

C & C COMMERCIAL CORPORATION, PLAINTIFF-APPELLEE, VS. ANTONIO C. MENOR, AS ACTING GENERAL MANAGER OF THE NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, AND MEMBERS OF THE COMMITTEE...

G.R. No. L-28360. January 27, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

This case is about the requirement of a tax clearance certificate as a prerequisite for taking part in public biddings or contracts to sell supplies to any government agency.

Judge Cloribel of the Court of First Instance of Manila in his decision dated March 1, 1967 in Civil Case No. 66750, a mandamus case, ordered the Acting General Manager of the National Waterworks and Sewerage Authority and the members of the Committee on Pre-Qualification to allow C & C Commercial Corporation to participate as a qualified bidder in the public bidding for the supply of asbestos cement pressure pipes to the Nawasa in spite of the fact that it had a pending tax case and had no tax clearance certificate.

By virtue of that judgment, which became final because the Nawasa did not appeal, C & C Commercial Corporation took part in the bidding. When the bids were opened on May 18, 1967, it was found to be the lowest bidder.

In a letter dated July 25, 1967, Antonio C. Menor, the acting general manager of the Nawasa, required C & C Commercial Corporation to submit the tax clearance certificate required in Presidential Administrative Order No. 66 dated June 26, 1967, 63 O. G. 6391, which reads as follows:

"Now, therefore, I, Ferdinand E. Marcos, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the disqualification of any person, natural or juridical, with a pending case before the Bureau of Internal Revenue or the Bureau of Customs or criminal or civil case in court pending or finally decided against him or it involving nonpayment of any tax, duty or undertaking with the Government, to participate in public biddings or in any contract with the Government or any of its subdivisions, branches or instrumentalities, including government-owned or controlled corporations, until after such case or cases are terminated in his or its favor, or unless the Secretary of Finance shall certify that such cases are pending and not decided without fault on the part of the taxpayer and the taxpayer submits bond for payment of taxes that may be assessed against him.

"Government offices, entities and instrumentalities and local governments shall impose this condition and shall require, in addition, the latest certified copy of BIR Letter of Confirmation Form No. 19.65-E-1 and BIR tax clearance Form No. 17.61 as prerequisites to participation in any public bidding or execution of any contract with them. Violation of this order shall be a ground for administrative action." (pp. 8-9, Brief for defendants-appellants).

Menor said that the requirement as to the tax clearance certificate was mandatory as held by the Government

Corporate Counsel in his Opinion No. 159, Series of 1967.

On that same date, July 25, 1967, or long after Judge Cloribel's judgment had been executed and when he had no more jurisdiction to amend it, C & C Commercial Corporation filed a motion in Civil Case No. 66750 wherein it prayed that the Nawasa officials be ordered to award to the said corporation the contract for the supply of asbestos cement pressure pipes, that they be restrained from awarding the contract to another bidder and that they be required to show cause why they should not be held in contempt of court. In effect, that motion was another petition for mandamus.

Judge Cloribel in his order of August 23, 1967 granted the motion and ordered Menor and the other Nawasa officials to award within ten days from notice the contract to C & C Commercial Corporation as the lowest bidder. From that order, the Nawasa appealed to this Court. Judge Cloribel approved its record on appeal in his order of November 9, 1967.

Realizing that the appeal would delay the award and that another bidder might be given the contract, C & C Commercial Corporation filed in the lower court another petition for mandamus dated November 21, 1967 wherein it prayed that the Nawasa Board of Directors, its Committee of Awards and Menor, its acting general manager, be restrained from awarding the contract to another bidder and that they be ordered to award the contract to C & C Commercial Corporation (pp. 29-30, Rollo).

That case, Civil Case No. 71346, was assigned to Judge Francisco Geronimo. In his order dated January 8, 1968, he denied the motion of C & C Commercial Corporation for a preliminary injunction. He said that the injunction would be inimical to the public interest (p. 37, Rollo).

The Government Corporate Counsel in a manifestation dated January 15, 1968 apprised the lower court that the Nawasa board of directors in resolution dated January 11, 1968 awarded the contract to Regal Trading Corporation as the "lowest complying bidder" (p. 38, Rollo).

Menor in his letter of January 16, 1968 forwarded to the President of the Philippines for examination and review the contract entered into between the Nawasa and Regal Trading Corporation, acting in behalf of the Sumitomo Shoji Kaisha, Ltd., for the supply of asbestos cement pressure pipes worth \$387,814.72 (p. 41, Rollo). The Presidential Economic Staff and the Office of the President approved the contract (p. 64, Rollo).

