Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

MANILA INTERNATIONAL AIRPORT AUTHORITY and ANTONIO P. GANA, Petitioners, - versus - **OLONGAPO MAINTENANCE SERVICES, INC. and TRIPLE CROWN SERVICES, INC.,** Respondents.	**G.R. Nos. 146184-85**
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ANTONIO P. GANA (in his capacity as Gen. Manager of the Manila International Airport Authority) and MANILAINTERNATIONAL AIRPORT AUTHORITY, Petitioners, - versus - **TRIPLE CROWN SERVICES, INC.,** Respondent.	**G.R. No. 161117**
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TRIPLE CROWN SERVICES, INC., Petitioner, - versus -	**G.R. No. 167827** Present: QUISUMBING, *J.*, Chairperson, CARPIO,

	CARPIO MORALES,
MANILA INTERNATIONAL AIRPORT AUTHORITY and THE COURT OF APPEALS,	TINGA, and VELASCO, JR., *JJ.*
Respondents.	Promulgated:
	January 31, 2008

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D E C I S I O N

VELASCO, JR., *J.*:

The rationale behind the requirement of a public bidding, as a mode of awarding government contracts, is to ensure that the people get maximum benefits and quality services from the contracts. More significantly, the strict compliance with the requirements of a public bidding echoes the call for transparency in government transactions and accountability of public officers. Public biddings are intended to minimize occasions for corruption and temptations to abuse of discretion on the part of government authorities in awarding contracts.

Before us are three separate petitions from service contractors that question the legality of awarding government contracts without public bidding.

The first petition, docketed as **G.R. Nos. 146184-85**, assails the November 24, 2000 Decision[1] of the Court of Appeals (CA) in consolidated cases CA-G.R. SP Nos. 50087 and 50131. The CA affirmed the November 18, 1998 Order[2] of the Regional Trial Court (RTC), Branch 119, Pasay City in Civil Case No. 98-1875 entitled *Olongapo Maintenance Services, Inc. v. Manila International Airport Authority and Antonio P. Gana*, granting an injunctive writ to respondent Olongapo Maintenance Services, Inc. (OMSI).

The same CA Decision likewise upheld the November 19, 1998 Order[3] of the RTC, Branch 113, Pasay City, granting an injunctive writ to respondent Triple Crown Services, Inc. (TCSI) in Civil Case No. 98-1885 entitled *Triple Crown Services, Inc. v. Antonio P. Gana (In his capacity as*

General Manager of the Manila International Airport Authority) and Goodline Staffers & Allied Services, Inc.

The second, docketed as **G.R. No. 161117**,[4] assails the November 28, 2003 CA Decision[5] in CA-G.R. SP No. 67092, which affirmed the Decision[6] dated February 1, 2001 of the RTC, Branch 113, Pasay City and its April 16, 2001 Order[7] in Civil Case No. 98-1885, extending the November 19, 1998 injunctive writ adverted to earlier, ordering petitioners to conduct a public bidding for the areas serviced by respondent TCSI, and denying petitioners' motion for reconsideration, respectively.

In the third, docketed as **G.R. No. 167827**,[8] TCSI assails the September 9, 2004 CA Decision[9] in CA-G.R. SP No. 76138, as veritably reiterated in the CA's April 13, 2005 Resolution,[10] which granted Manila International Airport Authority's (MIAA's) petition for certiorari charging TCSI with forum shopping. The CA lifted the March 19, 2003 Writ of Mandamus[11] issued by the RTC, Branch 115 in Civil Case No. 03-0025 entitled *Triple Crown Services, Inc. v. Manila International Airport Authority* for Mandamus with Damages.

We consolidated **G.R. Nos. 146184-85** with **G.R. No. 161117** and **G.R. No. 167827** as they all arose from the cancellation of the service contracts of OMSI and TCSI with MIAA.[12]

The antecedent facts are as follows:

OMSI and TCSI were among the five contractors of MIAA which had janitorial and maintenance service contracts covering various areas in the Ninoy AquinoInternational Airport. Before their service contracts expired on October 31, 1998, the MIAA Board of Directors, through Antonio P. Gana, then General Manager (GM) of MIAA, wrote OMSI and TCSI informing them that their contracts would no longer be renewed after October 31, 1998.[13]

On September 28, 1998, TCSI, in a letter to Gana, expressed its concern over the award of its concession area to a new service contractor through a negotiated contract. It said that to award TCSI's contract by mere negotiation would violate its right to equal protection of the law. TCSI thus suggested that a public bidding be conducted and that the effectivity of its service contract be meanwhile extended until a winning bid is declared.

A similar letter from OMSI to MIAA followed.[14]

In reply, MIAA wrote TCSI and OMSI reiterating its disinclination to renew the latter's contracts, adding that it was to the government's advantage to instead just negotiate with other contractors. The MIAA said that awarding a contract through negotiation was in accordance with Section 9 of Executive Order No. (EO) 903; Sec. 82 of Republic Act No. (RA) 8522, otherwise known as the *General Appropriations Act for 1998*; and Sec. 417 of the Government Accounting and Auditing Manual (GAAM).[15]

Consequently, OMSI and TCSI instituted civil cases against MIAA to forestall the termination of their contracts and prevent MIAA from negotiating with other service contractors.

Civil Case Nos. 98-1875 and 98-1885

On October 26, 1998, OMSI filed with the Pasay City RTC a Complaint for *Injunction and Damages with Prayer for Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction*[16] against MIAA (OMSI case). Docketed as Civil Case No. 98-1875, the case was raffled to Branch 119 of the court.

Two days after, TCSI filed Civil Case No. 98-1885 (first TCSI case) for *Prohibition, Mandamus and Damages with Prayer for Temporary Restraining Order (TRO) and Injunction*[17] against Gana and Goodline Staffers & Allied Services, Inc. (Goodline), a service contractor that was awarded the contract heretofore pertaining to TCSI. This was raffled to the

RTC, Branch 113, Pasay City. The OMSI and TCSI cases are now the consolidated cases G.R. Nos. 146184-85.

Both Branches 113 and 119 granted TROs to OMSI and TCSI.[18] Subsequently, on November 18, 1998, Branch 119 granted a preliminary injunctive writ[19] in favor of OMSI. A day after, Branch 113 also granted a similar writ[20] in favor of TCSI.

