

**REPUBLIC OF THE PHILIPPINES, (DEPARTMENT OF EDUCATION, CULTURE AND SPORTS), PETITIONER, VS. SALVADOR SILERIO, IN HIS CAPACITY AS PRESIDING JUDGE, BRANCH 8, REGIONAL TRIAL COURT ...***G.R. No. 108869. May 06, 1997*

Ponente: ROMERO, J.

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In the instant petition for certiorari, the government, on behalf of the Department of Education, Culture and Sports Pre/Post Qualification Bid and Awards Committee assails the November 20, 1992, December 11, 1992, December 15, 1992 and January 27, 1993 Orders of the Regional Trial Court in Legazpi City (Branch 8) as having been issued with grave abuse of discretion. The questioned Orders were issuances of a temporary restraining order, a preliminary injunction and a preliminary mandatory injunction commanding aforesaid Committee to award the contract to bidder Big Bertha Construction, herein private respondent, and a denial of the government's motion for reconsideration, respectively.

Private respondent Big Bertha Construction, through Pedro Lim, participated in the bidding conducted by the Department of Education, Culture and Sports in connection with the restoration, repair, electrical and civil works in Sorsogon College of Arts and Trades (SCAT-PATVEP) at Sorsogon, Sorsogon. Prospective bidders were required to submit two envelopes, envelope A containing the documentary requirements for the bidding and envelope B containing the actual bid price. Respondent Big Bertha Construction complied by submitting both envelopes sealed before ten o'clock in the morning of October 20, 1992.

The bidding was conducted by the Regional Pre-qualification Bid and Awards Committee (RPBAC) of the Department of Education, Culture and Sports (DECS). It was agreed that should a particular bidder's first envelope not contain the complete requirements, its second envelope would no longer be opened and considered.

Respondent construction company alleged that the bid committee opened its envelope A followed by envelope B because the company was found to have complied with the requirements in envelope A. However, Committee Chairman Miguel F. Garcia refused to announce Big Bertha's bid because it did not comply with the requirements, having submitted only one copy of the bid document and not triplicate copies as required by the rules. Mr. Pedro Lim was not present when the bids were being opened but his representative informed him soon after, because he returned as the bidding continued and publicly announced his protest. When the committee still refused to announce Big Bertha's bid, Mr. Lim announced that his bid was in the amount of P3,030,000.00 and that he was the lowest bidder. On the same day, Mr. Lim filed a protest with RPBAC, the bid committee.

The RPBAC, defendant below, admitted Big Bertha Construction's participation in the bid for the rehabilitation and civil works at the Sorsogon College of Arts and Trade. According to the committee, when Big Bertha Construction's envelope was opened, it was found to be "complying," or containing all the required documents, for which reason the committee proceeded to open respondent's envelope B. However, as the second envelope

was being opened, the Technical Committee apprised the Chairman that respondent was "non-complying" since envelope A contained only the original copy of the bid documents without the duplicate and triplicate copies thereof. Despite Mr. Lim's protest and public announcement of Big Bertha Construction's bid price, the committee did not yield. The latter reiterated its declaration that Big Bertha Construction's bid for civil works on the SCAT-PATVEP was "non-complying" according to Section I, IB 10.3 of Presidential Decree No. 1594.

Consequently, respondent company filed a formal, detailed protest of the proceedings on October 26, 1992, contesting the manner in which the proceedings were undertaken and the evaluation and decision of the bids committee. No action having been taken on said formal protest, respondent construction company sued the RPBC for specific performance, injunction with preliminary injunction and/or preliminary mandatory injunction and damages with prayer for a temporary restraining order before the Regional Trial Court in Legazpi City on November 20, 1992.[1]

On the same day, the Regional Trial Court issued the first of the assailed Orders, a twenty-day restraining order directing the PBAC to desist and refrain from declaring the bid of Sto. Niño Construction in the amount of P3,402,252.30 as winner and to desist from awarding the project until further orders from the court.[2]