Unable to get an injunction from Judge Geronimo, C & C Commercial Corporation sought recourse in this Court. In its ex parte motion of January 28, 1968, it asked this Court to enjoin the implementation of the said contract (p. 16, Rollo).

The Nawasa opposed the motion on the ground that there was nothing more to be enjoined. Its counsel revealed in its opposition what C & C Commercial Corporation had suppressed: the fact that after Judge Geronimo had denied its petition for injunction C & C Commercial Corporation instituted another action (the third case) in the Court of First Instance at Pasig, Rizal (presided over by Judge Pedro Navarro), docketed as Civil Case No. 10572, wherein it sought a declaration of the nullity of the award to Regal Trading Corporation.

Judge Navarro in his order dated February 7, 1968 restrained Menor, the Nawasa, the Committee of Awards and Regal Trading Corporation "from going through" with the said contract and from opening the corresponding letter of credit until the injunction incident is resolved (pp. 58-59 and 80-81, Rollo).

In contrast, this Court in its resolution of March 18, 1968 denied C & C Commercial Corporation's aforementioned motion for the issuance of an injunction. As the parties herein had already submitted their briefs, the appeal was submitted for decision. The issue is the propriety of Judge Cloribel's order compelling the Nawasa

official's to award the said contract to C & C Commercial Corporation.

It may be argued that the issue had become moot because the contract had already been awarded to Regal Trading Corporation in 1968 and at this late hour it can be presumed that the contract had been fully performed and implemented. Nevertheless, a ruling on the contentions of C & C Commercial Corporation is necessary, according to the Government Corporate Counsel, "if only to make the appellee-corporation stop playing around with our courts" (p. 70, Rollo). For the guidance of the bench and bar, we have to resolve the legal issues raised by the Nawasa.

We hold that Judge Cloribel acted without jurisdiction and with grave abuse of discretion in issuing his erroneous order, directing that the Nawasa officials should award the contract to C & C Commercial Corporation. The order is erroneous and void for the following reasons:

- The said order was an amendment of a judgment that had already been satisfied. The case was closed and terminated. Judge Cloribel had no right and authority to issue such an order after he had lost jurisdiction over the case. The award of the contract to C & C Commercial Corporation was not the *lis mota* in the mandamus case before Judge Cloribel. It was an extraneous matter that could not have been injected into that case nor resolved therein. What was in issue was whether C & C Commercial Corporation should be allowed to take part in the bidding even if it had no tax clearance certificate.
- The Nawasa was justified in not awarding the contract to C & C Commercial Corporation because it had no tax clearance certificate. It had a pending tax case in the Bureau of Internal Revenue. The award to C & C Commercial Corporation would be in gross contravention of Administrative Order No. 66.

That was the ruling in *Nawasa vs. Reyes*, L-28597, February 29, 1968, 22 SCRA 905, where the bidder was also the appellee herein, C & C Commercial Corporation. It was held therein that C & C Commercial Corporation was disqualified under the said order to take part in the bidding to supply the Nawasa with steel pipes because it had "tremendous tax liabilities."

Under Administrative Order No. 66, the Nawasa officials would be subject to administrative disciplinary action if they awarded the contract to C & C Commercial Corporation in spite of its unsettled tax liabilities.

The trial court erred in holding that Administrative Order No. 66 could not be given a retroactive effect to the bid of C & C Commercial Corporation which allegedly had been allowed to bid in prior transactions with the Nawasa in spite of its pending tax case.

It erred because Administrative Order No. 66 (promulgated after Judge Cloribel had rendered his decision of March 1, 1967) covers not only the bidding but also the "execution of any contract with" the lowest bidder. In this case, at the time the said order was issued, no award had as yet been made and when the award was to be made, the said order was already in force.

- Moreover, it was not the ministerial duty of the Nawasa officials to award the contract to C & C Commercial Corporation even if it was the lowest bidder. The Nawasa in its addendum No. 1 to the invitation to bid dated July 6, 1966 reserved the right "to reject the bid of any bidder" (p. 35, Record on Appeal).

Therefore, a bidder whose bid is rejected has no cause for complaint nor a right to dispute the award to another bidder (*Esguerra & Sons vs. Aytona*, 114 Phil. 1189; *Surigao Mineral Reservation Board vs. Cloribel*, L-27072, July 31, 1968, 24 SCRA 491).

It should be noted that "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" (Art. 1326, Civil Code). No such

contrary intention appears in this case.

WHEREFORE, the trial court's order is reversed and set aside with costs against C & C Commercial Corporation.

