Supreme Court E-Library

WHEREFORE, respondent Sylvia R. Yan is declared guilty of dishonesty and gross misconduct and is hereby *DISMISSED* from the service. She is ordered to restitute to this Court the sum of ₱261,062.38. All her withheld salaries, leave credits, allowances and benefits are ordered forfeited, the same to be applied to her accountabilities, with prejudice to re-employment in any branch or instrumentality in the government, including government-owned and controlled corporations.

The Court Administrator is *DIRECTED* to refer this case to the Department of Justice for appropriate action.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and *Garcia, JJ.,* concur.

SECOND DIVISION

[G.R. No. 155108. April 27, 2005]

REPUBLIC OF THE PHILIPPINES, Represented by Department of Public Works and Highways (DPWH) under Secretary Simeon Datumanong and Undersecretary Edmundo V. Mir, then Chairman Of Bid and Awards Committee (BAC), Assistant Secretary Bashir D. Rasuman, BAC Vice-Chairman, Director Oscar D. Abundo, BAC Member Director OIC-Director Antonio V. Malano, Jr., BAC Member and Project Director Philip F. Menez, *petitioner, vs.* **EMILIANO R. NOLASCO,** *respondent.*

Supreme Court E-Library

SYLLABUS

1. **REMEDIAL LAW; PLEADINGS; COMPLAINT; ALLEGATIONS NOT CAPTION GIVES MEANING TO PLEADINGS; EXEMPLIFIED IN CASE AT BAR.—** The principle consistently adhered to in this jurisdiction is that it is not the caption but the allegations in the complaint or other initiatory pleading which give meaning to the pleading and on the basis of which such pleading may be legally characterized. An examination of the "petition" reveals that it should be considered as a complaint for injunction, with a prayer for the provisional relief of temporary restraining order/preliminary injunction. After all, the *Petition* prayed that respondents therein (Petitioner herein) be restrained from awarding the contracts to Daewoo, citing as basis thereof its "unacceptability," as purportedly established by the evaluation report.

2. **ID.; ACTIONS; PROHIBITION ON ISSUANCE OF TEMPORARY RESTRAINING ORDER UNDER REPUBLIC ACT NO. 8975; CONSTRUED.—** Republic Act No. 8975 definitively enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity to restrain, prohibit or compel the bidding or awarding of a contract or project of the national government, precisely the situation that obtains in this case with respect to the Agno River Project. The only exception would be if the matter is of extreme urgency involving a constitutional issue, such that unless the temporary restraining order is issued, grave injustice and irreparable injury will arise. However, it must be clarified that Republic Act No. 8975 does not ordinarily warrant the outright dismissal of any complaint or petition before the lower courts seeking permanent injunctive relief from the implementation of national government infrastructure projects. What is expressly prohibited by the statute is the issuance of the provisional reliefs of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions. It does not preclude the lower courts from assuming jurisdiction over complaints or petitions that seek as ultimate relief the nullification or implementation of a national government infrastructure project. A statute such as Republic Act No. 8975 cannot diminish the constitutionally mandated judicial power

Supreme Court E-Library

to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Section 3 of the law in fact mandates, thus: 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. Thus, when a court is called upon to rule on an initiatory pleading assailing any material aspect pertinent to a national government infrastructure project, the court ordinarily may not dismiss the action based solely on Republic Act No. 8975 but is merely enjoined from granting provisional reliefs. If no other ground obtains to dismiss the action, the court should decide the case on the merits.

3. ID.; MOTIONS; MOTION FOR RECONSIDERATION; REQUIRED TO BE SET FOR HEARING BY THE APPLICANT AND TO BE HEARD WITH DUE NOTICE TO ALL PARTIES CONCERNED.— As far as determinable, there is no legal or jurisprudential standard of "comprehensive fairness," a phrase that reeks of pomposity without admitting to any concrete meaning. Neither is there any mandatory rule directing a court to conduct a hearing to receive evidence on a motion for reconsideration. Nonetheless, a motion for reconsideration, as with all other motions which may not be acted upon without prejudicing the rights of the adverse party, is required to be set for hearing by the applicant, and to be heard with due notice to all parties concerned. It is certainly within acceptable bounds of discretion for the trial judge to require or allow the movant for reconsideration to present evidence in support of the arguments in the motion, and in fact desirable if such evidence should be necessarily appreciated for a fair and correct disposition of the motion for reconsideration. Yet caution should be had. At this stage, the issues and evidence submitted for appreciation and resolution of the trial court should be limited to the matters pertinent to the motion for reconsideration.

4. ID.; CIVIL PROCEDURE; JUDGMENT; CONTENTS OF DISPOSITIVE PORTION THEREOF, CLARIFIED.— The Court recently explicated the contents of a proper dispositive portion in *Velarde v. Social Justice Society*: In a civil case as well as in a special civil action, the disposition should state whether the complaint or

Supreme Court E-Library

petition is granted or denied, the specific relief granted, and the costs. The following test of completeness may be applied. First, the parties should know their rights and obligations. Second, they should know how to execute the decision under alternative contingencies. Third, there should be no need for further proceedings to dispose of the issues. Fourth, the case should be terminated by according the proper relief. The "proper relief" usually depends upon what the parties seek in their pleadings. It may declare their rights and duties, command the performance of positive prestations, or order them to abstain from specific acts. The disposition must also adjudicate costs. We have ruled before against recognizing statements in the body of a decision as part of the dispositive portion. In *Velarde*, the respondents insisted that a statement by the trial court found on page ten (10) of the fourteen (14)-page decision should be considered as part of the dispositive portion. The Court disagreed, and cited the precedent in *Magdalena Estate, Inc. v. Hon. Caluag*: . . . The quoted finding of the lower court cannot supply deficiencies in the dispositive portion. It is a mere opinion of the court and the rule is settled that where there is a conflict between the dispositive part and the opinion, the former must prevail over the latter on the theory that the dispositive portion is the final order while the opinion is merely a statement ordering nothing.

5. ID.; ID.; ID.; DISTINGUISHED FROM AN OPINION.— In *Contreras v. Felix*, the Court reasoned: More to the point is another well-recognized doctrine, that the final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision. "A judgment must be distinguished from an opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So, . . . there is a distinction between the findings and conclusions of a court and its Judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment." (1 Freeman on Judgments, p. 6.) At the root of the doctrine that the premises must yield to the conclusion is perhaps, side by side with the needs of writing finis to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to

Supreme Court E-Library

give unimpeachable legal reasons." "It is an everyday experience of those who study judicial decisions that the results are usually sound, whether the reasoning from which the results purport to flow is sound or not." (The Theory of Judicial Decision, Pound, 36 Harv. Law Review, pp. 9, 51.) It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision.

6. ID.; ID.; ID.; PARTIAL JUDGMENT; WHEN PROPER.— The multiple reliefs referred to Section 5, Rule 36 of the Rules of Civil Procedure, which governs separate judgments, refer to those sufficiently segregate from each other that the allowance of one at a preliminary stage will not preclude litigation on the merits of the others. More importantly, the rule is explicit that partial judgment with regards one of the reliefs is warranted only after "a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim."

