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SECOND DIVISION

[G.R. No. 120287. May 28, 2002]

G & S TRANSPORT CORPORATION, *petitioner*, *vs.* **COURT OF APPEALS, HON. ENRICO A. LANZANAS, TWO THOUSAND (2000) TRANSPORT CORPORATION, NISSAN CAR LEASE PHILIPPINES, INC., MANILA INTERNATIONAL AIRPORT AUTHORITY AND GUILLERMO G. CUNANAN,** *respondents*.

SYNOPSIS

Petitioner sought to disqualify 2000 TRANSPORT from the award of the concession contract on coupon taxi service with MIAA for allegedly submitting its Articles of Incorporation with falsified signature and income tax returns falsely attested. Further, 2000 TRANSPORT is a dummy corporation for two Korean nationals. Petitioner asserted that the concession contract should be executed in its favor.

Petitioner prayed for a permanent injunction to bar the award of contract to 2000 TRANSPORT and NISSAN and to nullify the entire bidding process. His allegations, however, were not sufficient bases to support his prayer. Petitioner also prayed for a writ of *mandamus* to compel MIAA to grant it the concession contract. *Mandamus*, however, will not lie as the determination of winning bidders should be left to the sound judgment of MIAA. Further, PD 1818 deprives courts of jurisdiction to issue injunctive writs against the implementation or execution of contracts for the operation of a public utility. Courts may set aside the award of a contract made by the government entity only when there is grave abuse of discretion which is wanting in the case at bar.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL AND *CERTIORARI*; MAY BE JOINED IN ONE PLEADING.** – There is nothing irregular in joining both petitions for review (Rule

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45) and *certiorari* (Rule 65) in one pleading for purposes of resolving the issues raised by petitioner G & S. This procedural step may even avoid inconsistency of rulings which might result in case the writ of preliminary injunction is validated but the civil case from which the writ emanated is ordered dismissed. Although a petition for review under Rule 45 is an appeal process while a petition for *certiorari* under Rule 65 is an original action and the rule is that joinder of causes of action shall not include special civil actions governed by special rules, the conceptual and procedural differences between them are overshadowed by the more significant probability of divergent rulings in case the two (2) petitions are not joined which in the end would only cause difficulties in determining which of the conflicting decisions should be enforced. For the same reason, resort to *certiorari* under Rule 65 before this Court in lieu of an ordinary appeal to the Court of Appeals to assail the final Order of dismissal is fully justified by the necessity to bring all the issues before one (1) forum to ensure harmony of rulings. It must however be emphasized that in disposing of the issue regarding the propriety and legality of the Order, the applicable standard will of course be whether the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction, and the only reversible errors will be errors of jurisdiction and not errors of judgment.

2. **ID.; CIVIL PROCEDURE; ACTIONS; GROUNDS FOR DISMISSAL; FAILURE TO STATE CAUSE OF ACTION.** – The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein? Only ultimate facts and not legal conclusions or evidentiary facts which in the first place should not have been alleged in the complaint are considered for purposes of applying the test. Furthermore, actions which are prematurely commenced would fall under the objection.

3. **ID.; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHEN PROPER.** – It is a settled rule that *mandamus* will lie only to compel the performance of a ministerial duty but does not lie to require anyone to fulfill contractual obligations. Only such duties as are clearly and peremptorily enjoined by law or by reason of official station are to be enforced by the writ. Whether MIAA

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will enter into a contract for the provision of a coupon taxi service at the international airport is entirely and exclusively within its corporate discretion. It does not involve a duty the performance of which is enjoined by law and thus this Court cannot direct the exercise of this prerogative.

4. **ID.; PD 1818; COURTS PROHIBITED FROM ISSUING INJUNCTIVE WRITS AGAINST CONTRACTS FOR OPERATION OF A PUBLIC UTILITY.** – In *Bureau Veritas v. Office of the President* we ruled that "the discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function." Furthermore, Sec. 1 of PD 1818 (the governing statute in all the relevant dates alleged in the complaint) distinctly provides that "[n]o court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction x x x in any case, dispute, or controversy involving x x x any public utility operated by the government, including among others public utilities for the transport of the goods or commodities x x x to prohibit any person or persons x x x from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation." We stress that the provision expressly deprives courts of jurisdiction to issue injunctive writs against the implementation or execution of contracts for the operation of a public utility. Undeniably, both respondent MIAA and the concession contracts it wanted to bid out involve a public utility which would therefore enjoy the protective mantle of the decree.

5. **ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; GRAVE ABUSE OF DISCRETION.** – While the rule is that courts may set aside or enjoin the award of a contract made by a government entity, this may be done only upon a clear showing of grave abuse of discretion or only in cases involving issues definitely outside the exercise of discretion in technical cases and questions of law. Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.

