

G.R. No. 196199 — MANILA INTERNATIONAL PORTS TERMINAL, INC. v. PHILIPPINE PORTS AUTHORITY

G.R. No. 196252 — PHILIPPINE PORTS AUTHORITY v. MANILA INTERNATIONAL PORTS TERMINAL, INC.

Promulgated

December 7, 2021

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CONCURRING AND DISSENTING OPINION

LAZARO-JAVIER, J.:

I respectfully **disagree** with the *ponencia* of my learned senior colleague Justice Ramon Paul L. Hernando insofar as it **declared Executive Order No. 30, series of 1986 (EO 30)¹ as unconstitutional and the Philippine Ports Authority's (PPA) take-over of the operations of the Manila International Ports Terminal, Inc. (MIPTI) at the North Harbor as illegal, and awarded nominal and exemplary damages, attorney's fees, and costs of suit with legal interest to MIPTI at PPA's expense.**

But I agree with the *ponencia* as it **ordered MIPTI to return the excess amount of rentals it had received from PPA with legal interest to the national government, and denied MIPTI's claim for unrealized profits.**

Section 2 of Presidential Decree No. 634 (PD 634)² granted MIPTI a franchise "to construct, operate, and maintain modern container terminals, bonded warehouses, storage depots, cold and refrigerated storage, cargoes and transit sheds, conveyor piers, docks, landing and berthing facilities, access roads, bridges, seawalls, bulkheads and fillings in the area of the North Harbor, Manila Bay."

¹ RECALLING THE FRANCHISE GRANTED TO THE MANILA INTERNATIONAL PORT TERMINALS, INC. (MIPTI) TO OPERATE AND MANAGE THE INTERNATIONAL PORT COMPLEX AT NORTH HARBOR, MANILA. (EXECUTIVE ORDER 30, signed July 19, 1986).

² Section 2. Subject to the terms and conditions established in this Decree and in Act Numbered Twenty-one hundred thirty-seven and to the provisions of the Constitution, the Manila International Port Terminals, Inc., is hereby granted for a period of twenty-five years, renewable for another twenty-five years, the right, privilege and authority to construct, operate and maintain modern container terminals, bonded warehouses, storage depots, cold and refrigerated storage, cargo and transit sheds, conveyor piers, docks, landing and berthing facilities, access roads, bridges, seawalls, bulkheads and fillings in the area of the North Harbor, Manila Bay, subject to private rights, if any there be, which area is more particularly described as follows. x x x
(PRESIDENTIAL DECREE No. 634, January 7, 1975).



Section 2 of PD 634 was subsequently amended by Presidential Decree No. 1284 (PD 1284)³ to include the exclusive provision of other services within its franchise.

PD 1284 also amended PD 634 by also adding Section 4 which, among others, empowered

- (i) the **President** of the Philippines to **revoke or suspend** MIPTI's *franchise*, and
- (ii) the **PPA** to **conduct periodic inspections and audit** of the *operation and management* of the port by MIPTI for the *purpose* of **determining** the latter's compliance with the prescribed standards and guidelines, and if warranted, **recommending** to the President the exercise of the power to **suspend or revoke** MIPTI's franchise:

Section 4. The Philippine Ports Authority shall in addition have the following powers, functions and responsibilities:

(a) **Undertaken** any study or work for the development, construction and supervision of all portworks, facilities and dredging in the International Port Complex and its vicinity;

(b) Fix the schedule of rates of fees for all services rendered therein and promulgate guidelines and standards for the efficient operation and management of the complex by MIPTI; and

(c) **Conduct periodic inspections and audit** of the **operation and management** of the International Port Complex by MIPTI to **determine the latter's compliance** with the **prescribed standards**, rates fixed, and **guidelines** promulgated, **and if warranted, recommend** to the President of **suspension or revocation** of MIPTI's franchise.⁴ (Emphases supplied)

MIPTI and PPA entered into a **Memorandum of Agreement (MOA)** to implement, among others, Section 4 of PD 1284 which amended PD 634. In Section 14.01 of the MOA, they agreed as follows:

Section 14.01. Suspension or Revocation of Franchise. - PPA shall **conduct periodic inspection and audit of the operation and management** of the Port Terminal to **determine MIPTI's compliance** with the **prescribed standards**, rates fixed, and **guidelines** promulgated under this Agreement and existing PPA issuances, as well as those which may hereafter be made, adopted, or promulgated; and upon **proper investigation *or* showing of any violation, if warranted, recommend** the **suspension or revocation of MIPTI's franchise to the President**. In case