Without filing any motion for reconsideration, MIAA assailed as void the issuance of the injunctive writs before the CA through petitions for certiorari under Rule 65 of the Rules of Court, docketed as CA-G.R. SP Nos. 50087 and 50131.[21]

Meanwhile, even as the cases were pending before the CA, Branch 113 continued to hear the first TCSI case. On February 1, 2001, the trial court rendered a Decision declaring as null and void the negotiated contract award to Goodline and the Resolution of the MIAA Board dated October 2, 1998, which authorized Gana to negotiate the award of the service contract, and ordered the holding of a public bidding on the janitorial service contract. Branch 113 also ordered the writ of preliminary injunction in the case enforced until after a qualified bidder is determined.[22]

In its Decision, the trial court said MIAA and Gana violated TCSI's right to equal protection and that the authority to negotiate the MIAA Board granted to Gana was tainted with grave abuse of discretion as Gana's exercise of the management's prerogative to choose the awardee of a service contract was done arbitrarily. Gana, the RTC added, should have conducted a public bidding, noting that Gana erred in relying on the law and executive issuances he cited because those do not do away with the required public bidding, as held in *National Food Authority v. Court of Appeals*.[23]

Following the denial of Gana's motion for reconsideration, MIAA and Gana appealed before the CA, their recourse docketed as CA-G.R. SP No. 67092.

Civil Case Nos. 02-0517 and 03-0025

During the pendency of the appeal of the first TCSI case before the CA in CA-G.R. SP No. 67092, MIAA and TCSI engaged in several exchanges regarding payment of TCSI employees' salaries. It appears that MIAA promised to pay TCSI's employees who were allegedly not paid their salaries on time. According to MIAA, it had not paid TCSI the monthly billings per contract owing to the non-submission by TCSI, as required in the contract, of the proper billing requirements and proof of actual payment of TCSI's employees for the payroll period.

On September 9, 2002, TCSI sent a demand letter[24] to MIAA for contract billings since late June 2002. In the letter, TCSI also protested MIAA's unilateral precondition that the former submit proof of actual wage payment to its employees. TCSI claimed MIAA's delay in payment resulted in financial losses for TCSI. TCSI reiterated its demand on October 4, 2002 for the periods covering July to September 2002, TCSI this time accusing MIAA of deliberately delaying payment which had adversely affected TCSI's business since it could not increase its manpower nor buy enough janitorial supplies and materials, making it liable to MIAA for liquidated damages. TCSI appealed to MIAA to waive the liquidated damages it was charging TCSI for the period July to September 2002.

On October 30, 2002, MIAA informed TCSI that it was terminating the latter's contract effective 10 days from receipt of the notice or on November 14, 2002.[25] As reason therefor, MIAA alleged that TCSI's manpower was insufficient and, thus, was delinquent in the delivery of supplies—both in violation of paragraph 9.02[26] of the service contract.

TCSI protested the termination which it viewed as violative of the injunctive writ issued by Branch 113. It blamed MIAA for deliberately refusing and delaying to pay TCSI, which forced TCSI into a situation where it could not comply with its contract. TCSI accused MIAA of arbitrarily terminating its contract to replace TCSI with another outfit and for ignoring Article VIII of the contract, the arbitration clause. It also posited that par. 9.02 was a clause of adhesion and could not be enforced. On November 11, 2002, TCSI sent a demand letter[27] for PhP 18,091,957.94 to MIAA, the amount representing, among others, claims for janitorial services, illegal

deductions made from billing for janitorial services, and arbitrary deductions made for alleged undelivered supplies.

In its letter-reply[28] of November 13, 2002, MIAA asserted that the termination of TCSI's service contract did not violate the injunctive writ as the writ covered only the extension of the contract period until such time that a new awardee was chosen through public bidding. To MIAA, the writ did not enjoin contract termination for cause, such as for violation of par. 9.02 of the contract. Moreover, MIAA asserted that TCSI did not comply with Art. 1, par. 1.03 of the "status quo contract" which stipulates that TCSI shall strictly and fully comply with the procedures/instructions issued by MIAA, as part of the invitation to bid, and instructions that may be issued by MIAA from time to time—all integral parts of the contract. According to MIAA, it was TCSI that chose to ignore these instructions and did not present proof of actual payment to TCSI employees.

On the eve of November 18, 2002, MIAA refused entry to TCSI employees and took over the janitorial services in the area serviced by TCSI.

Subsequently, on November 25, 2002, TCSI filed a Petition for Contempt with Motion to Consolidate,[29] impleading Edgardo Manda who took over as GM of MIAA. The petition, entitled *Triple Crown Services, Inc. v. Edgardo Manda, in his capacity as General Manager of the Manila International Airport Authority* and docketed as Civil Case No. 02-0517 (second TCSI case for contempt), was raffled to the RTC, Branch 108, Pasay City. In it, TCSI mainly alleged that the unilateral termination by MIAA of their service contract on alleged contract violation brought about by MIAA's refusal to pay TCSI was a blatant and contumacious violation of the injunctive writ issued by Branch 113. TCSI also prayed that the petition for contempt be consolidated with the first TCSI case.

On the same day that the petition for contempt was filed, MIAA sent a reply[30] to TCSI's demand letter asserting that MIAA could not pay the

items TCSI demanded because TCSI had not presented any billings for the period it wanted to be paid, among other reasons.

Meanwhile, pending resolution of the second TCSI case for contempt, TCSI filed on January 24, 2003 a Petition for Mandamus with Damages[31] against MIAAentitled *Triple Crown Services, Inc. v. Manila International Airport Authority*, docketed as Civil Case No. 03-0025 (third TCSI case for mandamus) and again raffled to Branch 115, wherein TCSI sought to maintain the status quo order issued by Branch 113 in the first TCSI case and to compel MIAA to pay PhP 18 million to TCSI.

In its Comment, MIAA denied all of TCSI's allegations and accused TCSI of forum shopping.

On March 4, 2003, in the third TCSI case for mandamus, Branch 115 granted[32] the Writ of Mandamus to TCSI and ordered MIAA to comply with the Writ of Preliminary Injunction issued by Branch 113 in the first TCSI case.

A week after and because MIAA refused to allow TCSI to peacefully continue its contract services, TCSI filed an *Urgent Manifestation With Prayer for the Court to Cite Respondent Motu Proprio in Contempt.*[33]

After the trial court denied MIAA's Motion for Reconsideration,[34] Manda, in compliance with the trial court's show cause order, explained that the writ of mandamus had not yet become final and executory and a writ of execution was still needed before mandamus could be enforced.

On March 24, 2003, MIAA assailed the March 4, 2003 and March 19, 2003 Orders of the trial court before the CA through a petition for certiorari

under Rule 65 in CA-G.R. SP No. 76138, praying for a TRO and/or writ of preliminary injunction for the trial court to desist from further proceedings with the third TCSI case for mandamus.

