



Republic of the Philippines
 Supreme Court
 Manila

SECOND DIVISION

BUSAN UNIVERSAL RAIL, G.R. No. 235878
 INC.,

Petitioner,

Present:

PERLAS-BERNABE, S.A.J.,
Chairperson,

REYES, A., JR.,

HERNANDO,

INTING, and

DELOS SANTOS, JJ.

- versus -

DEPARTMENT OF
 TRANSPORTATION-METRO
 RAIL TRANSIT 3,

Respondent.

Promulgated:

26 FEB 2020

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DECISION

INTING, J.:

This is a Petition for Review on *Certiorari* under Rule 45 with Application for the Issuance of a *Status Quo* Order and/or Preliminary Mandatory Injunction¹ assailing the Orders dated October 13, 2017² and December 11, 2017,³ respectively, of Branch 105, Regional Trial Court (RTC), Quezon City in R-QZN-17-12023-CV. The assailed Orders denied the petition for the issuance of interim measures of protection with prayer for the issuance of a temporary restraining order filed by Busan Universal Rail, Inc. (petitioner) against Department of Transportation (DOTr)-Metro Rail Transit (MRT) 3 (respondent).

¹ *Rollo*, Vol. 1, pp. 15-57.

² *Id.* at 62.

³ *Id.* at 63-69.

The Antecedents

As a result of a negotiated procurement under Republic Act No. (RA) 9184,⁴ respondent and the Joint Venture composed of Busan Transportation Corporation, Edison Development and Construction, Tramarc Mercantile, Inc., TMICorp, Inc., and Castan Corporation entered into a contract⁵ for the Department of Transportation and Communications (DOTC)-MRT3 System Maintenance Provider, 43 light rail vehicles (LRVs) General Overhaul and Total Replacement of the Signaling System (MRT3 Contract). The Joint Venture was incorporated as a special purpose company known as BURI.

The total amount of the MRT3 Contract is ₱3,809,128,888.00 broken down into four packages:

- 1.) Package 1 is for the maintenance of the MRT3 system with a cost of ₱1,962,000,000.00 to be paid in fixed monthly sums. Under this package, petitioner is to deliver a certain number of available trains for the use of MRT3's passengers during specific periods;
- 2.) Package 2 is for the general overhauling of 43 units of LRVs with a cost of ₱907,369,561.81. Under Package 2, petitioner is to perform and complete all works required within 36 months from the date of issuance of Notice to Proceed;
- 3.) Package 3 is for the total replacement of the MRT3 signaling system with a cost of ₱888,000,000.00; and
- 4.) Package 4 is for additional maintenance works with a cost of ₱51,759,326.19.

After commencing with the performance of its obligations under Package 1, petitioner sent to respondent Billing Nos. 1 to 8.⁶ Respondent paid petitioner the corresponding monthly payments. On October 26,

⁴ Entitled, "Government Procurement Reform Act." Approved on January 10, 2003.

⁵ *Rollo*, pp. 87-94.

⁶ *Id.* at 269-284.

2016, petitioner sent to respondent Billing No. 9.⁷ However, in a Memorandum⁸ dated November 17, 2016, DOTr Undersecretary for Railways Cesar B. Chavez (Usec. Chavez) required petitioner to submit additional supporting documents and directed the withholding of certain amounts. Petitioner replied through a letter and gave its explanation, but Billing No. 9 was still not settled.

In a letter⁹ dated April 19, 2017, Usec. Chavez directed petitioner to explain why the MRT3 Contract should not be terminated with the happening of a series of serious incidents.

As of the date of the petition, Billing Nos. 9 to 18 remained unpaid.

On the part of petitioner, it responded through a letter¹⁰ dated April 27, 2017, and, among other things, it invoked Subsection No. 20 on Settlement of Disputes under Section III, General Conditions of the Contract (GCC) and requested for a meeting for a mutual consultation.