³ GRANTING AUTHORITY TO THE PHILIPPINE PORTS AUTHORITY TO PLAN, CONSTRUCT, DEVELOP AND MAINTAIN IN ALL PORT TERMINAL FACILITIES IN THE INTERNATIONAL PORT NORTH HARBOR, MANILA BAY, TO SUPERVISE THE OPERATION AND MANAGEMENT OF SUCH FACILITIES, AMENDING FOR THE PURPOSE PRESIDENTIAL DECREE NO. 634, DATED 7 JANUARY 1975, REPEALING PRESIDENTIAL DECREE NO. 802 DATED 18 SEPTEMBER 1975, AND FOR OTHER PURPOSES. (Presidential Decree No. 1284, January 16, 1978).

⁴ Section 4 of Presidential Decree No. 1284, January 16, 1978.

of **suspension or revocation** of MIPTI's franchise during its effectivity, **PPA shall take over the operations and management** of the Port Terminal as may be necessary. MIPTI shall see to it that the operations at the Port Terminal shall **not be affected or disrupted** during the period of suspension or turnover. (Emphases supplied)

President Corazon Aquino issued **EO 30 revoking MIPTI's franchise effective immediately**, that is, on **July 21, 1986**, when **EO 30 was published** in the Official Gazette. It is **not disputed** that EO 30 was issued pursuant to and by authority of PD 634, as amended by Section 4(c) of PD 1284.

The events leading to the issuance of EO 30 as well as the aftermath of this issuance are not disputed:

Sometime [in] **June 1986**, Vicente T. Suazo, Jr., Manager of the Port of Manila, sent **two (2) letters to MIPTI informing it[,] of alleged violations** in the latter's port activities, and **urging it to take necessary actions** in improving its deteriorating performance and equipment.

On **18 July 1986**, Primitivo S. Solis, Jr., PPA's General Manger, served a letter to MIPTI notifying it about the strike being staged by various trucking and brokerage firms at North Harbor **caused by its alleged poor performance and illegal practices**. Solis required MIPTI to answer **not later than 9:00 A.M. the next day** the following **illegal acts** allegedly committed by it, to wit: **(a) unpaid claims** for short delivery, **cargo losses and damages**; **(b) dilapidated and short supply of equipments [sic]**; **(c) unilateral increases in arrastre rates without consultation** with port users and approval of PPA; **(d) refunds from advance deposits were not returned** nor honored; and **(e) cargoes were not released** unless incentives were given to the arrastre personnel. In said letter, Solis likewise **informed MIPTI of its violations** under the provisions of their MOA.

On **19 July 1986**, in compliance with the PPA directive, Gregorio Oca – then MIPTI's President – submitted a reply denying all the **allegations** imputed against MIPTI and **enumerating the acts showing its faithful compliance** with its obligations under the franchise and the MOA.

On same date, then President Corazon C. Aquino issued Executive Order (EO) No. 30 revoking MIPTI's franchise due to **substantial violations** of the MOA, which resulted in (sic) the **deterioration of port services**, and **authorizing PPA to undertake, on its own, the cargo-handling operation at North Harbor**. Consequently, PPA sent a letter to MIPTI informing it of its **plan to take over its business and properties**.

On **20 July 1986**, PPA issued a permit to Metrostar Port and Allied Services, Inc. (Metrostar), a private domestic corporation engaged in the business of providing cargo-handling services and operation of port complex in the country, to **render cargo-handling and other port-related services** at North Harbor for a period of one (1) year.

On **21 July 1986**, PPA actually took over MIPTI's operations at the MIPTC and seized its equipment. PPA thereafter placed Metrostar in control of the port operations at North Harbor and in possession of the

seized properties. MIPTI subsequently made an **inventory of all the seized properties** in the presence of representatives from PPA, Metrostar[,] and PCGG.

On 14 August 1986, PPA sent a letter to MIPTI's President informing him that it was exercising its right to purchase the seized properties at book value pursuant to AO No. 10-81. However, MIPTI refused the offer on the ground that the price was iniquitous. Thereafter, a **guarantee fund deposit** was established in MIPTI's favor to secure the rental payments for the use of the seized properties.⁵ (Emphases supplied)

In the proceedings below, PPA **admitted** that it **recommended** the **revocation** of MIPTI's franchise but **justified** its **recommendation** by saying that "it only protected the interest of the public as being the State's agent in regulating port-related services at the port areas."

