

DEVELOPMENT BANK OF THE PHILIPPINES, VIVENCIO MACAPAGAL, ALFREDO CASAL, EDUARDO MENDOZA, ADORACION GARCIA, RODEL MAGNAYON, ROSARIO ELEP, MA. ANTONIO REBUENO, JOSE RIVERA, M. SAP...

G.R. No. 107016. March 11, 1994

Ponente: BIDIN, J.

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BIDIN, J.:

This petition for certiorari seeks the reversal of the May 13, 1992 decision of respondent Commission on Audit (COA) disallowing the amount of P246,539.25 representing payment of customs duties and taxes for one (1) unit of KVA Uninterruptible Power Supply (UPS) purchased by petitioner Development Bank of the Philippines (DBP) at a public bidding conducted by DBP itself.

On September 13, 1988 the Procurement Committee of DBP conducted a public bidding for one (1) unit of Uninterruptible Power Supply (UPS). Of the eight (8) suppliers who participated in the bidding, four (4) were disqualified outright for failure to submit the required bidder's bond. The remaining four (4) bidders were subjected to an evaluation process under the "must" criteria to determine whether the unit offered by the bidders complies with DBP's specifications. Under this evaluation process, only two (2) bidders qualified, namely: Paris-Manila Trading Corporation (Paris-Manila), and Voltronics Industrial Corporation (Voltronics). These bidders were further evaluated under the "wants" category which has the following criteria: (a) delivery time; (b) maintenance strategy; (c) cost; (d) manufacture support; and (e) company profile. Under this category, Paris-Manila got a rating of 75.02% while Voltronics got a rating of 78.75%. With respect to the amount of bids, Paris-Manila offered a bid in the amount of P2,493,000.00; Voltronics, on the other hand, offered P1,190,000.00 exclusive of customs duties and taxes at P246,539.25 or a total bid price of P1,436,539.25.

On the basis of a thorough evaluation conducted, the Special Technical Committee recommended to the DBP Vice Chairman that the UPS be purchased from Voltronics. In this connection, DBP submitted all the bidding documents to the Corporate Auditor for pre-audit pursuant to COA Circular No. 86-257. After a review of the documents, then Corporate Auditor Elisa C. Gervasio issued a reply finding the subject transaction to be "in order" but with a corresponding observation regarding customs duties and taxes to wit:

"In our review of bidding documents for the purchase of one (1) unit Uninterruptible Power Supply System, we found the proposed Purchase Order No. 137 dated October 14, 1988 in order. We would like to invite your attention, however, for (sic) the lack of additional provisions on the terms and conditions in the DBP Bid Form for customs duties and taxes for purchases of this kind. It is suggested that in future biddings, the quotation or bid price should always mean the total price to be paid by DBP including customs duties and/or other charges" (Rollo, p. 42).

Thereafter, DBP issued Purchase Order No. 0137 to Voltronics at the adjusted price, i.e., P1,436,539.25 inclusive of customs duties and taxes.

In the meantime, COA Circular No. 89-299 was passed lifting the pre-audit of government transactions. A new Corporate Auditor was also assigned to petitioner DBP.

After a post-audit, the new Corporate Auditor sent an "Auditor's Notice to Person's Liable" to the Chairman of DBP notifying him of the disallowance of the amount of P246,539.25 representing customs duties and taxes and at the same time holding him, along with the other petitioners herein, jointly and severally liable for the aforesaid sum. DBP moved for reconsideration in a letter-clarification dated November 2, 1990 but the same was denied. On appeal, the Commission en banc affirmed the disallowance.

In this petition, petitioner claims that:

"I RESPONDENT COMMISSION ERRED IN APPLYING THE POST-AUDIT SYSTEM UNDER COA CIRCULAR NO. 89-299 CONSIDERING THAT AT THE TIME OF THE QUESTIONED BIDDING THE 'LAW' IN FORCE WAS COA CIRCULAR NO. 86-257

"II RESPONDENT COMMISSION IS ESTOPPED FROM IMPUGNING THE DECISION OF ITS DULY CONSTITUTED REPRESENTATIVE EXERCISED IN THE ORDINARY COURSE OF ITS FUNCTION

"III RESPONDENT COMMISSION MISAPPRECIATED FACTS WHICH HAD THEY BEEN PROPERLY APPRECIATED WOULD HAVE ALTERED ITS DECISION"

The pivotal issue in this case hinges on whether or not the disallowance of the payment made by DBP representing customs duties and taxes is valid.