In another letter¹¹ dated April 19, 2017, Usec. Chavez again directed petitioner to explain why the MRT3 Contract should not be terminated saying that petitioner was bound to have delivered 17 overhauled LRVs to MRT3, however, not a single one was turned over. Petitioner responded, and again invoked Subsection No. 20 under Section III of the GCC, requesting for a mutual consultation. Through another letter¹² dated August 10, 2017, petitioner requested for a meeting with respondent. As none of the request for mutual consultation was acceded to, petitioner notified respondent of its intention to commence arbitration proceedings.¹³ Petitioner thereafter sent respondent a Notice of Arbitration¹⁴ formally demanding arbitration.

⁷ *Id.* at 285-286.

⁸ *Id.* at 290-292.

⁹ *Id.* at 364.

¹⁰ *Id.* at 365-368.

¹¹ *Id.* at 419.

¹² *Id.* at 470-476.

¹³ *Id.* at 491-494.

¹⁴ *Id.* at 495-499.

On October 6, 2017, petitioner instituted before the RTC a Petition for the Issuance of Interim Measures of Protection, with Prayer for the Issuance of a Temporary Order of Protection under the Special ADR Rules,¹⁵ essentially seeking to maintain the *status quo* and enjoin respondent from terminating the MRT3 Contract.

In an Order¹⁶ dated October 13, 2017, the RTC denied the petition. It noted the manifestation of petitioner's lawyer that the case had already been referred to the Philippine Dispute Resolution Center, Inc. for arbitration.

Subsequently, respondent issued a Notice to Terminate¹⁷ the MRT3 Contract dated October 16, 2017.

Petitioner moved for a partial reconsideration (omnibus motion)¹⁸ of the RTC Order dated October 13, 2017.

Meanwhile, respondent issued a Decision¹⁹ dated November 3, 2017 terminating the MRT3 Contract between respondent and petitioner.

On December 11, 2017, the RTC denied petitioner's omnibus motion.²⁰ Citing RA 8975, entitled "An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and for Other Purposes," the RTC held that it has no jurisdiction over the petition. It ruled that the issues raised in the petition are arbitrable.

Hence, this petition with the following assignment of errors:

¹⁵ *Id.* at 503-542.

¹⁶ *Id.* at 62.

¹⁷ *Id.* at 543.

¹⁸ Omnibus Motion (Re: Motion for Partial Reconsideration and Motion to Resolve Application for Ex-Parte Issuance of Temporary Protection Order), *id.* at 583-595.

¹⁹ *Id.* at 664-668.

²⁰ *Id.* at 63-69.

THE TRIAL COURT GRAVELY ERRED IN DISMISSING THE PETITION FOR THE ISSUANCE OF INTERIM MEASURES OF PROTEC[T]ION AGAINST RESPONDENT IN LIGHT OF THE ARBITRATION CLAUSE IN THE MRT3 CONTRACT.²¹

THE TRIAL COURT GRAVELY ERRED IN RULING THAT THE ACTS SOUGHT TO BE COMPELLED AND/OR ENJOINED ARE *FAIT ACCOMPLI*.²²

THE VALID AND BINDING ARBITRATION CLAUSE LEGALLY PREVENTS THE RESPONDENT FROM UNILATERALLY TERMINATING, RESCINDING AND/OR CANCELLING THE MRT3 CONTRACT.²³

The Court's Ruling

The petition is bereft of merit.

Essentially, the only issue that is proper for resolution is whether or not the RTC has jurisdiction to issue the protection and restraining order sought by petitioner against respondent.

Petitioner argues that the RTC has authority to issue interim measures of protection in cases involving disputes that are proper for arbitration by virtue of RA 9184. The prohibitory provision under Section 3(d) of RA 8975 is not applicable inasmuch as the arbitration clause contained in the GCC, which is an integral part of the MRT3 Contract, is anchored on RA 9184.

Petitioner theorizes in this wise:

10.8 RA 9184, its IRR, and the MRT3 Contract explicitly mandate that any and all disputes arising therefrom shall be settled through arbitration proceedings governed by RA 9285. RA 9285, on the other hand, provides for the remedy of interim protection that may be obtained by a party either from the courts or the arbitral tribunal upon the latter's constitution.