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6. **ID.; CIVIL PROCEDURE; ACTIONS; GROUNDS FOR DISMISSAL; FAILURE TO STATE CAUSE OF ACTION; CASE AT BAR.** – It is irrelevant that the Korean nationals were the President and the Vice President, respectively, of 2000 TRANSPORT as shown in the General Information Sheet on file with the Securities and Exchange Commission. What is material for purposes of stating a cause of action are allegations showing that they were such officers during the operational stages of the coupon taxi service. Moreover, the alleged defects on the documents submitted by 2000 TRANSPORT, MIAA acted within the bounds of reasonable discretion when it accepted the Articles of Incorporation and income tax returns of 2000 TRANSPORT since they were duly verified by the proper administrative agencies. It appears from the records that 2000 TRANSPORT had long been operating as a corporation engaged in common carriage so that MIAA had reasonable ground to rely upon the documents submitted to it to prove the corporate personality and status as public carrier of the bidder for purposes of the bidding. Moreover, because of the presumption of regular performance of powers and functions, MIAA should be deemed to have performed its functions in accordance with law and duly considered all the relevant documents before pre-qualifying 2000 TRANSPORT. It goes without saying that the action in Civil Case No. 95-72586 is premature and consequently fails to state a cause of action. In the absence of any finding of irregularity from the appropriate government agencies tasked to deal with these concerns, which at all the times relevant to the civil case would be the Securities and Exchange Commission and the Land Transportation Franchising and Regulatory Board, courts must defer to the presumption that these agencies had performed their functions regularly. The ultimate facts upon which depends the complaint in Civil Case No. 95-72586 would be matters which fall within the technical competence of government agencies over which courts could not prematurely rule upon and enter relief as prayed for in the complaint.

7. **ID.; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; CANNOT SURVIVE IN THE MAIN CASE.** – It is well settled that the issue of propriety of obtaining a preliminary injunction dies with the main case from which it logically sprang. Such a provisional remedy, like any other interlocutory order, cannot survive the main case of which it is but an incident. Indeed what more could this Court enjoin when the complaint has

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already been dismissed? To be sure, even a ruling granting the petition at bar would not revive the civil case much less change our ruling in the petition for *certiorari* under Rule 65. The remedy in question is precisely termed *preliminary* since it is meant to restrain acts *prior* to the rendition of a judgment or a final order.

8. ID.; ID.; ID.; WHEN PROPER. — It is well settled that before a writ of preliminary injunction may be issued, there must be a clear showing by the complainant that there exists a right to be protected and that the acts against which the writ is to be directed are violative of established right. In the instant case, it is an undisputed fact that the contract of petitioner G & S for coupon taxi service with MIAA had already expired and that a new concessionaire had been chosen. Admittedly there was no existing contractual relationship between MIAA and petitioner G & S since the former was under no legal obligation to renew the concession contract. Consequently petitioner had no right which needed protection by a writ of preliminary injunction.

APPEARANCES OF COUNSEL

Singson Valdez & Associates for petitioner.

The Government Corporate Counsel for respondents MIAA & Cunanan.

Picazo Buyco Tan Fider & Santos for respondent Nissan Car Lease Phil., Inc.

D E C I S I O N

BELLOSILLO, *J.*:

This resolves the consolidated *Petition for Review* of the *Decision* of the Court of Appeals in CA-G.R. SP No. 36345, "*Two Thousand (2000) Transport Corporation v. Hon. Guillermo L. Loja, Sr., as Judge, RTC, Manila, Branch 26, and G & S Transport Corporation,*" and in CA-G.R. SP No. 36356, "*Nissan Car Lease Philippines, Inc. v. Hon. Guillermo L. Loja, Sr., as Judge RTC of Manila, Branch 26, and G & S Transport Corporation,*" and *Petition for Certiorari*

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of the *Order* of the Regional Trial Court, Branch 7, Manila, in Civil Case No. 95-72586, "*G & S Transport Corporation v. Manila International Airport Authority, Guillermo G. Cunanan, Two Thousand (2000) Transport Corporation and Nissan Car Lease Philippines, Inc.*"

Petitioner G & S Transport Corporation (G & S), with the name and style *Avis Rent-A-Car*, was the exclusive operator of coupon taxi services at the Ninoy Aquino International Airport (NAIA) under a five (5)-year contract of concession with respondent Manila International Airport Authority (MIAA).[1] The concession contract expired on 31 January 1994 but was renewed by the parties on a monthly basis "until such time when a new concessionaire (shall have been) chosen."[2] Under the arrangement, G & S was able to operate the coupon taxi service uninterruptedly beyond the period of five (5) years originally awarded by MIAA.

On 12 July 1994 MIAA initiated proceedings for public bidding to choose two (2) concessionaires of the coupon taxi services at the NAIA. Five (5) firms pre-qualified to join the bidding including petitioner G & S and respondents Two Thousand (2000) Transport Corporation (2000 TRANSPORT) and Nissan Car Lease Philippines, Inc. (NISSAN), after complying with the terms of reference, the instructions to bidders and the invitation to bid.[3] On 23 September 1994 MIAA announced the ranking of the bidders on the basis of the fares per kilometer they each tendered –

1. Philippine International Transport Service Cooperative . . . . . .₱16.00/km
2. 2000 Transport Cooperative . . .. ₱17.00/km
3. Nissan Car Lease Philippines . . . . . .₱18.00/km
4. G&S Transport Corp. . . . . ₱18.50/km
5. Hyatt Transport Co., Inc. . . . . .₱24.00/km[4]

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[1] *Rollo*, pp. 77, 111-117.

[2] *Id.*, p. 118.

[3] *Id.*, pp. 77, 120-132.

[4] *Id.*, p. 77.