SO ORDERED.

Makasiar (Chairman), Concepcion Jr., Guerrero, and Escolin, JJ., concur.

Abad Santos, J., I concur. I wish to add that the rehabilitation of the waterworks system in Metro Manila was considerably delayed because contractors filed baseless suits and they were aided by judges who should have known better.

De Castro, J., dissents.

DISSENTING OPINION

DE CASTRO, J.:

In a judgment rendered by the Court of First Instance of Manila in Civil Case No. 66750 filed by the C & C Commercial Corporation principally against the NAWASA on September 7, 1966, the court ordered the NAWASA to allow the plaintiff corporation to enter as among the qualified bidders in the bidding for the supply of asbestos cement pressure pipes on September 23, 1966.[1] The complaint was filed because of the imposition of a requirement by NAWASA for the bidders to submit a certificate to the effect that they have paid all taxes due with the Bureau of Internal Revenue, which the plaintiff questioned as illegal.[2]

Choosing not to appeal the decision which thus became final and executory, and in compliance therewith, the defendant NAWASA pre-qualified the plaintiff corporation which thereupon submitted its bid. However, before NAWASA could make any award of the corresponding contract, the President of the Philippines promulgated Administrative Order No. 66 "disqualifying any person, natural or juridical, with a pending case before the Bureau of Internal Revenue or the Bureau of Customs, or criminal or civil case in court, pending or finally decided against him or involving non-payment of any tax, duty or undertaking with the government, to participate in public bidding or in any contract with the government or any of its subdivision, branches or instrumentalities including government-owned or controlled corporation . . ."; by reason of which NAWASA refused to award the contract to plaintiff corporation, prompting the latter to file a motion praying that defendants award the contract called for to said plaintiff being the lowest responsible bidder.[3] Granting the motion, the court ordered the defendants to award the contract in favor of the plaintiff, the court observing in its Order dated August 23, 1967, that the plaintiff is "the lowest bidder and practically the only one who can furnish a Filipino or local product under the provision of Commonwealth Act No. 138." [4]

In the motion for reconsideration of the aforementioned order, defendants contended that the matter of award of the contract was not included in the Decision dated March 1, 1967; that Administrative Order No. 66 of the President of the Philippines dated June 26, 1967 applies to the contract called for; and that the matter of the award of the contract in question rests on the absolute discretion of the defendants, taking into consideration all the circumstances attendant thereto.[5] This motion having been denied, defendants took the present recourse to have the Order dated August 23, 1967 of the lower court set aside.

The only issues raised by the defendants-appellants (appellants for short) are: (1) whether or not the award of the contract in question may be deemed to have been included in the judgment of the Court of First Instance dated March 1, 1967, or inferred therefrom; and (2) whether or not Administrative Order No. 66 dated June 26, 1967 of the President of the Philippines applies in the instant case.

The decision of the Court of First Instance of Manila dated March 1, 1967 disposed as follows:

"WHEREFORE, premises considered, judgment is hereby rendered granting the relief prayed for by ordering the defendants to allow the plaintiff corporation to enter as among the qualified bidders to the materials consisting of locally manufactured asbestos cement pressure pipes of different sizes from 12" to 24" diameter, without costs or damages."

In accordance with the foregoing decision, plaintiff-appellee (appellee for short) submitted its bid. However, despite that it was found on May 18, 1967 to have been the lowest responsible bidder, appellee was not forthwith given the final award of the corresponding contract because, as stated earlier, the President of the Philippines promulgated on June 26, 1967 Administrative Order No. 66 pertinent provisions of which reads:

"NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the disqualification of any person, natural or juridical, with a pending case before the Bureau of Internal Revenue of the Bureau of Customs, or criminal or civil case in court pending or finally decided against him or it involving non-payment of any tax, duty, or undertaking with the Government, to participate in public biddings or in any contract with the Government or any of its subdivisions, branches, or instrumentalities, including government-owned or controlled corporations, until after such case or cases are terminated in his or its favor, or unless the Secretary of Finance shall certify that such cases are pending and not decided without fault on the part of the taxpayer and the taxpayer submits bond for payment of taxes that may be assessed against him.

