

SAN RAFAEL HOMEOWNERS ASSOCIATION, INC. AND JACINTO C. LEAÑO, PETITIONERS AND APPELLANTS, VS. THE CITY OF MANILA, HON. ANTONIO J. VILLEGAS, MANUEL CUDIAMAT, JOSE ERESTAIN, FERNA...

G.R. Nos. L-26833 & L-26834. July 28, 1972

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Civil Case No. 65992 and Civil Case No. 66179 - the first for prohibition with preliminary injunction and the second for prohibition and mandamus with preliminary injunction were filed in the Court of First Instance of Manila by the San Rafael Homeowners Association, Inc. and Jacinto C. Leño, and by the Balut Women's Club, Dr. Severino Lopez and Dr. Tomas Josef, respectively. The respondents were the City of Manila and the members of the city's Committee on Awards, namely, then City Mayor Antonio J. Villegas, City Treasurer Manuel Cudiamat, City Auditor Jose Erestain and two other city officials - Fernando Manalastas and Jose F. Sugay. The petitioners sought to restrain the respondents from conducting a public bidding for the construction and establishment of an incinerator-thermal plant as system of garbage and refuse disposal in the City of Manila.

The two cases were heard jointly, and from the decision of the court aquo dismissing them the petitioners brought the instant appeal.

The records show that since 1955 the City of Manila had been conducting studies on the problem of garbage and refuse disposal. In 1961 a pilot composting plant was in operation at the North Harbor. On 15 November 1965 City Ordinance No. 5274 was enacted, "authorizing the establishment, equipping and construction of a garbage and refuse disposal plant * * *" and appropriating the sum of P15,000,000.00 for that purpose. The ordinance provided, inter alia, that "the city shall operate and manage the plant on a self-liquidating basis," and upon the signing of the contract for its construction shall provide a site of five hectares in the area which had been reclaimed from the sea near Balut Island at the North Bay Boulevard; and that the contractor (bidder), prior to receiving the necessary specifications, shall indicate "the country of origin and experience (sic) of the equipment to be used in his proposal * * * (and) shall list the type, size, make and condition of the machines and other equipment that will be used in setting up the garbage and refuse disposal plant."

On 2 February 1966, pursuant to Ordinance No. 5274 the City of Manila advertised for and received bids for the construction of the plant in accordance with specifications previously prepared by the respondents. Six bids were received: four firms offered to construct a compost plant, one firm offered to put up an incinerator with a thermal power station to generate electricity, and another offered a combined compost and incinerating plant. The acting City Public Service Officer, Fernando Manalastas, recommended approval of the bid for an incinerator with thermal power station. In an independent evaluation made by the National Science Development Board at the request of the Mayor, it found all six bids deficient and submitted the following recommendation:

1. Of the six (6) bidders, ACFC and VVDC should be rejected because their offers are above the P15 million

amount authorized by the City. This would leave three (3) bidders offering a composting plant and one (1) bidder offering an incineration-thermal power plant.

2. Considering only the technical and administration aspects of the remaining four (4) bids, there is hardly any choice to be made among them. However, with the health and sanitary aspects considered, the choice points only to the incineration-thermal power station.

3. Moreover, considering the marketability of the product, compost is in no position to compete with electricity especially insofar as the needs of the City Government of Manila are concerned. Certainly, the City would have a very limited use if at all of the compost product, whereas it can use all the electricity generated by the plant.

4. Taking into account what is best for the City of Manila, in the long run, the most advantageous offer would boil down to an incineration plant with thermal power station.

The Committee on Awards held hearings from 12 April to 9 May 1966 in order to study and evaluate for itself the various bids submitted. Apparently the committee was inclined in favor of the incinerator-thermal plant system, because on 13 May 1966 the Chief of the Fire Department submitted a report to the Mayor in compliance with the latter's order to "make a study on how much it will cost the City to put up its own electrical transmission and distribution system utilizing an available power of 4,800 KW from the proposed incinerating plant at Isla de Balut by feeding the different City Government buildings and street lights within a radius of one (1) mile from the proposed plant."

