Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-27275 November 18, 1967

C & C COMMERCIAL CORPORATION, plaintiff-appellee,
vs.
NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, defendant-appellant.

The Government Corporate Counsel for defendant-appellant.
Cesar R. Canonizado and E. Ignacio for plaintiff-appellee.

ANGELES, *J.:*

The main issue in this appeal is, whether or not the call for bids for the supply of steel and centrifugal cast iron pipes for the waterworks projects in Manila and suburbs, and in the cities of Davao and Iloilo, the National Waterworks & Sewerage Authority (NAWASA) violated the provisions of Republic Act 912, section 1 of which provides as follows:

> Sec. 1. In construction or repair work undertaken by the Government, whether done directly or through contract awards, Philippine made materials and products, whenever available, practicable and usable, and will serve the purpose as equally well as foreign made products or materials, shall be used in said construction or repair work, upon the proper certification of the availability, practicability, usability and durability of said materials or products by the Director of the Bureau of Public Works and/or his assistants.

In the decision appealed from the Court of First Instance of Manila has permanently enjoined the NAWASA from the procurement of the materials needed for the projects involved which, according to the appellant, are designed to alleviate the sufferings of the millions of inhabitants in said places where there is a crying need for more water — an item so vital to human existence — and the delay occasioned by the injunctions complained of, has in no little way, further aggravated the inconvenience of the consuming public in said metropolitan areas where acute water crises have recurred through the years. Nevertheless, it is vehemently contended by the appellee that the declaration of an economic national policy as envisioned in the aforequoted provision of the law which, like the original Flag Law[1] is impressed with the clear nationalistic policy of giving preference to locally produced materials and products, has been violated; and if this is so, no amount of public clamor could justify the acts of the NAWASA complained of, for above all the supremacy of the law must be upheld. We have, therefore, examined the record of this case with these considerations foremost in Our minds.

It appears that the case, originally commenced in the Court of First Instance of Manila, on July 7, 1965, as a petition for declaratory relief for the purpose of securing a judicial pronouncement on the interpretation of the word "practicable" as used in Republic Act No. 912, *i.e.*, whether it means that the cheapest materials among the locally produced or manufactured products should be preferred and specified in construction and repair works undertaken by the Government, was later converted into, an action for prohibition with preliminary injunction through the process of supplemental pleadings.

THE SAN PABLO WATERWORKS SYSTEM —

The corresponding complaint was filed on 19 July 1965, alleging that the NAWASA had started to negotiate: for direct purchase of centrifugally cast iron pipes (CCI) for the improvement of the San Pablo Waterworks System in violation of the provisions of Republic Act 912 and the law on public biddings, excluding the C & C Commercial Company, the plaintiff, which can supply instead asbestos cement pressure pipes which are *available*, *practicable*and *usable*, and will serve the purpose of the said project at a much lower cost.

On 6 August 1965, the NAWASA filed its answer to the complaint. On 10 August 1965, the Filipino Pipe and Foundry Corporation, with leave of court, also filed its answer in intervention.

On 16 August 1965, as prayed for in the complaint, the court issued a writ of preliminary injunction restraining the NAWASA from further negotiating the purchase of the CCI pipes from the intervenor.

On 23 September 1965, the plaintiff and the NAWASA entered into a partial stipulation of facts, on the basis of which and the additional evidence adduced at the hearing, the court rendered a partial decision on 31 January 1966, dismissing the complaint insofar as the San Pablo Waterworks System was concerned and dissolving the preliminary injunction issued thereunder. This partial decision has become final.

THE DAVAO METROPOLITAN WATERWORKS —

On 22 January 1965, the NAWASA called for bids for the furnishing of labor and the supply of materials for the construction of the proposed improvement of the Davao Metropolitan Waterworks System. *In the call for bids, the bidders were required to submit proposals for the supply of 24-inch steel pipes, asbestos, cement pressure pipes, and cast iron pipes*. The bidding was held on 23 February 1965. On 15 March 1965, the committee on award of the NAWASA recommended to the board of directors that the bid be awarded to the lowest bidder, Tirso del Rosario, under his proposal to supply steel pipes.

On 10 August 1965, the plaintiff filed a (*First*) *supplemental complaint* seeking to restrain the NAWASA from proceeding with the award of the project in Davao, alleging that in specifying steel pipes for the project, which is admittedly imported material, without giving preference to locally produced asbestos cement pressure pipes manufactured by the plaintiff, violates the

provisions of Republic Act 912. On 14 August 1965, the court admitted the supplemental complaint; and as prayed for therein on, 17 September 1965, the Court issued a writ of preliminary injunction.

