

INDUSTRIAL POWER SALES, INC., PETITIONER-APPELLANT, VS. HON. DUMA SINSUAT, ETC., ET AL., RESPONDENTS-APPELLEES.*G.R. No. L-29171. April 15, 1988*

Ponente: NARVASA, J.

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Certain universally accepted axioms govern judicial review through the extraordinary actions of certiorari or prohibition of determinations of administrative officers or agencies: first, that before said actions may be entertained in the courts of justice, it must be shown that all the administrative remedies prescribed by law or ordinance have been exhausted; and second, that the administrative decision may properly be annulled or set aside only upon a clear showing that the administrative official or tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion.[1] There are however exceptions to the principle known as exhaustion of administrative remedies, these being: (1) where the issue is purely a legal one; (2) where the controverted act is patently illegal or was done without jurisdiction or in excess of jurisdiction; (3) where the respondent is a department secretary whose acts as an alter ego of the President bear the latter's implied or assumed approval, unless actually disapproved; or (4) where there are circumstances indicating the urgency of judicial intervention.[2]

Application of these established precepts to the undisputed facts, hereunder briefly set out,[3] impels the grant of the writ of certiorari to annul the administrative decision complained of in the proceedings at bar.

In April of 1965 two (2) Invitations To Bid were advertised by the Bureau of Supply Coordination of the Department of General Services.

The first, dated April 6, 1965, called for "eight (8) units TRUCKS, Line construction, left-hand drive, complete and special factory built, series of 1965, brand new, for the use of the Bureau of Telecommunications pursuant to Requisition No. 18792 dated March 9, 1965." The Invitation to Bid as well as the requisition itself contained a proviso limiting the offers to foreign made products on a CIF basis, Port of Manila.

The second, dated April 29, 1965, amended the first notice on the basis of suggestions contained in letters of Industrial Power Sales, Inc. sent on April 7 and 13, 1965, which were evidently found worth considering. Those letters proposed that the invitation include not only foreign made products on a CIF-Manila basis but also those of local manufacture on an FOB-Manila basis. Concerning this, Acting Undersecretary of Public Works & Communications Lachica addressed a 3rd Indorsement to the Director of Supply Coordination, dated April 22, 1965[4]

*** advising that this Office would not have any objection to locally manufactured utility truck bodies provided they conform to the approved technical specification of this Office as well as to the manufacturer's standard product specification, since this type of body manufacture has been acceptable in most government vehicles ** (and in view thereof) it may therefore be necessary that both CIF and FOB Manila quotations be considered."

The second Invitation to Bid thus announced that both CIF Port of Manila and FOB Manila quotations would be accepted and made part of bid requirements.

The bidding took place on May 11, 1965, as scheduled. Among the bidders were Industrial Power Sales, Inc. and Delta Motor Corporation, hereafter respectively referred to simply as IPSI and DELTA.

The bids were deliberated on by the Committee on Awards. In attendance at the deliberations, at the Chairman's explicit request, were two (2) authorized representatives of the Bureau of Telecommunications, the requisitioner of the vehicles.[5] The Committee thereafter recommended -

"Award to Industrial Power Sales at P52,500 each, FOB Manila as the same is the lowest complying; the offer in dollars is higher. The lowest offer at \$10,688.77 is non-complying."

On the strength thereof, Letter-Order No. B-207495 was drawn up in IPSI's favor, dated June 10, 1965 and signed by the acting Director of Supply, Conrado L. Ledda.

DELTA protested the award to IPSI, by telegram sent to the Bureau of Telecommunications on June 11, 1965. It claimed that the trucks offered by IPSI were not factory built, as stipulated in the specifications contained in the requisition itself and in the Invitation to Bid. The telegraphic protest of DELTA was considered and adjudicated adversely to it by the Acting Director of Supply Coordination. In his decision dated June 23, 1965, the Director ruled that the bidding had been made in strict compliance with the technical specifications and requirements stated by the Bureau of Telecommunications as modified by the Chairman, Committee on Specifications Review of Equipment, Plant and Machinery of the Department of Public Works and Communications; and that after due deliberation on the different bids received, the Committee on Awards, with the concurrence of the requisitioner's duly authorized representatives, had resolved to award the contract in IPSI's favor. On the same date, the Acting Director of Supply informed the Acting Director of the Bureau of Telecommunications of the Letter-Order dated June 10, 1965 in IPSI's favor, and that delivery of the units was to be made within sixty (60) working days from date of receipt of that order.[6]