The Ponencia

The *ponencia* disposed of this case as follows:

WHEREFORE, the September 22, 2010 Decision of the Court of Appeals in CA-G.R. CV No. 80775 is **AFFIRMED with MODIFICATION**:

1) **DECLARING** Executive Order No. 30, issued on July 19, 1986, **UNCONSTITUTIONAL**;

2) **DECLARING** the takeover by defendant Philippine Ports Authority of the properties of the Manila International Port Terminal, Inc. **ILLEGAL**;

3) **ORDERING** defendant Philippine Ports Authority and its incumbent general manager:

a. To pay Manila International Port Terminal, Inc. nominal damages of ₱1,000,000.00; and

b. To pay Manila International Port Terminal, Inc. exemplary damages of ₱200,000.00 and attorney's fees of ₱500,000.00 plus costs of suit; and

4) **ORDERING** Manila International Port Terminal, Inc. to return the amount of ₱15,646,933.27, representing the excess rentals, to Philippine Ports Authority.

The amounts due shall be subject to a legal interest of six percent (6%) *per annum* from finality of this Decision until fully paid.

SO ORDERED.⁶

In so decreeing, the *ponencia* relied upon the following rationale:

⁵ The *ponencia* quoted the relevant portions of the Decision of the Court of Appeals.

⁶ *Ponencia*, pp. 31-32.

One. EO 30 is unconstitutional because it revoked MIPTI's franchise without due process of law.

The *ponencia* says: "One day, was business as usual for MIPTI. The following day, it was informed of its violations. The next day, it no longer has a business."⁷ The swiftness by which the revocation was decided and thereafter imposed and enforced proves the violation of MIPTI's right to due process –

The swift turn of events from the time MIPTI was notified to answer the charges against it at 5:00 pm of 18 July 1986 up to the time EO No. 30 was issued revoking the franchise on 19 July 1986 only showed a predetermined plan of driving the company out of business without affording it reasonable opportunity to present its defense.⁸ (Emphases supplied)

Two. MIPTI's property right was violated without due process of law because PPA had recommended the revocation of MIPTI's franchise without complying with Section 4(c) of PD 1284 and Section 14.01 of the MOA between PPA and MIPTI. This was because PPA had made the recommendation without any factual basis at all and therefore arbitrarily and whimsically. Thus:

Here, it is undisputed that PPA did not conduct any investigation. While PPA insists that its decision to recommend was justified for it was under the impression that MIPTI indeed committed the violations, such violations remain to be mere allegations, the veracity of which could have been ascertained had PPA simply conducted the required investigation.⁹ (Emphases supplied)

Three. The operative fact doctrine cannot justify, reverse, or set aside the unconstitutionality of EO 30 and the violations of MIPTI's right to due process.

Four. MIPTI is entitled to nominal damages with legal interest from PPA because its rights under Section 4(c) of PD 1284 and Section 14.01 of the MOA were violated by PPA.

Five. MIPTI is entitled to exemplary damages from PPA because of the arbitrary and hasty manner by which PPA rendered and presented its recommendation. Thus:

PPA's arbitrary, hasty, and oppressive actions justify the award of exemplary damages. PPA acted with undue haste and without conducting any investigation; it did not even attempt to establish with certainty any violation on the part of MIPTI; neither did it grant MIPTI any opportunity to counter the charges against it. All these were

⁷ *Ponencia*, p. 21.

⁸ *Id.* at 21.

⁹ *Id.* at 22.

manifestations of bad faith thereby warranting the award of exemplary damages.¹⁰ (Emphases supplied)

Further, since “MIPTI was **compelled** to litigate with third persons or to incur expenses to protect its rights,”¹¹ it is entitled to attorney’s fees and the costs of suit.

The *ponencia* claimed again that –

x x x **there was sufficient showing of bad faith** on the part of PPA. We thus sustain the RTC’s award of exemplary damages and attorney’s fees in the amounts of ₱200,000.00 and ₱500,000.00, respectively, as affirmed by the CA.¹² (Emphasis supplied)

The *ponencia*, however, **did not spell out** if there were **any other factual bases** for this claim of “*sufficient showing of bad faith*” **other than** the aforementioned basis for the award of exemplary damages.

My Dissent

As I have stated at the beginning, I **disagree** with the declaration of unconstitutionality and illegality and the award of nominal, exemplary, and other types of damages to MIPTI.