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The highest ranking bidder which offered the lowest rate per kilometer was Philippine International Transport Service Cooperative but was however disqualified as the bond it submitted was not a cash bond as required by the bidding rules.[5] Consequently, on 5 December 1994 MIAA selected 2000 TRANSPORT and NISSAN as the winning bidders and issued in their favor the respective notice of awards of the coupon taxi service concession.[6]

On 10 January 1995 petitioner G & S filed a complaint for injunction and *mandamus* with preliminary injunction and temporary restraining order against MIAA and its General Manager Guillermo G. Cunanan, 2000 TRANSPORT and NISSAN, which was docketed as Civil Case No. 95-72586 and subsequently raffled to RTC-Br. 26, Manila. The complaint sought to disqualify 2000 TRANSPORT from the award of the concession contract for submitting its *Articles of Incorporation* with the signature of one (1) of its incorporators allegedly falsified and its income tax returns falsely attested to by its treasurer, and for the existence of allegedly reasonable grounds to believe that 2000 TRANSPORT was a dummy corporation for two (2) Korean nationals. It also asserted that the concession contract should have been executed in favor of G & S since it was more deserving than both 2000 TRANSPORT and NISSAN in terms of facilities, financial standing, organizational set-up and capability. G & S subsequently amended the complaint to state that no new legitimate concessionaire had been properly chosen as a result of the failure of MIAA to disqualify 2000 TRANSPORT from the entire process of selecting two (2) coupon taxi service concessionaires and to allege that G & S remained to be the only legitimate service provider, and prayed that the month-to-month renewal of the concession contract with G & S should instead be enforced until a more deserving concessionaire would have been selected.

As prayed for in the complaint, the trial court issued a temporary restraining order enjoining MIAA from awarding to 2000 TRANSPORT and NISSAN the new concessions to operate

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[5] *Ibid.*

[6] *Id.*, pp. 77, 421-422.

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the NAIA coupon taxi service and from removing G & S as such concessionaire, and thereafter scheduled for hearing the application for preliminary injunction.

Meanwhile respondents 2000 TRANSPORT and NISSAN each moved to dismiss the complaint for failure to state a cause of action and for improper venue and to lift the temporary restraining order. On 30 January 1995, after the parties were heard although the motions were still pending, the trial court granted the writ of preliminary injunction which barred MIAA from doing any of the acts earlier restrained.

Respondents 2000 TRANSPORT and NISSAN assailed before the Court of Appeals the issuance of the writ of preliminary injunction through their respective petitions for *certiorari* with prayer for temporary restraining order and preliminary injunction under Rule 65 of the *Revised Rules of Court*.[7] Respondent 2000 TRANSPORT belied the claims that it falsified its *Articles of Incorporation* and that it was a dummy corporation. On the other hand, NISSAN alleged that the complaint of G & S did not state a cause of action since the allegations concerned exclusively the disqualification of 2000 TRANSPORT.

On 6 February 1995 the appellate court issued a temporary restraining order prohibiting the enforcement of the writ of preliminary injunction. While the temporary restraining order was in place, MIAA terminated the month-to-month renewal of the concession contract with G & S and executed the concession contracts with the winning bidders 2000 TRANSPORT and NISSAN which immediately commenced their respective coupon taxi services at the NAIA.[8] The temporary restraining order (issued by the Court of Appeals) had already expired when the appellate court conducted hearings on the application of 2000 TRANSPORT and NISSAN for a writ of preliminary injunction.

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[7] The petition filed by 2000 Transport was docketed as CA-G.R. SP No. 36345 while the petition of Nissan was docketed as CA-G.R. SP No. 36356.

[8] *Rollo*, p. 28.

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On 3 March 1995, upon separate motions of 2000 TRANSPORT and NISSAN, the presiding judge[9] of RTC-Br. 26, Manila, inhibited himself from hearing Civil Case No. 95-72586. The case was re-raffled and in due time referred to the RTC-Br. 7 which extensively heard the motions to dismiss separately filed by 2000 TRANSPORT and NISSAN.

On 11 April 1995 the trial court dismissed the complaint in Civil Case No. 95-72586.[10] It ruled that the complaint failed to state a cause of action against herein respondents and that *mandamus* was unavailable to compel the award of the concession contract in favor of G & S since such decision was discretionary upon the MIAA. On 16 June 1995 the trial court denied reconsideration of the *Order* of dismissal.

On 16 May 1995 the Court of Appeals granted the petitions for *certiorari* of 2000 TRANSPORT and NISSAN in CA-G.R. SP No. 36345 and CA-G.R. SP No. 36356, set aside the 30 January 1995 *Order* of the trial court issuing the writ of preliminary injunction, and prohibited the trial court from "hearing and taking further cognizance of Civil Case No. 95-72586 except to dismiss the same."[11] The appellate court held that the trial court gravely abused its discretion when it issued the writ of preliminary injunction since under *PD 1818* no court would have jurisdiction to restrain the operation of a public utility and since the selection of winning bidders was solely the discretion of the sponsoring government agency. Hence, the instant petition for review under Rule 45 of the *Revised Rules of Court* assailing the 16 May 1995 *Decision* of the Court of Appeals, which was joined with the instant petition for *certiorari* under Rule 65, seeking to nullify and set aside the 11 April 1995 *Order* of the trial court dismissing Civil Case No. 95-72586.

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[9] Reference was to Hon. Guillermo L. Loja, Sr.

[10] *Rollo*, p. 94; The order of dismissal was issued by Hon. Enrico A. Lanzanas.

[11] *Id.*, p. 84; Decision penned by Associate Justice Salome A. Montoya and concurred in by Associate Justices Fidel P. Purisima and Godardo A. Jacinto of the Second Division.