7. POLITICAL LAW; PRINCIPLES; TAXPAYER'S SUIT; DETERMINATION THEREOF LEFT TO THE DISCRETION OF THE COURTS.— The mere invocation of standing as a tax payer does not mean that in each and every instance where such a ground is invoked courts are left with no alternative except to hear the parties, for the courts are vested with discretion whether or not a taxpayer's suit should be entertained. We likewise find no error on the part of the RTC when it cited as basis for the dismissal of Nolasco's petition, our ruling in *Bugnay Construction & Development Corp. v. Laron* that the taxpayer-plaintiff must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation, and that he will sustain a direct injury as a result of the enforcement of the questioned statute or contract.

8. ID.; ID.; IMMUNITY FROM SUIT; APPLICATION THEREOF TO INCORPORATED GOVERNMENT AGENCY LIKE THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), SUSTAINED.— An unincorporated government

Supreme Court E-Library

agency such as the DPWH is without any separate juridical personality of its own and hence enjoys immunity from suit. Even in the exercise of proprietary functions incidental to its primarily governmental functions, an unincorporated agency still cannot be sued without its consent. Moreover, it cannot be said that the DPWH was deemed to have given its consent to be sued by entering into a contract, for at the time the petition was filed by Nolasco, the DPWH had not yet entered into a contract with respect to the Project.

APPEARANCES OF COUNSEL

Abelardo H. Santos and *Sagayo & Yulo Law Offices* for respondent.

Magsalin Pobre Lapid & Villena Law Offices for intervenor China International Water & Electric Corp.

Quisumbing Torres for intervenor-movant Daewoo.

D E C I S I O N

TINGA, *J.*:

An *obiter dictum* is a nonessential, welcome and sublime like a poem of love in a last will or unwanted and asinine as in brickbats in a funeral oration. It is neither enforceable as a relief nor the source of a judicially actionable claim. However, by reason of its non-binding nature, the pronouncement does not generally constitute error of law or grave abuse of discretion, even if it proves revelatory of the erroneous thinking on the part of the judge. It is chiefly for that reason that this petition is being denied, albeit with all clarifications necessary to leave no doubt as to the status and legal effect of the controvertible *Order* dated 6 September 2002 issued by Judge Juan C. Nabong, Jr. of the Regional Trial Court (RTC) of Manila, Branch 32.

The root of the dispute is a public works project, the Agno River Flood Control Project ("Project"), the undertaking of which has been unfortunately delayed due to the present petition. Funding for the project was to be derived primarily through a loan from the Japan Bank for International Cooperation (JBIC).

Supreme Court E-Library

A Bid and Awards Committee (BAC) was constituted by the Department of Public Works and Highways (DPWH) for the purpose of conducting international competitive bidding for the procurement of the contract for Package II — the Guide Channel to Bayambang under Phase II of the Project.[1] Six (6) pre-qualified contractors submitted their bids for the project, among them the present intervenors Daewoo Engineering and Construction Co., Ltd. (Daewoo), and China International Water and Electric Corp. (China International).

However, even before the BAC could come out with its recommendations, a legal challenge had already been posed to preempt the awarding of the contract to Daewoo. On 19 February 2002, Emiliano R. Nolasco, a self-identified taxpayer and newspaper publisher/editor-in-chief,[2] filed a *Petition*, seeking a temporary restraining order and/or preliminary injunction, with the RTC of Manila, naming the DPWH and the members of the BAC as respondents. He alleged having obtained copies of "Confidential Reports from an Unnamed DPWH Consultant," which he attached to his petition. Nolasco argued that based on the confidential reports it was apparent that Daewoo's bid was unacceptable and the putative award to Daewoo, illegal, immoral, and prejudicial to the government and the Filipino taxpayers. Invoking his right as a taxpayer, Nolasco prayed that the DPWH and BAC be restrained from awarding the contract to Daewoo and Daewoo disqualified as a bidder.[3]

The petition was raffled to the sala of Judge Nabong and docketed as Civil Case No. 02-102923. An *ex-parte* hearing was conducted on the prayer for a temporary restraining order (TRO), with Nolasco alone in attendance. Petitioner issued an *Order* dated 4 March 2002 directing the issuance of a TRO,

---

[1] *Rollo*, p. 84. The designated members of the Bids and Awards Committee were DPWH Undersecretary Edmundo V. Mir as Chairman; Bashir D. Rasuman, Oscar D. Abundo, Faustino A. Timbol and Antonio V. Molano as Members; and Philip F. Meñez as Project Director. *Id*. at 353.

[2] Of the Weekly Gazette. *Id*. at 524.

[3] *Id*. at 526.

Supreme Court E-Library

enjoining the DPWH and the BAC from awarding the contract to Daewoo "and that [Daewoo] be disqualified as bidder and its bidders be rejected" from carrying out the Project.[4] The term of the TRO was for a period of twenty (20) days.

Upon learning of the TRO, the DPWH and the BAC, through the Office of the Solicitor General (OSG), filed a *Motion to Dismiss Petition with Motion for Dissolution of Temporary Restraining Order Dated March 4, 2002*.[5] While noting the impropriety of a twenty (20)-day TRO without prior notice or hearing, they pointed out that Republic Act No. 8975 precisely prohibited the issuance by any court, save the Supreme Court, of a TRO or preliminary injunction which restrains or prohibits the bidding for or awarding of a contract/project of the national government. Accordingly, they prayed that the petition be dismissed and the TRO dissolved.

This new motion was set for hearing on 21 March 2002, and thereupon the parties were afforded the opportunity to argue their case. Then, on 27 March 2002, the RTC issued an order dismissing Nolasco's petition. The dismissal of the petition was warranted, according to the RTC, as it was a suit against the State, which had been sued without its consent.[6] The RTC also noted that Nolasco had not established that he would sustain a direct injury should the contract be awarded to Daewoo, and that the general interest which may have been possessed by Nolasco along with all members of the public would not suffice.[7]

Interestingly, on 2 April 2002, the OSG claims to have received a copy of an alleged order dated 22 March 2002 purportedly signed by Judge Nabong which denied the motion to dismiss, gave the petition due course, and granted the preliminary injunction subject to the posting of an injunction bond in the

---

[4] *Id*. at 201.

[5] *Id*. at 202.

[6] *Id*. at 217-218.

[7] *Ibid*.

Supreme Court E-Library

amount of Five Hundred Thousand Pesos (₱500,000.00).[8] However, in a *Certification* signed by Loida P. Moralejo, Officer-in-Charge of RTC Branch 32, it was attested that the signature in this order was spurious, and affirmed instead the *Order* dated 22 March 2002 dismissing the petition.[9]

In the meantime, the BAC issued Resolution No. MFCDP-RA-02 dated 1 April 2002. The BAC noted therein that among the three lowest bidders were Daewoo and China International, and that based on the bid amounts "as corrected," the bid of Daewoo was the lowest of the three, followed by China International's.[10] As a result, the BAC resolved to recommend the award of the contract for the Project to Daewoo. Then DPWH Secretary Simeon Datumanong approved the recommendation by affixing his signature on the *Resolution* on the same day.[11] A copy of the *Resolution* and the Bid Evaluation Report was furnished to JBIC for "review and concurrence."[12]

For his part, Nolasco filed a motion for reconsideration dated 3 April 2002, seeking the reversal of the *Order* dated 27 March 2002 dismissing his petition. Nolasco set this motion for reconsideration for hearing on 18 April 2002, but none apparently ensued.[13] The OSG filed its *Opposition/Comment/Manifestation* dated 24 April 2002 wherein it prayed that it be allowed to adopt its earlier motion to dismiss as its opposition to the motion for reconsideration. The RTC granted OSG's prayer in an *Order* dated 13 May 2002.[14] In the same *Order*, the RTC likewise

---

[8] *Rollo*, pp. 252 and 265.