Petitioners submit the contrary on the ground that the transaction in question had already been approved and passed in audit in accordance with the pre-audit system then obtaining and the later circular requiring post-audit should not be applied retroactively.

While it is true that the applicable procedure in force at the time of the questioned transaction was COA Circular 86-257 requiring a pre-audit, there is nothing to preclude respondent COA from conducting a post-audit of the already pre-audited transaction. As pointed out by the Solicitor General:

"A pre-audit is an examination of financial transactions before their consumption or payment and is basically a special development of the control aspect of accountancy as well as an integral part of the accounting and payment process. Thus, pre-audit seeks to determine that:

- '1. The proposed expenditure complies with an appropriation law or other specific statutory authority;
- '2. Sufficient funds are available for the purpose;
- '3. The proposed expenditure is not unreasonable or extravagant and the unexpended balance of appropriations where it will be charged to is sufficient to cover the entire amount thereof; and
- '4. The transaction is approved by proper authority and the claim is duly supported by authentic underlying evidences (COA Journal, August 1976, p. 8)'" (Rollo, p. 69).

Besides, the favorable action of the then Corporate Auditor as regards the transaction does not necessarily mean that the same was passed in audit. Circular 86-57 provides:

"V. DUTIES AND RESPONSIBILITIES OF COA OFFICIALS AND REPRESENTATIVES

The head of the audit unit shall:

3. Act on the transaction subject to pre-audit within twenty-four (24) hours from receipt by his Office of the pertinent vouchers/documents. The action herein required does not necessarily mean approval or allowing in

audit."

More importantly, Article IX (D) Section 2(1) of the Constitution expressly grants respondent Commission the power to conduct a post-audit, to wit:

"Sec. 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non--governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity x x x " (underscoring supplied).

DBP is no doubt a government corporation and the question of whether COA Circular 86-299 was retroactively applied to the subject transaction is thus of no moment. To begin with, there was never any retroactive application of post-audit. Regardless of the result of the pre-audit, it cannot be denied that respondent COA is so empowered to conduct a post-audit.

It is thus erroneous for DBP to claim that respondent Commission is estopped from questioning, in the process of post-audit, the previous acts of its officials. Further, well-settled is the principle that estoppel does not lie against the government (*Cruz, Jr. vs. Court of Appeals*, 194 SCRA 145 [1991]; *Republic vs. Court of Appeals*, 182 SCRA 290 [1990]), more so if they are erroneous, let alone irregular (*Republic vs. Intermediate Appellate Court*, 209 SCRA 90 [1992]; *Sharp International Marketing vs. Court of Appeals*, 201 SCRA 299 [1991]).

As to whether or not the result of the post-audit is proper, in this case the disallowance of the customs duties and taxes, is another matter altogether.

In the Notice to Persons Liable, the Corporate Auditor disallowed the payment of customs duties since "there was no quotation on this regard and to include this further would improve the bid after the opening which privilege was not given to other bidders" (Rollo, p.43). On its face, it would appear that the Auditor's reason aforequoted was based on the presumption that petitioner DBP had no knowledge whatsoever that the price quoted by Voltronics did not include customs duties and taxes, i.e., there was no disclosure of such fact by Voltronics at the time of the bidding. In fact, the question of whether or not Voltronics so informed petitioner DBP of the non-inclusion of customs duties and taxes in its bid became the thrust of both petitioner DBP and respondent COA's pleadings submitted before this Court.

DBP maintains that it was so informed by Voltronics in a letter dated September 12, 1988 along with the bid form that its quotation did not include the customs duties and taxes. Petitioner DBP insists that subsequent communications even made reference to this letter. On the other hand, respondent COA claims that there was no such attachment to the bid form and if there was any, the form would have so stated. Since there was no mention anywhere in the bid form of Voltronics or the Abstract of Bids as to any attachment, respondent COA concludes that no September 12, 1988 letter was appended thereto.