²¹ *Id.* at 34-35.

²² *Id.* at 48.

²³ *Id.* at 50.

10.9 The law, therefore, expressly grants the petitioner, and allows the respondent to be subjected to, Interim Measures of Protection as an incident of the binding Arbitration Clause in the MRT3 Contract. Otherwise stated, the Interim Measures of Protection prayed for is but an implement of the arbitration proceedings; which, by law and by contract, is the mandatory mode of dispute settlement between the parties.²⁴

Countering petitioner's argument, respondent contends that RA 8975 prohibits lower courts from issuing temporary restraining orders, preliminary injunctions or preliminary mandatory injunctions against government infrastructure projects, such as the MRT3 Contract. Respondent cites OCA Circular No. 38-14²⁵ and the case of *Department of Foreign Affairs, et al. v. Hon. Judge. Falcon, et al.*²⁶ (*Falcon*), and asserts that the petition should be dismissed to avoid prejudgment on the merits as the issues raised by petitioner are the same matters that the latter seeks to discuss in an arbitration proceeding.

The parties actually agree that the dispute between them arising from the MRT3 Contract should be referred to arbitration. Petitioner cites Subsection No. 20 of the GCC²⁷ which reads:

20. Settlement of Disputes

20.1 If any dispute or difference of any kind whatsoever shall arise between the Procuring Entity and the Supplier in connection with or arising out of this Contract, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

20.2 If after thirty (30) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the Procuring Entity or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given.

²⁴ *Id.* at 38. Emphasis omitted.

²⁵ *Judicious Implementation of Court Issuances Concerning the Ban on the Issuance of Temporary Restraining Orders or Writs of Preliminary Injunctions Involving Government Infrastructure Projects*. Dated March 12, 2014.

²⁶ 644 Phil. 105 (2010).

²⁷ Section III, General Conditions of Contract, contained in the document entitled "Negotiated Procurement for DOTC-MRT3 System Maintenance Service Provider, 43 LRV General Overhauling and Total Replacement of Signaling System," *rollo*, vol. 1, pp. 104-135.

20.3 Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under this Contract.

20.4 In the case of a dispute between the Procuring Entity and the Supplier, the dispute shall be resolved in accordance with Republic Act 9285 ("R.A. 9285"), otherwise known as the "Alternative Dispute Resolution Act of 2004."²⁸

The MRT3 Contract was entered into as a result of a negotiated procurement under RA 9184, or the Government Procurement Reform Act. Under Section 59, Rule XVIII of the Revised Implementing Rules and Regulations of RA 9184:

SECTION 59. *Arbitration.* —

59.1. If any dispute or difference of any kind whatsoever shall arise between the parties in connection with the implementation of the contract covered by the Act and this IRR, the parties shall make every effort to resolve amicably such dispute or difference by mutual consultation.

59.2. Any and all disputes arising from the implementation of a contract covered by the Act and this IRR shall be submitted to arbitration in the Philippines according to the provisions of R.A. 876, otherwise known as the "Arbitration Law" and R.A. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004": *Provided, however,* That disputes that are within the competence of the Construction Industry Arbitration Commission to resolve shall be referred thereto. The process of arbitration shall be incorporated as a provision in the contract that will be executed pursuant to the provisions of the Act and this IRR: *Provided, further,* That by mutual agreement, the parties may agree in writing to resort to other alternative modes of dispute resolution.

Under Section 28 of RA 9285 or the Alternative Dispute Resolution Act of 2004, as referred to in the above Section 59, the grant of an interim measure of protection by the proper court before the constitution of an arbitral tribunal is allowed:

²⁸ *Id.* at 120.

Sec. 28. *Grant of Interim Measure of Protection.* — (a) It is not incompatible with an arbitration agreement for a party to request, before constitution of the tribunal, from a Court²⁹ an interim measure of protection and for the Court to grant such measure. After constitution of the arbitral tribunal and during arbitral proceedings, a request for an interim measure of protection, or modification thereof, may be made with the arbitral tribunal or to the extent that the arbitral tribunal has no power to act or is unable to act effectively, the request may be made with the Court. The arbitral tribunal is deemed constituted when the sole arbitrator or the third arbitrator, who has been nominated, has accepted the nomination and written communication of said nomination and acceptance has been received by the party making the request.