[9] *Id*. at 266.

[10] *Id*. at 352.

[11] *Id*. at 353.

[12] *Id*. at 354.

[13] The OSG noted in their Opposition/Comment/Manifestation dated 24 April 2002 that they received a copy of Nolasco's Motion for Reconsideration only on 16 April 2002, or only two days before the date of hearing, in violation of Section 4, Rule 15 of the Rules on Civil Procedure. *Id*. at 240.

[14] *Id*. at 247.

Supreme Court E-Library

stated that "in the spirit of comprehensive fairness, this Court must, and hereby, [set] the hearing on the reception of petitioner's evidence on this Motion [for Reconsideration]" on 17 May 2002.[15]

During the hearing of 17 May 2002, the OSG asked Judge Nabong to clarify his directive that a hearing be had for the reception of Nolasco's evidence. Judge Nabong clarified that his bent was for petitioner to present his evidence but no longer on the question of whether a TRO or injunction should be issued. The RTC granted the OSG's prayer to submit a motion for reconsideration of this order, which the OSG did on 31 May 2002.[16] In the motion for reconsideration, the OSG argued that it was unnecessary to receive Nolasco's evidence, considering that the dismissal of the petition was grounded on pure questions of law. It also sought clarification of Judge Nabong's remarks during the 17 May 2002 hearing, which seemed to imply that this new hearing would actually be on the merits of the petition.

This new OSG motion was submitted to the RTC during the hearing of 28 June 2002, wherein Petitioner announced that the motion was to be resolved in due time. At the same time, the RTC allowed Nolasco to adduce his evidence over the objections of the OSG. Nolasco presented a witness, Engineer Shohei Ezaki, a DPWH consultant hired by JBIC who testified pursuant to a subpoena earlier issued by the court. Ezaki testified as to the Evaluation Report and Result prepared by his consultant firm and which had been earlier attached to Nolasco's petition. Nolasco also intimated its intention to present DPWH Director Philip F. Meñez as a witness on his behalf. In the hearing of 2 August 2002, the OSG manifested that it would file motions opposing the presentation of witnesses by Nolasco and the issuance of subpoenas requiring their testimony. In its order issued in open court on 2 August 2002, the RTC deferred the further presentation of Nolasco's witnesses pending the filing of OSG's motions.

---

[15] *Ibid*.

[16] *Id*. at 96.

Supreme Court E-Library

At that point, the proceedings thus far undertaken had been unorthodox. Then the course veered sharply to the bizarre. Nolasco filed a motion dated 12 August 2002, seeking the rendition of a partial judgment and dismissal of his own petition, based on the proceedings that had transpired during the hearings held on 28 June and 2 August 2002.[17] In the motion, Nolasco reiterated his submission that based on the evidence presented thus far, Daewoo should have been disqualified from bidding on the project. While the prayer for the dismissal of the motion for reconsideration was anchored on the need "to abbreviate the proceedings" so as to implement the projects, the motion nonetheless urged the court, to issue a partial judgment and award the bid for the Project to China International. Nolasco likewise filed a *Formal Offer of Evidence* dated 29 August 2002. The offered evidence included various documents and the testimony of Nolasco and his witnesses previously heard by the court. Both submissions of Nolasco were vigorously objected to by the OSG in pleadings filed to that effect.[18]

Then, on 6 September 2002, the RTC issued the *Order* now assailed before this Court. It included a brief discussion of the factual antecedents, as well as the 27 March 2002 *Order* dismissing the petition and the various pleadings filed by the parties prior and subsequent to the dismissal of the petition. The last two pages of the four (4)-page *Order* proceeded to dissect the testimonies and ultimate dispositions therein. The last three paragraphs of the *Order* and its *fallo* are replicated below in full:

> In the hearing, however, on August 21, 2002, Atty. Abelardo M. Santos for petitioner in open court, formally offered the testimony of Mr. Ezaki, although, before the start of his testimony Atty. Santos Manifested: "*Your Honor, the purpose of the testimony of this witness is to show that they had made a technical study of all the pre-qualified bidders referring to the Agno River Flood Control Project, Phase II."*

---

[17] *Id*. at 294. The motion is entitled "Motion to Issue Partial Judgment and to Dismiss Petition."

[18] See *Rollo*, pp. 315-341.

Supreme Court E-Library

Eng'r Shohel Ezaki, hired by the Japan Bank for International Cooperation (JBIC) through which the funding, granted by the Overseas Development Assistance (ODA), is covered and flows through, and the DPWH and President, Philippines Office, Nippon Koie Company, Ltd., (testifying under an issued subpoena *duces tecum ad testificandum*) testified that the Evaluation Report and Result of their consultant firm in association with the PKII and the Basic Team Inc., (doing evaluation works for the DPWH) disqualified DAEWOO and ITALIAN THAI on Packages 1 and 2, Phase II. Insofar, moreover, as regards Package 1, Phase II, the bids submitted by TOA Corporation is the lowest evaluated responsive bid. The second lowest evaluated responsive bid is that of China State Construction Engineering. In open court, on August 2, 2002, Director Eng'r. Philip F. Menez, Major Floor Control & Drainage Project-Project Management Office, Cluster II, DPWH, confirmed the award to TOA Corporation, the evaluated responsive bid, Package 1.

All told, and presently, and urgently, there is the need to implement the PROJECTS in this petition so as not to affect the ODA funding, harnessed through JBIC. More so, in addition, and a thoughtful consideration of pleadings and argument, from the Formal Offer of Evidence ADMITTED, facts, hearing, respondent BAC has strayed from fairly applying the Bidding Laws, Guidelines, Rules, and Regulations, and Bid Tender Documents and, as a matter of fairness, and in the interest of justice, considering other bidders whose bids have been evaluated by the Technical Working Group including the consultant, Nippon Koie Company, Ltd., in association with the PKII and the Basic Team, Inc., to be substantially responsive, *the Honorable Simeon P. Datumanong must now seriously consider and effect the award of Package 2, PHASE II, of the Agno River Floor Control Project,* as duly recommended by the Consultants and the Technical Working Group, DPWH, to China International Water & Electric Corporation being the lowest evaluated responsive bid.

WHEREFORE, in view of all the foregoing, the Motion for Reconsideration of the Petition is hereby DISMISSED.

SO ORDERED. (Italics supplied)[19]

The OSG received a copy of the *Order* dated 6 September 2002 on 17 September 2002. It opted to file a *Petition for Review*

---

[19] *Id*. at 151-152.