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G & S argues in its petition for review that irregularities attending the bidding for the coupon taxi service at the NAIA warranted the issuance of the writ of preliminary injunction and that *PD 1818* was not applicable to divest the trial court of jurisdiction to hear the complaint in Civil Case No. 95-72586. G & S asserts in its petition under Rule 65 that allegations in the complaint that 2000 TRANSPORT falsified its *Articles of Incorporation* and income tax returns, and was a dummy corporation for two (2) Korean nationals, and that irregularities rigged the bidding stated fully a cause of action against 2000 TRANSPORT and NISSAN which would have justified the disqualification of respondent 2000 TRANSPORT from the bidding and the continuation of the month-to-month renewal of the concession contract in favor of G & S. Petitioner also justifies resorting to Rule 65 in lieu of an ordinary appeal before the Court of Appeals to question the *Order* of dismissal of the trial court on grounds of expediency and necessity for a speedier remedy than appeal and further explains that joining the petitions for review and for *certiorari* in just one (1) pleading was essential to avoid conflicting rulings in case the petitions were brought separately in different fora.

To begin with, petitioner could have joined together all his allegations of error in one petition for review under Rule 45 of the 1997 Rules of Civil Procedure since only questions of law are raised in the instant casse. At any rate, there is nothing irregular in joining both petitions for review (Rule 45) and *certiorari* (Rule 65) in one pleading for purposes of resolving the issues raised by petitioner G & S. This procedural step may even avoid inconsistency of rulings which might result in case the writ of preliminary injunction is validated but the civil case from which the writ emanated is ordered dismissed. Although a petition for review under Rule 45 is an appeal process while a petition for *certiorari* under Rule 65 is an original action and the rule is that joinder of causes of action shall not include special civil actions governed by special rules,[12] the conceptual and procedural differences between them are overshadowed

[12] Sec. 5 (b), Rule 2, 1997 Rules of Civil Procedure.

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by the more significant probability of divergent rulings in case the two (2) petitions are not joined which in the end would only cause difficulties in determining which of the conflicting decisions should be enforced.

For the same reason, resort to *certiorari* under Rule 65 before this Court in lieu of an ordinary appeal to the Court of Appeals to assail the final *Order* of dismissal is fully justified by the necessity to bring all the issues before one (1) forum to ensure harmony of rulings. It must however be emphasized that in disposing of the issue regarding the propriety and legality of the *Order*, the applicable standard will of course be whether the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction,[13] and the only reversible errors will be errors of jurisdiction and not errors of judgment.[14]

We find that the trial court did not abuse its discretion in dismissing the complaint in Civil Case No. 95-72586 for failure to state a cause of action against respondents 2000 TRANSPORT and NISSAN. As admitted by petitioner G & S itself, the trial court used the correct "guidelines by which the failure of the complaint to state a cause of action as a ground in a motion to dismiss must be considered."[15] Concededly therefore the only errors involved in this petition are mere errors of judgment, if any, and not errors of jurisdiction for which the instant petition would be the inappropriate mode for seeking a reversal. The allegations of errors of judgment are in fact fairly obvious on the face of the instant petition for *certiorari* under Rule 65.

We nonetheless examine the *Order* of the trial court in the interest of justice. The elementary test for failure to state a cause of action is whether the complaint alleges facts which if true would justify the relief demanded. Stated otherwise, may the court render a valid judgment upon the facts alleged therein?[16] Only

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[13] Sec. 1, Rule 65, 1997 Rules of Civil Procedure.

[14] *Matute v. Macadaeg*, 99 Phil. 340 (1956); *De Galasison v. Maddela*, No. L-24584, 30 October 1975, 67 SCRA 478.

[15] *Rollo*, p. 48.

[16] I V.J. Francisco, *The Revised Rules of Court in the Philippines* (1973), p. 945.

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ultimate facts and not legal conclusions or evidentiary facts which in the first place should not have been alleged in the complaint are considered for purposes of applying the test.[17] Furthermore, actions which are prematurely commenced would fall under the objection.[18]

Petitioner G & S prayed for a permanent injunction to bar the award of the concession contract to 2000 TRANSPORT and NISSAN; a writ of *mandamus* compelling MIAA to grant to it the concession contract; the disqualification of 2000 TRANSPORT from the bidding; the nullification of the entire bidding process; and the payment of damages which would of course be a mere consequence of the other relief sought.[19] The ultimate facts supposedly justifying the complaint for injunction and *mandamus* were –

15. On October 26, 1994, the Manila Standard published a news item reporting that (2000) Transport has been accused of submitting to MIAA falsified documents in connection with their bid for the NAIA coupon taxi service. Investigating this report, plaintiff [G & S] discovered that on October 8, 1994, a certain Meliton Solpot had executed an Affidavit, wherein he stated that the corporate tax returns submitted by [2000 Transport] to MIAA during the bidding are (sic) falsified as his purported signatures thereon are (sic) not his signatures x x x x Plaintiff further discovered that on October 25, 1994, the same Meliton Solpot executed a Sworn Statement before the National Bureau of Investigation (NBI) alleging that his signatures on the partnership annual income tax return of [2000 Transport] dated December 1993 and February 3, 1994 as well as those found in the Articles of Incorporation of [2000 Transport] on file with the Securities and Exchange Commission are (sic) not his genuine signatures x x x x 17. In the meantime, plaintiff [G & S] was able to secure from the SEC a copy of the Articles of Incorporation of [2000 Transport]. In said Articles, it clearly appears that one of the alleged incorporators is a certain Meliton Solpot. It further appears that the two (2) Korean incorporators who appear to have subscribed to twenty percent (20%) of the authorized capital stock of the corporation had paid up eighty percent (80%) of the paid-in capital,thereby indicating that in fact,

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[17] *Id.*, pp. 567-568, 943.