However, I extol, and no doubt, agree to high heavens with the *ponencia* for **ordering MIPTI to refund** to the national government the *excess rental payments plus legal interest* and the following **rationale** on why MIPTI is **not entitled** to unrealized profits as an item of damages, to wit:

Here, the trial court ordered PPA to pay MIPTI unrealized profits after it determined that the latter was unable to operate and earn income from its operations due to the unlawful takeover. This was affirmed by the CA. **However, the RTC and the CA seem to have overlooked the fact that the takeover was ordered by President Aquino; it was not undertaken by PPA on its own authority. Given that the validity of EO 30 is presumed, PPA cannot be faulted for merely enforcing it. Thus, it cannot be held liable for the profits MIPTI failed to obtain by reason of the said enforcement.**¹³ (Emphases added)

Let me expound on the **reasons** for my **disagreement**.

First. EO 30 and PPA **did not violate** MIPTI’s **procedural** due process right.

The **revocation of a franchise** demands the **observance of due process** of law. *Gamboa v. Teves*¹⁴ affirms this legal doctrine: “A franchise

¹⁰ *Id.* at 30.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 27.

¹⁴ 668 Phil. 1, 84 (2011).

is a **property right** and **cannot be revoked or forfeited without due process of law.**"

It is **important to stress** that the **procedural** due process requirement as outlined in *Section 4(c)* and *Section 14.01* **pertain to the revocation of MIPTI's franchise.** Stated differently, *Section 4(c)* and *Section 14.01* **outlines the contents or requirements of procedural due process** – what must be done to accord procedural due process to MIPTI – before its franchise is **revoked.**

It is **not clear** though if the President **could** exercise the power to suspend or revoke **independently of Section 4(c)** of PD 1284 and *Section 14.01* of the MOA, that is, **without PPA's investigation and/or recommendation,** provided of course there is **another means** by which *due process of law* was *observed.* However, we do **not** have to resolve this **ambiguity** now because it is **not** an issue in this case.

Therefore, *Section 4(c)* and *Section 14.01* provide a foundation, because perhaps *procedural* due process may be **founded on some other means,** for concluding whether the **revocation** of MIPTI's franchise was attended by **procedural** due process or was not.

For clarity, PPA also **owes a legal duty of procedural** due process to MIPTI before it could **recommend** (to stress, *merely* recommend) the *revocation* of MIPTI's franchise. The **recommendation** to revoke would be **infirm** if *Section 4(c)* and *Section 14.01* are **not complied with** – though the **compliance requirement** should **not** be as **stringent** as when the **power to revoke** is exercised. The reasons for these observations are –

- (i) A **recommendation** to revoke, apart from the revocation itself, has a **life of its own.** A **recommendation** is **actionable** if it is the **proximate cause of both injury and damage** to MIPTI.
- (ii) A **recommendation** to revoke is **not** the **proximate cause** of the loss of MIPTI's operation of the port at North Harbor. Since the private interests at stake in a **recommendation** to revoke is **not itself** or **directly** the franchise, the **procedural** requirements should **not be as strict** as when a franchise is being revoked.

Section 4(c) of PD 1284¹⁵ empowers the **President** to **suspend or revoke** MIPTI's franchise. The **PPA,** on the other hand, may **recommend** the exercise of the President's power to suspend or revoke. PPA's **recommendation** is based upon its **investigation** of MIPTI's operation and management.

¹⁵ *Section 4(c)* Conduct periodic inspections and audit of the operation and management of the International Port Complex by MIPTI to determine the latter's compliance with the prescribed standards, rates fixed, and guidelines promulgated, and if warranted, recommend to the President of suspension or revocation of MIPTI's franchise.

Here, the President issued EO 30 **revoking** MIPTI's franchise **expressly** on the basis of –

- (i) a “**review of MIPTI's compliance** to its contract [showing] that it had **committed substantial violations** thereof” and “its **services [having] consequently deteriorated;**” and
- (ii) Section 4(c) of PD 1284 and Section 14.01 of the MOA, *specifically*, the authority of PPA to **recommend** the suspension or revocation of MIPTI's franchise upon an investigation *or* showing of MIPTI's violation thereof.

The pertinent provisions of EO 30 state:

WHEREAS, the Manila International Port Complex (MIPC) at North, Harbor, Manila was constructed and developed pursuant to P.D. No. 1284 promulgated on 16 January 1978, and in response to the increasing need of international container trade;

x x x x

WHEREAS, in implementation of its franchise, MIPTI entered into a **Memorandum of Agreement** with the Philippine Ports Authority (PPA) on 01 April 1980, which **spelled out the terms and conditions under which MIPTI shall render efficient services and violations of which will warrant the suspension or revocation of its franchise;**

WHEREAS, under **Section 4(c) of P.D. No. 1284 and Section 14.01 of the aforesaid agreement, PPA can, upon investigation or showing of violation** thereof by MIPTI, **recommend** the suspension or revocation of its franchise to the President;