THE ILOILO WATERWORKS SYSTEM —

As early as on 26 November 1962, the NAWASA called for *bids for the supply of 18-inch steel pipes* for the improvement of the Iloilo Waterworks System. The bidding was conducted on 27 December 1962. *C & C Commercial Co. participated in the bidding offering to supply the needed 18-inch steel pipes for the project, but lost in the bidding*. The lowest bidder for the supply of the specified 18-inch steel pipes was the Regal Trading Corporation, and the bid was awarded to it.

On 8 September 1965, almost three (3) years after the date of the bidding, the C & C Commercial Co. filed a (*Second*) *supplemental complaint*; seeking to restrain the NAWASA from formalizing or implementing the award on the aforesaid Iloilo project *for the supply of 18-inch steel pipes*, alleging that in specifying steel pipes for the particular project, the NAWASA has violated the provisions of Republic Act 912 which requires the purchase of Philippine made materials and products which are *available*, *practicable* and *usable* locally, like plaintiff's product — asbestos cement pressure pipes — in construction and repair undertaken by the government. On 24 September 1965, over the objection of the NAWASA, alleges second supplemental complaint was admitted by the court. The record is not clear when the restraining order under the second supplemental complaint was issued, although the NAWASA alleges that a restraining order was issued under date of 10 September 1965, which fact has not been traversed by the plaintiff.

THE MANILA AND SUBURBS WATERWORKS SYSTEM —

On 13 September 1965, the NAWASA *advertised for bids for the supply of 30 to 42-inch steel pipes* for the use and improvement of the interim waterworks project in the City of Manila and suburbs, the bidding to take place on 14 December 1955. On 10 November 1965, the C & C Commercial Co. filed a (*Third*) *Supplemental complaint*seeking to restrain the NAWASA and its representatives from holding the balding under the aforementioned notice to bid, averring identical facts as those alleged in the previous supplemental complaints, that the call for bid for steel pipes for the Manila project and suburbs violates the provisions of Republic Act 912. Over the objection of the defendant NAWASA, the supplemental complaint was admitted; and as prayed for therein, on 20 November 1965, a writ of preliminary injunction was issued restraining the NAWASA from holding the bidding scheduled on 14 December 1965, or on any subsequent date, until further orders from the court.

Pending the case in the court *a quo*, the NAWASA filed three separate motions praying for the dissolution of the preliminary injunctive writs issued in connection with the Davao, Iloilo and Manila projects, pleading to the court to consider the crying need for a more adequate supply of water in those cities, particularly in the City of Manila and its suburbs, where the lack of

adequate supply of potable water has been a recurrent crisis which affected to a dangerous extent, the health and the life of the inhabitants, and that the continuation of the injunctive writs may bring about the cancellation of the $20,200,000.00 loan of the NAWASA from the World Bank, which would result from the failure of the NAWASA to comply with the formulated work schedule of the waterworks projects, which under the agreement with the World Bank, has to be completed in the month of October 1967; but the court failed to take any action on the motions. Parodying Shakespeare, "Set honor in one eye, and death in the other, and I will look on both indifferently."

After a trial of the case, on 15 August 1966, the court rendered a decision finding and concluding that the act of the NAWASA in specifying steel pipes for the project of the city of Manila and its suburbs, and in awarding the contracts for the supply of steel pipes in the cases of the Davao and Iloilo Waterworks System, constituted a violation of the provisions of Republic Act 912; the dispositive portion of the decision reads as follows:

> (a) On the supplemental complaint, making permanent the preliminary injunction dated September 2, 1965, enjoining the defendant or its representatives and agents from formalizing or implementing the award for the construction of the Davao Waterworks Project in respect of the award of pipes to be used therein; rescinding the award made in favor of Tirso del Rosario; and ordering the reappraisal of the bids with a view to complying with the provisions of Republic Act No 912;
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> (b) On the second supplemental complaint ordering the issuance of a permanent injunction to enjoin the defendants or its agents and representatives from formalizing the award of the contract for the furnishing of 18" steel pipes for the Iloilo Waterworks System; ordering a new bidding for the said project so as to include in the call for bids for the supply and delivery of materials, asbestos cement pipes, as well as CCI pipes; and rescinding the award of the contract in favor of the Regal Trading Corporation;
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> (c) On the third supplemental complaint, making permanent the preliminary injunction dated December 14, 1965, or any other subsequent date calling for imported steel pipes from 30" to 42" diameter for the interim Development of Waterworks System for Manila and suburbs; and ordering the defendant to specify asbestos cement pressure pipes for the said project; and
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> (d) Ordering the defendants to pay the costs.

