



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 APR 18 2018
 BY: RDC/L
 TIME: 8:23

FIRST DIVISION

BUREAU OF CUSTOMS (BOC),
 represented by **COMMISSIONER**
ALBERTO D. LINA, AND
DEPARTMENT OF BUDGET
AND MANAGEMENT-
PROCUREMENT SERVICE,
 (DBM-PS), represented by
EXECUTIVE DIRECTOR
JOSE TOMAS C. SYQUIA,
 Petitioners,

G.R. No. 220832

Present:

SERENO, C.J.,
Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 JARDELEZA, and
 TIJAM, JJ.

- versus -

HON. PAULINO Q. GALLEGOS,
 in his capacity as **PRESIDING**
JUDGE, REGIONAL TRIAL
COURT, MANILA, BRANCH 47,
 and the purported **JOINT**
VENTURE OF OMNIPRIME
MARKETING, INC. AND
INTRASOFT INTERNATIONAL,
INC., represented by **ANNABELLE**
A. MARGAROLI,

Respondents.

Promulgated:

FEB 28 2018

X-----X

[Handwritten Signature]

[Handwritten Initials]

RESOLUTION**TIJAM, J.:**

We resolve this petition for *certiorari*¹ under Rule 65 of the Rules of Court, assailing the Omnibus Order² dated August 24, 2015 of the Regional Trial Court (RTC) of the City of Manila, Branch 47, in Civil Case No. 15-134333.

Antecedent Facts

On December 20, 2006, the Association of Southeast Asian Nation (ASEAN) member-countries, including the Philippines, signed the Protocol to Establish and Implement the ASEAN Single Window (ASW Protocol),³ under which the member-countries agreed to develop and implement their National Single Windows (NSW) based on international standards and best practices as established in international agreements and conventions concerning trade facilitation and modernization of customs techniques and practices.

Phase One of the Philippines' NSW project (PNSW 1) started in 2009 and completed in October 2010. Thereafter, Phase Two of the PNSW with Enhanced Customs Processing System project (PNSW 2) was undertaken.⁴ The project was dubbed as Selection of System Integrator for Design, Implementation, Operation and Maintenance of Integrated Enhanced Customs Processing System and National Single Window for the Government of the Philippines: Component I: Design, Implementation, Operation and Maintenance of Enhanced Customs Processing System for the Bureau of Customs (BOC); and Component II: Development and Operationalization of PNSW 2 Project for the Government of the Philippines for the Bureau of Customs (Public Bidding No. 14-082). It is an information technology project which is aimed at integrating the existing Electronic to Mobile Customs System and the PNSW 1 into a single system that will serve all the existing functionalities under the BOC's current electronic or mobile transaction system. Its purpose is to achieve a fully electronic, paperless, man-contact-free processing of Customs transactions while allowing traders a single submission of data and information, and for the BOC a single and synchronous processing of data and information and a single decision-making point for Customs release and clearance of cargo.⁵

¹ *Rollo*, pp. 3-79.

² Penned by Presiding Judge Paulino Q. Gallegos; *id.* at 83-99.

³ *Id.* at 102-115.

⁴ *Id.* at 84.

⁵ *Id.* at 605.



Utilizing the funds appropriated by Congress in the General Appropriations Act (GAA) for calendar year (CY) 2010 and for CY 2012, petitioner BOC, through its procuring entity,⁶ petitioner Department of Budget and Management-Procurement Service (DBM-PS), issued on October 15, 2014 a Request for Expression of Interest (RFEI),⁷ inviting prospective bidders (consultants) in the eligibility screening and to be shortlisted for the competitive bidding of the PNSW 2 project with a total approved budget for the contract of ₱650 Million.⁸ Among the bidders that submitted the eligibility documents were: (1) Joint Venture of Omniprime Marketing, Inc. and Intrasoft International, Inc. (private respondent); and (2) E-Konek & ILS & FS JV, whose biggest shareholder is petitioner BOC Commissioner Alberto D. Lina (Commissioner Lina).⁹

The announcement of the shortlist of eligible consultants and of the Highest Rated Bid (HRB) was delayed, due among others, to the interview of private respondent's Project Team Members, requested by former Deputy Commissioner Primo Aguas. The said interview, however, was neither required by law nor regulation.¹⁰

After the evaluation and determination of shortlisted bidders, the DBM-PS Bids and Awards Committee (BAC) issued on April 13, 2015, a Notice of HRB¹¹ and an Invitation to Negotiate¹² to private respondent, as the highest bidder.