A day after, in the second TCSI case for contempt, the RTC directed the arrest of Manda for his failure to comply with the orders of the court. This did not materialize because two days after, the CA granted a TRO enjoining the enforcement of the assailed orders and the writ of mandamus and, consequently, lifted the warrant of arrest for Manda.

Thereafter, Manda filed a Manifestation and Motion to Dismiss the second TCSI case for contempt on the ground of forum shopping. The trial court denied the motion on the ground that the contempt case was an entirely distinct and separate cause of action from the mandamus case pending in another RTC branch. It said the contempt case was grounded on the alleged disobedience of Manda of the RTC, Branch 113 Order and injunctive writ in the first TCSI case appealed before the CA which could not be considered final and executory. Hence, the trial court ruled that the contempt case was prematurely filed and it thus had not acquired jurisdiction over it.

The Ruling of the Court of Appeals in the consolidated cases docketed CA-G.R. SP Nos. 50087 and 50131 involving the injunctive writs issued in the OMSI case and First TCSI case

Recall that MIAA assailed the injunctive writs issued by the trial court thru petitions for certiorari under Rule 65 before the CA, docketed as CA-G.R. SP Nos. 50087 and 50131. On November 24, 2000, the CA rendered the assailed Decision, denying due course to and dismissing the petitions.[35] The CA stated that respondents-judges did not gravely abuse their discretion in issuing the injunctive writs enjoining MIAA from

terminating the service contracts of OMSI and TCSI. Relying on *Manila International Airport Authority v. Mabunay* (*Mabunay*)[36] and *National Food Authority*,[37] the CA said that MIAA and Gana failed to satisfactorily show why the aforementioned cases should not apply. Moreover, the appellate court explained that notwithstanding the expiration of the service contracts of OMSI and TCSI, they both have extant interests as possible applicants. Aggrieved by the CA Decision, MIAA and Gana filed the instant petition docketed as **G.R. Nos. 146184-85**.

The Ruling of the Court of Appeals in CA-G.R. SP No. 67092

Recall likewise that the RTC in the first TCSI case granted an injunctive writ in favor of TCSI. On appeal, on November 28, 2003, the CA in CA-G.R. SP No. 67092 rendered the assailed Decision, affirming that of the RTC[38] and reasoning that Sec. 1(e) of EO 301, series of 1987, entitled *Decentralizing Actions on Government Negotiated Contracts, Lease Contracts and Records Disposal*, relied upon by Gana and MIAA, does not apply to service contracts but only to requisitions of needed supplies. The CA applied our ruling in *Kilosbayan, Incorporated v. Morato* (*Kilosbayan*),[39] where we held that the "supplies" mentioned as exceptions in EO 301 refer only to contracts for the purchase of supplies, materials, and equipment, and do not refer to other contracts, such as lease of equipment, and that in the same vein, "supplies" in Sec. 1(e) of EO 301 only include materials and equipment and not service contracts, which are included in the general rule of Sec. 1. The CA, relying on *Mabunay*[40] and *National Food Authority*, explained that Sec. 9 of EO 903, Sec. 82 of RA 8522, and Sec. 417 of the GAAM must be harmonized with the provisions of EO 301 on public biddings in all government contracted services. The rationale for public bidding, the CA said, is to give the public the best possible advantages through open competition.

Without filing a motion for reconsideration, Gana and MIAA now question the above Decision of the appellate court in CA-G.R. SP No. 67092 through a Petition for Review on Certiorari docketed as **G.R. No. 161117** before us.

The Ruling of the Court of Appeals in CA-G.R. SP No. 76138

On September 9, 2004, the CA rendered the assailed Decision, granting MIAA's petition for certiorari. It annulled and set aside the March 4, 2003 Order and March 19, 2003 Writ of Mandamus and dismissed the third TCSI case for mandamus with prejudice.[41] The CA found TCSI guilty of forum shopping when it filed the third TCSI case for mandamus while the second TCSI case for contempt was pending. Further, the CA observed that the two cases have identical parties, prayed for the same reliefs, and were anchored on the same writ of preliminary injunction issued in the first TCSI case. Citing *Philippine Commercial International Bank v. Court of Appeals*,[42] the CA concluded that elements of *litis pendentia* were present and TCSI was guilty of forum shopping.

TCSI's motion for reconsideration was likewise denied in the April 13, 2005 CA Resolution. TCSI now assails the above Decision and Resolution before us in a Petition for Review on Certiorari under Rule 45 docketed as **G.R. No. 167827**.

The Issues

In **G.R. Nos. 146184-85**, MIAA and Gana raise the following issues for our consideration:

> 1. Whether [or not] the Court of Appeals erred in declaring that respondents had extant interests in the awarding of the service contracts.
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> 2. Whether [or not] the Court of Appeals erred in holding that petitioners had no power to award the service contracts through negotiation.[43]

In **G.R. No. 161117**, Gana and MIAA raise the following issues for our consideration:

> Whether [or not] the Court of Appeals erred in holding that the exception in Section 1 (e) of [EO] 301 applies only to requisition of needed supplies and not to the contracting of public services.
>
> Whether [or not] the Court of Appeals erred in holding that respondent is not estopped from questioning the negotiated contract between MIAA and [Goodline].
>
> Whether there was a violation of respondent's right to equal protection.[44]

In **G.R. No. 167827**, TCSI raises the following issues for our consideration:

> I.
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> Whether or not the respondent can be compelled by Mandamus to maintain the *status quo ante*, as earlier ordered by this Honorable Court and be held liable for damages for unilaterally terminating the service contract of the petitioner in violation of said status quo order.
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> II.
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> Whether or not the herein petitioner is guilty of forum shopping.
>
> III.
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> Whether or not the herein private respondent complied with the requisites for the institution of a petition for certiorari under Rule 65 with the Court of Appeals.[45]

Propriety of the issuance of the injunctions

We will jointly tackle G.R. Nos. 146184-85 and 161117 since the issues raised are closely interwoven. The incidents in the two assailed decisions not only arose from the first TCSI case, but also involved the same issue of the propriety of preliminary and permanent injunctions.

MIAA and Gana strongly assert that OMSI and TCSI have no right to be protected by the injunctive writs as the term of their service contracts had already expired on October 31, 1998. Petitioners rely on *National Food Authority*, where we held that no court can compel a party to agree to a

contract or its extension through an injunctive writ since an extension of a contract is only upon mutual consent of the parties.