[18] *Id.*, p. 947.

[19] *Rollo*, pp. 34, 107-108.

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and for all intents and purposes, the Korean incorporators were in control of the corporation x x x x Moreover, plaintiff was also able to secure a copy of the General Information Sheet for 1994 filed by [2000 Transport] with the SEC which shows that Sooja Park Lim, a Korean, is the Chairman and President of [2000 Transport] while Young Kon Jo, a Korean, is the Vice President of [2000 Transport] x x x x 23. Since [2000 Transport] was not duly qualified to participate in the bidding and has flagrantly violated the Constitution, MIAA and Cunanan have neither factual nor legal basis to declare said defendant as one of the winning bidders, to award to said defendant, a Contract of Concession for the NAIA coupon taxi service and allowing it to operate the said service. Furthermore, the participation of a disqualified bidder in the bidding affects the integrity of the entire bidding process and renders the same ineffective, null and void. Consequently, MIAA and Cunanan should be finally and permanently enjoined from awarding to [2000 Transport and Nissan] a Contract of Concession for the NAIA coupon taxi service and/or otherwise authorizing or allowing them to operate the NAIA coupon taxi service x x x x 25. While plaintiff had made the third lowest bid insofar as the fare is concerned, it certainly is way ahead of all other bidders, insofar as the other factors stated in the Instruction to Bidders are concerned. As the present operator and concessionaire of the NAIA coupon taxi service for the last five (5) years, its existing facilities, financial standing, organizational set-up, relevant experience, quality, capability and kind of services offered far outrank any of the other bidders. Thus, assuming, without conceding, that [2000 Transport] was not disqualified to participate in the bidding and/or the bidding process is not fatally flawed, plaintiff should be declared as one of the winning bidders based on these other factors. The other winning bidder should be determined between [2000 Transport and Nissan] based on these other factors.[20]

It is clear that the allegations would not call for any relief against respondent NISSAN. The alleged defects in the bidding process center on the incapacity and fraudulent act of 2000 TRANSPORT in submitting its *Articles of Incorporation* with one (1) falsified signature and in being a dummy corporation for two (2) Korean nationals. Under these set of facts, we see no basis for declaring NISSAN to be similarly disqualified

[20] *Id.*, pp. 33-34, 100-101.

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or for nullifying the entire bidding process. Indeed it has not been shown that the alleged irregularities committed by 2000 TRANSPORT were induced by or participated in by any of the other bidders. No rule would justify compromising the interests of NISSAN for an act it was not the author of or even privy to. If at all, liability should attach only to the responsible party for the alleged prejudice sustained by G & S as a result of the anomalies described above.

Neither would the allegations authorize us to issue the writ of *mandamus* compelling MIAA to award the concession contract in favor of petitioner G & S. It is a settled rule that *mandamus* will lie only to compel the performance of a ministerial duty but does not lie to require anyone to fulfill contractual obligations.[21] Only such duties as are clearly and peremptorily enjoined by law or by reason of official station are to be enforced by the writ.[22] Whether MIAA will enter into a contract for the provision of a coupon taxi service at the international airport is entirely and exclusively within its corporate discretion. It does not involve a duty the performance of which is enjoined by law and thus this Court cannot direct the exercise of this prerogative.

Indeed the determination of the winning bidders should be left to the sound judgment of the MIAA which is the agency in the best position to evaluate the proposals and to decide which bid would most complement the NAIA's services. The *Terms of Reference for Coupon Taxi Service Concession* observed, "[t]he professional transport service plays a very important role in enhancing and maintaining a good image of the country that will speak of trust, honesty, efficiency and modernity."[23] In this regard only the most advantageous bids would be selected on the basis of the best bid offer in relation to the bidders' existing facilities, financial standing, organizational set-up, relevant experience, quality, capability and kind of services offered.[24] The exercise of such

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[21] *National Power Corp. v. Vera*, G.R. No. 83558, 27 February 1989, 170 SCRA 721.

[22] *Ibid.*

[23] *Rollo*, p. 120.

[24] Instruction to Bidders; *Id.*, p. 132.

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discretion is a policy decision that necessitates such procedures as prior inquiry, investigation, comparison, evaluation and deliberation.[25] This process would necessarily entail the technical expertise of MIAA which the courts do not possess in order to evaluate the standards affecting this matter –

> x x x x courts, as a rule, refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions. This is so because such bodies are generally better equipped technically to decide administrative questions and that non-legal factors, such as government policy on the matter, are usually involved in the decisions.[26]

Nor would the allegations, even if admitted to be true, compel a permanent restraint on the execution of the respective concession contracts of respondents 2000 TRANSPORT and NISSAN with MIAA. In *Bureau Veritas v. Office of the President*[27] we ruled that "the discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function." Furthermore, Sec. 1 of *PD 1818* (the governing statute in all the relevant dates alleged in the complaint) distinctly provides that "[n]o court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction x x x in any case, dispute, or controversy involving x x x any public utility operated by the government, including among others public utilities for the transport of the goods or commodities x x x to prohibit any person or persons x x x from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation." We stress that the provision expressly deprives courts of jurisdiction to issue injunctive writs against the implementation or execution of

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[25] *Philippine Ports Authority v. Court of Appeals*, G.R. Nos. 115786-87, 5 February 1996, 253 SCRA 212.

[26] *Manuel v. Villena,* No. L-28218, 27 February 1971, 37 SCRA 745, 750.