On December 11, 1992, the same court granted the issuance of the writ of preliminary injunction enjoining defendants below or any person acting in their behalf to desist from awarding or in any manner granting to any bidder the contract for the rehabilitation, repair and civil works of the Sorsogon College of Arts and Trades, upon filing and approval of a bond in the amount of P50,000.00.[3] The Regional Trial Court held that under Section I IB 10.3 of Presidential Decree No. 1594, the government may even "waive the consideration of minor deviations in the bids received which do not affect the substance and validity of the bids." While there was in fact a defect in respondent's bid, the court considered this to be a "minor deviation" which did not in substance invalidate the bid. Respondent's claim as lowest bidder was un rebutted by defendants below. The court thus concluded that a right had been created in favor of Big Bertha Construction. Said right was violated by therein defendants when they refused to announce and award the contract to respondent as the lowest bidder; hence the latter was entitled to protection.

On December 15, 1992, the lower court approved the injunction bond filed by respondent construction company and ordered its Clerk of Court to issue a preliminary mandatory injunction commanding defendants below to declare Big Bertha Construction as winning bidder and to award it the contract for the repair and reconstruction of the Sorsogon College of Arts and Trades.[4]

The DECS' Motion for Reconsideration having been denied on January 27, 1993 by the same court,[5] the Republic elevates the controversy for resolution in this petition for certiorari.

Petitioner filed an Urgent Motion for the Issuance of a Restraining Order on March 12, 1993, contending among other things, that courts should refrain from issuing a writ of preliminary injunction which effectively disposes of the main case without trial since Presidential Decree No. 1818 prohibits courts from issuing any restraining order or preliminary injunction in any case, dispute or controversy involving an infrastructure project, and that the delay in the project resulted in the possible withdrawal by the Australian International Development Assistance Bureau (AIDAB) of its assistance in terms of fifteen to seventeen million pesos worth of equipment for the Philippines-Australia Technical and Vocational Education Project (PATVEP) intended for Sorsogon College of Arts and Trades if the legal obstacles were not resolved by April 30, 1993.

On March 17, 1993, this Court issued a temporary restraining order effective on said date and continuing until further orders from the Court, enjoining respondent Judge from enforcing his orders of December 11, 1992 and December 15, 1992 issued in Civil Case No. 8666, "Big Bertha Construction v. Department of Education, Culture

and Sports et. al." and from conducting further proceedings thereon.

Petitioner argues that the writs of certiorari and prohibition should issue in this case because the Regional Trial Court acted with grave abuse of discretion and in a manner designed solely to favor Pedro Lim. More specifically, petitioner contends that respondent Judge disregarded the express prohibition in Section 1 of Presidential Decree No. 1818 forbidding courts from issuing restraining orders, preliminary injunctions and preliminary mandatory injunctions in infrastructure projects; that the Government, through the PBAC, reserved the right to reject any or all bids in accordance with Presidential Decree No. 1594; that courts should not interfere with purely administrative and discretionary functions exercised by administrative agencies; that the RPBAC did not commit any arbitrariness; and that courts should refrain from issuing preliminary mandatory injunctions which dispose of the main case without trial.

Petitioner prays for the issuance of the writ of certiorari and the annulment of the aforesaid Orders in Civil Case No. 8666, the issuance of a writ of prohibition forbidding respondent Judge from proceeding with said civil case and ordering the dismissal of the same case.

The Court, after studying the issues raised in the pleadings, finds the petition meritorious. The writ of certiorari is rightfully granted in this case where the Orders assailed by petitioner were issued by the Regional Trial Court with grave abuse of discretion.