Supreme Court E-Library

on Certiorari under Rule 45 with this Court, instead of resorting to a motion for reconsideration, to avert unnecessary delay of the implementation of the Project which would result in millions of pesos in damages. The OSG thus alleges that the petition raises pure questions of law, thereby dispensing with recourse to the Court of Appeals.[20]

The OSG also notes that in a letter to the DPWH dated 21 June 2002, JBIC, through Chief Representative Mitsuru Taruki, let it be known that it had decided to hold in abeyance its concurrence to the project, as "the issue [was] now under the jurisdiction of the appropriate Philippine courts and other relevant organizations of the Philippine government," and that it would be prudent to wait "for the decisions of the proper authorities before taking any action on the matter."[21] It is likewise worth noting at this juncture that Nolasco had also filed a verified complaint against the Chairman and members of the BAC with the Presidential Anti-Graft Commission, as well as another complaint with the National Economic Development Authority and a complaint-letter with JBIC itself requesting that the bank reject the award to Daewoo.[22]

Since the filing of the present petition, both Daewoo and China International have since participated in the case. Daewoo filed a *Comment-in-Intervention* dated 10 January 2003, which this Court treated as a petition-In-intervention.[23] Upon order of this Court, China International filed a *Comment-in-Intervention* dated 5 February 2003.

Petitioner imputes error to the RTC in taking notice of and resolving Nolasco's *Motion to Issue Partial Judgment and Motion to Dismiss Petition*, which they characterize as a "trifle." Substantively, it asserts that the RTC erred in directing the DPWH to perform an affirmative act even though the court

---

[20] *See* Section 2(c), Rule 41, Rules of Civil Procedure.

[21] *Rollo*, p. 374.

[22] *Id*. at 235.

[23] In a Resolution dated 5 February 2003. *Id*. at 718.

Supreme Court E-Library

had no more jurisdiction over the petition, considering that the RTC never resolved the motion for reconsideration filed by Nolasco. It also avers that Nolasco's original petition had been substantially amended, without leave of court and without notice to the Petitioner, and that they had not been afforded the opportunity to file an answer to the petition. Moreover, the RTC is alleged to have erred in directing the award of the subject package to China International, a stranger to the case, without ordering the inclusion of Daewoo as an indispensable party.

We can recast the legal question within the framework of whether the RTC committed a reversible error in assailed *Order* dated 6 September 2002. It is a mark of the strangeness of this case that Petitioner seeks the nullification of a dispositive order that affirms the very dismissal of the case they likewise seek. However, given the circumstances, the dilemma of Petitioner is understandable. While the *fallo* of the assailed *Order* is indeed favorable to them, the body thereof is a palpable source of mischief.

Petitioner assails only the *Order* of 6 September 2002. However, it behooves this Court to be more comprehensive in approach, in part to elucidate on the proper steps that should be undertaken by lower court judges when confronted with complaints or petitions affecting national government infrastructure projects. Our review will necessarily entail an examination of the propriety of the procedure adopted by the RTC in disposing of Nolasco's petition. It would be best for the Court to diagram the procedures undertaken below like a grammar school teacher to illustrate the multiple errors attendant in this case. From a chronological standpoint, the first matter for discussion would be Nolasco's *Petition* before the RTC.

The caption of the *Petition* states that it is for "Issuance of a Temporary Restraining Order and/or Preliminary Injunction."[24] In the *Petition*, Nolasco averred that he received a letter from a resident of Bayambang, Pangasinan, regarding the latter's

[24] *Id*. at 524.

Supreme Court E-Library

"observations on the Public Bidding" made on the Project; that Nolasco contacted his sources at the DPWH and learned that the Project would be awarded to Daewoo; that he obtained a Confidential Report from "an Unnamed DPWH Consultant" which allegedly concluded that Daewoo's bid was unacceptable. From these premises, Nolasco argued that he was entitled to the issuance of a temporary restraining order or preliminary injunction, as the award to the contracts to Daewoo would probably cause injustice to him as a taxpayer. As prayer, Nolasco asked that the respondents therein (herein Petitioner) be restrained from awarding the contracts to Daewoo and that Daewoo be disqualified as a bidder and its bid rejected.

It would be difficult to ascertain the nature of Nolasco's action if the Court were obliged to rely alone on the caption of his pleading. The caption describes the *Petition* as one for issuance of a temporary restraining order and/or preliminary injunction; hence, implying that the action seeks only provisional reliefs without the necessary anchor of a final relief. Moreover, the use of "Petition" in lieu of "Complaint" seemingly implies that the action brought forth is the special civil action of prohibition under Rule 65, yet this is not supported by the body of the pleading itself as it is bereft of the necessary allegations of grave abuse of discretion or absence/excess of jurisdiction and the absence of any other plain speedy and adequate remedy.[25]

Nonetheless, the principle consistently adhered to in this jurisdiction is that it is not the caption but the allegations in the complaint or other initiatory pleading which give meaning to the pleading and on the basis of which such pleading may be legally characterized.[26] An examination of the "petition" reveals that it should be considered as a complaint for injunction, with a prayer for the provisional relief of temporary restraining order/preliminary injunction. After all, the *Petition* prayed that

---

[25] *See* Section 2, Rule 65, Rules of Civil Procedure.

[26] *Heirs of Amarante v. Court of Appeals*, G.R. No. 76386, 21 May 1990, 185 SCRA 585; citing *Ras v. Sua*, 134 Phil. 131 (1968); *Cajefe v. Fernandez*, 109 Phil. 743 (1960).

Supreme Court E-Library

respondents therein (Petitioner herein) be restrained from awarding the contracts to Daewoo, citing as basis thereof its "unacceptability," as purportedly established by the evaluation report.

Nonetheless, the prayer for the issuance of a temporary restraining order or preliminary injunction affecting the bidding or awarding of a national government contract or project, would have called for the application of Republic Act No. 8975 and the corresponding denial of the prayer for provisional relief. Still, the RTC instead issued a TRO in its *Order* dated 4 March 2002.

Republic Act No. 8975 definitively enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity to restrain, prohibit or compel the bidding or awarding of a contract or project of the national government,[27] precisely the situation that obtains in this case with respect to the Agno River Project. The only exception would be if the matter is of extreme urgency involving a constitutional issue, such that unless the temporary restraining order is issued, grave injustice and irreparable injury will arise.[28] The TRO issued by the RTC failed to take into consideration said law. Neither did it advert to any extreme urgency involving a constitutional issue, as required by the statute. The law ordains that such TRO is void,[29] and the judge who issues such order should suffer the penalty of suspension of at least sixty (60) days without pay.[30]

Nevertheless, there is no need to belabor this point since the TRO no longer subsists. It appears that the RTC subsequently

---

[27] *See* Section 3(b), in relation to Section 2(a), Republic Act No. 8975. *See* also Section 2(c), (d), and (e), Rep. Act No. 8975.

[28] *See* Section 3, Rep. Act No. 8975.

[29] *See* Section 4, Rep. Act No. 8975.

[30] *See* Section 6, Rep. Act No. 8975.

Supreme Court E-Library

realized the import of Republic Act No. 8975 as it cited the same in its 27 March 2002 *Order* dismissing the *Petition*:

> Applying Republic Act No. 8975, most particularly Section 3 thereof, and Administrative Circular No. 11-2000 issued on November 13, 2000 by the Honorable Hilario G. Davide, Jr., Chief Justice, Supreme Court, all parties having copies, the Petition at bench ought to be dismissed outrightly (*sic*).[31]

However, it must be clarified that Republic Act No. 8975 does not ordinarily warrant the outright dismissal of any complaint or petition before the lower courts seeking permanent injunctive relief from the implementation of national government infrastructure projects. What is expressly prohibited by the statute is the issuance of the provisional reliefs of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions. It does not preclude the lower courts from assuming jurisdiction over complaints or petitions that seek as ultimate relief the nullification or implementation of a national government infrastructure project. A statute such as Republic Act No. 8975 cannot diminish the constitutionally mandated judicial power to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government.[32] Section 3 of the law in fact mandates, thus:

> 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.