"Government offices, entities and instrumentalities and local governments, shall impose this condition and shall require in addition, the latest certified copy of BIR Letter of Confirmation Form No. 19.65 E-1 and BIR Tax Clearance Form No. 17.61 as prerequisite to participation in any public biddings or execution of any contract with them. Violation of this Order shall ground or administrative action." (Italics supplied)

What appellant Antonio C. Menor, Acting General Manager of NAWASA did was to address a letter to appellee on July 25, 1967, requesting it to comply within ten (10) days from receipt of the letter with the requirements of the presidential administrative order, and to submit to his office proof of said compliance.[6]

On the same date, July 25, 1967, plaintiff filed a "Motion" with the court below for the issuance of an order to compel appellants to "award the contract called for in the aforementioned bidding" in its favor. To the motion, appellants filed an opposition, despite which, the lower court issued the questioned Order of August 23, 1967.

The main contention of appellants in seeking the setting aside of the aforementioned questioned order is that the subject thereof is not included in, or inferred from, the judgment of March 1, 1967 which merely "ordered appellants to allow the plaintiff to enter as among the qualified bidders." Appellants claim that the judgment was already satisfied when appellants pre-qualified the appellee and allowed it to tender its bid, and that nothing more is to be done under the judgment.

It is at this point that Section 49 of the Revised Rules of Court on the "Effect of Judgment" comes into play, the pertinent provisions of which are as follows:

"SECTION 49. Effect of Judgments.— The effect of a judgment or final order rendered by a court or judge of the Philippines, having jurisdiction to pronounce the judgment or order, may be as follows:

"(a)

"(b) In other cases the judgment or order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigation for the same thing and under the same title and in the same capacity;

"(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

Appellants contend that the matter of the award of the contract in question was not "so adjudged" in the judgment of March 1, 1967 which limited its dispositive portion to adjudging only the pre-qualification of appellee. Appellee contends otherwise and maintains that the awarding of the contract to it is necessarily implied from and included in the order in the judgment declaring it qualified to take part in the bidding.

I find merit in the contention of appellee. In bringing the action to compel appellants to allow it to take part in the bidding in question, appellee necessarily meant to be also awarded the corresponding contract if its bid is found to be the lowest within the meaning of the term "lowest bidder" under the law and jurisprudence. The judgment ordering appellants to allow appellee to enter its bid would be empty and meaningless if despite the fact that appellee is found to be the "lowest bidder," the award of the contract is not made in its favor, without any valid reason to reject the bid under the reserved authority of the appellants to reject any or all bids as is generally set forth in all invitations to bid. No valid reason is intimated by appellants other than the promulgation of Presidential Administrative Order No. 66, after the judgment has become final and even already executed, at least insofar as it ordered appellants to allow appellee to enter its bid. This is evident from the fact that appellants gave appellee ten (10) days within which to comply with its provision, indicating that if the requirement thereof is complied with by appellee, the contract would be awarded to it as the lowest bidder.

For obvious reason, appellee could not comply with the aforementioned requirement, for it is an admitted fact that it has pending tax cases before the Bureau of Internal Revenue. It is precisely for this reason that appellee went to court and filed Civil Case No. 66750 when appellants imposed on it (appellee) the same or similar requirements as those found in Administrative Order No. 66, in order to have itself declared qualified to take part in the bidding. When the lower court decided in favor of appellee by declaring it to be qualified to so take part in the public bidding in question, the judgment must take precedence over Administrative Order No. 66 promulgated after the judgment has become final.

As may be seen, the presidential administrative order disqualified a person, natural or juridical, who has a pending tax case, administrative or judicial, from participating in public biddings or any contract with the Government or any of its subdivisions, branches or instrumentalities, including government-owned or controlled corporation. The judgment in question, on the other hand, qualified appellee to participate in the public bidding, which necessarily includes the award to him of the corresponding contract, if found to be the lowest bidder, otherwise taking part in the bidding would be a meaningless exercise and the judgment, an empty victory for appellee. The judgment has become the "law of the case," and in a true sense, the judgment has become "property" of which it may not be deprived without due process of law. This is exactly what Administrative Order No. 66 of the President of the Philippines would do if it is made to apply to the instant case, for while the Court, by final judgment, qualified appellee to participate in the bidding, the Administrative Order would disqualify said party. This would be an illegal interference on the power of the judiciary.

I, therefore, vote to dismiss the appeal and the order appealed from, affirmed, if only on reliance of the provision of Section II, Article X of the New Constitution for reasons I have set forth at length in *Malacora vs. Court of Appeals*, G. R. No. 51042, September 30, 1982, this case having been submitted more than eighteen (18) months before the instant case could be decided.

[1] Page 18, Rollo.

[2] Annex "A", p. 5, Record on Appeal.

[3] Annex "G", p. 50, Record on Appeal.

[4] Annex "H", p. 54, *ibid.*

[5] Annex "I", p. 58, *ibid.*

[6] page 31, Rollo.

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