1. First, the lower court acted in excess of its jurisdiction when it issued the restraining order, as well as the preliminary injunction and preliminary mandatory injunction against the Department of Education, Culture and Sports Regional Pre-Bid Qualification and Award Committee. Section 1 of Presidential Decree No. 1818[6] explicitly provides that:

"No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, including among others public utilities for the transport of the goods and commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or government official from proceeding with, or continuing the execution or implementation of any such project or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

This provision of law prohibits courts from issuing the injunctive writ to stop any person, entity or government official from proceeding with or continuing the execution or implementation of an infrastructure project.[7] It is palpably clear that the construction project sought to be awarded in the disputed bidding process, specifically the construction and refurbishment of the Sorsogon College of Arts and Trades, is an infrastructure project of the Government contemplated by the aforequoted legal prohibition. The term "infrastructure projects" means "construction, improvement and rehabilitation of roads, and bridges, railways, airports, seaports, communication facilities, irrigation, flood control and drainage, water supply and sewerage systems, shore protection, power facilities, national buildings, school buildings, hospital buildings, and other related construction projects that form part of the government capital investment." [8]

Hence, the issuance of the Orders dated November 20, 1992, December 11, 1992 and December 15, 1992 for a temporary restraining order, a preliminary injunction and a preliminary mandatory injunction, respectively, was in direct defiance of Presidential Decree No. 1818 and thus attended by grave abuse of discretion.

2. Second, the assailed Orders granting preliminary injunction and preliminary mandatory injunction should not have been issued, there being insufficient ground therefor.

Injunction is a preservative remedy aimed at protecting substantive rights and interests. The writ of preliminary

injunction is issued by the court to prevent threatened or continuous irreparable injury to some of the parties before their claims can be thoroughly studied and adjudicated.[9] Its sole objective is to preserve the status quo until the merits of the case can be heard fully.[10] The writ is issued upon satisfaction of two requisites, namely, the existence of a right to be protected and the facts against which the injunction is to be directed are violative of said right.[11]

The question now is whether or not respondent Big Bertha Construction, plaintiff below, possessed a right entitled to protection by the courts, for the possibility of irreparable damage without proof of violation of an actually existing right is no ground for injunction.[12] The answer is in the negative.

Admittedly, submission of three bid forms is one of the bidding requirements. One copy is retained by the RPBAC. Another copy is sent to the Commission on Audit for its own review and evaluation purposes. The third copy is sent to the DECS-EDPITAF (Educational Development Projects Implementing Task Force), the entity which directed the PBAC to conduct the bidding on its behalf.[13] Likewise undisputed is the fact that Big Bertha Construction failed to submit the required three copies; it submitted only the original. Respondent construction corporation nowhere alleges that it submitted three copies of the bid form, as required by the rules. It is thus clear that respondent corporation failed to meet one of the requirements set forth by the RPBAC. A bid which does not comply with the conditions or requirements of the bid documents shall be rejected by the Bid and Award Committee after giving the reason(s) for its rejection.[14] Consequently, the latter was correct in declaring Big Bertha Construction as "non-complying" because the failure to meet the requirements is a valid ground for disqualifying a bidder.[15]

Respondent corporation was not alone in its plight. Nine other bidders were declared as non-complying for failure to submit a credit line and Big Bertha Construction was one of three outfits reported to have "(i)ncomplete submitted bid proposal form, the submitted bid proposal is only one set it must be three sets." [16] None of the above firms were granted reconsideration and all their bids were uniformly turned down by the RPBAC. The acts of the bid committee were, therefore, not baseless nor characterized by arbitrariness, bias or prejudice.

Respondent Judge of the Regional Trial Court asserted that the failure to comply with the bid forms requirement is a "minor deviation" which does not invalidate the bid for government.[17] We do not agree.