In the light of all these contentions, it is difficult to determine with utmost certainty the truth as to the existence of the September 12, 1988 letter at the time of or even prior to the opening of the bids. However, inasmuch as this is a question of fact involving an occurrence where DBP itself participated as the party conducting the bidding, the presumption lies in favor of the latter that such a letter did exist informing it that the quoted bid of Voltronics excluded customs duties and taxes. Bolstering this position is a November 14, 1990 letter of the Senior Vice

President of DBP for Operations addressed to the Corporate Auditor confirming the fact that "Supplementary to the Bid Form submitted by Voltronics Industrial Corp. (winning bidder) is a letter dated September 12, 1988 (Annex C) specifically mentioning that its bid of P1,190,000.00 does not include customs duties and taxes (Rollo, p. 44; underscoring supplied). But even without the contested letter, it cannot be denied that Voltronics did specify in its bid "DUTIES AND TAXES NOT INCLUDED" (Rollo, p. 25). This alone would suffice to sustain the claim that DBP was well aware of Voltronics' bid to be exclusive of the aforesaid charges.

In this regard, the notice of disallowance which states: "(w)hen Voltronics offered the amount of P1,190,000.00, it is understood that said amount represents the total cost to paid (sic) by DBP upon delivery of the item, i.e., taxes/customs duty, handling costs" (Rollo, p.43) deserves scant consideration. It was based merely on the presumption that the bidders had prior understanding of what the "total" bid price should comprise, when in truth there was no clear-cut definition of the term conveyed to the participating bidders. In fact, such lack of prior understanding compelled the former Corporate Auditor, who, after pre-auditing the questioned transaction, suggested that "in future biddings, the quotation or bid price should always mean the total price to be paid by DBP including customs duties and/or other charges" (Rollo, p.42). Surely, the former Corporate Auditor would not have found the need to define in clearer terms what "total bid price" should refer to if it was already a settled concept to begin with.

Neither can we subscribe to the argument of respondent COA that the allowance of the questioned amount would be tantamount to granting a privilege to Voltronics which was not accorded to the other bidders. As far as the use of the term "privilege" is concerned, it would be well to point out that no such privilege was accorded to Voltronics. The then Corporate Auditor was well aware of the non-inclusion of duties and taxes relative to the purchase of the UPS. This notwithstanding, she found the Purchase Order to be in order knowing that even if the duties and taxes amounting to P246,539.25 were to be added to the bid price of P1,190,000.00, the total selling price would still be lower by more than a million pesos than the selling price offered by Paris-Manila. Based on the above computation and in so allowing the payment of P246,539.25, representing custom duties and taxes, no undue advantage could be said to have been awarded to Voltronics. And as far as Voltronics is concerned, there is no doubt that it acted in good faith. Secondly, Voltronics came out as the winner of the bidding only after undergoing the evaluation process required by petitioner DBP. Hence, the amount of the bid was not the only consideration for choosing Voltronics as the winning bidder. It also ranked higher than Paris-Manila under the "wants" criteria with a rating of 78.75%. Thirdly, even if the same "privilege" of "improving" its bid after the same has been opened were accorded to the so-called "other" bidders, only Paris-Manila would qualify as the "other" bidder(s) since it was the only one aside from Voltronics which qualified under the "must" criteria, the final stage of the evaluation process. All the rest were either immediately disqualified or did not meet the standards of the aforesaid criteria. Thus, even if Paris-Manila were afforded the opportunity to improve its bid, considering the disparity of its bid with Voltronics' bid of P1,436,539.25, inclusive of duties and taxes, the latter would still be the lowest bidder.

In other words, the alleged "privilege" had little effect on the ultimate outcome of the bidding. Inasmuch as neither Paris-Manila nor petitioner DBP was prejudiced by allowing the exclusion of the customs duties and taxes to the total bid price, the result of the pre-audit should be allowed to stand.

WHEREFORE, the petition is GRANTED. The decision of respondent COA dated May 13, 1992 is hereby REVERSED and SET ASIDE. Respondent COA is hereby DIRECTED to allow in post-audit the payment of P246,539.25.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, Puno, Vitug, and Kapunan, JJ., concur.

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