

A.C. ESGUERRA & SONS, PETITIONER AND APPELLEE, VS. DOMINADOR R. AYTONA, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. L-18751. April 28, 1962*

Ponente: BAUTISTA ANGELO, J.

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A. C. Esguerra & Sons, a registered partnership, was the operator of the warehouses located in the customs zone of the Bureau of Customs. It acquired the right to operate them by virtue of a contract entered into between said company and the Commissioner of Customs on August 22, 1956. It was extended on July 25, 1957 for reasons stated in the letter of said Commissioner bearing the same date. As the period of said firm's operation was coming to an end, the Secretary of Finance, in an indorsement sent to the Commissioner of Customs on February 8, 1960, directed the latter to conduct a public bidding for the operation of said warehouses, and pursuant to said directive, the Commissioner of Customs issued an invitation to bid, with corresponding instructions, which was published in some local newspapers on March 14, 21, and 28, 1960.

In response to the invitation, the following bids or proposals were received: Veloso Brothers, 46%; A. C. Esguerra & Sons, 35%; D. I. Cruz & Enterprises, 85%; A. R. Reyes & Co., if gross income does not exceed P35,000.00, 30%, and if it exceeds that amount, 55%; and B. E. Berkenkotter, a guaranteed minimum share of P200,000.00 per annum.

A bidding committee was created to evaluate the bids submitted which in due time submitted its report to the Commissioner of Customs. This report was in turn submitted to the Secretary of Finance who expressed his conformity to the findings and recommendations made therein. The bidding committee recommended that the bid of A. R. Reyes & Co. be accepted, since the terms and conditions thereof are most favorable to the government.

The Secretary of Finance, in approving the recommendation of the bidding committee, stated, however, that the award should be made subject to the following condition:

"That being the case, the offer in the bid of R. A. Reyes & Company to give 30% government share if the total gross income does not exceed P35,000 should not be incorporated in the contract between the Government and the said firm. Instead, the contract should contain the stipulation that 55% shall be the government share in any case and irrespective of the amount of the total gross income that may be derived from whatever source in connection with the operation of the old and new warehouses."

A. C. Esguerra & Sons was notified of the award made in favor of A. R. Reyes & Co., and was advised that it, should be prepared to effect the transfer of the operation of the warehouses to the latter within 15 days from notice. Upon receipt of this advice, A. C. Esguerra & Sons asked for a reconsideration of the award, but before any action could be taken thereon the Secretary of Finance instructed the Commissioner of Customs to execute the corresponding contract with the winning firm and, accordingly, the Commissioner and A. R. Reyes & Co. executed the operation contract on June 22, 1960.

Having learned of the execution of the contract before its motion for reconsideration was acted upon, A. C.

Esguerra & Sons commenced the present action of certiorari before the Court of First Instance of Manila against the Secretary of Finance and the Commissioner of Customs with a prayer that the latter officials be restrained from enforcing the contract for the operation of the warehouses awarded to A. R. Reyes & Co., as well as from disturbing the operation thereof by petitioner pending termination of the case. The petition, was amended by including a paragraph praying that the contract be declared null and void, and before the trial could be completed, it was ordered that A. R. Reyes & Co. be included as party-respondent. In the meantime, the court issued a preliminary injunction as prayed for.

Respondents filed a motion to dismiss the injunction calling attention to the fact that while petitioner is paying only 25% of the gross income on the operation of the customs warehouses, the successful bidder would pay 55% of the gross income, or a difference of 30%, and considering that the yearly gross income of the warehouses exceeds P1,000,000.00, the government stands to lose about P300,000.00 a year if the writ is not lifted. Action on the motion was deferred until after the parties had submitted their evidence. In the meantime, respondents filed their answer sustaining the validity of the award and setting up a counterclaim for losses. Petitioner filed its reply to this answer and counterclaim.

The parties held a pre-trial to thresh out certain incidental issues. Thereafter, they submitted a stipulation of facts, which was supplemented by testimonial evidence. And after the trial was completed, the court rendered judgment declaring the award in favor of A. R. Reyes & Co. null and void and making the injunction permanent. Respondents have appealed.

The trial court, in sustaining the plea of petitioner, ruled that the power of the Secretary of Finance relative to public biddings is only to approve or disapprove the recommendation of the Commissioner of Customs and not to alter or modify it. Since the bid of A. R. Reyes & Co. is 30% of the gross income if the same does not exceed P35,000.00 a month, and 55% of the gross income if it exceeds that amount, and the Secretary of Finance has approved that bid as the most favorable to the government subject to the condition that the contract should contain a stipulation that 55% shall be the government's share irrespective of the amount of the total gross income that may be derived from the operation of the warehouses, it is contended that said official has exceeded his authority and so his approval of the bid is improper and illegal.