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

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contracts for the operation of a public utility.[28] Undeniably, both respondent MIAA and the concession contracts it wanted to bid out involve a public utility which would therefore enjoy the protective mantle of the decree.

While the rule is that courts may set aside or enjoin the award of a contract made by a government entity, this may be done only upon a clear showing of grave abuse of discretion[29] or only in cases involving issues definitely outside the exercise of discretion in technical cases and questions of law.[30] We however find nothing of this sort in the allegations of petitioner G & S in Civil Case No. 95-72586. Even if admitted to be true, the allegations do not demonstrate grave abuse of discretion nor raise issues definitely outside the exercise of discretion in technical cases which would survive a motion to dismiss for failure to state cause of action and warrant a trial on the merits of the complaint.

Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power.[31] The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[32] In the case at bar, the allegations of G & S in the civil case do not call for the assumption that MIAA accepted the bid of 2000 TRANSPORT and NISSAN and declared them winning bidders with grave abuse of discretion.

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[28] *Garcia v. Burgos,* G.R. No. 124130, 29 June 1998, 291 SCRA 415.

[29] *Republic v. Capulong,* G.R. No. 93359, 12 July 1991, 199 SCRA 134; *Philippine Ports Authority v. Court of Appeals*, see Note 25.

[30] *Malaga v. Penachos,* G.R. No. 86695, 3 September 1992, 213 SCRA 516.

[31] *Filinvest Credit Corp. v. Intermediate Appellate Court,* G.R. No. 65935, 30 September 1988, 166 SCRA 155.

[32] *Litton Mills, Inc. v. Galleon Trader, Inc.*, No. L-40867, 26 July 1988, 163 SCRA 489.

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For one, the claim that 2000 TRANSPORT is a dummy corporation for two (2) Korean nationals is a legal conclusion from allegations which would not even compel the adoption of such inference –

> It further appears that the two (2) Korean incorporators who appear to have subscribed to twenty percent (20%) of the authorized capital stock of the corporation had paid up eighty percent (80%) of the paid-in capital, thereby indicating that in fact, and for all intents and purposes, the Korean incorporators were in control of the corporation x x x x Moreover, plaintiff was also able to secure a copy of the General Information Sheet for 1994 filed by [2000 Transport] with the SEC which shows that Sooja Park Lim, a Korean, is the Chairman and President of [2000 Transport] while Young Kon Jo, a Korean, is the Vice President of [2000 Transport] x x x x

Judicial notice of the *Articles of Incorporation* referred to in the allegations and attached as one of the annexes to the instant petition would show that the two (2) Korean nationals subscribed to only 1,000 shares out of the total 20,000 shares, which were fully paid up by them at ₱100.00 per share for ₱50,000.00 each.[33] On its face, the *Articles of Incorporation* merely showed the subscription by the two (2) Korean nationals of only five percent (5%) of the capital stock and the full payment thereof in the total amount of ₱100,000.00. Since factual premises as well as legal conclusions which by judicial notice are determined to be false are not deemed admitted to be true for purposes of disposing of an objection on the ground of failure to state a cause of action,[34] it was incumbent upon G & S to have alleged additional facts from which could be inferred that 2000 TRANSPORT was truly a front of the Korean shareholders.

In the same manner, it is irrelevant that the Korean nationals were the President and the Vice President, respectively, of 2000 TRANSPORT as shown in the General Information Sheet on file with the Securities and Exchange Commission. What is material for purposes of stating a cause of action are allegations

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[33] *Rollo*, p. 151.

[34] See Note 16, p. 570; I J. Feria and M.C. Noche, *Civil Procedure Annotated* (2001), pp. 443-444.

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showing that they were such officers during the operational stages of the coupon taxi service. As we have held in *Tatad v. Garcia*[35] –

> x x x x Private respondent EDSA LRT Corporation, Ltd., to whom the contract to construct the EDSA LRT III was awarded by public respondent, is admittedly a foreign corporation "duly incorporated and existing under the laws of Hong Kong" x x x x What private respondent owns are the rail tracks, rolling stocks like the coaches, rail stations, terminals and the power plant, not a public utility. While a franchise is needed to operate these facilities to serve the public, they do not by themselves constitute a public utility. What constitutes a public utility is not their ownership but their use to serve the public x x x x The Constitution, in no uncertain terms, requires a franchise for the operation of a public utility. However, it does not require a franchise before one can own the facilities needed to operate a public utility so long as it does not operate them to serve the public x x x x In law, there is a clear distinction between the "operation" of a public utility and the ownership of the facilities and equipment used to serve the public. The exercise of the rights encompassed in ownership is limited by law so that a property cannot be operated and used to serve the public as a public utility unless the operator has a franchise x x x x The right to operate a public utility may exist independently and separately from the ownership of the facilities thereof. One can own said facilities without operating them as a public utility, or conversely, one may operate a public utility without owning the facilities used to serve the public. The devotion of property to serve the public may be done by the owner or by the person in control thereof who may not necessarily be the owner thereof x x x x Indeed, a mere owner and lessor of the facilities used by a public utility is not a public utility x x x x Even the mere formation of a public utility corporation does not *ipso facto* characterize the corporation as one operating a public utility.

Moreover, the allegations that the documents submitted by 2000 TRANSPORT, *i.e.*, *Articles of Incorporation* and income tax returns, contained one (1) falsified signature even if admitted to be true could not be characterized as showing grave abuse of discretion on the part of MIAA in not disqualifying 2000

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[35] G.R. No. 114222, 6 April 1995, 243 SCRA 436, 453-456.