On April 17, 2015, private respondent's financial proposal and contract negotiation commenced.¹³

On April 23, 2015, Commissioner Lina was appointed as BOC Commissioner.¹⁴ He wrote a Letter¹⁵ dated May 6, 2015 addressed to petitioner DBM-PS Executive Director Jose Tomas C. Syquia (Director Syquia). Commissioner Lina requested for the discontinuance of the procurement process of the PNSW 2 project, in line with Section 41(c)¹⁶ of

⁶ Id. at 187.

⁷ Id. at 116-118.

⁸ Id. at 84.

⁹ Id. at 573.

¹⁰ Id. at 179-180.

¹¹ Id. at 119-120.

¹² Id. at 121-122.

¹³ Id. at 85.

¹⁴ Id.

¹⁵ Id. at 123.

¹⁶ Sec. 41. *Reservation Clause.* - The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

x x x x

c. For any justifiable and reasonable ground where the award of the contract will not rebound to the benefit of the government as defined in the IRR.

Republic Act (R.A.) No. 9184,¹⁷ otherwise known as the Government Procurement Reform Act. This provision grants to the head of the procuring agency the right to reject bids for justifiable and reasonable grounds where the award of the contract will not redound to the benefit of the government.

Acting upon Commissioner Lina's letter, Director Syquia issued on May 7, 2015, a Notice of Cancellation,¹⁸ aborting the bidding process for PNSW 2 project.

Private respondent, through a Letter dated May 22, 2015, moved for a reconsideration¹⁹ of the Notice of Cancellation, but the same was denied in petitioner BOC's Resolution dated July 31, 2015.²⁰

This prompted the private respondent to file a Petition for *Certiorari and Mandamus*²¹ with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Prohibitory Injunction (WPPI) and Writ of Preliminary Mandatory Injunction (WPMI), before the RTC against the petitioners. The petition prayed that a judgment be rendered annulling the decision of Director Syquia embodied in his Notice of Cancellation, made pursuant to Commissioner Lina's May 6, 2015 Letter and commanding the petitioners to refrain from cancelling, and, instead to continue the last remaining process of the competitive bidding for the PNSW 2 project, which is the signing of the contract and issuance of the Notice to Proceed. Pending such proceedings, the private respondent likewise prayed that the RTC restrain the petitioners from withholding or reducing the appropriation, or returning the appropriation for the project to the Bureau of Treasury, so as not to render ineffectual any judgment that may be issued by the RTC.

Ruling of the RTC

In its Order²² dated July 28, 2015, the RTC issued a TRO in favor of the private respondent.

Consequently, on August 24, 2015, the RTC issued the assailed Omnibus Order,²³ granting private respondent's application for the issuance of an injunctive writ, the dispositive portion of which, reads:

¹⁷ AN ACT PROVIDING FOR THE MODERNIZATION, STANDARIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES. Approved on January 10, 2003.

¹⁸ *Rollo*, p. 124.

¹⁹ *Id.* at 125-128.

²⁰ *Id.* at 162-164.

²¹ *Id.* at 165-207.

²² *Id.* at 234-237.

²³ *Id.* at 83-99.



WHEREFORE, premises considered, the Court rules:

- a. Denying [petitioners'] Motion to Dismiss;
- b. Granting [private respondent's] application for the issuance of a Writ of [P]reliminary [I]njunction and accordingly let an injunctive writ issue:
 1. Enjoining all the [petitioners] from implementing both the (a) 6 May 2015 Letter of [petitioner] Lina aborting the competitive bidding of the PNSW2 Project and the (b) 7 May 2015 Cancellation Notice of [petitioner] Syquia in the meantime that the case is heard upon its merit;
 2. Enjoining all the [petitioners] from initiating any other procurement, sourcing of funds and conducting any other procurement whether thru public bidding or negotiation to replace or upgrade the present customs system subject matter of this bid; and
 3. Ordering [petitioners] to continue with the remaining procurement process of signing the contract and to issue to [private respondent] the Notice to Proceed;
- c. Ordering the [private respondent] to post an Injunctive writ Bond to be immediately done in cash, following this Order in the amount of Five Hundred Thousand Pesos (P500,000.00) and be made answerable to any damage which [petitioners] may suffer by reason of issuing the Writ; and
- d. Ordering the [petitioners] to file their Comment on the Petition pursuant to Section 6, Rule 65 of the Revised Rules of Court.