WHEREAS, **review of MIPTI's compliance to its contract shows that it has committed substantial violations** thereof and **its services have consequently deteriorated** to the prejudice of the international shipping, other port users and the general public;

x x x x

WHEREAS, PPA can undertake on its own, the management, and operations of the MIPC and the cargo handling services thereat pursuant to Section 6a(v) (x) of P.D. No. 857 promulgated on 23 December 1975;

WHEREFORE, I, CORAZON C. AQUINO, President of the Republic of the Philippines, **by virtue of the powers** vested in me by the **Constitution and the law, do hereby order the immediate recall of the franchise** granted to the Manila International Port Terminals, Inc. (MIPTI) and **authorize the Philippine Ports Authority (PPA) to take over, manage and operate the Manila International Port Complex at North Harbor, Manila and undertake the provision of cargo handling and port related services thereat,** in accordance with P.D. No. 857 and other applicable laws and regulations.



DONE in the City of Manila, this 19th day of July, in the year of Our Lord, Nineteen Hundred and Eighty-Six.¹⁶ (Emphases supplied)

The issuance of EO 30 was **actually preceded** by PPA's **recommendation** to the President to **revoke** MIPTI's franchise. **In turn**, PPA's **recommendation** was **actually supported** by PPA's **investigation** that the Court of Appeals found to **have been done** –

Sometime [in] **June 1986**, Vicente T. Suazo, Jr., Manager of the Port of Manila, **sent two (2) letters to MIPTI informing it of alleged violations** in the latter's port activities, and **urging it to take necessary actions** in improving its deteriorating performance and equipment.

On **18 July 1986**, Primitivo S. Solis, Jr., PPA's General Manager, **served a letter to MIPTI notifying it about the strike being staged** by various trucking and brokerage firms at North Harbor **caused by its alleged poor performance and illegal practices**. Solis required MIPTI to **answer not later than 9:00 A.M. the next day** the following **illegal acts** allegedly committed by it, to wit: **(a) unpaid claims** for short delivery, cargo losses and damages; **(b) dilapidated and short supply of equipments** (sic); **(c) unilateral increases in arrastre rates without consultation** with port users and approval of PPA; **(d) refunds from advance deposits were not returned** nor honored; and **(e) cargoes were not released** unless incentives were given to the arrastre personnel. In said letter, Solis likewise **informed MIPTI of its violations** under the provisions of their MOA.

On **19 July 1986**, in compliance with the PPA directive, Gregorio Oca – then **MIPTI's President** – **submitted a reply denying all the allegations** imputed against MIPTI and **enumerating the acts showing its faithful compliance** with its obligations under the franchise and the MOA.

On the same date, then President Corazon C. Aquino issued **Executive Order (EO) No. 30** **revoking MIPTI's franchise** due to **substantial violations** of the MOA, which resulted in the **deterioration of port services**, and **authorizing PPA to undertake, on its own, the cargo-handling operation at North Harbor**. Consequently, PPA sent a letter to MIPTI **informing it of its plan to take over its business and properties**. (Emphases supplied)

The **procedure followed** by PPA proves that an **investigation** was indeed **conducted** and there was at least a **showing of MIPTI's violations** of its franchise.

Due process of law is a flexible concept.¹⁷ This description pertains as well to **procedural due process**. The **contents or requirements of procedural due process** “[depend] on the circumstances and [vary] with the subject matter and the necessities of the situation.”¹⁸

¹⁶ Published in the *Official Gazette*, Vol. 82 No. 29 page 3347 on July 21, 1986.

¹⁷ See *National Telecommunications Commission v. Brancomm Cable and Television Network Co., Inc.*, G.R. No. 204487, December 5, 2019.

¹⁸ *Id.*

In his *Concurring Opinion* in *Perez v. PT&T*,¹⁹ Justice Arturo D. Brion elucidated on what **procedural** due process entails:

x x x x

In the U.S., the due process clause of the U.S. Constitution provides the guarantee for procedural due process, and **has used a general balancing formula to identify the procedural guarantees appropriate to a particular context.** In *Mathews v. Eldridge*, Justice Powell articulated this approach when he said:

In recent years this Court increasingly has had occasion to consider the **extent to which due process requires an evidentiary hearing prior to the deprivation of some type of property interest** even if such hearing is provided thereafter. In only one case, *Goldberg v. Kelly*, has the Court ruled that a hearing closely approximating a judicial trial is necessary. In other cases requiring **some type of pretermination hearing as a matter of constitutional right**, the Court has spoken sparingly about the requisite procedures. [Our] decisions underscore the truism that “[d]ue process, unlike some legal rules, is **not a technical conception with a fixed content**, unrelated to time, place and circumstances. [Due process] is flexible and calls for such procedural protections as the particular situation demands.” Accordingly, the **resolution of the issue whether the administrative procedures** provided here are **constitutionally sufficient** requires **analysis** of the governmental and private interests that are affected. More precisely, our prior decisions indicate that **identification of the specific dictates of due process** generally requires consideration of **three distinct factors: first, the private interest that will be affected** by the official action; **second, the risk of an erroneous deprivation** of such interest through the **procedures used**, and the **probable value, if any, of additional or substitute procedural safeguards**; and **finally, the Government’s interest**, including the **function involved** and the **fiscal and administrative burdens** that the **additional or substitute** procedural requirement would entail.

Thus, the U.S. approach is to calibrate the procedural processes to be observed in administrative cases based on specifically defined parameters.

x x x x

Philippine Due Process Requirement

Article III, Section 1 of the Philippine Constitution contains the constitutional guarantee against denial of due process, and is a direct transplant from an American root — the Bill of Rights of the American Constitution....

¹⁹ 602 Phil. 522, 546-551 (2009). (to follow)

I submit that **in the absence of a clear legislative intent that what is intended is an actual hearing, the Court cannot construe the statutory procedural due process guaranty as an absolute requirement for an actual hearing.**

x x x x

b. Philippine Procedural Due Process Developments.

Our Constitution does not expressly define the principles that embody **due process**, as it is a **concept intended to counterbalance** a flexible power of state – **police power**. Early on, jurisprudence has recognized distinctions between procedural due process in judicial proceedings and in administrative proceedings.

In a long line of cases starting with *Banco Español v. Palanca*, the requirements of procedural due process in judicial proceedings have been defined. In these proceedings, the quantum of evidence that the prosecution must meet in criminal cases is proof beyond reasonable doubt, while in civil cases the standard has been described as “preponderance of evidence”. The requirements of procedural due process in administrative proceedings have been similarly defined in the early case of *Ang Tibay v. CIR*. The proof required in these proceedings is the lower standard of “substantial evidence.”

The **quantum of evidence** required in these proceedings **impacts on their hearing requirements**. While both judicial and administrative proceedings require a hearing and the opportunity to be heard, they differ with respect to the **hearing required before a decision can be made** x x x. Administrative due process, on the other hand, requires that the decision be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties concerned. Thus, **substantial reasons justify the variance in the hearing requirements** for these proceedings. (Emphases supplied)²⁰

Clearly, there is no one-size fits all concept of procedural due process. What the contents or requirements should be of procedural due process are determined by the nature of the matter being dealt with and the varying circumstances attending such matter. This determination is influenced by several factors including—

- **first, the procedure mentioned in the governing statute and/or its implementing rules;**
- **second, the private interest that will be affected by the official action;**
- **third, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and,**

²⁰ *Id.* at (to follow)

- *fourth*, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

The starting point for determining procedural due process requirements for the revocation of MIPTI's franchise is the governing statute itself. In the case at bar, this would be Section 4(c) of PD 1284 and Section 14.01 of the MOA.

Both Section 4(c) and Section 14.01 do not require an *actual face-to-face* or *viva voce hearing*. — Under Section 4(c), PPA's recommendation needs **only** to be preceded and supported by an *investigation* (i.e., inspections and audit) —

Section 4(c) Conduct periodic inspections and audit x x x and if warranted, recommend x x x.

Under Section 14.01, the procedure to be followed is the same, with the addition of the more unilateral pre-requisite of *showing of any violation-*

Section 14.01. Suspension or Revocation of Franchise. - PPA shall conduct periodic inspection and audit x x x and upon proper investigation or showing of any violation, if warranted, recommend x x x.

As quoted above, PPA actually conducted an investigation of MIPTI's performance.

This started in June 1986 when PPA sent two letters to MIPTI "informing it of alleged violations in the latter's port activities, and urging it to take necessary actions in improving its deteriorating performance and equipment." Unfortunately, there is **nothing** by way of reply that came from MIPTI.

The two (2) letters were followed on July 18, 1986 by a third letter from PPA "notifying it about the strike being staged by various trucking and brokerage firms at North Harbor x x x."

It was **only on the following day** that MIPTI answered PPA's investigation as expressed in its three (3) letters.