(b) The following rules on interim or provisional relief shall be observed:

- (1) Any party may request that provisional relief be granted against the adverse party.
- (2) Such relief may be granted:
 - (i) to prevent irreparable loss or injury;
 - (ii) to provide security for the performance of any obligation;
 - (iii) to produce or preserve any evidence; or
 - (iv) to compel any other appropriate act or omission.
- (3) The order granting provisional relief may be conditioned upon the provision of security or any act or omission specified in the order.
- (4) Interim or provisional relief is requested by written application transmitted by reasonable means to the Court or arbitral tribunal as the case may be and the party against whom the relief is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.
- (5) The order shall be binding upon the parties.
- (6) Either party may apply with the Court for assistance in implementing or enforcing an interim measure ordered by an arbitral tribunal.
- (7) A party who does not comply with the order shall be liable for all damages resulting from noncompliance, including all expenses and reasonable attorney's fees, paid in obtaining the order's judicial enforcement.

²⁹ Section 3, par. (k) of RA 9285 states: "Court" as referred to in Article 6 of the Model Law shall mean a Regional Trial Court.

However, RA 8975 prohibits the issuance of temporary restraining orders and preliminary injunctions against national government projects. Section 3 thereof reads:

Sec. 3. Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions. — No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government's direction, to restrain, prohibit or compel the following acts:

- (a) Acquisition, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;
- (c) Commencement, prosecution, execution, implementation, operation of any such contract or project;
- (d) Termination or rescission of any such contract/project; and
- (e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise. The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accrue in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

On the application of RA 9285 *vis-a-vis* RA 8975, the case of *Falcon* is instructive:

Republic Act No. 9285 is a general law applicable to all matters and controversies to be resolved through alternative dispute resolution methods. This law allows a Regional Trial Court to grant interim or provisional relief, including preliminary injunction, to parties in an arbitration case prior to the constitution of the arbitral tribunal. This general statute, however, must give way to a special law governing national government projects, Republic Act No. 8975 which prohibits courts, except the Supreme Court, from issuing TROs and writs of preliminary injunction in cases involving national government projects.³⁰

For further elucidation on the prohibition under RA 8975, the following pronouncements in that case are quoted hereunder:

x x x In seeking to enjoin the government from awarding or implementing a machine readable passport project or any similar electronic passport or visa project and praying for the maintenance of the *status quo ante* pending the resolution on the merits of BCA's Request for Arbitration, BCA effectively seeks to enjoin the termination of the Amended BOT Agreement for the MRP/V Project.

x x x Under Section 3(d) of that statute, trial courts are prohibited from issuing a TRO or writ of preliminary injunction against the government to restrain or prohibit the termination or rescission of any such national government project/contract.

The rationale for this provision is easy to understand. For if a project proponent — that the government believes to be in default — is allowed to enjoin the termination of its contract on the ground that it is contesting the validity of said termination, then the government will be unable to enter into a new contract with any other party while the controversy is pending litigation. Obviously, a court's grant of injunctive relief in such an instance is prejudicial to public interest since government would be indefinitely hampered in its duty to provide vital public goods and services in order to preserve the private proprietary rights of the project proponent. On the other hand, should it turn out that the project proponent was not at fault, the BOT Law itself presupposes that the project proponent can be adequately compensated for the termination of the contract. Although BCA did not specifically pray for the trial court to enjoin the termination of the Amended BOT Agreement and thus, there is no direct violation of Republic Act No. 8795, a grant of injunctive relief as prayed for by BCA will indirectly contravene the same statute.

³⁰ *Supra* note 26 at i45.