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TRANSPORT from the bidding and in not nullifying the bidding process. It is clear that under the *Terms of Reference for Coupon Taxi Service Concession* the required pre-qualification documents consisted of, among others, certified true copy of the *Articles of Incorporation* and certified true copy of the income tax returns of the corporation for the last two (2) years immediately preceding the date of the bidding.[36] MIAA acted within the bounds of reasonable discretion when it accepted the *Articles of Incorporation* and income tax returns of 2000 TRANSPORT since they were duly verified by the proper administrative agencies. It appears from the records that 2000 TRANSPORT had long been operating as a corporation engaged in common carriage so that MIAA had reasonable ground to rely upon the documents submitted to it to prove the corporate personality and status as public carrier of the bidder for purposes of the bidding. Moreover, because of the presumption of regular performance of powers and functions, MIAA should be deemed to have performed its functions in accordance with law and duly considered all the relevant documents before pre-qualifying 2000 TRANSPORT.

It goes without saying that the action in Civil Case No. 95-72586 is premature and consequently fails to state a cause of action. The allegations of the complaint therein focused on the irregularity in the process of obtaining corporate personality, that is, the alleged falsification of the *Articles of Incorporation* of 2000 TRANSPORT, and the misdeed in securing a certificate of public convenience for operating taxi services when 2000 TRANSPORT was allegedly a dummy corporation for two (2) Korean nationals. Clearly, in the absence of any finding of irregularity from the appropriate government agencies tasked to deal with these concerns, which at all the times relevant to the civil case would be the Securities and Exchange Commission[37] and the Land Transportation Franchising and Regulatory Board,[38]

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[36] *Rollo*, pp. 126-127.

[37] Sec. 6 (l), PD 902-A as amended (1976).

[38] Sec. 19, Title XV, Book IV, The Administrative Code of 1987.

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courts must defer to the presumption that these agencies had performed their functions regularly. The ultimate facts upon which depends the complaint in Civil Case No. 95-72586 would be matters which fall within the technical competence of government agencies over which courts could not prematurely rule upon and enter relief as prayed for in the complaint –

In recent years, it has been the jurisprudential trend to apply the doctrine of primary jurisdiction in many cases involving matters that demand the special competence of administrative agencies. It may occur that the Court has jurisdiction to take cognizance of a particular case, which means that the matter involved is also judicial in character. However, if the case is such that its determination requires the expertise, specialized skills and knowledge of the proper administrative bodies because technical matters or intricate questions of facts are involved, then relief must first be obtained in an administrative proceeding before a remedy will be supplied by the courts even though the matter is within the proper jurisdiction of a court. This is the doctrine of primary jurisdiction. It applies "where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such case the judicial process is suspended pending referral of such issues to the administrative body for its view" x x x x "Uniformity and consistency in the regulation of business entrusted to an administrative agency are secured, and the limited function of review by the judiciary are more rationally exercised, by preliminary resort, for ascertaining and interpreting the circumstances underlying legal issues, to agencies that are better equipped than courts by specialization, by insight gained through experience, and by more flexible procedure" x x x x[39]

The propriety of the *Order* of dismissal of Civil Case No. 95-72586 should render moot and academic the instant petition for review of the *Decision* of the Court of Appeals in CA-G.R. SP No. 36345, "*Two Thousand (2000) Transport Corporation v. Hon. Guillermo L. Loja, Sr., as Judge, RTC of Manila, Branch 26, and G & S Transport Corporation,*"

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[39] *Industrial Enterprises, Inc. v. Court of Appeals*, G.R. No. 88550, 18 April 1990.

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and in CA-G.R. SP No. 36356, "*Nissan Car Lease Philippines, Inc. v. Hon. Guillermo L. Loja, Sr., as Judge, RTC of Manila, Branch 26, and G & S Transport Corporation.*" It is well settled that the issue of propriety of obtaining a preliminary injunction dies with the main case from which it logically sprang. Such a provisional remedy, like any other interlocutory order, cannot survive the main case of which it is but an incident.[40] Indeed what more could this Court enjoin when the complaint has already been dismissed? To be sure, even a ruling granting the petition at bar would not revive the civil case much less change our ruling in the petition for *certiorari* under Rule 65.[41] The remedy in question is precisely termed *preliminary* since it is meant to restrain acts *prior* to the rendition of a judgment or a final order.[42]

Be that as it may, we find the assailed *Decision* of the Court of Appeals to be in accord with law and jurisprudence. For starters, it is well settled that before a writ of preliminary injunction may be issued, there must be a clear showing by the complainant that there exists a right to be protected and that the acts against which the writ is to be directed are violative of established right.[43] In the instant case, it is an undisputed fact that the contract of petitioner G & S for coupon taxi service with MIAA had already expired and that a new concessionaire had been chosen. Admittedly there was no existing contractual relationship between MIAA and petitioner G & S since the former was under no legal obligation to renew the concession contract. Consequently petitioner had no right which needed protection by a writ of preliminary injunction.

Furthermore, *PD 1818* was clearly applicable to divest the trial court of authority to issue the injunctive writ against the execution of the concession contracts with 2000 TRANSPORT and NISSAN.

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[40] IV R. J. Francisco, *The Rules of Court in the Philippines: Provisional Remedies* (1998), p. 321.

[41] *Ibid.*

[42] *La Vista Association, Inc. v. Court of Appeals*, G.R. No. 95252, 5 September 1997, 278 SCRA 498.

