The reply having been filed by petitioner, upon order of the court, respondent filed a rejoinder. A supplementary reply was also filed by petitioner.

In the recent case of *Palm Avenue Realty Development Corporation, et al. vs. Presidential Commission on Good Government, et al.*,<sup>26</sup> this Court held —

...The filing by the petitioners of the instant special civil action for certiorari and prohibition in this Court despite the pendency of their action in the Makati Regional Trial Court, is a species of forum-shopping. Both actions unquestionably involve the same transactions, the same essential facts and circumstances. The petitioners' claim of absence of Identity simply because the PCGG had not been impleaded in the RTC suit and the suit did not involve certain acts which transpired after its commencement is specious. In the RTC action, as in the action before this Court, the validity of the contract to purchase and sell of September 1, 1986, i.e., whether or not it had been efficaciously rescinded, and the propriety of implementing the same (by paying the pledgee banks the amount of their loans, obtaining the release of the pledged shares, etc.) were the basic issues. So, too, the relief was the same the prevention of such implementation and/or the restoration of the status quo ante. When the acts sought to be restrained took place anyway despite the issuance by the Trial Court of a temporary restraining order, the RTC, suit did not become functus officio. It remained an effective vehicle for obtention of relief and petitioners' remedy in the premises was plain and patent: the filing of an amended and

supplemental pleading in the RTC suit, so as to include the PCGG as defendant and seek nullification of the acts sought to be enjoined but nonetheless done. The remedy was certainly not the institution of another action in another forum based on essentially the same facts. The adoption of this latter recourse renders the petitioners amenable to disciplinary action and both their actions, in this Court as well as in the Court *a quo* is dismissible.

The said RTC case should therefore be dismissed for forum shopping as well as the herein petition in G.R. No. 85285.

And with more reason, as emphasized in the petition in G.R. No. 87150, the RTC court has no jurisdiction to review a decision of the COA under the Constitution.<sup>27</sup> This is a matter within the exclusive jurisdiction of this Court. Although apparently said Civil Case 88-2194 against PNOCC was intended to stop a rebidding of the vessel in question, necessarily in the same proceeding, the trial court must determine if the COA committed a grave abuse of discretion in disapproving the sale of the vessel to respondent Danville Maritime, Inc. This it has no power to do.

WHEREFORE, the herein petition in G.R. No. 85285 is hereby DISMISSED for lack of merit. On the other hand, the petition in G.R. No. 87150 is granted, the restraining order this Court issued on March 8, 1989, is hereby made permanent and the said RTC Civil Case No. 88-2194 of the Regional Trial Court of Makati is hereby ordered DISMISSED. This decision is immediately executory.

SO ORDERED,

*Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado., JJ., concur.*

#### **Footnotes**

1 Rollo, p. 56.

2 Rollo, p. 64,.

3 Rollo, p. 75.

4 Rollo, p. 95.

5 *Ibid*, p. 97.

6 *Ibid*, p. 98.

7 *Ibid*, p. 100-102, Annex N to Petition.

8 *Ibid*, p. 103.

9 *Ibid*, p. 42, Annex A to Petition.

10 Art. IX, D. Sec. 2(2), 1987 Constitution of the Philippines.

11 Fernandez, B.A. Treatise on Government Contracts Under Philippine Law, page 63; See also Law on Public Bidding and Government Contracts, 1961 Ed., Cobacha and Lucenario, page 6.

12 *Supra*, Fernandez, page 64; Cobacha, pages 8 to 9.

13 Tantuico, Jr., F.S. State Audit Code Philippines Annotated, page 415 citing Black's Law Dictionary, Rev. 4th ed.; Black's Law Dictionary, 5th ed., page 119.

14 Fernandez, B.A. Treatise on Government Contracts Under Philippine Law, page 63.

15 Pages 56 to 57, Rollo.

16 See Petition, pages 24 to 25, Rollo.

17 Am. Jur. 2nd 246; page 25, Rollo.

18 Cobacha & Lucenario, Law on Public Bidding and Government Contracts, pages 67 to 74; page 25, Rollo.

19 Asturias Sugar Central, Inc. vs. Commissioner of Customs, 29 SCRA 617 (1969), and Ramas vs. Court of Industrial Relations, 21 SCRA 1281. (1969).

20 Sagun, et al vs. People's Homesite and Housing Corporation, G.R. No. L-44738, June 22, 1988; Guardiano vs. Encarnacion, 29 SCRA 326 (1969); Alvarez vs. Board of Liquidators, 4 SCRA 195 (1962); Grande vs. Santos, 98 Phil. 61 (1955).

21 COA Circular No. 86-257, III-B, Paras. 1, 2, and 6.

22 Par. 1, Memorandum of Agreement.

23 COA Circular No. 78-87, September 6, 1987.

24 Palm Avenue Realty Development Corp., et al. vs. PCGG, et al., G.R. No. 76296, August 31, 1987; E. Razon, Inc., et al. vs, Philippine Port Authority et al., G.R. No. 75197, July 31, 1986.

25 Section 7 Article IX, Constitution.

26 *Supra*.

27 *Supra*.