On July 16, 1965, however, Acting Undersecretary Lachica tried to reverse himself. He wrote to the Director of Bureau of Supply Coordination recalling his 3rd indorsement of April 22, in which he had expressed his office's, absence of objection to offers of trucks with locally manufactured utility bodies, it having been "found out that the requisition as approved by the Secretary calls for special factory built, Line Construction Trucks, and not merely utility trucks." [7] The reply of the Acting Director of Supply dated July 27, 1965 [8] however reiterated and reaffirmed the conclusions in his Decision of June 23, 1965 just mentioned, i.e., that IPSI's bid conformed strictly to all declared requirements and specifications and had thus been correctly accepted. The director further made the point [9] that -

"The term 'special' as stated in the ** (Undersecretary's) basic letter, which qualified the (description) factory built line construction trucks was not originally required in the specifications and requirements submitted by the Bureau of Telecommunications, which specifications and requirement were approved by that Department, hence, not included in the bid advertisement. Requirements that are not contained in the advertisement for bids could not be entertained as they violate Rule 46 (7) of the Department of General Services Order No. 32, Series of 1963.

"It may not be amiss to inform in this connection that based on the results of public bidding the offer of Industrial Power Sales for eight (8) Utility Construction trucks at P52,000.00 each net all taxes included, delivered at site, conforms to the specifications and requirements, and the price is the lowest as against Delta Motor Corporation's \$14,000.00 each, CIF Port of Manila, (which) excludes government taxes, banking charges, local arrastre and wharfage fees."

This letter of the Director of Supply was forwarded by the Undersecretary to the Director of Telecommunications. The latter wrote back to the Undersecretary on August 18, 1965,¹ expressing his concurrence with the views set forth in said letter of the Director of Supply. He also stressed his Bureau's "dire need" for the vehicles; "further postponement" of their acquisition "will contribute greatly to the delay in the early completion of our projects to be derived from expected income." Obviously satisfied, the Undersecretary transmitted the Telecommunications Director's letter to the Acting Director of Supply (by 4th Indorsement dated August 20, 1965), making no reference to his recall of his 3rd Indorsement of April 22, 1965.^[11]

DELTA'S next move was to file with the Office of the Secretary of General Services a letter of protest against the proposed award to IPSI, accompanied by a protest bond in the amount of P44,000.00 executed by the Meridian Assurance Corporation. DELTA'S position was that IPSI's offer of locally assembled trucks was not in accordance with the bid specification for brand new, complete and factory-built trucks.^[12] Acting thereon, Secretary Duma Sinsuat, in his 1st Indorsement dated September 3, 1965 addressed to the Director of the Bureau of Supply, opined that --

" ** only Delta Motor Corporation has complied with the technical specifications originally called for in Requisition No. 198792 dated March 9, 1965, duly approved by Secretary Abad. The award of the eight (8) line construction trucks called for ** should, therefore, be made to Delta ** at a price equal to that offered by the Industrial Power Sales, Inc., as manifested by the protestant in its letter-protest and as provided for in Rule 45 of Department Order No. 32, Series of 1963."

In Secretary Sinsuat's view, when Acting Director Lachica agreed to announce and advertise a supplemental or amended Invitation to Bid, which would admit offers of trucks with "locally manufactured utility bodies," the latter had violated a department rule^[13] that -

"Any subsequent alteration or modification made separately or on the requisition itself by any subordinate official should bear the approval of the Department Head concerned, pursuant to Section 2048 of the Revised Administrative Code, or of the Undersecretary if so delegated."

