MANILA INTERNATIONAL AIRPORT AUTHORITY (MIAA), FORMER SECRETARY JESUS B. GARCIA, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATION (DOTC), A...

G.R. No. 126151. January 20, 2000

Ponente: GONZAGA-REYES, J.

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GONZAGA-REYES, J.:

In their petition for review on certiorari under Rule 45 of the Rules of Court, the Manila International Airport Authority (MlAA), former Secretary Jesus B. Garcia, in his capacity as the Secretary of the Department of Transportation and Communication (DOTC), and Gen. Francisco E. Atayde (Ret.) in his capacity as the General Manager of the Ninoy Aquino International Airport, assail the decision dated August 30, 1996 of respondent Judge Sergio D. Mabunay, Presiding Judge Regional Trial Court of Manila, Branch 24, insofar as it ruled that under the laws and regulations, it is necessary for the Manila International Airport Authority to contract for security services through public bidding. The petitioners claim that the ruling interferes with "the absolute prerogative" of the petitioners to award security services either through negotiated contract or public bidding.

Private respondent Lanting Security and Watchman Agency ("Lanting" for brevity) is a bonded security agency, which entered into an Agreement with the Manila International Airport Authority to render security services on a month-to- month basis to commence on April 31, 1987 renewable at the sole option of the MIAA. The contract was renewed by MIAA from 1988 to 1995. In 1995, upon the recommendation of the MIAA's former General Manager for the privatization of the Aviation Security Services of MIAA, a subsidiary company, the Philippine Aviation Security Services Corporation (PASSCOR) was formed, and the MIAA Board of Directors approved the award of security services in favor of PASSCOR effective September l, 1995. Having been informed that PASSCOR would take over the operations and management of the security of the MIAA, and that the security services contract that MIAA entered into with Lanting would be terminated by August 31, 1995, Lanting filed a complaint for injunction, which was docketed as Civil Case No. 95-75048 with the respondent Regional Trial Court of Manila, Branch XXIV, challenging the "highly irregular" awarding by MIAA of the security services contract to PASSCOR without going through public bidding, as being not only contrary to law, but likewise against public policy. The respondent Regional Trial Court issued a writ of preliminary injunction ordering MIAA not to terminate the security services of Lanting and not to award the security contract in favor of PASSCOR.

On August 30, 1996, the parties formulated and submitted a Compromise Agreement, which was approved by the Regional Trial Court and which contained the following terms and conditions:

> - MIAA shall not implement the termination of Lanting's security services by August 31, 1996 and instead shall extend as it hereby extends such, services by a period of ten (10) months beginning 01 September 1996 to 30 June 1997. For this purpose, MIAA and Lanting shall execute the necessary Extension Contract.
>
> - To effect the above extension, MIAA shall allow Lanting to redeploy a total of 274 guards within the NAIA

> Complex which shall be inclusive of the currently deployed 114 Lanting guards effective not later than midnight of August 28, 1996.
>
> - Upon execution hereof, MIAA shall be free to engage immediately the services of other security agencies, including that of Philippine Aviation Security Services Corp. (PASSCOR), to meet the security needs at the NAIA Complex, also for a period of ten (10) months beginning 01 September 1996 up to 30 June 1997.
>
> - Subject to paragraph 6 hereof, Lanting shall withdraw as it hereby withdraws its instant complaint.
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> - The parties shall jointly move as they so move and pray for this Honorable Court to lift the writ of preliminary injunction dated September 15, 1995 which it issued in the above-captioned case.
>
> - Further, the parties shall jointly move as they respectfully move and pray for the Honorable Court to resolve the following residual issues:
>
> 6.1
>
> Whether or not the 160 Lanting security guards whose services phased-out effective July 31, 1996 are entitled to back wages for the period during the month of August 1996 when they were not deployed at the NAIA Complex;
>
> 6.2
>
> Whether or not MIAA has the option, under existing laws, rules and regulations, to contract security services by negotiation of through public bidding.
>
> - Finally, MIAA undertakes to effect compliance with the trial court's order on paragraph 6.1 in the event said issue is resolved in favor of payment of the security guard's backwages, within seven (7) days from receipt of said order of the trial court. MIAA may however opt to appeal any adverse resolution on paragraph 6.2 hereof."[1]

On the issue defined in 6.2 above, which was left to the Court for resolution, the court ruled as follows:

> "With respect to 6.2 in the Compromise Agreement, the court rules that under the laws and regulations, it is necessary for the defendant to contract for security services through public bidding."

The following grounds are invoked to support the instant petition for certiorari:

> "PETITIONER MIAA HAS THE OPTION TO RESORT TO NEGOTIATED CONTRACT OR PUBLIC BIDDING.
>
> SECTION 62, CHAPTER 13, BOOK IV OF THE ADMINISTRATIVE CODE OF 1987 HAS NO APPLICATION TO THE CASE AT BAR."[2]

Petitioners allege that the "only issue to be resolved in this petition refers to the right of MIAA to award security services through negotiated contract or public bidding". Petitioners submit that the option to make such award is addressed to the exclusive and sole discretion of the MIAA, and the awarding of the contract to PASSCOR cannot be branded as highly irregular despite the fact that no public bidding was conducted. The petitioners point out that the Philippines is a signatory to the convention for international civil aviation, and the selection of an airport security agency is of paramount importance involving as it does national security and safety.

Petitioners contend that the applicable law is Section 68 of R.A. 7845, whereunder the government agency concerned has the option to resort to public bidding or negotiated contract wherever it is impractical or more expensive for the government to directly undertake certain functions and operations.