Verily, there is valid reason for the law to deny preliminary injunctive relief to those who seek to contest the government's termination of a national government contract. The only circumstance under which a court may grant injunctive relief is the existence of a matter of extreme urgency involving a constitutional issue, such that unless a TRO or injunctive writ is issued, grave injustice and irreparable injury will result.³¹

In the case at bar, petitioner, in its petition before the RTC, prayed for the following:

(i) Upon filing of the instant Petition, this Honorable Court ISSUE, *ex parte*, a Temporary Protection Order, enjoining the respondent DOTR-MRT3, or any of its officers, agents, or representatives, from doing any act, or causing to do any act, that would result in the termination of the MRT3 Contract, and any of its components or would have the effect of implementing any termination that have (*sic*) been previously made, that will render any judgment in the instant Petition illusory; and

After due proceedings, this Honorable Court ISSUE an INTERIM PROTECTION ORDER, and enjoin respondent DOTR-MRT3, and any of its officers, agents, or representatives, to:

(i) MAINTAIN the *status quo ante litem motam* and pay BURI the fixed Monthly Maintenance Fee in the amount of Php 54,500,000.00, subject only to duly assessed penalties based on Train Availability Certifications, in accordance with the Contract Documents;

(ii) CEASE and DESIST from committing any act that would have the effect of terminating the MRT3 Contract and any of its components, or would have the effect of implementing any termination that may have been previously made; and

(iii) COMPLY with the arbitration agreement under Clause 20, Section III of the MRT3 Contract and proceed with arbitration proceedings in accordance with RA 9285.³² (Emphasis omitted.)

³¹ *Supra* note 26 at 153-154.

³² *Rollo*, Vol. 1, p. 538.

Inasmuch as petitioner was seeking to restrain respondent from terminating the MRT3 Contract, the cited pronouncements in *Falcon* find application. Thus, the RTC properly dismissed petitioner's petition.

Petitioner adds that there is an extreme urgency involving a constitutional issue making the prohibition under RA 8975 inapplicable. Petitioner invokes the third paragraph of Section 3 of RA 8975 as quoted above. But We do not agree. The issue between the parties are purely contractual. We again direct petitioner's attention to *Falcon* where it was sharply ruled that, and as applicable herein:

Article III, Section 1 of the Constitution provides "[n]o person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." Ordinarily, this constitutional provision has been applied to the exercise by the State of its sovereign powers such as, its legislative power, police power, or its power of eminent domain.

In the instant case, the State action being assailed is the DFA's termination of the Amended BOT Agreement with BCA. Although the said agreement involves a public service that the DFA is mandated to provide and, therefore, is imbued with public interest, the relationship of DFA to BCA is primarily contractual and their dispute involves the adjudication of contractual rights. The propriety of the DFA's acts, in relation to the termination of the Amended BOT Agreement, should be gauged against the provisions of the contract itself and the applicable statutes to such contract. These contractual and statutory provisions outline what constitutes due process in the present case. In all, BCA failed to demonstrate that there is a constitutional issue involved in this case, much less a constitutional issue of extreme urgency.³³

With respect to the other matters raised, We note that most of the parties' factual allegations and counter-allegations already touch upon the merits of the main controversy, *i.e.*, the propriety of respondent's termination of the MRT3 Contract. We deem it best to refrain from ruling on this issue and the matters surrounding it since they should be threshed out and litigated in the appropriate arbitration proceedings between the parties.

³³ *Supra* note 26 at 154-155.

WHEREFORE, the petition is **DENIED**. As a consequence, the prayer for the issuance of a *Status Quo* Order and/or Preliminary Mandatory Injunction is also denied as it is merely ancillary to the petition.

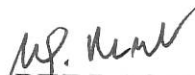
The Orders respectively dated October 13, 2017 and December 11, 2017 of Branch 105, Regional Trial Court, Quezon City in R-QZN-17-12023-CV are **AFFIRMED**.

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:



ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



ANDRES B. REYES, JR.
Associate Justice



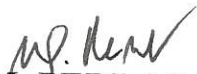
RAMON PAUL L. HERNANDO
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice


ATTESTATION

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.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

CERTIFICATION

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.


DIOSDADO M. PERALTA
Chief Justice