On 19 May 1966, however, the Committee on Awards decided to reject all the bids on the ground that none of them complied with the requirement in the ordinance that the garbage and refuse disposal plant should be capable of being operated on a self-liquidating basis. A motion for reconsideration filed by the compost plant bidders was denied on 6 June 1966.

News specifications were drawn up under date of 24 May 1966. Paragraph 1.o.o. defined the term "Garbage and Refuse Disposal Plant" to mean "pollution-free incinerator plant complete with accessories and all other auxiliaries that may render it a self-liquidating project," and subject to certain additional terms and conditions thereafter specified. Among those terms and conditions were: (1) that bidders should submit detailed plans of the plant facilities, accessories, auxiliaries and equipment; (2) that the bidders should submit estimates of the gross and net proceeds to be realized by the plant and its products; (3) that "the incinerator plant shall provide maximum sanitary and health safeguards and must be able to prevent the exposure of disease and other health hazards of the people within the plant area and its vicinity * * * in short among other things, (that) the incinerator plant must be 'pollution-free' and never be a nuisance." More detailed specifications were provided with respect to: (a) the garbage and refuse receiving and feeding equipment; (b) the incinerator furnace; (c) the incinerating equipment itself; (d) the accessories and auxiliaries of the incinerating equipment for each furnace; (e) the ash handling plant; and (f) the air pollution control equipment. With respect to this last item, the specifications did not call for any specific type, brand or capacity of equipment, but simply provided that it should be "a complete air pollution control equipment to clean the flue gases of dust and pollutant gases * * * (with) sufficient capacity and high efficiency to control air pollution in accordance with the standards of the Model Smoke Law of the American Society of Mechanical Engineers."

The specifications were approved by the Awards Committee on 2 June 1966, and an "Invitation to Bid" was published in the Official Gazette, Volume 62, No. 30, dated 25 July 1966. It appears, however, that the deadline for the submission and opening of bids called for in the publication was also 25 July 1966.

On 5 July 1966 Civil Case No. 65992 (L-26833 in this appeal) was filed. A restraining order to stop the scheduled

bidding was issued *ex parte* by the Court of First Instance on the same day, but was subsequently lifted after a hearing on 12 July 1966, when the prayer for a writ of preliminary injunction was denied. The bidding was then postponed to 19 August 1966 and notice thereof, dated 25 July 1966, was published anew in the Official Gazette, Volume 62, No. 31, 1 August 1966.

On 22 July 1966 the second case, Civil Case No. 66179 (L-26834 in this appeal), was commenced, and again a restraining order was issued *ex parte* by the trial court, and was not lifted until its decision was rendered.

Since both cases involved identical facts and issues they were consolidated on 30 July 1966, on motion of the respondents. No formal trial was held and in lieu of oral evidence the parties submitted documents, citations of authorities and expert opinions, and depositions to support their respective sides, in addition to the usual memoranda.

A joint decision was promulgated by the lower court on 5 November 1966, denying the writs prayed for and dismissing both petitions.

Subsequently the respondents caused the publication in the Manila Chronicle issue of 10 November 1966 of a "Notice for Resetting of the Date for Rebidding" to 15 November 1966. The petitioners moved in the lower court for the issuance of a writ of preliminary injunction, but the motion was denied because their appeal to this Court had by then been perfected.

A motion for preliminary injunction pending appeal was then filed in this Court. Forthwith, on 15 November 1966, a temporary restraining order was issued to enjoin the bidding scheduled on that same date.

In their brief the petitioners cite numerous errors in the decision of the lower court. The main points, however, are that the advertised bidding for an incinerator was in excess of the respondents' authority because an incinerator is a nuisance *per se* and because its establishment would violate Ordinance No. 5274, the City Charter of Manila, the Revised Administrative Code, and the Local Autonomy Act.