Thus, when a court is called upon to rule on an initiatory pleading assailing any material aspect pertinent to a national

---

[31] *Rollo*, p. 225. Administrative Circular No. 11-2000, *Re: Ban On The Issuance Of Temporary Restraining Orders Or Writs Of Preliminary Prohibitory Or Mandatory Injunctions In Cases Involving Government Infrastructure Projects*, enjoins all judges of lower courts to strictly comply with Rep. Act No. 8975.

[32] *See* Section 1, Article VIII, Constitution.

Supreme Court E-Library

government infrastructure project, the court ordinarily may not dismiss the action based solely on Republic Act No. 8975 but is merely enjoined from granting provisional reliefs. If no other ground obtains to dismiss the action, the court should decide the case on the merits. As we recently held in *Opiña v. NHA*:[33]

> Unquestionably, the power to issue injunctive writs against the implementation of any government infrastructure project is exclusively lodged with this Court, pursuant to Section 3 of Rep. Act No. 8975. But while lower courts are proscribed thereunder from issuing restraining orders and/or writs of preliminary injunction to stop such projects, *the proscription does not mean that such courts are likewise bereft of authority to take cognizance of the issue/issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction.*

Accordingly, it was not proper for the RTC to cite Republic Act No. 8975 as basis for the dismissal of Nolasco's petition since the statute does not bar the institution of an action that seeks to enjoin the implementation of a national government project, but merely the issuance of provisional orders enjoining the same. However, the RTC cited two other grounds for the dismissal of the case — that Nolasco's general interest as a taxpayer was not sufficient to establish any direct injury to him should the Project be awarded to Daewoo; and that the petition was a suit against the State, which may not be sued without its consent.

We shall defer for now a review of these two grounds cited by the RTC for the dismissal of Nolasco's petition, and instead focus on the proper steps that should have been undertaken owing to the dismissal of the case. Nolasco filed a motion for reconsideration or the dismissal of the case, a remedy available to him since the 27 March 2002 *Order* is a final order that disposed of the case.[34] Petitioner responded with an all-encompassing *Opposition/Comment/Manifestation (Re: Petitioner's Motion for Reconsideration*). Both of these

---

[33] G.R. No. 161649, 17 November 2004.

[34] *See* Section 1, Rule 37, Rules of Civil Procedure.

Supreme Court E-Library

submissions were set for hearing before the RTC. The RTC could have very well resolved the motion for reconsideration based on the pleadings submitted. Yet, in its *Order* dated 13 May 2002, it declared:

> However, be that as it may, in the spirit of comprehensive fairness, this Court must, and hereby, sets the hearing on the Reception of Petitioner's evidence on this Motion on May 17, 2002 at 9:00 A.M.[35]

As far as determinable, there is no legal or jurisprudential standard of "comprehensive fairness," a phrase that reeks of pomposity without admitting to any concrete meaning. Neither is there any mandatory rule directing a court to conduct a hearing to receive evidence on a motion for reconsideration. Nonetheless, a motion for reconsideration, as with all other motions which may not be acted upon without prejudicing the rights of the adverse party, is required to be set for hearing by the applicant,[36] and to be heard with due notice to all parties concerned.[37]

It is certainly within acceptable bounds of discretion for the trial judge to require or allow the movant for reconsideration to present evidence in support of the arguments in the motion, and in fact desirable if such evidence should be necessarily appreciated for a fair and correct disposition of the motion for reconsideration. Yet caution should be had. At this stage, the issues and evidence submitted for appreciation and resolution of the trial court should be limited to the matters pertinent to the motion for reconsideration. In this case, the RTC in hearing the motion for reconsideration, should have focused on the issues of lack of standing on the part of Nolasco and non-suability of the State, as these were the grounds on which dismissal of the petition was predicated. It would entail a fundamental reconsideration of these two key concerns for Nolasco's motion to have been granted and the petition readmitted.

---

[35] *Supra* note 14.

[36] *See* Section 4, Rule 15, Rules of Civil Procedure.

[37] *See* Sections 4 & 5, Rule 15, Rules of Civil Procedure.

Supreme Court E-Library

Instead, the RTC, upon Nolasco's insistence, proceeded instead to hear the case on the merits. The RTC allowed Nolasco's witness, Engineer Ezaki to testify as to the authenticity and veracity of the bid evaluation report attached to Nolasco's petition, and to affirm the conclusion that Daewoo was not a qualified bidder.[38] This unusual turn of events arouses suspicion. The RTC had earlier dismissed the petition on legal grounds, yet it was now considering factual matters as basis for review on reconsideration. The petitioner, through counsel, appears to have strenuously objected to this furtive and dubious recourse by Nolasco, but to no avail.

Then, despite the fact that other witnesses of Nolasco were still scheduled to be heard, Nolasco filed the *Motion to Issue Partial Judgment and to Dismiss Petition*. He expressly prayed that his very own motion for reconsideration of the petition be dismissed. From this motion, it is difficult to ascertain why exactly Nolasco wanted the RTC to deny his own motion for reconsideration and to affirm the dismissal of his own petition, though there is the expressed concern "in order to abbreviate the proceedings in view of the need to implement the subject projects of this petition the soonest possible time."[39] At the same time, and in the same pleading, Nolasco still asserted that Daewoo was not qualified to be awarded the project, and emphasizes that such contention was borne out by the evidence he had presented thus far. Accordingly, he likewise prayed that partial judgment be rendered on the petition, calling on the RTC to conclude that China International won the Project, it being the lowest evaluated responsive bid.[40]

It bears noting that at this stage, there were two pending motions before the RTC, both filed by Nolasco, which had at issue whether or not his petition should be dismissed. The first was Nolasco's motion for reconsideration praying for the reinstatement of his petition. The second was Nolasco's *Motion*

---

[38] *Rollo*, pp. 297-298.

[39] *Id*. at 301.

[40] *Ibid*.

Supreme Court E-Library

for Partial Judgment and to Dismiss Petition, praying for the dismissal of his petition. Palpably, Nolasco had opted to hedge his chips on both red and black, which is not normally done for obvious reasons. Neither did Nolasco, in his latter pleading, expressly withdraw his earlier motion for reconsideration, although his subsequent prayer for the dismissal of his own earlier motion sufficiently evinced such intent.

This *Motion for Partial Judgment and to Dismiss Petition* is truly an odd duckling of a pleading, which unfortunately did not blossom into a swan but from it instead emerged an even uglier duck — the 6 September 2002 *Order*, which dismissed the petition yet intoned that DPWH Secretary Datumanong "must now seriously consider and effect the award" of the project to China International.

There is no doubt that the assailed *Order* dated 6 September 2002 sought to resolve the *Motion for Partial Judgment and to Dismiss Petition.* This is evident from the first sentence of the *Order*, which states: "Before the Court is petitioner's Motion to Issue Partial Judgment and to Dismiss Petition filed on August 16, 2002. . . ." No other pending motion, such as the motion for reconsideration, was adverted to as being subject for resolution by the said *Order*.