Sinsuat asserted that as there was no showing that Undersecretary Lachica had been authorized to approve any modifications of the requisition, the modification sanctioned by him in his aforesaid 3rd Indorsement of April 22, 1965 was null and void; besides, Lachica had afterwards withdrawn his approval thereof in his letter of July 16, 1965.

Replying to Secretary Sinsuat, the Acting Director of Supply, by 2nd Indorsement dated September 7, 1965, drew attention to the fact that DELTA'S quoted price of U.S. \$13,425.00 per unit, CIF-Manila -- computed on the basis of FOB Manila, to place it on a parity with IPSI's bid and would then like IPSI's have to include banking charges, duties and taxes, etc. -- would in Philippine Currency amount to P65,467.88 and, therefore, would not be equal to IPSI's tendered price of P52,500.00. Secretary Sinsuat however wrote back the following day, September 8, 1965 (3rd Indorsement), and told the Acting Director that the Department had already approved DELTA'S price of \$13,425.00, CIF-Manila, per unit of Toyota Line Construction Trucks and categorically directed him to award to DELTA the purchase order for the eight Line Construction Trucks with the least possible delay. In view thereof, Letter-Order No. B-210230 was forthwith made by Acting Supply Director Ledda, and approved and signed by Secretary of General Services Duma Sinsuat. Even at this time, one other dissenting voice still made itself heard. The Senior Buyer of the Committee on Awards wrote to the Committee Chairman on September 9, 1965, confessing himself "at a loss in framing out the legend of the order (in DELTA'S favor) and also the minutes of the Committee's deliberation," and stating that he would "refrain in the award in favor of the Delta Motor Corporation."^[14]

IPSI lost no time in appealing from Secretary Sinsuat's decision to award the purchase contract to DELTA. It

appealed on September 9, 1965 to the Office of the President^[15] as well as to the Office of the Auditor General.^[16] The latter acted just as promptly. By 1st Indorsement dated September 10, 1965 of the Deputy Auditor General, the Secretary of General Services was required to comment on IPSI's letter-appeal and to forward the pertinent papers to the General Auditing Office for final consideration.^[17] The appeal notwithstanding, the Letter-Order in favor of DELTA was released to it on September 17, 1965.^[18]

IPSI then filed with the Quezon City Court of First Instance on September 21, 1965, a petition for certiorari, prohibition and mandamus, with application for preliminary prohibitory and mandatory injunction, which was docketed as Case No. Q-9477.^[19] The injunction prayed for issued upon a bond in the amount of P100,000.00 given by Capitol Insurance & Surety Co., Inc. The verdict went against IPSI, however. After trial, the Court rendered judgment dismissing IPSI's petition and sentencing it and its surety, on the counterclaim, to pay damages to DELTA. The dispositive portion of that judgment reads:

"WHEREFORE, judgment is hereby rendered in favor of respondent Delta Motors Corporation and its co-respondents and against the petitioner Industrial Power Sales, Inc., dismissing the latter's petition for certiorari, prohibition and mandamus, dated September 20, 1965, and dissolving the preliminary injunction issued in this case, and ordering petitioner Industrial Power Sales;

"1. To pay P400,000.00, jointly and severally with the Capital Insurance and Surety Co., Inc., the latter, to the extent of P100,000.00 only, as damages to respondent Delta Motors Corporation by reason of the writ of preliminary injunction issued in this case;

"2. To pay attorney's fees in the sum of P20,000.00, and

"3. To pay the costs of this suit."

From this judgment IPSI has appealed to this Court contending that the Trial Court erred-

