Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. Nos. 115786-87 February 5, 1996

PHILIPPINE PORTS AUTHORITY and MANILA FLOATING SILO CORPORATION, petitioners,
vs.
THE HONORABLE COURT OF APPEALS, HON. REGINO T. VERIDIANO II, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 31; MARINA PORT SERVICES, INC. (now ASIAN TERMINALS, INC.); HON. SERGIO D. MABUNAY, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 24; KATIPUNAN NG MGA MANGGAGAWA SA DAUNGAN; HON. WILLIAM M. BAYHON, in his capacity as Presiding Judge of the Regional Trial Court of Manila, Branch 23, and CHAMBER OF CUSTOMS BROKERS, INC., respondents.

D E C I S I O N

ROMERO, *J.*:

Presidential Decree No. 1818 was issued on January 16, 1981 in the name of public interest. It applies to "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," the provision in Presidential Decree No. 605 banning the courts from issuing preliminary injunctions in cases involving concessions, licenses and other permits issued by public administrative officials or bodies for the exploitation of natural resources. The principal provision of P.D. No. 1818 states:

> Sec. 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, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or government 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.[1]

Noting the "indiscriminate issuance of restraining orders and court injunctions against the National Power Corporation and other government public utility firms in gross violation of Sec. 1 of P.D. 1818" and the ruling in*National Power Corporation v. Hon. Abraham Vera*[2] vesting the "protective mantle" of said decree on the National Power Corporation "for the higher interest of public service," on March 5, 1993, Court Administrator Ernani Cruz Pano issued Circular No.

13-93 requiring all clerks of court of the lower courts "to immediately furnish this Office copies of any restraining orders and/or writs of injunction against the National Power Corporation or other government public utility firms."

Invoking primarily these legal provisions, petitioners herein question the issuance by the Court of Appeals of a writ of preliminary injunction which, in effect, enjoins the implementation of a contract between petitioners Philippine Ports Authority (PPA) and Manila Floating Silo Corporation (MAFSICOR) for the setting up of floating bulk terminal facilities at the South Harbor of the Port of Manila. The issuance of said writ being contrary to the mandate of P.D. No. 1818, in the interest of justice, we have embarked on an in-depth review of the records of the case to determine the cause for the nonapplication of the aforequoted provisions of said decree.[3]

On June 27, 1980, PPA and Ocean Terminal Services, Inc. (OTSI) entered into a management contract[4] whereby the former granted the latter the "*exclusive* right to manage and operate stevedoring services at the South Harbor." OTSI and the PPA entered into a supplemental management contract on November 2, 1983 on the same services.

On March 10, 1987, PPA also granted the Marina Port Services, Inc. (MPSI) the "*exclusive* management and operation of arrastre and container terminal handling services in all piers, slips and wharves at the South Harbor Terminal, Port of Manila."[5]

Thereafter, Enrique C. Araneta, a principal stockholder of OTSI, sold his shares of stock therein to Harbor Facilities, Inc. (HFI) represented by its chairman, Arturo V. Rocha and Arc C.A. Terminals and Port Services, Inc. In the parties' memorandum of agreement dated March 16, 1990, as amended by the agreement of March 20, 1991,[6] they agreed that:

> 11. Upon the full payment of the amount herein stipulated, the BUYERS shall have OTSI assign to the SELLER, its franchise to operate a Floating Grains Terminal at the South Harbor. In consideration for this assignment, the BUYERS shall have the option to own forty percent (40%) of the business of operating the Floating Grains Terminal. If the BUYERS do not exercise this option, the SELLER shall pay to OTSI a franchise fee in the amount of THIRTY THOUSAND PESOS (P30,000.00) a month. All stevedoring services and labor shall be exclusively provided by OTSI. The parties shall execute a more detailed agreement on this matter subsequent to the full payment herein before stipulated.[7]

It appears, however, that during this period, the PPA had allocated to three different companies, through separate contracts, the following services: (a) *stevedoring*, to OTSI through the aforesaid contract of June 27, 1980 and the supplemental management contract of November 2, 1983; (b) *arrastre*, to MPSI through the earlier mentioned contract of March 10, 1987, and (c) *warehousing*, to 7-R Port Services, Inc. under a lease agreement dated January 29, 1987.[8]

On November 28, 1991, the PPA Board of Directors renewed the contract of March 10, 1987 with the MPSI for another fifteen (15) years. Section 14.01 of the contract required the MPSI to "cause integration of storage, arrastre and stevedoring services at the South Harbor." Consequently, OTSI and 7-R Port Services assigned their respective stevedoring and warehousing services to MPSI. In the deed of assignment dated January 16, 1992, duly conformed to by the PPA, OTSI described itself as the "exclusive stevedoring operator of the South Harbor" by virtue of the Management Contract of November 27, 1980.[9] A pertinent provision of the deed of assignment stated:

> 1. The ASSIGNOR hereby assigns in favor of the ASSIGNEE, all of the ASSIGNORS (*sic*) rights, privileges, interest, and participation, *including all duties and obligations, under the above-mentioned Management Contract and Supplemental Management Contract with respect to, and insofar as it applies to, the stevedoring functions at South Harbor*; (Emphasis supplied)

MPSI having absorbed and integrated the three services, on March 13, 1992, it entered into a contract for cargo handling services with PPA.[10] The material provisions contract stated:

> Sec. 1.02. *Coverage* - The CONTRACTOR shall have the duty and responsibility of providing and rendering arrastre and container terminal handling services on all cargoes discharged from or loaded unto vessels in all piers, slips and wharves at the South Harbor Terminal and stevedoring services at Berths 3 and 4 in pier 3 and on all RORO vessels, or at such areas that the AUTHORITY may designate from time to time.
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> The CONTRACTOR shall likewise have the authority to provide and render stevedoring and storage services upon approval by the Board of Directors of the AUTHORITY of the DEEDS OF ASSIGNMENT by and between Ocean Terminal Services, Inc. (OTSI) and MPSI and 7-R and MPSI, copies of which are hereto attached as Annexes "B" and "C", respectively, which form part of this Contract.[11]
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> Sec. 2.01. *Cargo Handling Services* - It shall be the duty and responsibility of the CONTRACTOR to manage, operate and render the following services:
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> a) Arrastre;
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> b) Container terminal handling;
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> c) Stevedoring;
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> d) Storage Management, and
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> e) Other related services authorized in writing by the AUTHORITY.[12]