[43] *Araneta v. Gatmaitan,* 101 Phil. 328 (1957); *Buayan Cattle Co., Inc, v. Quintillan,* No. L-26970, March 19, 1984, 128 SCRA 276.

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Their respective contracts involved public utility which were within the protective mantle of the decree. Moreover, as shown above, the issues raised in the complaint in Civil Case No. 95-72586 did not involve matters outside the technical competence of MIAA or veritable questions of law. The contentions of petitioner G & S were precisely directed towards urging the trial court to substitute its judgment for that of MIAA in determining to which bidders the concession contracts should be awarded. Hence, the appellate court correctly nullified the injunctive writ on the ground that it violated *PD 1818*.

We also share the view of the Court of Appeals that determination of the winning bidders is a matter falling within the exclusive jurisdiction of the sponsoring government agency. While petitioner G & S asserts that MIAA committed grave abuse of discretion in pre-qualifying 2000 TRANSPORT, there certainly was no cause of action in similarly seeking the nullification of the winning bid of NISSAN. From the beginning, G & S had no reason to restrain NISSAN from the fruits of its efforts in winning the bid. Similarly, MIAA was merely relying upon the *Terms of Reference for Coupon Taxi Service Concession* when it pre-qualified 2000 TRANSPORT and proceeded with the bidding, hence, MIAA could not have abused its discretion in doing so. On the contrary, it would have been grave abuse of discretion if MIAA were to suddenly abandon the *Terms of Reference* if only to accommodate the objections of G & S.

Be it understood that in the instant proceedings we have confined ourselves within the parameters of the propriety of the dismissal of Civil Case No. 95-72586 and the impropriety of the issuance of a writ of preliminary injunction by the trial court. Hence we are not putting to rest, indeed not by a long shot on the ground of *res judicata*, the contentions ardently raised by petitioner G & S on the absence of qualifications of respondent 2000 TRANSPORT as a corporate entity to operate a public utility. In the instant case, our emphasis has been the proper observance of the procedure in the assertion of grievances which in this regard would be to bring up the alleged irregularities

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in the creation and operation of 2000 TRANSPORT to the proper authorities as discussed above.

It is important to note that the claims of petitioner G & S assume great importance when argued in the proper forum in light of the sudden desertion by respondent 2000 TRANSPORT from the instant proceedings without leaving word on its new address nor advice as to its new counsel or attorney-in-fact. Without so much as a by-your-leave, 2000 TRANSPORT abandoned the instant case after filing its comment to the instant petition and ignored all court processes requiring the submission of a memorandum in its behalf. The contemptuous conduct of 2000 TRANSPORT has unfortunately wasted our efforts in trying to deliver the various court orders to its address on record,[44] and has embarrassingly caused the imposition of fine upon and the detention of one (1) of its lawyers for direct contempt of court arising from his failure to file the memorandum for 2000 TRANSPORT despite repeated warnings.[45]

WHEREFORE, the consolidated *Petition for Review* under Rule 45 and *Petition for Certiorari* under Rule 65 are *DENIED* and *DISMISSED*, respectively. The *Decision* of the Court of Appeals in CA-G.R. SP No. 36345, "*Two Thousand (2000) Transport Corporation v. Hon. Guillermo L. Loja, Sr., as Judge, RTC of Manila, Branch 26, and G & S Transport Corporation,*" and in CA-G.R. SP No. 36356, "*Nissan Car Lease Philippines, Inc. v. Hon. Guillermo L. Loja, Sr., as Judge, RTC of Manila, Branch 26, and G & S Transport Corporation,*" as well as the *Order* of the RTC-Br. 7, Manila, in Civil Case No. 95-72586, "*G & S Transport Corporation v. Manila International Airport Authority, Guillermo G.*Cunanan, Two Thousand (2000) Transport Corporation and Nissan Car Leases Philippines, Inc.," is *AFFIRMED*. The writ of preliminary injuction issued in Civil Case No. 95-72586 is *SET ASIDE* and *NULLIFIED*, and Civil Case No. 95-72586 is *DISMISSED* without prejudice to the filing of the appropriate complaint/action with the concerned regulatory agencies.

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[44] Resolution dated 3 September 2001; *Rollo*, p. 813.

[45] Resolution dated 10 July 2000; *id.*, pp. 738-743.

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Let copy of this Decision be served upon the Land Transportation Franchising and Regulatory Board and the Securities and Exchange Commission for their information and appropriate action. No pronouncement as to costs.

SO ORDERED.

Mendoza, Quisumbing, De Leon, Jr., and Corona, JJ., concur.

EN BANC

[G.R. No. 133887. May 28, 2002]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **AVELINO GALGO, DOMITILO GALGO, DIOSDADO GALGO, and NELSON GALGO,** *accused-appellants.*

SYNOPSIS

Appeal was interposed when appellants were found guilty of murder and sentenced to death. Except for the punishment, the Court affirmed the conviction of appellants. The Court upheld the credibility of the prosecution witnesses and rejected the alibi of appellants. It ruled that treachery qualified the killing because of the sudden and unexpected firing of appellants upon the victim when the latter was about to step out of the house. The Court noted that appellants deliberately waited outside the house and fired upon the victim as he was coming out of the door. There was suddenness in the attack that caught the victim unaware, precluding him from defending himself and thus ensuring the execution of the crime. There was not the slightest provocation on the part of the victim. At any rate, the alleged aggravating circumstance of abuse of superior strength was