Presidential Decree No. 1594,[18] expressly states that the Government, in the evaluation of bid received, "reserves the right to waive the consideration of minor deviations in the bids received which do not affect the substance and validity of the bids." The reservation of the right to waive minor deviations implies discretion and prerogative on the part of the Government, more specifically the RPBAC. Well-established is the principle that courts cannot compel an agency to do a particular act or to enjoin such act within its prerogative, except when in the exercise of its authority it gravely abuses or exceeds its jurisdiction.[19]

The contention that respondent deserved to win the bidding simply because Big Bertha Construction's bid was the lowest is likewise untenable. The lowest bid need not always and automatically be considered the winning bidder. The published Invitation to Bid expressly states that the "DECS-RPBAC reserve(d) the right to reject any or all bids and to waive any informality in the bids received, or to accept such bids as may be considered most responsive and advantageous to the government." [20] And as stated above, any waiver of requirements or the acceptance or rejection of a bid is within RPBAC's discretion. Such discretion is of such wide latitude that the courts will not interfere therewith[21] or direct the committee in the exercise of its express prerogative.

WHEREFORE, the petition is hereby GRANTED. The Orders of the Regional Trial Court in Civil Case No. 8666 dated December 11, 1992, December 15, 1992 and January 27, 1993 are REVERSED AND SET ASIDE. Civil Case No. 8666, "Big Bertha Construction v. Department of Education, Culture and Sports, Regional Office No. 5"

is hereby DISMISSED. The Injunction issued by the Court on March 17, 1993 is hereby MADE PERMANENT. Costs against respondent Big Bertha Construction and Pedro Lim.  
SO ORDERED.

Regalado (Chairman), Puno, Mendoza, and Torres, Jr., JJ., concur.

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[1] Big Bertha Construction as represented by Attorney-in-Fact Pedro Lim v. Department of Education, Culture and Sports, Regional Office No. 5, as represented by its Regional Director et. al., Civil Case No. 8666, Regional Trial Court Branch 8, Legazpi City, Judge Salvador D. Silerio, presiding.

[2] Rollo,p. 31.

[3] Rollo,pp. 32-36.

[4] Rollo, p. 37.

[5] Rollo, pp. 38-40.

[6] Prohibiting Courts from Issuing Restraining Orders or Preliminary Injunctions in Cases Involving Infrastructure and Natural Resource Development Projects of, and Public Utilities Operated by, the Government. Promulgated on January 16, 1981.

[7] Malayan Integrated Industries Corporation v. CA, 213 SCRA 640 (1992).

[8] Letter of Instruction No. 1186, promulgated January 13, 1982, 83 VLD 79, cited in Philippine Ports Authority v. CA, 253 SCRA 213 (1996).

[9] Del Rosario v. CA, 255 SCRA 152 (1996).

[10] Lim v. Pacquing, 240 SCRA 649 (1995); Unciano Paramedical College Inc. v. CA, 221 SCRA 285; Knecht v. CA, 228 SCRA 1; Rava Development Corporation v. CA, 211 SCRA 144 (1993).

[11] Araneta v. Gatmaitan, 101 Phil. 328 (1957); Del Rosario v. CA, supra.; Philip Morris Inc. v. CA, 224 SCRA 576 (1993); Searth Commodities Corporation v. CA, 207 SCRA 622 (1992).

[12] National Power Corporation v. Judge Vera, 170 SCRA 721 (1989).

[13] Petition, p. 26; Rollo,p. 26

[14] IB 10.3 (Evaluation of Bids) of Presidential Decree No. 1594.

[15] Republic v. Capulong, 199 SCRA 134 (1991).

[16] Minutes of Opening of Bids for SCAT-PATVEP, October 20, 1992. Rollo,p. 47.

[17] Rollo, p. 34.

[18] Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts; Promulgated June 11, 1978.

[19] Provident Tree Farms, Inc. v. Batario, Jr., 231 SCRA 471 (1994); Lim, Sr. v. Secretary of Agriculture and Natural Resources, 34 SCRA 751 (1970).

[20] Rollo, p. 44.

[21] Bureau Veritas v. Office of the President, 205 SCRA 717 (1992), C&C Commercial Corporation v. Menor,

120 SCRA 112 (1983).

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