> Sec. 2.02. *Arrastre* - Arrastre services shall refer to the receiving, handling and checking as well as the custody and delivery of conventional, breakbulk or stripped/stuffed containerized cargo over piers or wharves, in transit sheds/warehouses and open storage areas. Details of these services are those defined and enumerated in section 1.01 para d) of PPA Administrative Order No. 10-81 dated April 13, 1981, hereto attached as Annex "D."[13]
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> Sec. 2.03. *Stevedoring* - Stevedoring services means all work performed on board vessel, that is the process or act of loading and unloading cargo, stowing inside hatches, compartments and on deck or open cargo spaces on board vessel. Related services to stevedoring are the activities of rigging ship's gear, opening and closing of hatches, securing cargo stored on board by lashing, shoring and trimming. All these activities are undertaken by stevedore gangs which are headed by gang bosses and composed of winchmen, signalmen and as many number of stevedores as may be predetermined by the kinds of cargo to be handled and in some cases assisted by ship's crew.[14]
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> Sec. 2.04. *Container Terminal Handling* - Container terminal handling shall refer to the services of handling container discharged or loaded unto vessels.[15]
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> Sec. 2.05. *Storage* - refers to the storing of containers, bulk and break bulk cargoes in all storage areas at the South Harbor.[16]

Around two weeks later, or on April 2, 1992, PPA entered into a contract with petitioner MAFSICOR whereby it granted MAFSICOR the "right, privilege, responsibility and authority to provide, operate and manage floating bulk terminal facilities for bulk cargoes bound for South Harbor, Port of Manila," with the proviso that "the use or availment of such floating terminal facilities shall not be compulsory to bulk shippers, consignees or importers." MAFSICOR therein undertook to "deliver and anchor at the berth determined by the AUTHORITY the initial floating bulk terminal facility or vessel with a minimum length overall (LOA) of 700 feet and an aggregate unloading capacity of 1,000 metric tons per hour" within one year from the approval of the contract.[17]

The parties entered into the said contract "as an interim alternative service facility, pending the actual implementation of the land-based bulk handling terminal," considering that the floating bulk terminal facilities "will greatly benefit the general public and port users in terms of higher operational efficiency and lower handling costs.[18] Thus, the contract also provides as follows:

> Sec. 1.01. *Effectivity and Term*. - This Contract shall take effect upon approval by the Board of Directors of the Authority and shall remain in full force and effect for a period of five (5) years, renewable for such period as may be agreed upon by the parties and in no case beyond the full operationalization or actual implementation of the land-based bulk terminal plant for the Port of Manila; *Provided*, that the effectivity of this Contract, may nonetheless be modified, suspended or terminated in accordance with the pertinent provisions hereof and in the manner herein provided. In case of pre-

> termination by reason of the full operationalization of the land-based terminal, the CONTRACTOR, by mutual agreement of the parties herein, may transfer its operations at such areas or ports requiring its services or facilities.

Barely four months later or on July 30, 1992, PPA and MPSI entered into an agreement wherein the former authorized the latter to construct a land-based bulk grain and compatible storage terminal in Mariveles, Bataan.[19]

Over a month thereafter or on September 8, 1992, the PPA and MAFSICOR signed a supplemental agreement [20]with the following specific provisions:

> Sec. 5.02. *Manpower and Equipment Requirement* - The CONTRACTOR undertakes to hire the stevedoring services of the authorized stevedoring contractor in South Harbor, the Ocean Terminal Services,. Inc. (OTSI), who shall provide adequate manpower as may be required by the CONTRACTOR's operations. The CONTRACTOR shall utilize only qualified stevedores provided by OTSI with the proper training and experience to work or operate on board vessels. Gang composition per working hatch shall be covered. under such guidelines as may be promulgated by the AUTHORITY. Further, the CONTRACTOR shall provide the specialized cargo handling equipment as the nature of the cargo and/or the technical requirements of operations may demand.

Alleging that the PPA-MAFSICOR contract is "in complete derogation of MPSI's rights under the contract of March 13, 1992 and only serves to promote chaos, instability and labor unrest in the South Harbor" and that, having invested USS27,000,000 pursuant to said contract, it would lose 50% of its projected P40,000,000 to P45,000,000 gross revenues in wheat and soybean for July 1993 to June 1994 upon the operation of the floating grains terminal, on August 5, 1993, MPSI filed a petition against PPA and MAFSICOR for "declaratory relief, final injunction with prayer for temporary restraining order and preliminary prohibitory injunction" in the Regional Trial Court of Manila. Docketed as Civil Case No. 93-67096, the petition prayed with particularly as follows:

> WHEREFORE, in view of the foregoing, plaintiff prays that:
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> > 1) Immediately upon the filing, hereof, if the same be sufficient in form and substance, plaintiff prays for the issuance forthwith of a Temporary Restraining Order directing defendant (*sic*) to maintain the status quo and to prevent the defendant MAFSICOR from bringing in the floating bulk terminal scheduled to arrive in the South Harbor, Port of Manila in the middle of August 1993 to enjoin, prohibit and stop defendants, its agents, privies, sympathizers and anybody acting for in behalf or in the interest of the defendant, from interfering, hindering, or in any way diminishing plaintiff's rights under the CONTRACT of March 13, 1992; subject, to further orders of this Honorable Court;

2) After notice and posting of the appropriate bond, as may be required by the court, Plaintiff prays for the issuance of a writ of Preliminary Prohibitory Injunction of the same tenor and effect as the Restraining Order prayed for;

3) After trial, plaintiff prays for the issuance of judgment as follows:

a) making final and permanent the writ of Preliminary Injunction for the whole of the 15 year cargo handling services contract from March 13, 1992 up to March 13, 2007;

b) Declaring and respecting MPSI's contractual and vested rights under the PPA-MPSI's contract of March 13, 1992;

c) Directing the defendants PPA and MAFSICOR to pay plaintiff the following amounts (*sic*):

4) Finally, plaintiff prays for such other relief as may be just and equitable under the premises.

