

SURIGAO MINERAL RESER-VATION BOARD AND THE EXECUTIVE SECRETARY, PETITIONERS, VS. HON. GAUDENCIO CLORIBEL, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND MAC-ARTHUR INTER...

G.R. No. L-27072. July 31, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Original action for certiorari and prohibition, with preliminary injunction, to restrain the Honorable Gaudencio Cloribel, as Judge of the Court of First Instance of Manila, from continuing with the hearing of Civil Case No. 67400 of said Court, and from enforcing a restraining order issued therein on November 16, 1966, as well as to annul an order of respondent Judge, in the same case, dated December 9, 1966.

It appears that, on or about December 2, 1964, the Surigao Mineral Reservations Board - hereinafter referred to as the Board - issued an Invitation to Bid, on May 12, 1965, for the explo-ration and development of mineral deposits in a portion of the Surigao Mineral Reservation, in the province of Surigao, more particularly described in said Invitation to Bid; that, in response thereto, two (2) bids were filed, namely, one (1) by the Mac-Arthur International Minerals Co. - hereinafter referred to as the Company - and the other by Benguet Consolidated, Inc.; that, these two (2) bids were referred by the Board to an Evaluation Committee created therefor; that both bids were later rejected by the Board, upon consideration of the report thereon of said Committee; and that, a reconsideration, sought by the Company, of the action thus taken by the Board was, thereafter denied by the latter.

Thereupon, or on September 1, 1966, the Company filed, with the Court of First Instance of Manila, the petition in said Case No. 67400, against the Board and the Executive Secretary - as the officer "responsible for the approval and authorization of public biddings and the acceptance, handling and processing of all bids" - seemingly to annul the proceedings before said Board leading to the rejection of the bid of the Company and to prevent the Board, the Evaluation Committee and the Executive Secretary from taking such steps as may impair the rights that the Company claims to have acquired in consequence of its bid.

After requiring petitioners herein, as respondents in said Case No. 67400, to answer the petition therein, or on November 16, 1966, respondent Judge issued a restraining order directing petitioners' herein, their agents and/or representatives, to refrain from exe-cuting the acts adverted to above. On December 1, 1966, petitioners herein filed their answer to said Case No. 67400, with a motion to dismiss and an opposition to the writ of preliminary injunction prayed for by the Company. Acting on said motion, on December 9, 1966, respondent Judge denied the same and set the case for hearing.

Presently, or on January 14, 1967, petitioners herein commenced the present action against respondent Judge and the Company, for the purpose indicated at the beginning of this decision. On January 19, 1967, this Court required respondents herein to file their answer, not a motion to dismiss, as well as issued the writ of preliminary injunct-ion prayed for by the petitioners. Subsequently, respondents filed their answer and later moved to dissolve

or amend said writ of preliminary injunction; but we denied the motion.

The main issue in this case is whether or not respondent Judge had committed a grave abuse of discretion, amounting to excess of jurisdiction, in issuing the restraining order dated November 16, 1966. This question, in turn, hinges on whether or not the records of said Case No. 67400 disclose that the Company has no cause of action against petitioners herein.

In this connection, it should be noted that the petition in said case is predicated - like the answer in the case at bar - upon the theory that the Invitation to Bid issued by the Board constitutes an "offer", which was unqualifiedly accepted by the bid submitted by the Company, thereby resulting - according to the latter's contention in both cases - into a perfected contract, which is binding upon the Board, thereby imposing upon the same the obligation to implement said alleged contract and to refrain from entering into negotiations or doing anything tending to defeat or impair the supposed rights of the Company under said contract.

This theory is, however, absolutely untenable. An Invitation to Bid, is not an "offer", which, if accepted, matures into a contract. In the language of Article 1326 of our Civil Code, "advertisements for bidders are simply invitations to make proposals and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.[1] The Company does not even allege that "the contrary appears."

Worse, still, the Invitation to Bid, issued by the Board, provided, inter alia, that "the Government reserves the right to reject any and all bids, waive any defect of form or accept such bid as may be deemed most advantageous to it." In other words, acceptance by the Board of a given bid is necessary for contract to exist between the Board or the Government and any bidder, regardless of the terms and conditions of his bid. This reservation of the "right" of the Board "to reject any and all bids," is one of the terms and conditions of the Invitation to Bid which the Company has accepted and, hence, binds the same.[2] As a consequence, it is now in stoppel to object to or assail the exercise of said "right" by the Board.[3]

Then, contrary to the conclusions made in the pleadings of the Company, the same has not, in fact, adhered faithfully to the terms, and conditions of said Invitation to Bid. Indeed, the latter explicitly declares that "bids not accompanied by bid bonds will be rejected." Admittedly, the bid of the Company had been submitted without the requisite bond.

It is thus manifest, from the records of said Case No. 67400, that the Company had no cause of action against petitioners herein and that, accordingly, respondent Judge committed a grave abuse of discretion, amounting to excess of jurisdiction, in issuing its restraining order of November 16, 1966, and its order of December 9, 1966, refusing, in effect, to set aside said order of November 16, 1966.[4]

WHEREFORE, said orders of respondent Judge dated November 16, and December 9, 1966, are hereby annulled and the writ of preliminary injunction issued in the present case made permanent, with cost against respondent, Mac-Arthur International Minerals Company. Writ granted.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Underscoring ours.

[2] Leonquinco v. Postal Savings Bank, 47 Phil. 772; Borromeo v. City of Manila, 62 Phil. 512.

[3] Gutierrez v. Insular Life, 102 Phil. 524; De Lara v. Secre-tary of Public Works, L-13460, November 28, 1958;

Jalandoni v. National Settlement, L-15198, May 30, 1960; De Ocampo v. Municipal Council, L-9293, May 31, 1957; Esguerra v. Aytona, L-18751, April 28, 1962.

[4] Alemany v. Sweeney, 2 Phil. 654; La Insular v. Jao Oge, 42 Phil. 367; De los Santos v. Provincial Sheriff, 64 Phil. 193; Alzua v. Johnson, 21 Phil. 308, 349-350, 366; North Negros Sugar Co. v. Hidalgo, 63 Phil. 664, 671; Ayo v. Ilao, L-23293, Jan. 16, 1968; Commissioner of Customs v. Cloribel, L-20266, Jan. 31, 1967; Vivo v. Arca, L-21728, Dec. 27, 1963.

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