From the decision, NAWASA appealed to this Court.

Appellant contends that the provisions of Republic Act 912, are applicable only to construction or repair works undertaken by the Government. It argues, that since the NAWASA, though a public corporation, is not a municipal corporation or agency of the State empowered to regulate or administer the local affairs of a town or city,[2] nor one of the various arms of the government through which political authority is made effective in the Islands, consequently,

the NAWASA should not be included within the meaning of the term "Government" as used in the law.[3] It is to be noted, however, that Section 2 of the Revised Administrative Code defining the term "Government" which is heavily relied upon by the appellant recognizes an exception: "when a different meaning for the word or phrase is given a particular statute or is plainly to be collected from the context or connection where the term is used." In this context of the law, the term "government" without any qualification as used in Republic Act 912, should be construed in its implied sense and not in the strict signification of the term "Government of the Philippines" as the political entity through which political authority is exercised. A comparative analysis of Republic Act 912 and Commonwealth Act 138, otherwise known as the "Flag Law" the latter "An Act to give Native Products and Domestic Entities the Preference in the Purchase of Articles for the Government", and the former "An Act to Require the Use, Under Certain Conditions, of Philippine Made Materials or Products in Government Projects or Public Works Construction, Whether Done Directly by the Government or Awarded thru Contracts", discloses that both relate to the same subject matter and have the same nationalistic purpose or object: to give preference to locally produced materials in purchases, works or projects of the Government. The oberservation that Commonwealth Act 138 expressly includes *purchases by Government-owned companies*, while Republic Act 912 merely relates to *construction or repair work done by the Government*, is no argument for the proposition that government-owned or controlled corporations have been excepted from the operation of the latter law, for it is clear that Commonwealth Act 138 also ordains that the Purchase and Equipment Division of government-owned companies authorized to purchase or contract for materials and supplies for public use, buildings, or public works, shall give preference to locally produced materials or products. Being statutes *in pari materia* they should be construed together to attain the purpose of an expressed national policy. Thus, it has been aptly stated:

> On the presumption that whenever the legislature enacts a provision it has in mind the previous statutes relating to the same subject matter, it is held that in the absence of any express repeal or amendment therein, the new provision was enacted in accord with the legislative policy embodied in those prior statutes, and they all should be construed together. Provisions in an act which are omitted in another act relating to the same subject matter will be applied in a proceeding under the other act, when not inconsistent with its purpose. Prior statutes relating to the same subject matter are to be compared with the new provisions; and if possible by reasonable construction, both are to be construed that effect is given to every provision of each. Statutes *in pari materia* although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other.[4]

The main objective of the Government is to develop our domestic industries so that the country will be economically self-sufficient. And both Commonwealth Act 138 and Republic Act 912 aim to contribute to the realization of the aforesaid nationalistic policy by requiring, the use of Philippine made products or materials, whenever *available*, *practicable* and *usable* in government construction work or repair projects. The alleged conflict between the two laws is more apparent than real, and should not be allowed to defeat the purpose of these laws. We have to declare, therefore, that the NAWASA, like any other corporation exercising proprietary

or governmental functions should be deemed embraced within the term "Government" found in Republic Act 912, and in the repair or construction of their works or projects or the purchase of materials therefor, local materials should be given preference when available, practicable and usable.

The next issue for consideration is: Did the NAWASA violate the provisions of Republic Act 912?

Appellant vehemently denies the charge and decries the holding of the lower court appealed from that in specifying steel pipes in the call for bids for the supply of materials for the waterworks projects under consideration it had defied the mandate of the law. Appellant insists that at the time it called for bids for the Davao project, followed by the call for the supply of materials, for the Iloilo project, herein appellee's plant was only capable of producing asbestos cement pressure pipes up to 12 inches diameter; while at the time the call for bids for the supply of materials for the Interim Project of Manila and suburbs was advertised, the largest size of asbestos cement pipes available were of 24 inches being produced at the time by another local manufacturer, the Eternit Corporation, which never protested against the bids in question.