Forthwith, the lower court, through Judge Regino R. Veridiano II, issued a temporary restraining order dated August 6, 1993 directing the defendants, their agents and privies to maintain the *status quo* and enjoining MAFSICOR from bringing in the floating bulk terminal. It set the hearing on the issuance of a writ of preliminary injunction.[21]

Having received a copy of the petition, the PPA filed an opposition to the issuance of said writ, alleging that in truth, the PPA-MAFSICOR contract "supports" that of the PPA-MPSI through the provision allowing the hiring of the authorized stevedoring contractor in the South Harbor. The PPA pointed out that it had conducted a 2-day public hearing on February 17 and 18, 1992 to the operation of the proposed floating grains terminal and that majority of those present registered their agreement to the proposal which was a "practical interim solution to a better handling system of bulk charges as well as a forward step in the modernization of "grains handling" because MAFSICOR would be using pneumatic conveyors.[22]

On its part, MAFSICOR filed on August 12, 1993 an urgent motion for the lifting of the temporary restraining order and for an outright denial of the plaintiff's application for preliminary injunction on the ground that an injunctive relief is not available in a special civil action for declaratory relief.[23]

On that same day, MAFSICOR also filed a motion to dismiss the complaint on the ground that declaratory relief was not the proper remedy available to MPSI and that, not being a party to the PPA-MPSI contract sought to be interpreted in the petition for declaratory relief, MAFSICOR was not a party-in-interest thereto.[24]

After due hearing on the prayer for the issuance of a writ of preliminary injunction, the trial court issued an Order on August 25, 1993 denying issuance of such writ and dissolving the temporary restraining order it had issued. [25]The court denied the prayer for said writ for three reasons. First of all, the lower court found that the PPA-MPSI contract had not vested on the MPSI the right to operate the floating grains terminal and neither did the PPA-MAFSICOR contract recognize such right. Citing the testimony of Mr. Ramon Atayde, witness for MPSI, the court found that while there could be an "overlapping" of stevedoring services as the operations of the floating grains terminal would interfere with the stevedoring services contract of MPSI, there would actually be "no conflict between the MPSI contract for stevedoring services and the operation of a Floating Grains Terminal" because MPSI is not the "sole entity authorized to render stevedoring services in the South Harbor." Moreover, the provision in the PPA-MAFSICOR contract that the manpower requirements in the operation of the floating bulk terminal shall be provided by the OTSI (or the MPSI) obviated any possible conflict or overlapping between the PPA-MPSI and the PPA-MAFSICOR contracts.

Secondly, the contract with MAFSICOR for the operation of the floating grains terminal was "non-exclusive" so that even MPSI may apply to operate a similar terminal. Thus, because the MPSI (OTSI) may provide the stevedoring manpower for the operation of the said terminal, the two contracts actually compliment each other.

Thirdly, an injunctive relief may not be granted in the action for declaratory relief which merely seeks the construction or interpretation of the contract between PPA and MPSI. Moreover, MPSI, not being a party thereto, may not question the PPA-MAFSICOR contract. Furthermore, the contract between PPA and MAFSICOR was an "accomplished act" which cannot be the subject of restraining order "because there is yet no irreparable injury caused to the plaintiff's right as the floating grains terminal has not yet been deposited in the South Harbor and the injury insisted by the petitioner are (*sic*) merely speculative and conjectural if not premature."

MPSI filed a motion for the reconsideration of the Order of August 25, 1993. Duly opposed by MAFSICOR, the lower court declared the same for lack of merit in its Order of September 15, 1993.[26]

Meanwhile, on September 3, 1993, the *Katipunan ng mga Manggagawa sa Daungan* (KAMADA), the bargaining agent for the 4,000 stevedores employed by MPSI , filed a complaint against MPSI, PPA and MAFSICOR for the annulment of the PPA-MAFSICOR contract of April 2, 1992, alleging that the floating grains terminal would duplicate their function of stevedoring in the South Harbor (Civil Case No. 93-67441). KAMADA alleged further that while the said contract provided that MAFSICOR would avail of the services of the authorized stevedoring contractor, MAFSICOR had not contacted KAMADA on the matter. On the contrary, KAMADA averred, MAFSICOR's requirement of trained and qualified stevedores would "certainly deprive some of plaintiff's member employees of their employment."

Acting on the allegations of the complaint and concluding that "great and irreparable injuries" upon the applicant would result "before the matter can be heard on notice," the Regional Trial

Court of Manila, Branch XXIV (presided by Judge Sergio D. Mabunay), to which the case was raffled on the day it was filed, issued an Order also on that same day, temporarily restraining the defendants from "deploying and operating the floating grains terminal or otherwise implement their grains terminal contract."[27]

MAFSICOR filed a motion to dismiss Civil Case No. 93-67441 and an urgent motion to lift the temporary restraining order, alleging that the National Labor Relations Commission, not the regular courts, had jurisdiction over the complaint; that there was no cause of action against it as it was not the employer of the members of KAMADA, that the PPA-MAFSICOR contract required availment of the plaintiff's stevedoring services and that the alleged CBA, upon which KAMADA founded its complaint, would not be the basis of an injunction because the said CBA was entered into by KAMADA and MPSI only on March 10, 1993 or almost a year after the PPA-MAFSICOR contract was signed on April 2, 1992; and that the complaint filed by KAMADA was a "sham" designed to delay if not derail the operation of the floating grains terminal.[28]

Noting these allegations of MAFSICOR as well as the point it raised in open court during the hearing of the prayer for the issuance of a preliminary injunction that this Court's Circular No. 13-93 prohibits the issuance of injunction against certain government agencies including public utilities, the lower court issued an Order on September 8, 1993[29] stating that:

> The Court takes note of the points raised by the defendant MAFSICOR that it is necessary that this Court immediately lift the restraining order because of the fact that failure to do so may subject the defendant MAFSICOR to prejudice because the contract between MAFSICOR and PPA was to start today. While the Court sees that point, the Court believes that they will not be unduly prejudiced because any delay cannot be attributed to the defendant MAFSICOR but arising from an Order of the Court and that is beyond the control of MAFSICOR.