SO ORDERED.²⁴

On August 26, 2015, the RTC issued the writ of preliminary injunction (WPI).²⁵

The BOC, represented by Commissioner Lina, and DBM-PS, represented by Director Syquia (collectively, the petitioners) dispensing with the filing of a motion for reconsideration or any form of redress in the court *a quo*, filed this instant petition.

Issue

The main issue for this Court's resolution is whether Judge Paulino Q. Gallegos (respondent Judge) gravely abused in his discretion when he issued the omnibus order and the injunctive writ.

²⁴ Id. at 98-99.

²⁵ Id. at 100-101.

Ruling of the Court

The petition fails.

Procedural Aspect

Certiorari under Rule 65 inherently requires the filing of a motion for reconsideration, which is the tangible representation of the opportunity given to the office to correct itself.²⁶ The plain and adequate remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision, which in this case, is the RTC's omnibus order. The purpose of the motion is to enable the court or agency to rectify its mistakes without the intervention of a higher court. To dispense with this requirement, there must be a concrete, compelling, and valid reason for the failure to comply with the requirement.²⁷

Here, petitioners maintain that since the petition raises purely questions of law, their failure to file a motion for reconsideration is not fatal. Except for this bare allegation, however, petitioners failed to show sufficient justification for dispensing with the requirement of a prior motion for reconsideration. Indeed, “petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not.”²⁸

Likewise, the direct filing of this petition in this Court is in disregard of the doctrine of hierarchy of courts. The concurrence of jurisdiction among the Supreme Court, CA and the RTC to issue the writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction did not give petitioners the unrestricted freedom of choice of court forum.²⁹ Stated differently, although this Court has concurrent jurisdiction with the CA and the RTC in issuing the writ of *certiorari*, direct resort is allowed only when there are special, extraordinary or compelling reasons that justify the same.³⁰ The Court enforces the observance of the hierarchy of courts in order to free itself from unnecessary, frivolous and impertinent cases and thus afford time for it to deal with the more fundamental and more essential tasks that the Constitution has assigned to it.³¹ Absent any showing of any special, important or compelling reason to justify the direct filing of the petition will cause the dismissal of the recourse, as in this case.

²⁶ *Philtranco Service Enterprises, Inc. v. Philtranco Workers Union-Association of Genuine Labor Organizations (PWU-AGLO)*, 728 Phil. 99, 144 (2014).

²⁷ *Metro Transit Organization, Inc. v. CA*, 440 Phil. 743, 753 (2002).

²⁸ *Jiao, et. al. v. National Labor Relations Commission, et.al.*, 686 Phil. 171, 182 (2012).

²⁹ *Heirs of Bertuldo Hinog v. Hon. Melicor*, 495 Phil. 422, 431-432 (2005).

³⁰ *Saint Mary Crusade to Alleviate Poverty of Brethren Foundation, Inc. v. Judge Triel*, 750 Phil. 57, 68 (2015).

³¹ *Bañez, Jr. v. Judge Concepcion, et al.*, 693 Phil. 399, 412 (2012).

Based on the foregoing, it is clear that this petition is procedurally infirm, and thus, dismissible.

Substantive Aspect

Even if petitioners' direct resort to this Court is allowed, the dismissal of their petition remains.

For *certiorari* to lie, it must be shown that the respondent Judge acted with grave abuse of discretion, or more specifically, that he exercised his power arbitrarily or despotically when he issued the omnibus order and the WPI, by reason of passion or personal hostility; and such exercise was so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform it or to act in contemplation of law.³² Petitioners, however, failed in this respect.

For one thing, the authority to issue writs of *certiorari*, prohibition, and *mandamus* involves the exercise of original jurisdiction which must be expressly conferred by the Constitution or by law.³³ Under Section 21³⁴ of Batas Pambansa Bilang 129 (BP 129),³⁵ otherwise known as The Judiciary Organization Act of 1980, the RTC had the original jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of its respective region.

Contrary to petitioners' insistence, R.A. No. 8975³⁶ does not apply in this case because the procurement of PNSW 2 is not considered as an "infrastructure project" as defined under R.A. No. 8975. As aptly put by the RTC, thus:

Furthermore, an infrastructure project is also defined under the law as to include the construction improvement, rehabilitation, demolition, repair restoration or maintenance of roads and bridges, railways, airports, seaports, communication facilities, civil works, components of information technology projects, x x x. Thus, this does not include non-civil works components of consultancy service contracts an information technology project, like the project PNSW 2 Project and accordingly the

³² *Valencia v. Sandiganbayan*, 477 Phil. 103, 119 (2004).