MIAA and Gana also argue that OMSI and TCSI are estopped from questioning the validity of a contract acquired through negotiations since the service contracts of OMSI and TCSI with MIAA were also negotiated contracts and did not undergo public bidding. These negotiated contracts are among the exceptions in Sec. 1 of EO 301. MIAA and Gana posit that the exceptions in Sec. 1 cover both contracts for public services and contracts for supplies, materials, and equipment. And, since TCSI's contract expired on October 31, 1998, and MIAA refused to extend the contracts, OMSI and TCSI have no right of renewal or extension of their service contract.

We agree with MIAA and Gana.

It is undisputed that the service contracts of OMSI and TCSI expired on October 31, 1998 and were not extended by MIAA. Hence, all the rights and obligations arising from said contracts were extinguished on the last day of the term. As a result, OMSI and TCSI had already lost their rights to render janitorial and maintenance services for MIAA starting November 1, 1998.

Such being the case, the Court rules that the TROs and writs of preliminary injunction issued in favor of OMSI and TCSI are irregular and without legal basis for the following reasons, to wit:

(1) The November 18, 1998 injunctive writ in favor of OMSI in the OMSI case and the November 19, 1998 injunctive writ in favor of TCSI in the first TCSI case were in the nature of writs of mandatory preliminary injunction. In *Bautista v. Barcelona*,[46] we made clear that a mandatory injunction is an extreme remedy and will be granted only on a showing that (a) the invasion of the right is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage.[47] It is apparent that OMSI and TCSI have no more legal rights under the service contracts

and, therefore, they have not met the vital procedural requirement that they must have material and substantial rights that have to be protected by courts.

(2) The service contracts of OMSI and TCSI may not be extended through the instrumentality of an injunctive writ. It is a doctrine firmly settled in this jurisdiction that courts have no power to make a contract for the parties nor can they construe contracts in such a manner as to change the terms of the contracts not contemplated by the parties.[48] Verily, under Art. 1308 of the Civil Code, the contract between the parties is the law between them; mutuality being an essential characteristic of contracts giving rise to reciprocal obligations.[49] And under Art. 1306 of the Code, the parties may establish stipulations mutually acceptable to them for as long as such are not contrary to law, morals, good customs, public order, or public policy. And where a determinate period for a contract's effectivity and expiration has been mutually agreed upon and duly stipulated, the lapse of such period ends the contract's effectivity and the parties cease to be bound by the contract.

It is undisputed that the service contracts were to terminate on October 31, 1998. Thus, by the lapse of such date, where no contract extension had been mutually agreed upon by the parties, the trial court cannot force the parties nor substitute their mutual consent to a contract extension through an injunction.

Indeed, MIAA's decision not to extend the service contracts of OMSI and TCSI is a valid exercise of management prerogative. Certainly, there is no law that prohibits management discretion, even if it be a governmental agency or instrumentality or a government-owned or controlled corporation, from extending or not extending a service contract. Certainly, MIAA's management can determine, in the exercise of its sound discretion and the options available, given the factual and economic milieu prevailing, whether or not it is to its interest to extend a service contract for janitorial and maintenance services.

From the foregoing premises, the RTCs in Civil Case Nos. 98-1875 and 98-1885 have erred in issuing the assailed writs of mandatory injunction. Hence, these writs must be nullified.

The next issue to be resolved is whether MIAA, in the context of this case, can be barred from entering into negotiated contracts after the expiration of the service contracts of OMSI and TCSI on October 31, 1998.

The answer is in the affirmative.

Exceptions in EO 301 apply to purchase of supplies, materials and equipment not to contracts for public services

We cannot agree with the contention of MIAA and Gana that the exceptions to the public bidding rule in Sec. 1 of EO 301 cover both contracts for public services and for supplies, material, and equipment. Their reliance on Sec. 1(e) of EO 301 for the award of a service contract for janitorial and maintenance services without public bidding is misplaced.

For clarity, we quote in full Sec. 1 of EO 301:

> Section 1. Guidelines for Negotiated Contracts. Any provision of the law, decree, executive order or other issuances to the contrary nothwithstanding, **no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding**, except under any of the following situations:
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> a. Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to, life and/or property;
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> b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;
>
> c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;

> d. Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance were exorbitant or non-conforming to specifications;
>
> e. **In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned**; and
>
> f. Whenever the purchase is made from an agency of the government. (Emphasis supplied.)

In *Andres v. Commission on Audit*, this Court explained the rationale behind EO 301, upholding the general rule that contracts shall not be entered into or renewed without public bidding, thus:

> Executive Order No. 301 explicitly permits negotiated contracts in particular identified instances. In its preamble, it adverted to the then existing set-up of "**a centralized administrative system . . . for reviewing and approving negotiated contracts . . .," and to the unsatisfactory character thereof in that "such centralized administrative system is not at all 'facilitative' *particularly in emergency situations,* characterized as it is by red tape and too much delay in the processing and final approval of the required transaction or activity;" hence, the "need to decentralize the processing and final approval of negotiated contracts** . . . " It then laid down, in its Section 1, "guidelines for negotiated contracts" thenceforth to be followed. **While affirming the general policy that contracts shall not be entered into or renewed without public bidding**, x x x. (Emphasis supplied.)[50]

It is only in the instances enumerated above that public bidding may be dispensed with and a contract closed through negotiations.

MIAA and Gana posit the view that Sec. 1(e) of EO 301 includes contracts for public services and is not limited to supplies, materials, or equipment, and applies to all forms of contracts.

We are not convinced.

In *Kilosbayan*,[51] we ruled that Sec. 1 of EO 301 "applies only to the contracts for the purchase of supplies, materials, and equipment. It does not cover contracts of lease of equipment like the [Equipment Lease Agreement]." While the lease of equipment was the subject of *Kilosbayan*, the ruling therein can very well apply to the cases at bar. We agree with the apt observation of OMSI and TCSI that Sec. 1 of EO 301 and the exceptions to the bidding rule enumerated therein only pertain to contracts for the procurement of supplies, materials, and equipment. Thus, corollarily, this express enumeration excludes all others in accord with the elemental principle in legal hermeneutics, *expressio unius est exclusio alterius* or the express inclusion of one implies the exclusion of all others. A contract for janitorial and maintenance services, like a contract of lease of equipment, is not included in the exceptions, particularly Sec. 1(e) relied upon by MIAA and Gana.