1. Reference is made to Section 607 of the Revised Administrative Code, which says that the City Treasurer must certify that funds have been duly appropriated for the proposed contract; and to the provision in the Local Autonomy Act that samples should first be forwarded to the Institute of Science and Technology and/or Materials Testing Laboratories of the Bureau of Public Highways for analysis, and that purchases of equipment should be made on the basis of specifications made by the Bureau of Public Works. It should be noted that the requirement as to the City Treasurer's certification refers to contracts entered into or about to be entered into by the local government, while the submission of samples to the Institute of Science or to the testing laboratories refers to equipment and materials purchased. In this case, no such contract is yet involved and no purchase of equipment contemplated. The act complained of is merely the scheduled bidding, from which an award may or may not result. Moreover, Ordinance No. 5274 does appropriate the amount of P15,000,000 "out of any unappropriated funds, balances of dormant projects and other savings existing in the City Treasury not otherwise appropriated." Not only that, but the same ordinance also authorizes the City Mayor, in case funds are not available in the City Treasury, to borrow from banks or other lending institutions. And with respect to the other point, the City Charter of Manila provides in its section 31 that the City Engineer, not the Bureau of Public Works, is the one who shall prepare and submit specifications for city public works projects. Indeed, under the local Autonomy Act (Sec. 3), cities are authorized to undertake public works projects financed by city funds without the intervention of the Department of Public Works and Communications.

2. Ordinance No. 5274 is worded comprehensively enough to cover various systems of garbage and refuse disposal, whether by composting or by incineration. The fact that the bidding was limited to the second method,

because in the opinion of the city authorities it was the more efficient and suitable one, does not violate the said ordinance and is certainly of no concern to the petitioners herein who are not themselves bidders, except insofar as the operation of an incinerator may give rise to a nuisance which should be prevented.

This, indeed, is the only issue which the interest of the petitioners entitle them to raise and which they do so with copious citations of authorities. The main thrust of their argument is that composting is better than incineration as a method of garbage and refuse disposal and that incineration will prove to be a nuisance. Arrayed on the side of the respondents, however, are equally impressive authorities to the contrary. What we gather from a reading of the conflicting citations, from court decisions in the United States, from journals and other publications on the subject, and from reports and opinions of experts, is that the trend in many progressive countries is toward the incineration method. Its efficiency, it appears to us, depends to a decisive degree upon the adequacy of the equipment and measures employed. The very authorities relied upon by the petitioners bear this out, such as, for instance, the following:

"* * * if there will be no adequate measure that will be incorporated in the incinerator, there will be pollution and the pollutant will be great considering that the volume of garbage and refuse collected everyday amounts to several hundreds of tons per day * * *." (Opinion of Dr. Jesus Almonte, Chief of the Division of Industrial Hygiene of the Bureau of Health Services and Assistant Professor in Preventive Medicine at the University of Sto. Tomas, page 8 of Petitioners' Brief)

"The lack of a secondary combustion chamber and additional air into it (the proposed incinerator) means very incomplete combustion with dangerous noxious gases such as carbon monoxide, sulfur dioxide, hydro carbons, etc. belching into the atmosphere to the detriment of property and health of citizens." (Opinion of Dr. John Snell, page 13 of Petitioners' Brief)

It is, to our mind, entirely pointless to go into an academic discussion of the relative merits of the composting and the incineration methods of garbage and refuse disposal for purposes of deciding whether or not at this stage prohibition should issue to stop the bidding called for by the respondents. The instant petitions for that purpose are premature. Certainly this Court cannot and should not substitute its judgment this early for that of the respondents, and on a purely theoretical basis rule that the bids submitted should not be opened, or if opened should not be accepted, because not one of the plants therein offered to be established would serve the purpose envisaged and because, if so established, it would so pollute the environment as to constitute a nuisance. If and when such a result becomes a reality, or at least an imminent threat, that will be the time the petitioners may come to court. That they are not successful now will not preclude them from doing so, because a continuing nuisance calls for a continuing remedy. It is even a possibility that none of the bids submitted to the respondents will be accepted for failure to come up to the standards required by the specifications. And should an award be made notwithstanding such failure, demonstrable in court, then a suit for prohibition would be proper.