³³ *The City of Manila, et al. v. Judge Grecia-Cuerdo, et. al.*, 726 Phil. 9, 23 (2014).

³⁴ Sec. 21. *Original jurisdiction in other cases.* – Regional Trial Courts shall exercise original jurisdiction:

(1) In the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions; and

(2) In actions affecting ambassadors and other public ministers and consuls.

³⁵ AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on August 14, 1981.

³⁶ 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. Approved on November 7, 2000.

prohibition under R[.]A[.] No. 8975 hardly applies to the instant case where the subject matter is limited to information technology consultancy services, as explicitly stated and described in the Bidding Documents, where the classification is consulting Services, the category is Information Technology and participants are called upon as consultants.

Indeed, in the case of DFA versus Falcon x x x, the Supreme Court ruled that the term infrastructure project was limited to only the civil works component of information technology projects and the non-civil works component of information technology projects would be treated as an acquisition of goods or consulting services.³⁷

Likewise, private respondent correctly pointed out that the nature of the procurement, subject of the competitive bidding, is one involving a “consulting service contract” for the PNSW 2 project of petitioner BOC, which is beyond the contemplation of R.A. No. 8975.³⁸ The project includes design, implementation, operation, maintenance, and consulting services. In fact, even the RFEI issued by petitioner DBM-PS classified the project merely as “consulting services”, indicating therein that the said project will be governed by R.A. No. 9184 and its Implementing Rules and Regulations (IRR).³⁹

For another thing, the petitioners failed to show that respondent Judge gravely abused his discretion when he issued the injunctive writ, pursuant to his omnibus order, which effectively enjoined the implementation of Director Syquia's May 7, 2015 Notice of Cancellation, which in turn was issued as a consequence of Commissioner Lina's May 6, 2015 Letter requesting for the cancellation of the bidding. Measured against established rules and jurisprudence, respondent Judge's disposition to grant the writ was not without basis and, hence, could not have been arrived at capriciously, whimsically, arbitrarily or despotically.

The purpose of a preliminary injunction under Section 3,⁴⁰ Rule 58 of the Rules of Court, is to prevent threatened or continuous irremediable injury to some of the parties before their claims can be thoroughly studied and adjudicated.⁴¹ “Its sole aim is to preserve the *status quo* until the merits

³⁷ *Rollo*, p. 96.

³⁸ *Id.* at 607.

³⁹ *Id.* at 116-117.

⁴⁰ Sec. 3. *Grounds for issuance of preliminary injunction.* — A preliminary injunction may be granted when it is established:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the act or acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or nonperformance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, agency or a person is doing, threatening, or is attempting to do, or is procuring or suffering to be done some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

⁴¹ *Bank of the Philippine Islands v. Spouses Santiago*, 548 Phil. 314, 329 (2007).

of the case can be heard fully.”⁴² In *Medina v. Greenfield Dev't. Corp.*,⁴³ the Court reiterated the following requisites to be entitled to an injunctive writ. *viz*: (1) a right *in esse* or a clear and unmistakable right to be protected; (2) a violation of that right; (3) that there is an urgent and permanent act and urgent necessity for the writ to prevent serious damage.⁴⁴ “While a clear showing of the right is necessary, its existence need not be conclusively established. Hence, to be entitled to the writ, it is sufficient that the complainant, shows that he has an ostensible right to the final relief prayed for in his complaint.”⁴⁵ Here, private respondent amply justified the grant of the provisional relief it prayed for before the RTC.

First, private respondent as the declared highest bidder, has a right under R.A. No. 9184 and its IRR to be awarded the contract upon the BAC's determination of its compliance with and responsiveness to the terms and conditions in the Bidding Documents.

Section 38, Article XI of R.A. No. 9184 provides a time-limit within which to award a contract as a consequence of the bidding process, which is set at three (3) months from the opening of the bids. It likewise provides that the contract shall be deemed approved should there be inaction from the concerned entities. Section 38, Article XI of R.A. No. 9184 provides:

Sec. 38. Period of Action on Procurement Activities. – The procurement process from the opening of bids up to the award of contract shall not exceed three (3) months, or a shorter period to be determined by the procuring entity concerned. Without prejudice to the provisions of the preceding section, the different procurement activities shall be completed within reasonable periods to be specified in the IRR.