On the **same day**, PPA recommended the revocation of MIPTI's franchise. After a review of MIPTI's compliance, also on the **same day**, President Corazon Aquino issued EO 30.

There is **nothing** hasty or irregular about this procedure in the revocation of MIPTI's franchise. There was a **gap of almost two (2) months** before the revocation was decided and later implemented.

To begin with, the *ponencia* failed to identify the requirements of procedural due process in this case. The *ponencia* merely assumed that the President and PPA violated MIPTI's right to procedural due process – without mentioning, though, what that right *exactly* consisted of. In the absence here of a clear finding on the specific requirements of procedural due process, the *ponencia* cannot conclude that MIPTI's procedural due process right was violated.

For another, the procedure used by the President and PPA actually complied with Section 4(c) of PD 1284 and Section 14.01 of the MOA. To repeat, PPA conducted an investigation and undertook a showing of MIPTI's violations. The investigation ran for almost two months.

The governing rules do not require certain periods within which to conduct and conclude the investigation. – They also do not specify the standards of proof that the investigation must achieve – not proof *beyond a reasonable doubt* of these violations nor of the results of the investigation, not even proof on *clear and convincing evidence* or on a *balance of probabilities*. All in all, the investigation may only yield substantial evidence – what a reasonable mind would accept as *adequate to support* a conclusion. The showing of violations does not have to be *overwhelming* or *preponderant*, but only *reasonable*.

In the case at bar, there were three (3) letters from PPA, two (2) of which were not replied to by MIPTI, while the third one referred to a strike that was going on and therefore easily verifiable. There being no evidence of the *unreasonableness* of PPA's showing of MIPTI's violations, it would have to be presumed that the showing of violations was what every reasonable mind would accept as *adequate* to support the President's action to revoke the franchise.

Should the President and PPA have done *more than investigate for almost two (2) months*, that is, over and above what Section 4(c) and Section 14.01 demanded?

MIPTI's private interests, the risk of erroneous actions as a result of the required procedures, the added value of additional procedural mechanisms, the nature of the functions involved, and the added burdens upon the government – all these dictate that adequate procedural safeguards were already observed by the President and PPA.

MIPTI's private interests arose from a franchise. Before accepting the franchise, MIPTI was already apprised that it is subject to revocation and suspension upon investigation *or* showing of violations. Its private interests

are thus already **sufficiently protected** by what Section 4(c) and Section 14.01 on their face required.

Added safeguards did **not guarantee better fact-finding results**. Here, **almost two (2) months and three (3) letters** were given to MIPTI. On the other hand, **several more procedural barriers** would have **adversely impacted** on the **operations of North Harbor**, an admittedly **vital commercial and security facility**, and would have **generated more economic burdens** on the government as a result of the **impasse** arising from the investigation. We also **ought to consider the revolutionary context** of the times then. In other words, the **nature of the function involved**, the **projected added burdens** to the government's operation of a **national port** of immense commercial importance, and the **historical and political context** of the times all **necessitated a swift and decisive action** from the government.

For the above reasons, with due respect, the *ponencia* **went overboard** in declaring EO 30 unconstitutional for violation of MIPTI's procedural due process right and PPA's take-over of MIPTI's operations at North Harbor as **illegal**. The President and PPA **complied to the letter** with the guarantees of Section 4(c) and Section 14.01, and these are **enough** to conclude that **procedural** due process has been observed in both instances. Anything more, **especially since the ponencia** itself did not say what **process was due**, would have been *undue process of law*.

Second. The **powers** of public officers are those **expressly granted** and those **necessarily implied** from the express grant. As held in *Villegas v. Subido*:²¹

x x x. Nothing is better settled in the law than that a **public official exercises power** not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise **agents entrusted with the responsibility of discharging its functions**. As such there is no presumption that they are empowered to act. There must be a **delegation of such authority, either express or implied**. In the absence of a valid grant, they are devoid of power. What they do suffers from a fatal infirmity. x x x (Emphases supplied)

PPA had the **authority to take over the private properties** of MIPTI that were being used for the port operations. This authority is **necessarily implied** from EO 30 and Section 14.01 of the MOA which **mandated PPA to take-over the operations and management** of the port and MIPTI's **obligation** to see to it that the **take-over run unimpeded**.

The port operations **cannot operate during the take-over** without the **concomitant equipment** and the **other apparatus owned by MIPTI** in its performance of the franchise. To require PPA to stockpile its own properties for the purpose of a **take-over** would be an **unreasonable requirement** since

²¹ 141 Phil. 167, 180 (1969). (to follow)

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its function is **not to operate a port** but to **regulate** port operations by **private contractors**. Necessarily, PPA can only fulfil the **take-over** function **only if** it is also allowed as an **essential incident** of the **express take-over power** that it would be **able to use the private properties of MIPTI** as service provider.