3. Section 32 of the Charter of the City of Manila (R.A. No. 409) provides that public works and improvements involving a cost of P3,000.00 or more shall be awarded to the lowest responsible bidder after public advertisement in the Official Gazette for not less than ten days. The invitation to bid dated 4 June 1966 fixed the deadline for the submission of sealed bids on 25 July 1966. The notice was published in the Official Gazette which, it is now averred, came out on that very day, 25 July. However, it appears that at the instance of one of the bidders the bidding deadline was moved to 19 August 1966, and notice thereof was again published in the Official Gazette dated 1 August 1966. In this notice it was announced that "should there be another postponement, no further publication in the Official Gazette will be made (and that) interested parties are requested to watch local dailies for any announcement of postponement."

Further postponement of the bidding was caused by the filing of these two suits in the lower court; and so after its

decision was promulgated on 5 November 1966 the date of the bidding was reset, and pursuant to the advertence made in the second publication in the Official Gazette the corresponding notice was published in the Manila Chronicle of 10 November 1966, fixing a new deadline, namely, 15 November 1966.

The circumstances related above disclose that there was substantial compliance with the requisites of publication. Indeed none of the participating bidders, nor any one alleging to be a prospective bidder, has questioned the manner in which the notices were published. And as far as the herein petitioners are concerned their interest are in no way affected thereby.

4. The next issue raised by the petitioners is that an incinerator with thermal power plant for garbage and refuse disposal in the City of Manila cannot be operated on a self-liquidating basis, as required by Ordinance No. 5274. The argument is that since all the six bids originally submitted, one of which precisely offered an incinerator with thermal power generator, were rejected on the ground that none of them could be self-liquidating, the only conclusion that can be derived is that none of the bids which were submitted subsequently will satisfy the requirement.

In the first place the argument would be more proper for prospective bidders who might have been denied the chance to bid, but not for the herein petitioners, who have no interest in the bidding per se or in whether or not the plant to be established will pay for itself. In the second place it is again premature to speculate on this particular aspect of the bids. As pointed out by the respondents, they precisely called for new bids in order to find out if any incinerator with a thermal power plant can be offered which can be operated on a self-liquidating basis. If after the bids are opened it is found that none of them satisfies this requirement, obviously all of them will be rejected; and if despite such deficiency a particular bid is accepted then the corresponding suit to stop the award can be brought by the proper parties.

The petitioners claim that the specifications prepared by the respondents, particularly with respect to anti-pollution devices, are so broad as to preclude competitive bidding. Again this is an argument that is proper for bidders to make, but not for the petitioners, to whom this aspect of the bidding is a matter of indifference. But in the very nature of things, the specifications could hardly have been more definite and precise as to details, since there are different methods of effective pollution control, as to which the plans are left to the bidders themselves, so that from the different plans submitted the respondents may make the choice. For this purpose it may be noted that the specifications require that the incinerator be equipped with complete air pollution control facilities, of a sufficient capacity and efficiency to meet the standards of the Model Smoke Law of the American Society of Mechanical Engineers, as well as with all other auxiliaries or additional plant facilities that will render the plant offered self-liquidating.

With respect to the incinerating equipment itself, the specifications are quite precise and definite as to details as may be noted in paragraph 10.1.0 thereof.

WHEREFORE, We find the present appeal to be without merit, and hereby affirm the judgment of the court a quo, with costs against the petitioners-appellants.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Castro, Fernando, Barredo, Makasiar, and Esguerra, JJ., concur.

Teehankee and Antonio, JJ., took no part.

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