Now, the *Motion for Partial Judgment and to Dismiss Petition* seeks reliefs A and B — that China International be awarded the project; and that the motion for reconsideration be dismissed. There is no doubt that relief B was unequivocally granted by the trial court, with the following disposal:

> WHEREFORE, in view of all the foregoing, the Motion for Reconsideration of the Petition is hereby DISMISSED.
>
> SO ORDERED.[41]

But did the trial court grant relief A that China International be awarded the project?

---

[41] *Id*. at 36.

Supreme Court E-Library

All told, and presently, and urgently, there is the need to implement the PROJECTS in this petition so as not to affect the ODA funding, harnessed through JBIC. More so, in addition, and a thoughtful consideration of pleadings and argument, from the Formal Offer of Evidence ADMITTED, facts, hearing, respondent BAC has strayed from fairly applying the Bidding Laws, Guidelines, Rules, and Regulations, and Bid Tender Documents and, as a matter of fairness, and in the interest of justice, considering other bidders whose bids have been evaluated by the Technical Working Group including the consultant, Nippon Koie Company, Ltd., In association with the PKII and the Basic Team, Inc., to be substantially responsive, *the Honorable Simeon P. Datumanong* **must now seriously consider** *and effect the award of Package 2, PHASE II, of the Agno River Floor Control Project, as duly recommended by the Consultants and the Technical Working Group, DPWH, to China International Water & Electric Corporation being the lowest evaluated responsive bid.*[42] (emphasis supplied)

Contrast this with Nolasco's prayer on the same relief in his *Motion for Partial Judgment and to Dismiss Petition*, thus:

WHEREFORE, in view of the foregoing premises, and in consideration of equity and petitioner's moral obligation and in order to abbreviate the proceedings in view of the need to implement the subject projects of this petition the soonest possible time so as not to jeopardize the funding granted by the Overseas Development Assistance (ODA) fund through the Japan Bank For International Cooperation (JBIC), it is respectfully prayed unto this Honorable Court to issue its partial judgment on the petition. An [sic] in view of the foregoing findings that clear violation of bidding laws, rules and regulations, the respondents' Bid Tender Documents, has been committed by the respondents members of the BAC, and in fairness to the other bidder whose bids have been evaluated by the Technical Working Group including the consultant, Nippon Koie Company, Ltd., in association with the PKIII and the Basic Team, Inc. to be substantially responsive, the Bid of China International Water & Electric Corporation being the lowest evaluated responsive bid *must be awarded the project, package 2, Phase II, of the Agno River Flood Control Projects as recommended by the Consultants and the Technical Working Group of the respondents. The respondent, Honorable Secretary Simeon*

---

[42] *Ibid*.

Supreme Court E-Library

Datumanong is hereby directed to take steps to attain this end.[43] (Italics supplied)

Unmistakably though, the controverted portion of the *Order*, urging the DPWH Secretary "to consider" awarding the Project to China International does not form part of the dispositive portion or *fallo*. What should be deemed as the dispositive portion in this case is the final paragraph of the Resolution, which reads: "WHEREFORE, in view of all the foregoing, the Motion for Reconsideration of the Petition is hereby DISMISSED."

The Court recently explicated the contents of a proper dispositive portion in *Velarde v. Social Justice Society*:[44]

> In a civil case as well as in a special civil action, the disposition should state whether the complaint or petition is granted or denied, the specific relief granted, and the costs. The following test of completeness may be applied. First, the parties should know their rights and obligations. Second, they should know how to execute the decision under alternative contingencies. Third, there should be no need for further proceedings to dispose of the issues. Fourth, the case should be terminated by according the proper relief. The "proper relief" usually depends upon what the parties seek in their pleadings. It may declare their rights and duties, command the performance of positive prestations, or order them to abstain from specific acts. The disposition must also adjudicate costs.[45]

We have ruled before against recognizing statements in the body of a decision as part of the dispositive portion. In *Velarde*, the respondents insisted that a statement by the trial court found on page ten (10) of the fourteen (14)-page decision should be considered as part of the dispositive portion. The Court disagreed,[46] and cited the precedent in *Magdalena Estate, Inc. v. Hon. Caluag*:[47]

---

[43] *Rollo*, p. 36.

[44] G.R. No. 159357, 28 April 2004, 428 SCRA 283.

[45] *Id*. at 313.

[46] *Id*. at 308.

[47] 120 Phil. 338 (1964).

Supreme Court E-Library

. . . The quoted finding of the lower court cannot supply deficiencies in the dispositive portion. It is a mere opinion of the court and the rule is settled that where there is a conflict between the dispositive part and the opinion, the former must prevail over the latter on the theory that the dispositive portion is the final order while the opinion is merely a statement ordering nothing.[48]

In *Contreras v. Felix*,[49] the Court reasoned:

More to the point is another well-recognized doctrine, that the final judgment as rendered is the judgment of the court irrespective of all seemingly contrary statements in the decision. "A judgment must be distinguished from an opinion. The latter is the informal expression of the views of the court and cannot prevail against its final order or decision. While the two may be combined in one instrument, the opinion forms no part of the judgment. So, . . . there is a distinction between the findings and conclusions of a court and its Judgment. While they may constitute its decision and amount to the rendition of a judgment, they are not the judgment itself. They amount to nothing more than an order for judgment, which must, of course, be distinguished from the judgment." (1 *Freeman on Judgments*, p. 6.) At the root of the doctrine that the premises must yield to the conclusion is perhaps, side by side with the needs of writing finis to litigations, the recognition of the truth that "the trained intuition of the judge continually leads him to right results for which he is puzzled to give unimpeachable legal reasons." "It is an everyday experience of those who study judicial decisions that the results are usually sound, whether the reasoning from which the results purport to flow is sound or not." (*The Theory of Judicial Decision*, Pound, 36 Harv. Law Review, pp. 9, 51.) It is not infrequent that the grounds of a decision fail to reflect the exact views of the court, especially those of concurring justices in a collegiate court. We often encounter in judicial decisions, lapses, findings, loose statements and generalities which do not bear on the issues or are apparently opposed to the otherwise sound and considered result reached by the court as expressed in the dispositive part, so called, of the decision.[50]

---

[48] *Id*. at 343; cited in *Velarde*, *supra* note 41 at 308.

[49] 78 Phil. 570 (1947).

[50] *Id*. at 577-578.

Supreme Court E-Library

Moreover, we are guided by the evident fact that the respondent-judge did not intend to make his conclusions on who should be awarded the Project as part of the dispositive portion of his order. The language deliberately employed in the order, "must now seriously consider and effect the award," indicates that the judge was hesitant to definitively grant the relief sought by Nolasco, which was that the trial court award the bid to China International and direct Sec. Datumanong to take steps towards this end. Instead, it stated that Sec. Datumanong "must now seriously consider and effect the award" to China International. Undoubtedly, the word "must" is mandatory in character, but it is used in conjunction with "consider". In short, the trial court noted that the DPWH Secretary "must think about" effecting an award to China International.

Imagine if Nolasco had tried to judicially enforce this portion of the decision. Agents of the court would be sent over to the DPWH offices to confront the DPWH Secretary. What else could they say but, "Sir, have you seriously considered effecting the award to China International?" Of course, the DPWH Secretary can reply, "Yes, but I decided to award the bid anyway to Daewoo," and such averment would evince satisfactory compliance with the assailed *Order*. After all, the *Order* did not require that the DPWH award the bid to China International, only that the DPWH consider such a measure.

