

Title:

****Abaya v. Secretary Ebdane, et al., G.R. No. 164195, August 14, 2007****

Facts:

The case involves a challenge to the award of a contract for the implementation of civil works for Contract Package No. 1 (CP I) of the Catanduanes Circumferential Road Improvement Project (CCRIP) to China Road and Bridge Corporation (CRBC). The project is part of the Arterial Road Links Development Project (Phase IV), funded by a loan agreement (Loan Agreement No. PH-P204) between the Japan Bank for International Cooperation (JBIC) and the Government of the Philippines.

1. ****Project Initiation****:

On December 28, 1999, the Philippine and Japanese governments entered into an Exchange of Notes, stipulating that Japan would provide loans aimed at promoting economic stabilization in the Philippines. This included funding for the Arterial Road Links Development Project.

2. ****Loan Agreement****:

Based on the understanding reached, Loan Agreement No. PH-P204 was signed, entailing that the guidelines for procurement set by JBIC would govern the purchase of goods and services related to the funded projects.

3. ****Prequalification and Bidding****:

The Department of Public Works and Highways (DPWH) invited contractors to prequalify and bid for CP I, which encompasses 79.818 kilometers of road rehabilitation in Catanduanes. Seven contractors were prequalified and submitted their bids.

4. ****Bid Results****:

The bids were evaluated and CRBC emerged as the lowest complying bidder with a bid amounting to Php 952,564,821.71, which was 28.95% higher than the Approved Budget for the Contract (ABC) set at Php 738,710,563.67.

5. ****Resolution and Contract Award****:

On May 7, 2004, DPWH issued Resolution No. PJHL-A-04-012 recommending the award to CRBC. A contract agreement was signed on September 29, 2004.

6. ****Petition****:

The petitioners, consisting of a taxpayer, a former military officer, and a foundation, filed for

certiorari and prohibition with the Supreme Court, seeking to nullify the resolution and the contract on the grounds that it violated Republic Act No. 9184 (RA 9184), which mandates that bids exceeding the ABC should be disqualified.

Issues:

1. ****Locus Standi****: Whether the petitioners have standing to file a suit.
2. ****Applicability of RA 9184****: Whether RA 9184, which limits bid amounts to the ABC, applies to the contract awarded under Loan Agreement No. PH-P204.
3. ****Legal Validity of the Award****: Whether the award of the contract to CRBC, despite exceeding the ABC, is valid under existing laws and agreements.

Court's Decision:

After considering the issues and arguments:

1. ****Locus Standi****:

The Court ruled that the petitioners, as taxpayers, have the standing to file the petition. They demonstrated that public funds are involved due to the peso counterpart in the loan agreement.

2. ****Applicability of RA 9184****:

The Court held that RA 9184, although effective from January 26, 2003, could not be applied retroactively to CP I as its procurement process began before the effectivity of RA 9184 with the publication of the "Invitation to Prequalify and to Bid" in November 2002. Thus, EO 40 (issued on October 8, 2001) should govern.

3. ****Legal Validity of the Award****:

Under EO 40 and JBIC guidelines, there is a specific exception allowing for deviations such as accepting bids exceeding a predetermined budget. Therefore, the award to CRBC was consistent with these guidelines, which mandated the award to the lowest evaluated bidder.

Doctrine:

1. ****Non-Retroactivity of Laws****: Laws operate prospectively unless explicitly stated otherwise, especially concerning contractual obligations.
2. ****International Agreements and Executive Agreements****: International and executive agreements (such as the Exchange of Notes between Japan and the Philippines) become part of the law and must be observed in executing contracts funded under such agreements.

Class Notes:

- **Locus Standi**: Taxpayers can sue on grounds of illegal disbursement of public funds.
- **Executive Agreements**: Like treaties, these agreements are binding and exempt from subsequent conflicting local laws.
- **Prospective Law Application**: New laws affecting procurement processes do not apply retroactively unless explicitly stated.

Historical Background:

The case highlights the intersection between local procurement laws and international funding agreements, reflecting how foreign loans and stipulations may supersede or modify local rules. The Arterial Road Links Development Project was part of broader economic cooperation between Japan and the Philippines, aimed at infrastructure improvements pivotal to the latter's development goals.

Relevant Statutes:

- **Republic Act No. 9184 (RA 9184)**: The Government Procurement Reform Act.
- **Executive Order No. 40 (EO 40)**: Consolidating procurement rules, applicable before RA 9184.
- **Republic Act No. 4860 (RA 4860)**: The Foreign Borrowings Act, allowing waivers in international bidding laws.