Respondents controvert this ruling contending that what the Secretary of Finance did was merely to eliminate what he considered to be a mere surplusage because of the proven fact that during the previous years the operation of the warehouses has always yielded a monthly gross income between P90,000.00 to P110,000.00.

We share this view. In fact, this is supported by the report of the bidding committee wherein the following appears: "From the report of the monthly gross income of the present operator based on their monthly remittances of the government share, as reported by the Chairman of the Special Committee now auditing the books of the operator, it is evident that during the past four years, from 1956 to 1959, the monthly gross income of the operator always exceed P35,000.00. In fact, during the past three years, the average monthly gross income was between P90,000.00 to P110,000.00." With this finding, it would appear that the offer of 30% if the gross income does not exceed P35,000.00 would indeed be a surplusage for, as the figures show, there would never be an occasion where such average monthly income would be less than P35,000.00 if the operation be given to the winning bidder. It is for this reason that that portion of the bid was disregarded and was stipulated in lieu thereof that the rate of 55% be charged irrespective of the total gross income that may be derived from the operation of the bonded warehouses. It is, therefore, clear that there has been no substantial change in the bid as submitted. If at all, the change is negligible, or of no legal consequence. At any rate, if the change can be considered of some consequence, the same operated to the advantage of the government, and the bidder has not complained.

It is true that upon the taking over of the warehouses by the new bidder the latter has to start its operation with the first ton to be delivered for storage for the warehouses are filled with cargoes handled by the old operator whose unloading or removal will have to be awaited before the warehouses could be operated at their maximum capacity, and so, as petitioner contends, "it is highly possible that the monthly income of the new operator may go lower than P35,000.00 a month" during that period of transition. But this situation is merely temporary. According to Rolando Geotina, Acting Commissioner of Customs, who was called as a witness of petitioner, the complete turn over can be effected about one or two months considering that the average monthly delivery to consignees is about 13,500 tons. And this testimony is binding on petitioner because it was said petitioner who presented said official as its own witness. Moreover, even' during that transition period, the government will not stand to lose for it will get just the same its 55% share from the new operator and at the same time its 25% share from the old operator until the whole cargoes had been completely removed.

Another factor that the trial court has overlooked is the fact that in the invitation to bid there is a condition imposed upon the bidders to the effect that the bidding shall be subject to the right of the government to reject any and all bids subject to its discretion. Here the government has made its choice, and unless an unfairness or injustice is shown, the losing bidders have no cause to complain, nor right to dispute that choice. This is a well-settled doctrine in this jurisdiction and elsewhere (*Ocampo vs. Municipal Council*, G.R. No. L-9393, May 31, 1957; *Leoquinco vs. Postal Savings Bank*, 47 Phil., 772).

"Frequently, either by statute or by the terms of the advertisement for bids, the right to reject any or all bids is reserved. Such a reservation is generally held to vest in the authorities a wide discretion as to who is the best as well as the lowest bidder, and this involves inquiry, investigation, comparison, deliberation, and decision; which are quasi-judicial functions, and, when honestly exercised, may not be reviewed by the courts. In these cases there is no binding obligation to award the contract to any bidder, and although all bids are rejected and the enterprise abandoned, if in good faith, or all bids are rejected and new bids asked for, the courts will seldom, if ever, interfere. It has been held that where the rights to reject is reserved, the lowest bid or any bid may be rejected on a mere technicality, that all bids may be rejected, even if arbitrarily and unwisely, or under a mistake, and that in the exercise of a sound discretion, the award may be made to another than the lowest bidder." (43 Am. Jur., 788)

Since petitioner does not claim that its right has been violated or jeopardized by the acceptance of the bid of A. R. Reyes & Co., for it is apparent that its bid is less favorable than that of the latter, while, on the other hand, the winning bid is undisputably the best and most advantageous to the government, petitioner has no cause to complain against the decision of the Secretary of Finance. This is more so when it appears that petitioner is disqualified because one of the bidders is the son-in-law and employee of A. C. Esguerra, as found by the bidding committee. This is in violation of the instructions attached to the invitation to bid.

Wherefore, the decision appealed from is reversed, with costs against petitioner.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

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