We have reexamined the record of the case with painstaking solicitude and, instead, We find the facts indubitable and conclusive that the C & C Commercial Corporation had not therefore and even up to the present time ever produced pipes larger than 12 inches in diameter. Said appellee corporation has implicitly admitted this as a fact; and although it claims to have a complete plant that is equipped with the necessary machinery, technicians and skilled laborers capable of producing pipes in the sizes called for in those bids (18 to 42 inches in diameter) had the NAWASA specified them in asbestos cement, the weakness of the argument is at once exposed by a mere examination of the pertinent evidence adduced during the trial of the case on this particular point. The claim is belied by Leopoldo del Rosario, a staff civil an engineer of the NAWASA, who testified as follows:

> Q. Engineer Del Rosario, what is the limitation of the local asbestos cement pressure pipes that are locally manufactured in the Philippines?
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> A. We based on NAWASA's experience, we have purchased only sizes up to 12 inches, but on certification of the Bureau of Public Works, a report has been submitted to us that asbestos cement pressure pipes (is) being manufactured by one local manufacturing company in the Philippines, the Eternit Corporation, which is a pipe manufacturer. and we have recently purchased pipes for the Manila interim project of sizes up to 24 inches non-pressure pipes.
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> Q. Is there any other local manufacturer of asbestos cement pressure pipes besides C & C Commercial Corporation?
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> A. None, sir, only the C & C Commercial Corporation.[5]

Q. Engineer del Rosario, as staff civil engineer and the specification engineer, member-secretary of the Pre-Qualifications Committee and the present chairman of all the bidding committees of the NAWASA, do you know if C & C Commercial Corporation, the plaintiff herein, is manufacturing asbestos cement pressure pipes from sizes thirty inches and up in diameter?

A. The company does not manufacture size beyond twelve inches.

Q. Why do you say that the C & C Commercial Corporation is not manufacturing asbestos cement pressure. pipes beyond twelve inches?

A. Because we had bi-yearly inspection of all local plants here as a matter of policy of the committee to determine the capacity or capability of the local manufacturers to supply and even to bid. So every six months the pre-qualifications, committee in collaboration with the procurement inspect all the facilities of the chemical producing plant, this cast iron and asbestos plant, the galvanized iron pipe plant, these are regularly inspected every six months and so the pre-qualifications would know what is available.[6]

And the foregoing testimony relative to the "non-availability" of appellee's products in sizes above 12 inches in diameter was corroborated by Mrs. Clara Reyes Pastor, herein appellee corporation's President, who declared as follows:

Q. Is it not a fact Mrs. Reyes, that the sizes of asbestos cement pressure pipes locally manufactured by you and which you furnish the NAWASA is only 12 inches in diameter? Yes or No ?

A. Yes, sir, because that is the only pipe required at the time I delivered it.

Q. And the asbestos cement pressure pipes from sizes 12 to 42 inches that you have supplied the NAWASA in the past, they were all imported by you?

A. Yes, sir.

Q. I heard you testify Mrs. Reyes, that in case you win in this particular bidding, you intend to import equipments from abroad, is that correct?

A. Not equipments, only mandril.

Q. So that presently what is the biggest size of mandril that you have?

A. I have a 16-inch mandril the biggest of them all.[7]

From the foregoing testimony of witnesses, and in the light of other evidence submitted by the parties, the following may be deduced: that it is the practice of the NAWASA — which we find both practical and logical — to send out its own men to the various local manufacturing plants for the purpose of knowing the availability of materials needed for its projects; that at the time it specified 18 and 24 inches diameter steel pipes for the Davao and Iloilo waterworks projects, there were no locally produced materials in said sizes; and that with respect to those sizes that were already available, the NAWASA has actually specified and used them in various other construction and repair works even without the certification of the Director of Public Works. We really do not see Our way clear how herein appellee could have charged that the NAWASA had discriminated against its products under the circumstances when its own president admits that it has supplied the NAWASA before locally produced asbestos cement pressure pipes up to 12 inches diameter only and all those with diameters above 12 inches were of foreign manufacture. The evidence, therefore, is conclusive that locally produced asbestos pipes above 12 inches in diameter were not available for purposes of claiming any preference under the provisions of Republic Act 912. And this conclusion becomes even more cogent if We are to consider the fact that C & C Commercial Corporation failed to produce the necessary certification from the Director of Public Works to show that its products were already certified as available, practicable and usable at the time that the call for bids for the supply of materials for the Davao, Iloilo and Manila Interim projects were made to give some semblance of the right it claims to have been violated.