On September 10, 1993, MAFSICOR filed a supplement to its motion to dismiss and to lift the temporary restraining order, raising as additional reason therefor, the aforequoted Section 1 of P.D. No. 1818.[30] As expected, MPSI opposed this motion alleging among others that MAFSICOR's operations may be enjoined by injunction, the said entity "not being a public utility nor performing a public function and therefore no public interest may be affected."[31]

On September 14, 1993, Judge Mabunay denied MAFSICOR's motions to dismiss and to lift the temporary restraining order, holding that it was premature to dismiss the case "without receiving the evidence of the parties."[32] At the hearing on September 16, 1993, counsel for MAFSICOR orally moved for the reconsideration of the dismissal order. The court having denied the same, MAFSICOR requested postponement of the hearing and manifested that the issue would be elevated to a higher authority.[33]

On September 28, 1993, Judge Mabunay issued an Order resolving the prayer for the issuance of a writ of preliminary injunction against KAMADA. While he found that KAMADA had the personality to question the validity of the PPA-MAFSICOR contract, he held that the case should

be distinguished from *NPC v. Vera*[34] where this Court held that NPC is a public utility because while the PPA "may be a public utility," MAFSICOR is "undeniably a private corporation." Nevertheless, Judge Mabunay denied the prayer for the issuance of a writ of preliminary injunction on the ground that KAMADA had "failed to present clear and convincing evidence of any damages it will suffer" should the PPA-MAFSICOR contract be implemented.[35]

It turned out that yet another case for injunction with provisional remedy of preliminary injunction involving the same PPA-MAFSICOR contract was filed against the PPA and MAFSICOR on September 7, 1993 also in the Regional Trial Court of Manila where it was docketed as Civil Case No. 93-67464. The plaintiff therein , the Chamber of Customs Brokers, Inc., (hereinafter referred to as the Chamber), is allegedly the "only accredited association" for customs brokers in the country.

The complaint alleged that the Chamber was never informed of the hearings conducted by the PPA on the proposal to put up a floating grains terminal; that the operation of such terminal would adversely affect and prejudice its members considering that by the size of said terminal, foreign vessels loading cargoes other than grains would be deprived of the use of two anchorage berths thereby resulting in delay in the docking of said vessels; that PPA had not issued any tariff rates for the use of the floating grains terminal the operation of which would entail payment of more charges since MAFSICOR would "charge them the tariff it would pay to Marina for the latter's stevedoring, the charter fees it has to pay to the owner of the floating grains vessel, and its own profit or mark up," and that the enforcement of the PPA-MAFSICOR contract "would be in violation" of the PPA's duties and responsibilities as provided by law.

The case was raffled to Branch 23 of the Regional Trial Court of Manila (presided by Judge William M. Bayhon). On September 13, 1993, the court issued an Order restraining the defendants from implementing the PPA-MAFSICOR contract "to maintain the *status quo* and in order not to render moot and academic" the resolution of the case. It set the hearing on the issuance of a writ of preliminary injunction.[36]

In due course, on October 1, 1993, the lower court issued an Order finding in the main that the operation of the floating grains terminal would "only cause double handling and in effect would cause additional expenses," and directing the issuance of a writ of preliminary injunction upon MPSI's filing of an injunction bond in the amount of P10,000,000.00.[37] Upon MPSI's motion for the reduction of said bond to P2,000,00000, the lower court issued an Order on October 13, 1993 reducing the amount of the bond to P6,000,000.00.[38]

In the meantime, on September 22, 1993, the PPA and MAFSICOR filed before this Court a petition for *certiorari*and prohibition with prayer for the issuance of a temporary restraining order and/or preliminary injunction. Docketed as G.R. No. 111758, the petition impleaded Judge Veridiano as a public respondent in order that a "complete adjudication of the controversy" in Civil Case No. 93-67096 may be achieved. The petitioners also prayed administratively dealt with for that Judges Mabunay and Bayhon be a disregarding Circular No. 13-93.

In the Resolution of September 27, 1993, this Court referred the petition to the Court of Appeals pursuant to Sec. 9 (1) of Batas Pambansa Blg. 29 granting said appellate court original jurisdiction to issue writs of *certiorari* and prohibition.[39] Accordingly, on September 30, 1993, the petition having been docketed as CA-G.R. S.P. No. 32197, the Court of Appeals required the respondents to file their comments thereon and set the hearing on the matter of issuance of a writ of preliminary injunction.[40]

CA-G.R. SP No. 32197 was later consolidated with CA-G.R. SP No. 32113, a petition for *certiorari* and/or*mandamus* with preliminary injunction filed by MPSI against the PPA and MAFSICOR with Judge Veridiano as nominal party, for the nullification of the Orders of August 25, 1993 and September 15, 1993 in Civil Case No. 93-67096.[41]

On September 23, 1993, the Court of Appeals issued a temporary restraining order directing respondents PPA and MAFSICOR "to maintain the *status quo ante litem motam*" and to prevent them from deploying the floating grains terminal.[42]

On October 13, 1993, the Court of Appeals issued an Order[43] directing the issuance of a writ of preliminary injunction in CA-G.R. SP No. 32113 to maintain the *status quo* or MPSI's "present rendering of stevedoring services at the South Harbor exclusive of other parties," upon MPSI's filing of a bond in the amount of P15,000,000.00.[44] The Court of Appeals issued said Order upon its finding that, under the contracts executed by MPSI and the PPA, as well as the deed of assignment of OTSI's stevedoring services to MPSI, the latter obtained the exclusive stevedoring rights at the South Harbor with which the operation of MAFSICOR's floating grains terminal would overlap. While professing that it is not "anti-technology" and that it is all "for mechanization if it means progress," the Court of Appeals held that mechanization must not "appear to breach existing contract otherwise judicial relief shall issue."