- 1) in not holding that regardless of the validity of the modification approved by Undersecretary Lachica, local manufacturers cannot be lawfully excluded from the bidding even under the original invitation to bid because mandatorily required by law;
- 2) in holding that IPSI is not a local manufacturer or domestic entity entitled to 15% preference over DELTA;
- 3) in not holding that Secretary Sinsuat exceeded his jurisdiction in giving due course to DELTA's appeal although filed beyond the reglementary period therefor;
- 4) in not holding that even if DELTA's appeal were timely perfected, Secretary Sinsuat gravely abused his discretion or exceeded his jurisdiction in not affording IPSI a right to be heard on that appeal;
- 5) in not holding that Secretary Sinsuat had gravely abused his discretion in reversing the decision to award the contract to IPSI and ruling that Undersecretary's approval of the modification of the bidding terms was unauthorized;
- 6) in not holding that Secretary Sinsuat gravely abused his discretion in permitting DELTA to reduce its price to equal that of IPSI, the latter's bid not being defective, and in insisting on approval of DELTA's reduced price although higher than IPSI's;
- 7) in not holding that the award in DELTA's favor violated the Retail Trade Nationalization Law;
- 8) in denying IPSI's claim for damages; and
- 9) in awarding excessive damages to DELTA, the evidence to justify the same being insufficient and said award being, in any case, against the law.

It appears that respondent Secretary of General Services disregarded certain material facts, or considered them as of no consequence, these being:

- 1) the amended notice to bidders or Invitation to Bid was duly advertised;
- 2) it was clear from that advertised, modified Invitation to Bid that offers not only of foreign made or factory-built trucks but also of trucks with bodies of local manufacture, or offers of trucks either CIF-Manila, or FOB-Manila, would be acceptable;
- 3) the modification had been favorably considered by the Bureau of Supply Coordination and approved by the Undersecretary of Public Works & Communications, who had observed on that occasion that "this type of body manufacture (i.e., "locally manufactured utility truck bodies") has been acceptable in most government vehicles;"
- 4) no protest whatever had been made by DELTA to the terms set forth in that second Invitation to Bid, prior to the scheduled bidding on May 11, 1965;
- 5) all bids submitted were studied and weighed by the Committee on Awards, with the participation of two (2) representatives of the requisitioning agency; and thereafter, the Committee, in a reasoned report, unanimously declared IPSI's bid as the winning bid and recommended award to it of the contract;
- 6) the recommendation of the Awards Committee was approved by the Director of Supply;
- 7) that approval was reaffirmed by the Director of Supply -- In his decision on the protest of DELTA, which it filed after learning that it had lost in the bidding -- asserting that the bidding had been done in strict compliance with all relevant requisites, and the award given not only after due deliberations, but also with the concurrence of the representatives of the requisitioning bureau;
- 8) although the Undersecretary of Public Works & Communications had subsequently tried to recall his approval of the modification (for acceptance of bids, FOB-Manila, or of trucks with locally manufactured bodies), supra, he had abandoned that attempt after receiving communications from -
 - a) the Director of Supply, reiterating his stand on the propriety of the bidding and the award to IPSI; and
 - b) the Director of the requisitioning agency, the Bureau of Telecommunications, concurring with the position of the Director of Supply, and requesting quick action on the award in view of the Bureau's "dire need" therefor;
- 9) the Senior Buyer of the Committee on Awards refused to go along with the award to DELTA;
- 10) in fine, all the Government agencies concerned were agreed on the correctness of the award to IPSI: the requisitioner, the Bureau of Telecommunications, the Department of Public Works & Communications to which said Bureau of Telecommunications pertains, the Bureau of Supply, which had direct supervision and control of the bidding, and of course, the Committee on Awards.

These material circumstances were, to repeat, considered of no moment by respondent Secretary of General Services. He ignored, too, the additional circumstance of estoppel as regards DELTA. For DELTA, with full knowledge of the amendment of the notice to bidders (making acceptable bids for trucks with locally manufactured bodies, or FOB-Manila) made no protest at all but, on the contrary, participated in the bidding under said advertised terms, objecting thereto only after its bid had been rejected by the Committee on Awards and the other Government offices concerned.

Respondent Secretary's justification for doing so is that (1) the modification had not been validly approved by the Undersecretary of Public Works & Communications, because there was "no showing that the latter ** (had been)

authorized by (the) Secretary ** to make the modifications;" and (2) said Undersecretary had subsequently withdrawn "his approval to the modifications."