Of course, appellee points out the fact that it has subsequently secured the necessary certification from the Director of Public Works certifying to the availability, practicability and durability of the asbestos cement pressure pipes produced from its plant. We agree, and there should be no quarrel at all that with respect to pipes of 4 to 12 inches in diameter which it is actually producing now, the preference claimed under the law may be allowed. Be that as it may, however, the certification referred to did not in any way improve its position; for the stubborn fact still remains that at the time said certification was issued on July 6,1966, C & C Commercial Corporation was actually producing asbestos pipe up to 12 inches only, which its existing equipment or machinery, when inspected by a representative of the Office that issued the certification, was found capable of producing. Hence, We cannot subscribe to the holding of the court below that locally produced asbestos cement pipes above 12 inches in diameter may be considered "'available" within the meaning of Republic Act 912 simply because the President of herein appellee corporation n had manifested or promised that it can procure bigger mandrels worth $25,000.00 fom abroad and will be able to produce pipes in the larger sizes called for in the questioned bids shortly after their installation, for that would be giving the term "available" a very strained meaning. It would really be unfair to require in order to be "available" within the meaning of the law that herein appellee should have in stock the sizes of pipes called for in the bids in the quantity needed by the appellant; but We cannot also believe, by any stretch of the imagination, that the Director of Public Works would certify to the availability, practicability, usability and durability of certain products even before the machinery, equipment or tools needed to produce said products are actually bought from abroad and installed in its plant by the manufacturer.

Statutes granting advantages to private persons have in many instances created special privileges or monopolies for the grantees and thus have been viewed with suspicion and strictly construed. This is altogether appropriate in the majority of situations, for if public advantage is gained by the grant,it normally appears to be of secondary significance compared with the advantage gained by the grantee.[8] And rights which exist only by virtue of such statutes come into being only after strict compliance with all the conditions found in those statutes.[9] These rules should apply to the case at bar where the law invoked grants a preference to locally produced products or materials. Since Republic Act 912 grants preference only upon the certification of availability, practicability and usability of locally produced materials by the Director of Public Works, that certification must be existing and effective before any right arising therefrom may be claimed to have been violated. Notwithstanding the clear nationalistic policy of the law aforementioned, We cannot, by any mistaken sympathy towards herein appellee, recognize the existence of its right under the law alleged to have been violated, which C & C Commercial Corporation has miserably failed to prove in this case.

With respect to the Interim Project for the City of Manila and its suburbs, it would seem that the decision appealed from had virtually become moot and academic by reason of the passage of Republic Act 4858 which authorizes the President to allow the procurement of supplies necessary for the rehabilitation of the project as an exception to the restrictions and preferences provided for in Republic Act 912, and the President appears to have authorized the General Manager of the NAWASA under the said statutory power to purchase all the pipes and materials necessary for the project by negotiated sales.

For all the foregoing, We find it unnecessary to discuss further the other errors assigned by the appellant.

WHEREFORE, the decision appealed from is hereby set aside, with costs against the appellee. The writs of preliminary injunctions issued by the lower court are set, aside, and declared null and void.

Concepcion, C.J., Reyes J.B.L., Dizon, Bengzon, J.P., Zaldivar, Sanchez and Castro, JJ., concur. *Fernando, J.,* took no part.

Footnotes

[1] Commonwealth Act No. 138, Nov. 7, 1936.

[2] Citing NAWASA vs. NAWASA Consolidated Unions, et al. L-18938.

[3] Citing Section 2, Rev. Adm. Code which provides, *inter alia*, as follows: "The Government of the Republic of the Phil. in a term which refers to the corporate governmental entity through which the functions of the government are exercised throughout the Philippines, including, save as the

contrary appear; from the context, the various arms through which political authority is made effective in the Philippines, whether pertaining to the central government or to the provincial or municipal branches or other forms of local government."

[4] Sutherland & Statutory Construction, Vol. II, pp. 530-532.

[5] T.S.N., June 27, 1966, pp. 54-55.

[6] T.S.N., June 7, 1966, pp. 8-10.

[7] T.S.N., June 27, 1966, pp. 44-45.

[8] Sutherland Statutory Construction, Vol. II, see. 3404, p. 240.

[9] *Id*., Vol. III, sec. 5812, p. 94.