On the applicability of P.D. No. 1818, the ruling in *NPC v. Vera*, and Circular No. 13-93, the Court of Appeals, after quoting Sec. 1 of said presidential decree, stated:

> Here, there is no stoppage of "infrastructure project . . . other natural resource development project of the government . . ." (Sec. 1, P.D. 1818). Stevedoring, arrastre and warehousing services continue to be rendered by petitioner at the South Harbor. What is being stopped albeit just temporarily is private respondent's operation of the floating bulk terminal facility that will lessen petitioner's stevedoring services, as it infringes on latter's exclusive stevedoring contractual right.

The Court of Appeals, in effect, held that it is not necessary that there be an actual breach of contract for it is enough that a violation thereof would by prevented by an injunctive relief.

After MPSI had filed the required bond, on October 22, 1993, the Court of Appeals directed the issuance of the writ of preliminary injunction in accordance with the Order of October 13, 1993.[45] Also on October 22, 1993, the PPA and MAFSICOR filed a second supplemental petition in the Court of Appeals[46] alleging that since Judge Bayhon decreased the amount of the

injunctive bond from P10,000,000.00 to P6,000,000.00 without their (petitioners) having been notified of the motion to reduce said bond, Judge Bayhon acted without jurisdiction when he issued his Order of October 13, 1993.[47]

Thereafter, MAFSICOR filed a motion for the reconsideration of the Court of Appeals Resolution of October 13, 1993 in CA-G.R. No. SP-32113 but on February 10, 1994, the same court denied said motion at the same time directing the issuance in CA-G.R. No. SP-32197 of a writ of preliminary injunction "enjoining respondent judges from proceeding with their cases respectively pending before them, upon petitioners' filing of a bond of One Million (P1,000,000.00) Pesos in each case."[48]

On June 8, 1994, the Court of Appeals promulgated Decision in CA-G.R. SP. Nos. 32113 and 32197 disposing of those cases in this wise:

> WHEREFORE, We hereby resolve, as follows:
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> > (a) In CA-G.R. No. 32113, the petition is GRANTED and the orders dated 25 August 1993 and 15 September 1993 are SET ASIDE and the preliminary injunction issued is made permanent during the trial of the case in the court *a quo*.
> >
> > (b) In CA-G.R. No. 32197, the petition is GRANTED and the order dated 01 October 1993 of respondent Judge Bayhon granting injunction (Civil Case No 93-67464) is SET ASIDE and said respondent Judge is permanently enjoined from issuing injunctive orders during the trial of the case in the court *a quo* in Civil Case No. 93-67464.
>
> Respondent Judge Mabunay is likewise permanently enjoined from issuing injunctive reliefs during the trial before the court *a quo*.
>
> Let the trial court records be remanded to their respective Regional Trial Courts for further proceedings.
>
> No cost.
>
> SO ORDERED.

In thus resolving the two petitions, the Court of Appeals affirmed the exclusivity of the stevedoring contract in favor of MPSI. Such exclusivity precluded infringement of the PPA-MPSI contract by the PPA-MAFSICOR contract for the operation of the floating grains terminal. Citing the definition of "stevedoring" in the PPA-MPSI contract of March 13, 1992 aforequoted, the Court of Appeals explained that the floating grains terminal is simply a "mechanized unloading of grains cargo from the vessel to the barge or other transport facilities prior to their being finally stored in the warehouses."[49] Because "what is solely done by stevedores is substituted

by machines complemented by needed stevedores," PPA should have first renegotiated with and secured the consent of MPSI on the operation of the floating grains terminal.

With respect to the stipulation in the September 8, 1992 PPA-MAFSICOR supplemental agreement providing for the hiring of OTSI stevedores, the Court of Appeals said:

> If any legal significance can de deduced from the execution of the September 8th supplemental agreement, it is that MAFSICOR and PPA had to adjust their original contract of 02 April 1992 not unlikely in order to avoid violating the exclusive stevedoring right of MPSI under the existing March 13th contract. Thus, per said supplemental agreement, MAFSICOR binds itself to hire stevedoring services from OTSI. Such move, however, does not militate against the encroachment of the MPSI's exclusive stevedoring right under the Match 13th contract. Observedly, MPSI is not a party to the PPA-MAFSICOR agreement and therefore is not bound by it. Besides, said agreement is a contractual mirage. MAFSICOR can legally excuse itself from compliance since at the time of its execution, OTSI was no longer the holder of the exclusive stevedoring right having endorsed it earlier with the approval of PPA to MPSI. What baffles the mind is why PPA signed such an agreement with MAFSICOR when the former had earlier approved OTSI's assignment of the exclusive Stevedoring right to MPSI. PPA can justifiably be scorned as a legal mammal whose right hand does not know what the left hand is doing.[50]

As regards MAFSICOR's allegation that the filing of separate petitions and complaints by MPSI, KAMADA and the Chamber was a "thinly disguised attempt at forum shopping," the Court of Appeals held that there was no forum shopping because aside from the fact that the three plaintiffs had distinct and separate legal personalities, there was no evidence that they had confabulated to forum-shop to the detriment of orderly administration of justice.