Moreover, in *Kilosbayan*, in denying Kilosbayan Incorporated's motion for reconsideration and debunking its contention that EO 301 covers all types of contracts for public services, this Court, in a Resolution, reiterated its original ruling and held that EO 301 was promulgated merely to decentralize the system of reviewing negotiated contracts of purchase for the furnishing of supplies, materials, and equipment as well as lease contracts of buildings. We concluded:

> In sum, **E.O. No. 301 applies only to contracts for the purchase of supplies, materials and equipment**, and it was merely to change the system of administrative review of emergency purchases, as theretofore prescribed by E.O. No. 298, that E.O. No. 301 was issued on July 26, 1987. Part B of this Executive Order applies to leases of buildings, not of equipment, and therefore does not govern the lease contract in this case. (Emphasis supplied.) [52]

It is thus clear that the contention of MIAA and Gana that the exceptions in EO 301, particularly Sec. 1(e), include contracts for public services cannot be sustained.

Further, suffice it to say that Sec. 9 of EO 903,[53] Sec. 82 of RA 8522 or the *General Appropriations Act for 1998*, and Sec. 417 of the GAAM, likewise relied upon by MIAA and Gana for grant of authority to negotiate service contract, do not do away with the general rule on public bidding. In *Mabunay*, we ruled that RA 7845 or the *General Appropriations Act for 1995* cannot be construed to eliminate public bidding in the award of a contract for security services, as RA 7845 "is not the governing law on the award of the service contracts by government agencies nor does it do away with the general requirement of public bidding"[54] and that "administrative discretion may not transcend the statutes"[55] that require public bidding. Thus, RA 8522, particularly its Sec. 82, does not dispense with the requirement of public bidding to award a contract for janitorial and maintenance services.

Furthermore, our ruling in *National Food Authority*, cited in *Mabunay*, is still valid. It directly applies to the legal issue in the instant consolidated cases that public bidding is required for the award of service contracts.

RA 9184 provides for alternative procurement procedures

In sum, we reiterate the legal requirement of competitive public bidding for all government public service contracts and procurement of materials, supplies, and equipment. Competitive public bidding may not be dispensed with nor circumvented, and alternative modes of procurement for public service contracts and for supplies, materials, and equipment may only be resorted to in the instances provided for by law. In the instant case, no express provision of law has granted MIAA the right to forego public bidding in negotiating the award of contracts for janitorial and maintenance services.

In *Abaya v. Ebdane*,[56] this Court outlined the history of Philippine procurement laws from the introduction of American public bidding through Act No. 22, enacted on October 15, 1900, and the subsequent laws and

issuances. On October 8, 2001, President Arroyo issued EO 40 which repealed, amended, or modified all executive issuances, orders, rules and regulations, or parts inconsistent with her EO.[57]

On January 10, 2003, President Arroyo signed into law RA 9184,[58] which expressly repealed, among others, EO 40, EO 262, EO 301, EO 302, and Presidential Decree No. 1594, as amended, and is the current law on government procurement. This law still requires public bidding as a preferred mode of award. However, RA 9184 allows exceptions to public bidding rule in certain instances, conditions, or extraordinary circumstances. Sec. 53[59] of RA 9184 in particular authorizes negotiated procurement, while other alternative methods of procurement are set forth under Art. XVI[60] of RA 9184. Thus, under the present law, MIAA can enter into negotiated contracts in the exceptional situations allowed by RA 9184.

With regard to the prayer for a mandatory preliminary injunction, OMSI and TCSI have amply demonstrated their right to require the holding of a public bidding for the service contracts with MIAA. While we have previously explained that OMSI and TCSI have no right to a writ of mandatory injunction to have their service contracts extended by the courts beyond the fixed term, the situation is different with respect to their right to participate in the public bidding prescribed by law. Since they were the previous service contractors of MIAA and have manifested their desire to participate in the public bidding for the new contracts, then they have satisfactorily shown that they have material and substantial rights to be protected and preserved by a mandatory injunctive writ against MIAA. Considering that the negotiated contract is contextually illegal under EO 301, EO 903, Sec. 82 of RA 8522, and Sec. 417 of the GAAM, then MIAA can be directed to conduct a public bidding instead of resorting to a negotiated contract.

MIAA, however, eventually discarded the negotiation of new contracts with prospective service contractors and has decided to hire personnel to render janitorial and messengerial services starting July 31, 2005. Clearly, the employment of said personnel is within the realm of management prerogatives of MIAA allowed under its charter, EO 903, and other existing laws. Since the hiring of said employees dispensed with the

need for getting service contractors, then the relief of requiring MIAA to conduct public bidding is already unavailing and has become moot and academic.

On the claim of OMSI and TCSI that their rights to equal protection of laws were violated by the negotiation of the contracts by MIAA with other service contractors, the Court finds no law that is discriminatory against them in relation to their expired service contracts. EO 301, EO 903, RA 8522, and the GAAM are not discriminatory against them precisely because, as the Court ruled, there has to be public bidding where OMSI and TCSI are allowed to participate. At most, what can be discriminatory is the intended negotiation of the new service contracts by MIAA which prevents OMSI and TCSI from participating in the bidding. We find such act illegal and irregular because of the wrong application of the laws by MIAA and not because the pertinent laws are discriminatory against them.

We stressed in *Genaro R. Reyes Construction, Inc. v. CA*:

> [A]lthough the law be fair on its face, and impartial in appearance, yet if applied and administered by the public authorities charged with their administration x x x with an evil eye and unequal hand so as to practically make unjust and illegal determination, the denial of equal justice is still within the prohibition of the Constitution.[61]

Given the antecedent facts of these consolidated cases, we agree with the courts *a quo* that the constitutional right of OMSI and TCSI to equal protection is violated by MIAA and Gana when no public bidding was called precisely because the latter were going to award the subject service contracts through negotiation. Worse, the acts of MIAA and Gana smack of arbitrariness and discrimination as they not only did not call for the required public bidding but also did not even accord OMSI and TCSI the opportunity to submit their proposals in a public bidding. What OMSI and TCSI got was a terse reply that their contracts will not be renewed and that MIAA would negotiate contracts lower than those of OMSI and TCSI without granting them the opportunity to submit their own bids or proposals. On the ground of uneven protection of law, we could grant the prayer for an order directing

a public bidding. Unfortunately, such action is already foreclosed by the decision of MIAA not to hire any service contractor.

The CA has discretion to give due course to the petition

We now tackle the procedural issues raised in G.R. No. 167827 on whether MIAA complied with the requirements of Rule 65 before the CA and whether forum shopping is present.

TCSI argues that MIAA's petition for certiorari under Rule 65 before the CA should have been outrightly dismissed for manifest violation of par. 2, Sec. 1 of Rule 65 in failing to attach the required certified true copies of the assailed RTC Orders. Moreover, TCSI contends that MIAA failed to raise any genuine jurisdictional issues correctable by certiorari, as the issues raised by MIAA were all factual matters which involved questions of error of judgment and not of jurisdiction.