These premises considered, we cannot agree with Petitioner' characterization of this portion of the *Order* as granting affirmative relief in favor of China International.[51] No such affirmative relief was rendered in favor of China International, as such was not included as part of the *fallo*. Nor was there an evident intent on the part of the judge to grant such affirmative relief, on account of the language he employed, recommendatory in character as it ultimately was.

Still, if the Court were to construe this assailed portion of the *Order* as belonging to the dispository part, such disposition,

---

[51] *Rollo*, p. 134.

Supreme Court E-Library

effectively concluding that China International and not DAEWOO should be awarded the bid, would run contrary to law.

It must be remembered that Nolasco's prayer that the trial court award the bid to China International utilized as legal basis the power of the trial courts to issue partial or separate judgments. Yet by any objective standard, there is no merit in allowing for such a relief in this case. Section 5, Rule 36 of the Rules of Civil Procedure, which governs separate judgments, states:

> Sec. 5. *Separate judgments*. — When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. . . .

On paper, Nolasco's petition prays for two reliefs, that the petitioner be restrained from awarding the Project to Daewoo, and that Daewoo be disqualified as a bidder and its bid be rejected. Yet these reliefs are obviously intertwined for the allowance of one would necessarily lead to the grant of the other. The multiple reliefs referred to in the provision refer to those sufficiently segregate from each other that the allowance of one at a preliminary stage will not preclude litigation on the merits of the others.

More importantly, the rule is explicit that partial judgment with regards one of the reliefs is warranted only after "a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim." Herein, the partial judgment was sought even before the respondents had the chance to file their answer to the petition. Moreover, it was prayed for at a point when, at even such a preliminary stage, the claimant was actually somehow able to already present evidence in support of his claim, but before the respondents had the chance to rebut this claim or support countervailing evidence.

Supreme Court E-Library

At bare minimum, the allowance of a partial judgment at this stage would constitute a denial of constitutional due process. It would condemn before hearing, and render judgment before trial.[52] Had indeed partial judgment been granted in the assailed *Order*, it would have been rendered before the Petitioner were afforded the opportunity to rebut the evidence of Nolasco, or to present their own countervailing evidence. While the allowance of partial judgments may expedite the litigation of claims, it cannot be sanctioned at a stage when the trial judge has not had the opportunity to hear all sides to the claim. In fact, it was highly imprudent for the respondent judge to have concluded, as he did in his *Order*, that it was an admitted fact that the BAC had strayed from fairly applying the Bidding Laws, Guidelines, Rules, and Regulations, and Bid Tender Documents, considering that the Petitioner had not even filed an answer or been allowed the opportunity to present any evidence on its behalf.

And there is the fact that as of the moment the assailed *Order* was rendered, Nolasco's petition had already been dismissed by the earlier *Order* dated 27 March 2002. In order that the prayer for partial judgment could have been granted by the RTC, it would have been first necessary to reinstate Nolasco's dismissed petition, such as by granting Nolasco's motion for reconsideration. The respondent judge never reinstated the petition, which has stood dismissed since 27 March 2002. Thus, none of the reliefs prayed for by Nolasco in his *Petition*, much less the prayer for partial judgment, could have ever been granted by the respondent-judge.

Thus, the dispositive portion of the assailed *Order* correctly limited itself to the denial of Nolasco's motion for

---

[52] "This safeguard, the first listed in the Bill of Rights, includes what is known as procedural due process that guarantees a procedure which, according to Daniel Webster, 'hears before it condemns, which proceeds upon inquiry and renders judgment only after trial.'" *Pagasian v. Judge Zura*, A.M. No. RTJ-89-425, 17 April 1990, 184 SCRA 391. See also, *e.g., U.S. v. Ling Su Fan*, 10 Phil. 104, 111; *NPC Supervisor's Union v. NPC*, 193 Phil. 696 (1981).

Supreme Court E-Library

reconsideration without allowing any other relief that Nolasco prayed for in his *Motion for Partial Judgment and to Dismiss Petition*. Had the judge instead opted to grant partial judgment and direct the award of the Project to China International, the Court would not hesitate to strike down such award. Yet the judge did not act so unequivocally, and merely advised that the DPWH Secretary should consider such an option. Perhaps the propriety of such advice can be appropriately questioned, in light of our view that such conclusion was derived without allowing the DPWH or an injured party such as Daewoo opportunity to be heard and to present their own evidence. Nonetheless, such advisory opinion has no binding effect, especially if construed as directing the award of the Project to China International. Accordingly, for that reason alone and with the necessary clarifications made, there is no reason to set aside the assailed *Order* dated 6 September 2002, especially considering that its final disposition dismissing Nolasco's motion for reconsideration is ultimately correct.

Nolasco's petition had been correctly dismissed by the RTC on two grounds: that Nolasco's general interest as a taxpayer was not sufficient to establish any direct injury to him should the Project be awarded to Daewoo; and that the petition was a suit against the State, which may not prosper without its consent. Given that none of the parties are actually praying that Nolasco's motion for reconsideration be granted or that Nolasco's petition be reinstated, we need not review in depth the rationale of the RTC in dismissing Nolasco's petition. The mere invocation of standing as a tax payer does not mean that in each and every instance where such a ground is invoked courts are left with no alternative except to hear the parties, for the courts are vested with discretion whether or not a taxpayer's suit should be entertained.[53] We likewise find no error on the part of the RTC when it cited as basis for the dismissal of Nolasco's petition, our ruling in *Bugnay*

---

[53] *Macasiano v. NHA*, G.R. No. 107921, 1 July 1993, 224 SCRA 236, 244.

Supreme Court E-Library

Construction & Development Corp. v. Laron[54] that the taxpayer-plaintiff must specifically prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation, and that he will sustain a direct injury as a result of the enforcement of the questioned statute or contract.[55]

We also find no error on the part of the RTC in regarding Nolasco's petition as a suit against the State without the latter's consent. An unincorporated government agency such as the DPWH is without any separate juridical personality of its own and hence enjoys immunity from suit.[56] Even in the exercise of proprietary functions incidental to its primarily governmental functions, an unincorporated agency still cannot be sued without its consent.[57] Moreover, it cannot be said that the DPWH was deemed to have given its consent to be sued by entering into a contract, for at the time the petition was filed by Nolasco, the DPWH had not yet entered into a contract with respect to the Project.

Surprisingly, and with no apparent benefit on its behalf, Petitioner imputes error on the part of the RTC when the court, in the *fallo* of the assailed *Order*, directed the dismissal of the

---

[54] G.R. No. 79983, 10 August 1989, 176 SCRA 240.

[55] *Id*. at 251-252. "However, for the above rule to apply, it is exigent that the taxpayer-plaintiff sufficiently show that he would be benefited or injured by the judgment or entitled to the avails of the suit as a real party in interest. Before he can invoke the power of judicial review, he must specifically prove that he has sufficient interest in preventing the illegal expenditure of the money raised by taxation and that he will sustain a direct injury as a result of the enforcement of the questioned statute or contract. It is not sufficient that he has merely a general interest common to all members of the public."