On the applicability of P.D. No. 1818, the Court of Appeals reiterated its ruling on the matter in the Resolution of October 13, 1993.

Consequently, after filing a motion for an extension of time to file a petition for review on *certiorari*, the PPA and MAFSICOR filed the instant petition on July 11, 1994 alleging that the Court of Appeals' Decision: (a) violates P.D. 1818 and Circular No. 13-93, the constitutional principle of separation of judicial and executive powers and the proscription against forum shopping; (b) supplants the discretion of the trial court to pass upon the propriety of a preliminary injunction, and (c) is contrary to the evidence on record.[51] Resolution of the instant petition therefore hinges on the applicability of P.D. No. 1818 herein.

Sec. 1 of P.D. No. 1818 aforequoted provides that no "restraining order, preliminary injunction, or preliminary mandatory injunction" may be issued by *any court* in a case involving an infrastructure project, *or* natural resource development project of the government "*or* any *public utility* operated by the government, *including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts*" which would

"prohibit *any person or persons*, entity or government official" from proceeding with the operation of a public utility. Clearly, the prohibition in P.D. No. 1818 does not cover infrastructure projects[52] alone. It includes the implementation of stevedoring contracts. The law being clear, there is no room for interpretation or construction. A*verbis legis non est recedendum* (From the words of a statute there should be no departure).[53] Nevertheless, in the interest of justice, we shall clarify matters which appear to have befuddled both the courts below and the private respondents.

The prohibition in P.D. No. 1818 applies "in controversies *involving facts* or the *exercise of discretion* in technical cases." It is founded on the principle that to allow the courts to determine such matters would disturb the smooth functioning of the administrative machinery.[54] In *Republic v*. *Capulong*, [55] this Court defines discretion as follows:

> (W)hen applied to public functionaries, (discretion) means a power or right conferred upon them by law of acting officially, under certain circumstances, uncontrolled by the judgment or conscience of others. A purely ministerial act or duty in contradiction to a discretional act is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.

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.[56] 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.

Thus, in the Resolution of March 17, 1988 in G.R. No. 82218 (Hon. Reinerio O. Reyes, etc., et al. v. Hon. Doroteo N. Cañeba, etc., et al.), the Court, in holding that judicial review of the public bidding of the development, management and operation of the Manila International Container Terminal was premature, said:

> . . . Acts of an administrative agency must not casually be overturned by a court, and a court should as a rule not substitute its judgment for that of the administrative agency acting within the perimeters of its own competence. The respondent trial Judge surely has no special competence in respect of container terminal operations. The multiplication of administrative agencies in which government performs its many tasks, is characteristic of life today in a developing country. Courts have no brooding superintendence of such administrative agencies. Where, however, there is clear and convincing proof that an administrative agency has acted so arbitrarily and capriciously

> as to amount to a grave abuse of discretion, or an act without or in excess of its jurisdiction, a court may of course and should intervene to protect public interest or private rights in a proper case. Where that proof is wanting, as in the present case, the court must stay its hand.

This holding was reiterated in *Bureau Veritas v. Office of the President*,[57] where it held that the courts will intervene only

> . . . to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.

Indeed, even under the basic legal axiom of separation of powers which accords co-equal status to the three branches of government, the 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.[58]

In this case, there is no showing that the PPA abused its discretion in entering into the contract with MAFSICOR. It notes, however, the proclivity of the PPA officials to allow the use of the word "exclusive" in its contracts. As demonstrated above, the PPA incorporated the same word in its contract with MPSI while its contract with OTSI on stevedoring services was still existing. Such lapse in contractual drafting however, hardly indicates abuse of discretion as regards the actual operations in the South Harbor.

Judge Veridiano correctly concluded that there is no provision for the putting up of a floating grains terminal in the PPA-MPSI contract. All it covers are the general services of stevedoring. While the operation of a floating grains terminal may be considered as part and parcel of stevedoring as such operation merely entails the mechanization of stevedoring, it was considered by the PPA, in the exercise of its discretion, as necessary to improve the services rendered in the South Harbor *in the meantime that no land-based bulk terminal is yet operational*. Indeed, it is clear from the stipulations in the PPA-MAFSICOR contract, which is appended to the petition in Civil Case No. 93-67096 as Annex "C,"[59] that the operation of the floating grains terminal is an expedient measure in the delivery of services in the Port of Manila. That such operation is also temporary may be gleaned from the aforequoted Sec. 1.01 of the PPA-MAFSICOR contract giving it "full force and effect for a period of five (5) years, renewable for such period as may be agreed upon by the parties and *in no case beyond the full operationalization or actual implementation of the land-based bulk terminal for the Port of Manila*."

Because the presumption of regular performance of its powers and functions has not been overturned, the PPA should be deemed to have performed its functions in accordance with law and duly considered all factors in the operation of the floating grains terminal, including its effects on manual stevedoring and the traffic of vessels in the South Harbor.

Assuming *arguendo* that PPA gravely abused its discretion in entering into the contract with MAFSICOR, the issuance of an injunction against it should be in accordance with law. In *Prado v. Veridiano II*,[60] the Court said:

> For the writ of injunction to issue, the existence of a clear and positive right especially calling for judicial protection must be shown; injunction is not to protect contingent or future rights; nor is it a remedy to enforce an abstract right. An injunction will not issue to protect a right not *in esse* and which may never arise or to restrain an act which does not give rise to a cause of action. There must exist an actual right.

In other words, to authorize the issuance of an injunction, the terms of the agreement involved must be so precise that neither party could misunderstand them.[61] In this case, however, when MPSI filed the petition for declaratory relief below with the specific prayer that its "contractual and vested rights under the PPA-MPSI contract of March 13, 1992"[62] be declared and respected, MPSI in effect manifested its uncertainty as to the exclusivity of said contract with respect to stevedoring operations. Under Sec. 1, Rule 64 of the Rules of Court, an action for declaratory relief is filed to "determine any question of construction or validity arising under the instrument or statute and for a declaration of his (petitioner's) rights or duties thereunder." Considering the nature of the petition filed in Civil Case No. 97-67096, the lower court presided by Judge Veridiano, therefore, correctly denied the application for a writ of preliminary injunction.