Third. The *ponencia* assessed nominal and exemplary damages against PPA as well as attorney's fees, costs of suit and legal interests. I respectfully submit that this assessment has **no factual and legal bases**.

There is **no factual basis** since PPA did **not violate** MIPTI's **procedural** due process right in **recommending** the revocation of MIPTI's franchise. PPA conducted an **investigation** and **showed** MIPTI's **violations** of its franchise. This **process** is **consistent** with Section 4(c) and Section 14.01. Anything more than this would have been **undue** and **unnecessary**.

There is **no legal basis** for awarding MIPTI damages against PPA. The **framework** for determining *whether damages are due* is as follows:

The Court had the occasion to explain the distinction between damages and injury in this wise:

x x x **Injury** is the **illegal invasion of a legal right**; **damage** is the **loss, hurt[,] or harm** which results from the **injury**; and **damages** are the **recompense or compensation** awarded for the **damage** suffered. Thus, there can be **damage without injury** in those instances in which the **loss or harm** was **not the result of a violation of a legal duty**. In such cases, the **consequences must be borne by the injured person alone**, the law affords **no remedy for damages** resulting from an act which does not amount to a legal injury or wrong. These situations are often called *damnum absque injuria*.

In other words, in order that a **plaintiff may maintain an action for the injuries** of which he complains, he **must establish that such injuries resulted from a breach of duty** which the defendant owed to the plaintiff – a **concurrence of injury to the plaintiff and legal responsibility by the person causing it**. The underlying basis for the award of tort damages is the premise that the **individual was injured in contemplation of law**. Thus, there **must first be a breach of some duty** and the **imposition of liability for that breach** before damages may be awarded; and the **breach of such duty should be the proximate cause of the injury**.²² (Emphasis supplied)

Here, the **missing elements** from the **legal basis** to hold PPA liable for damages are –

²² *Far Eastern Bank & Trust Co. v. Pacilan Jr.*, 503 Phil. 334, 346 (2005).

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- i. PPA did **not commit injury** to and did **not cause damage** upon MIPTI. PPA conducted an **investigation** and in fact **showed** the commission of **violations** by MIPTI. Hence, PPA did **not breach** any **legal right** of and **legal duty** to MIPTI. While only *technical injury* and **not actual damage** is required to award nominal damages, nonetheless, **no** legal right was infringed by PPA.
- ii. **Exemplary damages** presuppose a **wrongful act** done with **bad faith**. Since there was **no breach** of legal right and legal duty, exemplary damages **should not have been adjudicated**. **Further**, Articles 2229²³ and 2234²⁴ of the *Civil Code* authorize the award of exemplary damages **only if** moral, temperate, liquidated, or compensatory damages are **also given**. As there is **no award** of these damages in the *ponencia*'s dispositive portion, the *ponencia* **cannot give** MIPTI exemplary damages.
- iii. MIPTI is **not entitled** to attorney's fees and legal interest because there are **no factual** and **legal bases** for its complaint for damages. MIPTI was **not** therefore **compelled** to litigate to protect its rights. It chose to litigate at its **own expense**. Besides, PPA did **not** act in bad faith. Its actions to **recommend** was **within the authority** and **process** of Section 4(c) and Section 14.0 and to **defend itself** all the way to this Court is **consistent** with the fact that **it did no wrong** and thus was **within its right to defend itself** against baseless claims.

ACCORDINGLY, I vote to grant Philippine Ports Authority's petition, reverse and set aside the contrary judgments of the Regional Trial Court and the Court of Appeals, dismiss the complaint for damages filed with the trial court, **but order Manila International Ports Terminal, Inc.** to pay the national government ₱15,646,933.27 with legal interest of six percent (6%) *per annum* from finality of the Decision until fully paid.


AMY C. LAZARO-JAVIER
Associate Justice

²³ Article 2229. Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages. (AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 386, Approved: June 18, 1949).

²⁴ Article 2234. While the amount of the exemplary damages need not be proved, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded. In case liquidated damages have been agreed upon, although no proof of loss is necessary in order that such liquidated damages may be recovered, nevertheless, before the court may consider the question of granting exemplary in addition to the liquidated damages, the plaintiff must show that he would be entitled to moral, temperate or compensatory damages were it not for the stipulation for liquidated damages. (AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 386, Approved: June 18, 1949).