If no action on the contract is taken by the head of the procuring entity or by his duly authorized representative, or by the concerned board, in the case of government-owned and/or -controlled corporations, within the periods specified in the preceding paragraph, the contract concerned shall be deemed approved. (Emphasis ours)

In this case, more than three (3) months have elapsed since the opening of the bids, yet the head of the procuring entity, petitioner DBM-PS, represented by Director Syquia failed to observe the parameters of the law and allowed Commissioner Lina of the BOC to exercise the discretion of canceling the bidding process. Due to petitioner DBM-PS' inaction, the contract between the private respondent and the government should have already been deemed approved upon the lapsed of the three-month period, in accordance with Section 38, Paragraph 2, Article XI of R.A. No. 9184.

⁴² *First Global Realty and Dev't. Corp. v. San Agustin*, 427 Phil. 593, 601 (2002).

⁴³ 485 Phil. 533, 542 (2004).

⁴⁴ *Id.* at 542.

⁴⁵ *Lukang v. Pagbilao Development Corporation, et al.*, 728 Phil. 608, 618 (2014).

W

Second, private respondent's right was violated due to the issuance of the Director Syquia's May 7, 2015 Notice of Cancellation, which was prompted by Commissioner Lina's May 6, 2015 Letter, ordering the cancellation of the procurement of PNSW 2 project. These issuances were bereft of factual and legal bases.

The right to reject any bid contemplated by Section 41(c),⁴⁶ Article XI of R.A. No. 9184, which was invoked by Commissioner Lina to support his May 6, 2015 Letter, must be read in conjunction with the “*justifiable ground*” defined in Section 41.1 of R.A. No. 9184's IRR, which reads, thus:

Sec. 41. Reservation Clause.

41.1. The head of procuring entity reserves the right to reject any and all bids, declare a failure of bidding, or not award the contract in the following situations:

x x x x

- c) For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the Government as follows: (i) if the physical and economic conditions have significantly changed so as to render the project no longer economically, financially or technically feasible as determined by the head of the procuring entity; (ii) if the project is no longer necessary as determined by the head of the procuring entity; or (iii) if the source of funds for the project has been withheld or reduced through no fault of the procuring entity.

A perusal of the May 6, 2015 Letter indicates that Commissioner Lina based his discretion to abandon the procurement of the PNSW 2 project simply because he intends “to conduct a thorough review of its details” such as its terms of reference, and specifications, among others. This is hardly a justifiable ground in abandoning the bidding for the said project. Likewise, a cursory reading of the May 7, 2015 Notice of Cancellation reveals that there was no proof, except for Director Syquia's bare statement, that the project is no longer economically, financially or technically feasible. Mere allegation is not evidence and is not equivalent to proof.⁴⁷

⁴⁶ Sec. 41. *Reservation Clause*. — The Head of the Agency reserves the right to reject any and all Bids, declare a failure of bidding, or not award the contract in the following situations:

x x x x

c. For any justifiable and reasonable ground where the award of the contract will not redound to the benefit of the government as defined in the IRR.

⁴⁷*ECE Realty and Development Inc. v. Mandap*, 742 Phil. 164, 171 (2014).

W

Contrariwise, the records bear out that the PNSW 2 project was thoroughly conceived, carefully studied, and extensively evaluated prior to the decision to initiate a competitive bidding, as a mode of procurement.⁴⁸ No less than Director Syquia admitted that petitioner DBM-PS and the “BOC have spent more than three (3) years bidding, rebidding and redoing the project.”⁴⁹ There is also no indication that the conditions surrounding the procurement of the project have been changed with the appointment of Commissioner Lina, who as head of the BOC is fully aware of the country's commitment to the ASEAN and the need to improve the BOC's efficiency.⁵⁰

In *First United Constructors Corp. v. Poro Point Mgm't. Corp., et al.*,⁵¹ We held that:

In any event, the invitation to bid contains a reservation for PPMC to reject any bid. It has been held that where the right to reject is so reserved, the lowest bid, or any bid for that matter, may be rejected on a mere technicality. The discretion to accept or reject bid and award contracts is vested in the government agencies entrusted with that function. This discretion is of such wide latitude that the Courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives unless it is apparent that it is used as a shield to a fraudulent award; or an unfairness or injustice is shown; or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. Thus, where PPMC as advertiser, availing itself of that right, opts to reject any or all bids, the losing bidder has no cause to complain or right to dispute that choice, unless fraudulent acts, injustice, unfairness or grave abuse of discretion is shown.⁵² (Citations omitted)

We likewise made a similar ruling in *Urbanes, Jr. v. Local Water Utilities Administration*,⁵³ thus:

And so, where the Government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice, unless an unfairness or injustice is shown. Accordingly, he has no ground of action to compel the Government to award the contract in his favor, nor to compel it to accept his bid.⁵⁴ (Emphasis and underscoring in the original)

As can be gleaned from the aforementioned cases, it can be deduced that as a general rule, courts cannot direct government agencies entrusted with the function to accept or reject bid and awards contract, to do a

⁴⁸ *Rollo*, pp. 190, 584.