It should at once be apparent that the second ground of justification is not borne out by the facts. As already above stated, the Undersecretary did not persist in but implicitly abandoned his attempt to withdraw his approval of the modification. As to the first ground, it being a legal presumption that official duty has been regularly performed,[20] it must be assumed, no evidence having been adduced to destroy the presumption, that Undersecretary Lachica indeed possessed the requisite authority to approve the modifications in question. In any event, his possession of that authority may be demonstrated by Department Order No. 82 dated November 30, 1984 by which the Secretary of Public Works & Communications delineated the powers of his two undersecretaries and the chiefs of offices in relation to his own.[21]

Apart from material facts, also ignored were applicable provisions of law conferring preferential status to locally manufactured equipment and supplies, etc., and to domestic, as distinguished from foreign, entities. Republic Act No. 4164, the Appropriations Act relevant to the time in question, provided³ that all appropriations for the purchase of equipment, supplies and materials authorized thereunder shall be available only for locally manufactured equipment, parts, accessories, supplies and materials, unless none be available in the market, or the price of the locally manufactured article exceed those determined by the Flag Law by 10%. The applicability of the provision in IPSI's favor seems indisputable. The Flag Law,[23] on the other hand, provides that whenever several bidders participate in a bidding for supplying articles, materials, and equipment for any office of the government for public use ** or public works, the award shall be made to the domestic entity making the lowest bid, provided it is not more than 15% in excess of the lowest bid made by a bidder other than a domestic entity. While DELTA was organized under Philippine laws, it was acting in this case merely as agent of a foreign company; it was the latter which to all intents and purposes was the bidder; -hence, as between it and IPSI, IPSI should be considered the preferred bidder.

The plea made in behalf of respondent Secretary that IPSI had gone to Court without first exhausting all administrative remedies cannot be sustained in view of the doctrines set out in the opening paragraph of this opinion.

There is merit in IPSI's appeal, therefore. The respondent Secretary had indeed acted with grave abuse of discretion amounting to lack or excess of jurisdiction. His acts must be nullified, and the Trial Court's judgment upholding those acts must be set aside.

WHEREFORE, the decision of the Trial Court subject of the appeal is REVERSED AND SET ASIDE and another entered NULLIFYING the orders of respondent Secretary of General Services embodied in his 1st Indorsement dated September 8, 1965 and those in affirmance and implementation thereof, and SENTENCING defendant-appellee Delta Motor Corporation to pay the sum of P20,000.00 to plaintiff-appellant Industrial Power Sales, Inc. as and for attorney's fees, and the costs of the suit.

Teehankee, C.J., Cruz, Gancayco and Griño-Aquino, JJ., concur.

[1] Jao Igco v. Shuster, 10 Phil. 448; Costas v. Aldanese, 45 Phil. 345; Ortua v. Singson Encarnacion, 59 Phil. 440; Antonio v. Tanco, Jr., 65 SCRA 448; Lacuesta v. Herrera, 62 SCRA 115.

[2] Gonzales v. Hechanova, 9 SCRA 230; Velazco v. Blas, 115 SCRA 540.

[3] Culled from the recital thereof in the decision of the late Hon. Judge Hunorato B. Masakayan in Civil Case No. Q-9477 dated December 11, 1967, amended by Order dated March 28, 1968.

- [4] Original Record, p. 94.
- [5] Original Record, p. 32.
- [6] *Id.*, p. 38.
- [7] Emphasis supplied.
- [8] 1st Indorsement, Original Record, p. 148.
- [9] Italics and parenthetical insertions in quoted paragraphs, supplied.
- [10] 3rd Indorsement: Original Record, p. 160.
- [11] Original Record, p. 160.
- [12] Original Record, p. 47.
- [13] Rule 7 (b) of Dept. Order No. 32, Series of 1965; italics supplied.
- [14] Original Record, p. 67.
- [15] Original Record, pp. 69-72.
- [16] *Id.*, pp. 73-74.
- [17] *Id.*, p. 79.
- [18] *Id.*, p. 242.
- [19] SEE footnote 2 at p. 2, *supra*.
- [20] Sec. 5, m, Rule 131, Rules of Court.
- [21] Exh. J: Original Record, p. 669.
- [22] In Sec. 10 thereof; see original record, p. 647.
- [23] C.A. No.138, Sec. 4.

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