While its sole provision would appear to encompass all cases involving the implementation of projects and contracts on infrastructure, natural resource development and public utilities, there are actually instances when P.D. No. 1818 should *not* find application. These instances are: (a) where there is clear grave abuse of discretion on the part of the government authority or private person being enjoined, and (b) where the effect of the non issuance of an injunction or a restraining order would be to "stave off implementation of a government project."[63]Such effect would be in contravention of the very purpose enunciated in the "whereas clause" of P.D. No. 1818 "*not* to disrupt or hamper the pursuit of essential government projects." In this case, the operation of a floating bulk terminal would *augment* and improve, not "stave off" or hamper, the overall operations at the Port of Manila and/or the stevedoring services awarded to MPSI.

Another contention of private respondents against the applicability of P.D. No. 1818 is that MAFSICOR is a private entity. A myopic conception of the law, such contention betrays a failure to comprehend the functions of the PPA as defined in its Charter, P.D. No. 505, as amended by P.D. No. 857. Under Sec. 6 (a) (v) of this decree, one of the corporate duties of the PPA is

> (t)o provide services (*whether on its own, by contract or otherwise*) within the Port Districts and the approaches thereof, including but not limited to -
>
> - berthing, towing, mooring, moving, slipping, or docking any vessel;

- loading or discharging any vessel;

- sorting, weighing, measuring, storing, warehousing, or otherwise handling goods. (Emphasis supplied.)

Paragraph (b) (vi) of the same section empowers the PPA "(t)o make or enter contracts of any kind or nature to enable it to discharge its functions under this Decree." Said duty and power of the PPA have been affirmed in*Albano v. Reyes*[64] where the Court held that the PPA may contract with International Container Terminal\Services, Inc.; (ICTSI) for the management, operation and development of the Manila International Container Port (MICP). In the same vein, in *E. Razon, Inc. v. Philippine Ports Authority*,[65] the Court said:

> Respondent PPA is the governing agency charged with the specific duty of supervising, controlling, regulating, constructing, maintaining, operating and providing such facilities or services as are necessary in the ports vested in, or belonging to it (Sec. 6, [ii], P.D. 857). It has the expertise to determine whether or not Marina Port Services Inc. has the capability of discharging the tasks assigned to it as interim operator of arrastre service in South Harbor. Except in cases of clear grave abuse of discretion, which has not been shown in the instant petition, the Court will not disturb such judgment and substitute its own.

Moreover, Section 1 of P.D. No. 1818 clearly states that an injunction may not be issued "to prohibit *any person or persons*, entity or government official" from undertaking the protected activities enumerated therein. The prohibition, therefore, applies regardless of whether or not the person or entity being enjoined is a public or a private person or entity, provided that the purpose of the law to protect essential government projects in pursuit of economic development is attained.

Be it understood that we have confined ourselves within the parameters of the propriety of the issuance of a writ of preliminary injunction in the three cases before different branches in the Regional Trial Court of Manila. We are not resolving the main issues offered for resolution therein which necessitate trial on the merits, such as the issue of *exclusivity* of the PPA-MPSI contract. However, we cannot write *finis* to this incident in the cases below without noting allegations herein of judicial impropriety on the part of two of the judges of the lower court. While we agree with the Court of Appeals that forum-shopping may not be deemed to have been resorted to by the MPSI (now Asian Terminals, Inc.) in the filing of the three different cases involved herein as MPSI has a personality separate and distinct from those of KAMADA and Chamber, we certainly cannot allow any hint of judicial malfeasance to pass unscrutinized.

In its urgent omnibus motion dated June 27, 1995,[66] MAFSICOR alleged that in accordance with the contract to operate and manage stevedoring services dated November 3, 1983 between PPA and OTSI which was assigned to Asian Terminals, Inc. (then the MPSI) through a deed of assignment dated January 16, 1992, the ATI's contract to manage and operate stevedoring services would expire on that day (June 27, 1995); that, notwithstanding that the effectivity of

said contract is "inextricably linked with the claim of exclusivity" of the PPA-MPSI contract "squarely before this Court," ATI filed on June 20, 1995 a complaint against PPA alone seeking a declaration that its stevedoring contract shall expire on March 13, 2007 not June 27, 1995 and the issuance of a temporary restraining order and writ of preliminary injunction enjoining the PPA from taking over from ATI the stevedoring services at the South Harbor; that at 10:58 in the morning of June 10, 1995, ATI filed an urgent motion for special raffle on the ground of urgency of the case; that notwithstanding the fact that regular raffles are held every Monday, Wednesday and Friday, at 11:25 a.m. of June 20, 1995 (a Tuesday); "the complaint was *ordered* to be raffled to Branch 24 of the Regional Trial Court of Manila presided by none other than" Judge Mabunay through a handwritten order which "could have come only" from the Office of Executive Judge Bayhon; that on that same day, Judge Mabunay issued the temporary restraining order prayed for notwithstanding "his awareness of the pendency" of the other cases "involving the same issues and the same parties"; that ATI's filing of Civil Case No. 95-74280 "is a clear case of forum-shopping for which the proper sanctions must be imposed"; that the order to raffle appearing on the face of the complaint in Civil Case No. 95-74280 is "a mockery of justice" that must be duly investigated; that the issuance of the temporary restraining order in said case, as well as the further proceedings therein "constitute unlawful interference with the proceedings" of this Court tending to obstruct the administration of justice for which Judge Mabunay must be punished for contempt; and that it is "mind-puzzling" how, aside from Civil Case No. 93-67441 (KAMADA case), Civil Case No. 95-74280 (Asian Terminals, Inc. v. PPA) and Civil Case No. 94-68845 (Harbor Facilities, Inc. v. Enrique Araneta, et al.) "gravitated to the same judge."