⁴⁹ *Id.* at 189-190.

⁵⁰ *Id.* at 191, 585.

⁵¹ 596 Phil. 334 (2009).

⁵² *Id.* at 344-345.

⁵³ 531 Phil. 447 (2006)

⁵⁴ *Id.* at 459.

particular act or to enjoin such act within its prerogative. Consequently, the bidder has no cause to complain. However, jurisprudence has carved out an exception, *i.e.*, when said government agency used its discretion or prerogative as a shield to a fraudulent award; or an unfairness or injustice is shown; or when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction. To restate, the cancellation of an ongoing public bidding is not reasonable if it will cause unfairness or injustice to the bidder concerned or if it is attended by arbitrariness, fraudulent acts or grave abuse of discretion on the part of the government agencies entrusted with that function.

Taking into consideration the circumstances surrounding the facts, this case falls under the exception. As We have discussed earlier, neither Commissioner Lina nor Director Syquia justified the cancellation of the PNSW2 in accordance with the express provision of Section 41.1 of R.A. No. 9184's IRR.

In *SM Land, Inc. v. Bases Conversion Dev't. Authority, et al.*,⁵⁵ this Court held that the reservation clause under Section 41(c), Article XI of R.A. No. 9184 cannot be read in isolation from the circumstances surrounding the case. Thus:

We find that the reservation clause cannot justify the cancellation of the entire procurement process. Respondent cannot merely harp on the lone provision adverted to without first explaining the context surrounding the reservation clause. The said provision cannot be interpreted in a vacuum and should instead be read in congruence with the other provisions in the TOR for Us to fully appreciate its import.⁵⁶

As already mentioned, the tenor of Commissioner Lina's May 6, 2015 Letter and that of Director Syquia's May 7, 2015 Notice of Cancellation are devoid of any proof or explanation that would warrant the cancellation of the PNSW 2 project. This arbitrary act certainly caused unfairness and injustice upon the private respondents. These are anathema to the aforesaid pronouncements by this Court, and thus, cannot be countenanced.

Third, there is an urgent necessity to preserve the *status quo*, considering that the unjustified cancellation would put to naught private respondent's considerable resources, time and efforts in order to hurdle the rigorous requirements in the Bidding Documents. Aside from this, the records show that the PNSW 2 project had long been overdue and our country had been lagging behind in its commitment to the ASEAN under the ASEAN Single Window Agreement signed back in December 9, 2005. To further delay the Philippines' international commitment by the mere

⁵⁵ 741 Phil. 269 (2014).

⁵⁶ *Id.* at 300.



expedient of arbitrarily canceling the procurement of the said project would create a deleterious effect in our international relations with other ASEAN members.

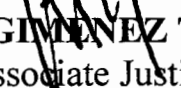
Prescinding from the foregoing discussion, We conclude that no grave abuse of discretion can be attributed to the respondent Judge when he issued the WPI.

We emphasize though that the evidence upon which the RTC based its August 24, 2015 Omnibus Order is not conclusive as to result in the automatic issuance of a final injunction. Indeed, “the evidence submitted for purposes of issuing a WPI is not conclusive or complete for only a sampling is needed to give the court an idea of the justification for the preliminary injunction pending the decision of the case on the merits.”⁵⁷

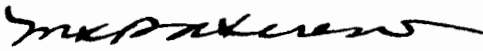
In the same vein, Our Resolution in this case is without prejudice to whatever final resolution the RTC may arrive at in Civil Case No. 15-134333.

WHEREFORE, premises considered, the petition is **DISMISSED**. The Omnibus Order dated August 24, 2015 of the Regional Trial Court of the City of Manila, Branch 47 is **AFFIRMED** *in toto*. This case is **REMANDED** to the RTC for the immediate resolution of the main petition in Civil Case No. 15-134333.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

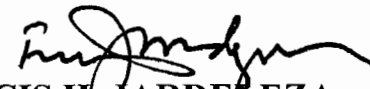
WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁵⁷ *Sps. Aldover v. CA, et al.*, 718 Phil. 205, 231 (2013).



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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


MARIA LOURDES P. A. SERENO
Chief Justice