We are not persuaded.

Sec. 1 of Rule 65 pertinently provides:

> SECTION 1. *Petition for certiorari*.—When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

The above provision clearly vests the CA the authority and discretion to give due course to the petitions before it or to dismiss them when they are not sufficient in form and substance, the required pleadings and documents are not attached to them, and no sworn certificate on non-forum shopping is submitted. This discretion must be exercised, not arbitrarily or oppressively, but in a reasonable manner in consonance with the spirit of the law, always with the view in mind of seeing to it that justice is served.

The CA has exercised its discretion in giving due course to MIAA's petition before it. We will not delve into this issue to bear on the instant petition. Certainly, TCSI has not shown that the CA has arbitrarily or oppressively exercised its sound discretion. Nor has it shown that the appellate court was not able to or could not go over the pertinent documents in resolving the instant case on review before it. Neither has TCSI shown any manifest bias, fraud, or illegal consideration on the part of the CA to merit reconsideration for the grant of due course.

Certiorari is a proper remedy for an interlocutory order granting mandamus (Third TCSI case for Mandamus)

The March 4, 2003 and March 19, 2003 Orders granting mandamus and denying MIAA's motion for reconsideration, respectively, are clearly interlocutory orders. What we held in *Metropolitan Bank & Trust Company v. Court of Appeals* is instructive, thus:

> It has been held that "[a]n interlocutory order does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the court before the case is finally decided on the merits." It "refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy." Conversely, a final order is one which leaves to the

> court nothing more to do to resolve the case. The test to ascertain whether an order is interlocutory or final is: "Does it leave something to be done in the trial court with respect to the merits of the case? If it does, it is interlocutory; if it does not, it is final."[62]

TCSI argues that since the trial court still has to hear the issue on damages in Civil Case No. 03-0025 for mandamus and no final decision has yet been rendered, the mandamus writ is an interlocutory one, and cannot be subject of an appeal. However, Rule 41 clearly states that while an interlocutory order cannot be subject of an appeal and the aggrieved party has to await the decision of the court, still it allows the filing of a special civil action of certiorari under Rule 65 when there is grave abuse of discretion in the issuance of the order. Moreover, under the circumstances of the case, MIAA had no other plain, speedy, and adequate remedy other than a petition for certiorari under Rule 65.

MIAA raised issues alleging grave abuse of discretion on the part of the RTC

TCSI argues that MIAA only raised factual matters before the CA which the trial court has ruled upon in the exercise of its jurisdiction and thus are not reviewable by certiorari but only by appeal.

Contrary to TCSI's contention, a close perusal of the issues raised by MIAA in CA-G.R. SP No. 76138 shows that not all the issues the latter raised were factual issues. MIAA assailed the lack or excess of jurisdiction of the RTC resulting from grave abuse of discretion when it issued the questioned orders. Abuse of discretion is precisely the thrust in a petition for certiorari under Rule 65.

Forum shopping exists

TCSI contends that the CA committed reversible error when it held TCSI resorted to forum shopping. TCSI argues it was not guilty of forum shopping when it filed the second TCSI case for contempt and the third

TCSI case for mandamus. According to TSCI, as these are two distinct and separate cases, the elements of *litis pendentia* amounting to *res judicata* do not exist.

TCSI's contention is devoid of merit.

Forum shopping exists when the elements of *litis pendentia* are present, or when a final judgment in one case will amount to *res judicata* in another.[63] There isforum shopping when the following elements concur: (1) identity of the parties or, at least, of the parties who represent the same interest in both actions; (2) identity of the rights asserted and relief prayed for, as the latter is founded on the same set of facts; and (3) identity of the two preceding particulars, such that any judgment rendered in the other action will amount to *res judicata* in the action under consideration or will constitute *litis pendentia*.[64]

We uphold the CA's finding that TCSI was guilty of forum shopping:

> An examination of the two petitions filed by [TCSI] reveals that the elements of *litis pendentia* are present. Both petitions are based on the alleged violation by petitioner of the writ of preliminary injunction dated November 19, 1998 issued in Civil Case No. 98-1885 [first TCSI case] enjoining the latter to maintain the *status quo* until after a qualified winning bidder is chosen by way of a public bidding. The reliefs prayed for in the two petitions are likewise founded on the same fact, *i.e.*, the alleged disobedience or violation of the writ of preliminary injunction by petitioner.
>
> In the assailed Order dated March 4, 2003 granting the writ of mandamus, respondent Judge directed petitioner to immediately comply with the writ of preliminary injunction. In the Order dated March 12, 2003, respondent Judge directed petitioner's General Manager, Edgardo Manda, to explain why he should not be cited for contempt for defying the Order datedMarch 4, 2003. Respondent Judge found the explanation of Manda devoid of merit and directed the latter to allow private respondent to re-assume its post at the airport terminal immediately, otherwise, a warrant of arrest shall be issued against him, pursuant to Section 8, Rule 71 of the Rules of Court. In fact, a warrant of arrest was issued against Manda on March 25, 2003 for his failure to comply with the Orders dated March 4, 2003 and March 19, 2003. In other words, the same penalty could be imposed on Manda in the petition for contempt filed by

> private respondent with the RTC, Branch 108, Pasay City, should the Presiding Judge thereof find him guilty of violating the writ of preliminary injunction. Moreover, Section 7, Rule 71 of the Rules of Court provides that if the contempt consists in the violation of writ of injunction, temporary restraining order or *status quo* order, the person adjudged guilty of contempt may also be ordered to make complete restitution to the party injured by such violation of the property involved or such amount as may be alleged and proved. Thus, private respondent could likewise claim damages in the petition for contempt filed by it with Branch 108. That private respondent did not find the petition for contempt to be an adequate and speedy remedy as no action has been taken by Branch 108 as of the date of the filing of the petition for mandamus with damages only shows that private respondent indulged in forum shopping.[65]

If the first TCSI case for Prohibition, Mandamus, and Damages with Prayer for TRO and Injunction would not be considered in determining whether forum shopping was resorted to by TCSI when it subsequently filed the second TCSI case for contempt and the third TCSI case for mandamus, then there could have been merit in TCSI's claim of non-forum shopping. The fact, however, is the second and third TCSI cases stemmed from the first TCSI case, anchored as they were on the alleged breach by MIAA of the November 19, 1998 writ of preliminary injunction. Such being the case, the court *a quo* did not err when it ruled that the reliefs in the second and third TCSI cases in effect prayed for the enforcement of the November 19, 1998 injunctive writ. Moreover, the causes of action in the second and third cases are substantially identical because the basis is the disobedience or breach of the writ of injunction.[66] Hence, forum shopping is present.