These verified allegations require the exercise of this Court's administrative disciplinary powers *via* an investigation by the Office of the Court Administrator, which shall include among others, the forum-shopping allegation, in order that any tinge of impropriety, if any there be, may be accordingly dealt with.

WHEREFORE, the instant petition for review on *certiorari* is hereby GRANTED. The questioned Decision of the Court of Appeals and its Order issuing a writ of preliminary injunction are REVERSED and SET ASIDE. Trial on the merits of Civil Cases Nos. 93-67096, 93-67441 and 93-67464 shall immediately take place, with the courts below disposing of said cases with deliberate dispatch.

The Office of the Court Administrator is directed to investigate the allegations in private respondent MAFSICOR's Urgent Omnibus Motion dated June 27, 1995 and to submit a report thereon within thirty (30) days from notice of this Decision.

This Decision is immediately executory.

SO ORDERED.

Regalado and Mendoza, JJ., concur.
Puno, J., took no part.

Footnotes

[1] 79 O.G. 4131.

[2] G.R. No. 83558, February 27, 1989, 170 SCRA 721.

[3] The Court of Appeals' findings of facts, even if contrary to those of the trial court, is conclusive and binding upon this Court so long as such findings are supported by the records or based on substantial evidence (Tabaco v. Court of Appeals, G.R. No. 100981, December 28, 1994, 239 SCRA 485; Mercado v. Court of Appeals, G.R. No. 108802, July 12, 1994, 234 SCRA 98).

[4] Exh. "J."

[5] Exh. "D."

[6] Exh. "I."

[7] Exh. "I-1."

[8] CA Decision, p. 2.

[9] Exh. "B."

[10] Exh. "A."

[11] Exh. "A-1."

[12] Exh. "A-2."

[13] Exh. "A-3."

[14] Exh. "A-4."

[15] Exh. "A-5."

[16] Exh. "A-6."

[17] Sec. 4.01 of the Contract, Exh. "7."

[18] Third "whereas clause" of the contract.

[19] CA Decision, p. 3.

[20] Exh. "8."

[21] Record of Civil Case No. 93-67096, p. 118.

[22] *Ibid*., p. 122.

[23] *Ibid*., p. 129.

[24] *Ibid*., p. 133.

[25] *Ibid*., p. 202.

[26] *Ibid*., p. 257.

[27] Record of Civil Case No. 93-67441, p. 96.

[28] *Ibid*., p. 102.

[29] *Ibid*., p. 155.

[30] *Ibid*., p. 158.

[31] *Ibid*., p. 162, 171.

[32] *Ibid*., p. 201, 204.

[33] *Ibid*., p. 223.

[34] *Supra*.

[35] *Ibid*., p. 334.

[36] Record in Civil Case No. 33-67464, p. 24.

[37] *Ibid*., p. 189.

[38] *Ibid*., p. 271.

[39] *Rollo* of G.R. No. 111758, p. 112.

[40] *Ibid*., p. 114.

[41] Record of CA-G.R. SP No. 32197, p. 120.

[42] Record of CA-G.R. SP No. 32113, p. 130.

[43] Penned by Associate Justice Buenaventura J. Guerrero and concurred in by Associate Justices Manuel C. Herrera and Cezar D. Francisco.

[44] *Ibid*., p. 416.

[45] *Ibid*., p. 461.

[46] Petitioners filed a Supplemental petition dated October 8, 1993.

[47] *Ibid*., p. 464.

[48] *Rollo*, pp. 187-188.

[49] Decision, p. 8.

[50] *Ibid*., pp. 8-9.

[51] Petition, p. 7; *Rollo*, p. 15.

[52] Under Letters of Instruction No. 1186 dated January 13, 1982, 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 sewerage systems, shore protection, power facilities, national buildings, school buildings, hospital buildings, and other related construction projects that form part of the government capital investment."

[53] MORENO, PHILIPPINE LAW DICTIONARY, 3rd ed., p. 993 *citing* Corders v. Court of First Instance, 67 Phil. 358, 362 (1939).

[54] Malaga v. Penachos, G.R. No. 86695, September 3, 1992, 213 SCRA 516, 523-4 *citing* Datiles and Co. v. Sucaldito, G.R. No. 42380, June 22, 1990, 186 SCRA 704.

[55] G.R. No. 93359, July 12, 1991, 199 SCRA 134, 149 quoting Meralco Securities Corporation v. Savellano,L-36748, October 23, 1982, 117 SCRA 804, 812.

[56] Concerned Officials Of the Metropolitan Waterworks and Sewerage System (MWSS) v. Vasquez, G.R. No. 109113, January 25, 1995, 240 SCRA 502, 528.

[57] G.R. No. 101678, February 3, 1992, 205 SCRA 705, 718.

[58] Malayan Integrated Industries, Corporation v. Court of Appeals, G.R. No. 101469, September 4, 1992, 213 SCRA 640, 651.

[59] It is Annex "D" to the complaint in Civil Case No. 93-67441 and Annex "B" to the complaint in Civil Case No. 93-67464.

[60] G.R. No. 98118, December 6, 1991, 204 SCRA 654, 672.

[61] 43A C.J.S. 106, citing Reynolds v. South Side Nat. Co., App., 64 S.W. 2d 297 (1933).

[62] *See* aforequoted prayer in the original petition in Civil Case No. 93-67096.

[63] Genaro R. Reyes Construction, Inc. v. Court of Appeals, G.R. No. 108718, July 14, 1994, 234 SCRA 116. Justices Florentino Feliciano and Jose Vitug dissented in this THIRD DIVISION case.

[64] G.R. No. 83551, July 11, 1989, 175 SCRA 264, 270.

[65] G.R. No. 75197, June 22, 1987, 151 SCRA 233, 247.

[66] *Rollo*, p. 332.