[56] *Farolan v. CTA*, G.R. No. 42204, 21 January 1993, 217 SCRA 298, 306. "[W]hen a suit is directed against said unincorporated government agency which, because it is unincorporated, possesses no juridical personality of its own, the suit is against the agency's principal, *i.e*., the State." *Philippine Rock Industries, Inc. v. Board of Liquidators*, G.R. No. 84992, 15 December 1989, 180 SCRA 171.

[57] A.B. NACHURA, *OUTLINE REVIEWER IN POLITICAL LAW*, 2000 Ed., at 22.

Supreme Court E-Library

"Motion for Reconsideration of the Petition," pointing out that such pleading was never filed by Nolasco,[58] and accordingly prays "that the order dismissing the alleged Motion for Reconsideration of Petition be declared null and void."[59] However, Nolasco did file a "Motion for Reconsideration" to the order dismissing the petition, and in his *Motion for Partial Judgment and to Dismiss Petition*, Nolasco similarly prays that "the Motion for Reconsideration of the Petition be dismissed." We have no doubt, infelicitous wording aside, that the "Motion for Reconsideration of the Petition" adverted to in the *fallo* refers to Nolasco's own motion for reconsideration, the denial of which Nolasco also prayed for in the *Motion for Partial Judgment and to Dismiss Petition* that was the subject of the assailed *Order*. And as just discussed, the denial of the Nolasco's motion for reconsideration was in order.

Notably, this Court has not engaged in a review of the award of the Project to Daewoo. Notwithstanding the fact that the parties have prayed that the Court either effect the award of the Project to Daewoo or direct the award to China International, the Court deems it improper to conduct a de novo factual finding on which entity should be awarded the project. The Court is not a trier of facts, and it would be offensive to established order and the hierarchy of courts for this Court to initiate such factual review. Had the RTC conducted a valid trial on the merits, perhaps this Court could eventually review the lower court's findings on the matter, but the RTC properly dismissed the case, and it would be unbecoming on the part of this Court to suddenly engage in an initial trial on the merits on appellate review.

This is a stance not borne out of hesitance to tackle the issue, or avoid the sort of ruling that may satisfy one party or the other as "definitive," but arrived at out of necessity to preserve the integrity of our civil procedure, including the hierarchy of our courts and the limits of this Court's power of judicial review.

---

[58] *Id*. at 115.

[59] *Id*. at 142.

Supreme Court E-Library

Precisely, the messy milieu presented before us occurred because the RTC and Nolasco compromised our court processes to destructive ends, and it is this Court's function to reassert the rules, to restore order, and not compound to the sloppiness by itself violating procedural order.

The executive department is acknowledged to have wide latitude to accept or reject a bid, or even after an award has been made, to revoke such award. From these actions taken, the court will not generally interfere with the exercise of discretion by the executive department, unless it is apparent that the exercise of discretion is used to shield unfairness or injustice.[60] This policy of non-interference can hardly be countermanded by reason of a claim anchored on an unofficial document such as the "Confidential Reports from an Unnamed DPWH Consultant" presented by Nolasco, especially when the probative value thereof has hardly been passed upon by a proper trier of facts.

More importantly, the Court, the parties, and the public at large are bound to respect the fact that official acts of the Government, including those performed by governmental agencies such as the DPWH, are clothed with the presumption of regularity in the performance of official duty, and cannot be summarily, prematurely and capriciously set aside.[61] Such presumption is operative not only upon the courts, but on all persons, especially on those who deal with the government on a frequent basis. There is perhaps a more cynical attitude fostered within the popular culture, or even through anecdotal traditions. Yet, such default pessimism is not embodied in our system of laws, which presumes that the State and its elements act correctly

---

[60] *Hutchison Ports Philippines Limited v. SBMA*, G.R. No. 131367, 31 August 2000, 339 SCRA 434, 443.

[61] See *Republic v. De los Angeles*, G.R. No. L-30240, 25 March 1988. "The [Garments and Exports Textile Board], as an administrative agency, has in its favor the presumption that it has regularly performed its official duties, including those which are quasi-judicial in nature. In the absence of clear facts to rebut the same, said presumption of regularity must be upheld." *GTEB v. Court of Appeals*, 335 Phil. 723 (1997).

Supreme Court E-Library

unless otherwise proven. To infuse within our legal philosophy a contrary, gloomy pessimism would assure that the State would bog down, wither and die.

Instead, our legal framework allows the pursuit of remedies against errors of the State or its components available to those entitled by reason of damage or injury sustained. Such litigation involves demonstration of legal capacity to sue or be sued, an exhaustive trial on the merits, and adjudication that has basis in duly proven facts and law. No proper and viable legal challenge has emerged impugning the award of the Project by DPWH to Daewoo, Nolasco's *Petition* being woefully insufficient to that purpose. It is tragic perhaps that the irresponsible actions of Judge Nabong, and their ultimate embodiment in his *obiter dicta* in the assailed *Order*, somehow fostered the illusion that there was a serious legal cloud hovering over the award by DPWH to Daewoo. We rule that there is none, that the RTC acted correctly in granting the Petitioner's motion to dismiss Nolasco's *Petition* and in denying the subsequent motion for reconsideration to the dismissal. These are the only relevant matters properly brought for judicial review and everything else is unnecessary verbiage.

For the same reason, we cannot allow the Petitioner's prayer for damages against Nolasco. The matter of damages is one that has to be properly litigated before the triers of fact, and certainly has not been passed upon by the RTC. Yet it does not necessarily follow that no liability arises from the filing of the initiatory petition, or the facts succeeding thereto. It does not escape our attention that on 2 April 2002, the OSG was served a spurious order purportedly giving due course to Nolasco's petition and granting the sought-for preliminary injunction. This incident cannot pass without comment by this Court, which cannot sanction the circulation of fake judicial orders, and should be duly investigated by the National Bureau of Investigation for appropriate action.

Finally, it likewise appears that Judge Nabong, by issuing the temporary restraining order dated 4 March 2002, violated Section 6 of Republic Act No. 8975, which penalizes the judge

Supreme Court E-Library

who issues a temporary restraining order enjoining the bidding or awarding of a contract or project of the national government.[62] Yet to his credit, Judge Nabong recalled the TRO upon realizing his error, thus a REPRIMAND should suffice under the circumstances.

WHEREFORE, premises considered, the Petition is *DENIED*. The assailed *Order* dated 6 September 2004 is *AFFIRMED*, with the *QUALIFICATION* that last paragraph of the body of the *Order*, which states that the DPWH Secretary "must now seriously consider and effect the award of Package 2, Phase II of the Agno River Flood Control Project. . ." is *OBITER DICTA* and hence of no binding force.

The National Bureau of Investigation is hereby *DIRECTED* to investigate the circumstances surrounding the alleged spurious order dated 22 March 2002 served on the Office of the Solicitor General and determine possible criminal liabilities for the creation of such forged document.

Judge Juan Nabong is hereby *REPRIMANDED* for failure to observe Section 6 of Republic Act No. 8975, and *WARNED* that a subsequent repetition of the same shall be dealt with more severely.

No costs.

SO ORDERED.

Puno (Chairman), Austria-Martinez, Callejo, Sr., and *Chico-Nazario, JJ.,* concur.

---

[62] See Section 6, Rep. Act No. 8975.