The Court's Dispositions

I. **G.R. No. 146184** (CA-G.R. SP No. 50087)
Civil Case No. 98-1875 entitled *OMSI v. MIAA* before the Pasay City RTC, Branch 119

Re: November 18, 1998 Order granting writ of preliminary injunction in Civil Case No. 98-1875

(1) We rule to nullify the November 18, 1998 Order granting the injunctive writ for want of any legal right on the part of OMSI to be entitled to a writ of mandatory injunction.

(2) The November 24, 2000 CA Decision in CA-G.R. SP Nos. 50087 and 50131, affirming the aforementioned November 18, 1998 Order in Civil Case No. 98-1875, is accordingly reversed and set aside.

II. **G.R. No. 146185** (CA-G.R. SP No. 50131)
Civil Case No. 98-1885 entitled *TCSI v. Antonio P. Gana, MIAA and Goodline* (first TCSI case) before the Pasay City RTC, Branch 113

Re: November 19, 1998 Order granting the injunctive writ

(1) We rule to nullify the November 19, 1998 Order granting the writ of mandatory injunction in the absence of any real and substantial right

on the part of TCSI entitling it to such writ under the rules and applicable jurisprudence.

(2) The November 24, 2000 CA Decision in CA-G.R. SP. Nos. 50087 and 50131, affirming the November 18, 1998 Order in Civil Case No. 98-1875, is also accordingly reversed and set aside.

III. **G.R. No. 161117** (CA-G.R. SP No. 67092)

Civil Case No. 98-1885 entitled *TSCI v. Antonio P. Gana, MIAA and Goodline* (first TCSI case)

Re: February 1, 2001 Decision in
Civil Case No. 98-1885

(1) We rule that the negotiated contract between MIAA and Goodline and the resolution of the MIAA Board dated October 2, 1998, authorizing MIAA's management and/or GM Gana to negotiate and award service contracts upon the expiration of the present service contract on October 31, 1998, are null and void. We, therefore, affirm par. 1 of the February 1, 2001 Decision of the Pasay City RTC, Branch 113.

(2) We rule that, in 1998, MIAA was required by EO 301 to conduct public bidding, and the negotiated contract for services with Goodline is prohibited and null and void. However, since MIAA decided against hiring contractors for janitorial and maintenance services and instead directly hired employees for the purpose, it would be legally improper to require MIAA to contract out such services by public bidding since this involves management decisions and prerogative. We, therefore, set aside par. 2 of the February 1, 2001 Pasay City RTC, Branch 113 Decision in

Civil Case No. 98-1885, requiring MIAA and Gana to hold a public bidding, for being moot and academic.

(3) The writ of preliminary injunction is nullified, as TCSI has not shown any legal basis for the grant thereof. We, therefore, set aside par. 3 of the February 1, 2001 RTC Decision in Civil Case No. 98-1885. The November 28, 2003 CA Decision in CA-G.R. SP No. 67092, affirming the aforementioned pars. 2 and 3 of said RTC Decision, is likewise reversed and set aside.

IV. **G.R. No. 167827** (CA-G.R. SP No. 76138)
Civil Case No. 03-0025 entitled *TCSI v. MIAA* (third TCSI case for mandamus) before the Pasay City RTC, Branch 115

Re: March 19, 2003 Writ of Mandamus
in Civil Case No. 03-0025

Since the November 19, 1998 Order of the Pasay City RTC, Branch 115 in Civil Case No. 98-1885 (first TCSI case) granting the injunctive writ is, for want of legal basis, null and void, it follows that the March 19, 2003 Writ of Mandamus issued in Civil Case No. 03-0025 is likewise null and void.

WHEREFORE, the petition in **G.R. Nos. 146184-85** is **GRANTED**. The November 24, 2000 CA Decision in CA-G.R. SP Nos. 50087 and 50131 is**REVERSED** and **SET ASIDE**. Likewise, both the November 18, 1998 Order of the Pasay City RTC, Branch 119 in Civil Case No. 98-1875 and the November 19, 1998 Order of the Pasay City RTC, Branch 113 in Civil Case No. 98-1885 are **REVERSED** and **SET ASIDE**. The Court declares the service contracts of OMSI and TCSI to have been legally and validly terminated on October 31, 1998 by virtue of the expiration of the contracts' term and their non-renewal. The Pasay City RTC, Branch 119 is ordered to continue with the proceedings in Civil Case No. 98-1875.

The petition in **G.R. No. 161117** is **PARTLY GRANTED**. The November 28, 2003 CA Decision in CA-G.R. SP No. 67092 and the February 1, 2001 Decision of the Pasay City RTC, Branch 113 in Civil Case No. 98-1885, which was affirmed by the CA, are **AFFIRMED** with **MODIFICATIONS**, as follows:

> WHEREFORE, a decision is hereby rendered, ordering as follows:
>
> 1. The negotiated contract by and between the respondents and the resolution of the MIAA Board, dated October 2, 1998, authorizing MIAA management and/or respondent GM Gana to negotiate and award service contracts upon the expiration of the present service contract, on October 31, 1998 are hereby declared NULL and VOID;
>
> **2. The hiring of employees to render janitorial and maintenance services by GM Gana and/or the MIAA management is declared VALID and LEGAL. However, should said petitioners decide to procure the services of a contractor for janitorial and maintenance services, then they are ordered to hold a public bidding for said services, subject to certain exceptions, set forth in RA 9184 or the *Government Procurement Act,* if applicable;**

3. **The writ of preliminary injunction is RECALLED and NULLIFIED; and**

4. No pronouncement as to costs and attorney's fees.

The petition in **G.R. No. 167827** is **DENIED** for lack of merit and the September 9, 2004 Decision in CA-G.R. SP No. 76138 is **AFFIRMED**.

No costs.

SO ORDERED.

PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

ANTONIO T. CARPIO MORALES
Associate Justice

CONCHITA CARPIO
Associate Justice

DANTE O. TINGA
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LEONARDO A. QUISUMBING
Associate Justice
Chairperson

C E R T I F I C A T I O N

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO
Chief Justice

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[1] *Rollo* (G.R. Nos. 146184-85), pp. 29-42.
[2] Id. at 80-87, misdated as October 18, 1998, per Judge Pedro De Leon Gutierrez.
[3] Id. at 157-170.
[4] *Rollo* (G.R. No. 161117), pp. 9-23.
[5] Id. at 24-38. Penned by Associate Justice Jose C. Reyes, Jr. and concurred in by Associate Justices Romeo A. Brawner (now ret.) and Rebecca de Guia-Salvador.

[6] Id. at 114-124.
[7] Id. at 133.
[8] *Rollo* (G.R. No. 167827), pp. 3-29.
[9] Id. at 34-46. Penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Rebecca de Guia-Salvador and Rosmari D. Carandang.
[10] Id. at 31-32.
[11] Id. at 278-279.
[12] Id. at 727-728, Report dated March 28, 2007 submitted by Atty. Lucita Abjelina-Soriano, Clerk of Court, Third Division, recommending the consolidation of the three cases.
[13] *Rollo* (G.R. Nos. 146184-85), pp. 43 & 311.
[14] Id. at 44.
[15] Id. at 45-46 & 317-320.
[16] Id. at 47-56.
[17] Id. at 111-118.
[18] Id. at 58-61 & 119-126.
[19] Id. at 80-87.
[20] Id. at 157-180.
[21] Id. at 88-104 & 171-189.
[22] Id. at 123-124. Penned by Judge Caridad H. Grecia-Cuerdo.
[23] G.R. Nos. 115121-25, February 9, 1996, 253 SCRA 470.
[24] *Rollo* (G.R. No. 167827), pp. 168-170.
[25] Id. at 71.
[26] Id. at 52. Par. 9.02 states: Notwithstanding any provision to the contrary, the MIAA has the right to terminate or rescind this Contract without need of judicial intervention by giving at least ten (10) days written notice to that effect upon the CONTRACTOR, which notice shall be final and binding on both parties. In such event, the MIAA shall have the right to stop issuing passes to the CONTRACTOR and its employees to prevent them from entering the NAIA premises.
[27] Id. at 72-73.
[28] Id. at 182-185.
[29] Id. at 155-166.
[30] Id. at 238-239.
[31] Id. at 76-91.
[32] Id. at 256-258, per Judge Francisco G. Mendiola.
[33] Id. at 259-262.
[34] Id. at 266-272.
[35] *Rollo* (G.R. Nos. 146184-85), p. 42.
[36] G.R. No. 126151, January 20, 2000, 322 SCRA 760.
[37] Supra note 23.
[38] *Rollo* (G.R. No. 161117), p. 37.
[39] G.R. No. 118910, July 17, 1995, 246 SCRA 540.
[40] Supra note 36.
[41] *Rollo* (G.R. No. 167827), pp. 45-46.
[42] G.R. No. 114951, July 17, 2003, 406 SCRA 575.
[43] *Rollo* (G.R. Nos. 146184-85), p. 13.
[44] *Rollo* (G.R. No. 161117), p. 13.
[45] *Rollo* (G.R. No. 167827), p. 14.
[46] 100 Phil. 1078 (1957).
[47] *See also Merville Park Homeowners Association, Inc. v. Velez*, G.R. No. 82985, April 22, 1991, 196 SCRA 189; cited in Regalado, REMEDIAL LAW COMPENDIUM 707 & 710 (9th ed.).
[48] *New Life Enterprises v. CA*, G.R. No. 94071, March 31, 1992, 207 SCRA 669.
[49] CIVIL CODE, Art. 1308. The contracts must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.
[50] G.R. No. 94476, September 26, 1991, 201 SCRA 780, 787.
[51] Supra note 39.
[52] G.R. No. 118910, November 16, 1995, 250 SCRA 130, 150.

[53] "Providing for a Revision of Executive Order No. 778 Creating the Manila International Airport Authority, Transferring Existing Assets of the Manila International Airport to the Authority, and Vesting the Authority with Power to Administer and Operate the Manila International Airport" (1983).

[54] Supra note 36, at 766; citing *National Food Authority*, supra note 23.

[55] *Mabunay*, supra at 768; citing Tantuico, Jr., STATE AUDIT CODE OF THE PHILIPPINES 448 (1982).

[56] G.R. No. 167919, February 14, 2007, 515 SCRA 720.

[57] EO 40, Sec. 48.

[58] "An Act Providing for the Modernization, Standardization and Regulation of the Procurement Activities of the Government and For Other Purposes," promulgated on January 10, 2003 and took effect on January 26, 2003, or 15 days after its publication in two newspapers of general circulation.

[59] SEC. 53. *Negotiated Procurement.*—Negotiated Procurement shall be allowed only in the following instances:

(a) In cases of two (2) failed biddings, as provided in Section 35 hereof;

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

(d) Where the subject contract is adjacent or contiguous to an on-going infrastructure project, as defined in the IRR: *Provided, however*, That the original contract is the result of a Competitive Bidding; the subject contract to be negotiated has similar or related scopes of work; it is within the contracting capacity of the contractor; the contractor uses the same prices or lower unit prices as in the original contract less mobilization cost; the amount involved does not exceed the amount of the ongoing project; and, the contractor has no negative slippage: *Provided, further*, That negotiations for the procurement are commenced before the expiry of the original contract. Whenever applicable, this principle shall also govern consultancy contracts, where the consultants have unique experience and expertise to deliver the required service; or,

(e) Subject to the guidelines specified in the IRR, purchases of Goods from another agency of the government, such as the Procurement Service of the DBM, which is tasked with a centralized procurement of commonly used Goods for the government in accordance with Letters of Instruction No. 755 and Executive Order No. 359, series of 1989.

[60] Alternative methods provided for under Art. XVI, specifically Sec. 48, are: (a) limited source bidding; (b) direct contracting; (c) repeat order; (d) shopping; and (e) negotiated procurement.

[61] G.R. No. 108718, July 14, 1994, 234 SCRA 116, 131-132.

[62] G.R. No. 110147, April 17, 2001, 356 SCRA 563, 570-571; citing *Bitong v. Court of Appeals*, G.R. No. 123553, July 13, 1998, 292 SCRA 503, 521: An example of an interlocutory order is one dismissing a motion to dismiss. The court must still conduct a trial before it can resolve the merits of such a case.

[63] *Philippine Nails and Wires Corporation v. Malayan Insurance Co., Inc.*, G.R. No. 143933, February 14, 2003, 397 SCRA 431, 443-444.

[64] *Mondragon Leisure and Resorts Corporation v. United Coconut Planters Bank*, G.R. No. 154187, April 14, 2004, 427 SCRA 585, 590.

[65] *Rollo* (G.R. No. 167827), pp. 43-44.

[66] *Northcott & Co. v. Villa-Abrille*, 41 Phil. 462 (1921).