In its Comment, private respondent Lanting alleges that Section 68 of R.A. 7845 does not give government

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agencies the unqualified discretion to choose by what manner they may contract out services which they themselves cannot directly undertake. Lanting submits that the applicable legal provision is Section 62, referring to public bidding of contracts and the exceptions thereto, is applicable. Since none of the exceptional circumstances provided under Section 62 is present to justify an award by negotiated contract, the award should go through a public bidding. Respondent Lanting also points to Section 417 of the Government Auditing Rules and Regulations of the COA, which lays down the criteria for evaluating offers for security and janitorial services.

The only legal question posed herein is whether the court a quo erred in ruling that under existing laws and regulations the contract for security services should be awarded through public bidding.

We hold that it did not. The petition must perforce be dismissed.

Section 68 of R. A. 7845 which is the General Appropriations Act for 1995, specifically refers to contracts for services related to the functions and operations of the government and its agencies. It reads:

> "SEC. 68. Service Contracts. Departments, bureaus, offices or agencies of the National Government are hereby authorized to enter into contracts with other government agencies, private firms or individuals and non-governmental organizations for services related or incidental to their respective functions and operations, through public bidding or negotiated contracts whenever it is impractical or more expensive for the government to directly undertake such functions and operations, subject to pertinent accounting and auditing rules and regulations: PROVIDED, That the execution of the service contracts shall not operate to automatically abolish or render vacant any existing occupied position in the contracting office or agency."

Petitioners' position that the above-quoted section gives the government agency concerned the sole option to resort to public bidding or to negotiated contract whenever it is impractical or more expensive for the government to directly undertake a certain function or operation, is not tenable. There is nothing in said provision which does away with the general requirement of public bidding in the award of government contract. This was the ruling in National Food Authority vs. Court of Appeals,[3] involving the award of a contract for security services by the National Food Authority wherein the said government agency relied on Section 31 of Republic Act No.7645, which is the counterpart provision of Section 78 of Republic Act No.7845. This Court held:

> "Petitioners' manifest reluctance to hold a public bidding and award a contract to the winning bidder smacks of favoritism and partiality toward the security agencies to whom it awarded the negotiated contracts and cannot be countenanced. A competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.
>
> The General Appropriations Act (GAA) of 1993 cannot be used by petitioners to justify their actuations. An appropriations acts is primarily a special type of legislation whose content is limited to specified sums of money dedicated to a specific purpose or a separate fiscal unit. Section 31 on the General Provisions of the GAA of 1993 merely authorizes the heads of departments, bureaus, offices or agencies of the national government to hire, through public bidding or negotiated contracts, contractual personnel to perform specific activities or services related or incidental to their functions. This law specifically authorizes expenditures for the hiring of these personnel. It is not the governing law on the award of the service contracts by government agencies nor does it do away with the general requirement of public bidding."

Indeed, public bidding in government contracts has been observed in this jurisdiction since the time of the Philippine Commission:

> "Bidding was introduced in the Philippines by the American Laws on Public Bidding until finally Act No.22 (1900) of the Philippine Commission was enacted which became the first law on public bidding in this jurisdiction. This was followed by several related Acts such as Act Nos. 74(1901), 82 (1901) and 83 (1901)

> culminating in the promulgation by President Quezon on February 3, 1936, of Executive Order No.16 declaring as a general policy that public bidding must be the means adopted in the purchase of supplies, materials and equipment except on very extraordinary cases and with his prior approval. These Acts and Executive Order as well as the rules and regulations promulgated pertinent thereto were later incorporated in the Administrative Code and in subsequent Public Works Acts, although with slight modifications. Up to the present, this policy and medium still hold both in procurement and construction contracts of the government, and the latest enactment relative thereto is Presidential Decree No.1594 (1978) and its Implementing Rules and Regulations."[4]

As early as 1936, then President Quezon declared as a matter of general policy that Government contracts for public service or for furnishing supplies, materials and equipment to the Government should be subjected to public bidding.[5] There were a number of amendments,[6] the latest of which, Executive Order No. 40 dated June l, 1963 of President Diosdado Macapagal, reiterated the directive that no government contract for public service or for furnishing supplies, materials and equipments to the government or any of its branches, agencies or instrumentalities, shall be entered into without public bidding except for very extraordinary reasons to be determined by a Committee constituted thereunder. Of more recent date is Executive Order No. 301, S. 1987, issued by President Corazon Aquino, which prescribed the guidelines for decentralization of negotiated contracts. Section 1 of this issuance reiterated the legal requirement of public bidding for the award of contracts for public services and for furnishing supplies, materials and equipment to the government, and expressly specified the exceptions thereto.

By positive provision of the annual General Appropriations Acts[7] government offices and agencies are authorized to enter into contracts for services related or incidental to their respective functions and operations, either through public bidding or negotiated contract, whenever it is impractical or more expensive for the government to directly undertake such functions and operation, subject to accounting or auditing rules and regulations. As earlier stated, these provisions are not to be construed as doing away with the general requirement of public bidding. Indeed, public bidding is the accepted method for arriving at a fair and reasonable price and it ensures that overpricing and favoritism, and other anomalous practices are eliminated or minimized[8] and we reiterate that Section 68 of the General Appropriations Act has not dispensed with such requirement for contracts for services awarded thereunder. Although the legislature in making appropriations under its exclusive jurisdiction leaves largely to administrative discretion the choice of ways and means to accomplish the object of appropriation, that administrative discretion may not transcend the statutes.[9]

WHEREFORE, the petition is denied for lack of merit.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Purisima. JJ., concur.

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[1] Rollo, pp. 32-33.

[2] Rollo, pp. 17-18.

[3] 253 SCRA 470.

[4] Faustino C. Sentelices, Bidding and Award of Government Contracts, Proceedings of the Seminar on Government Contracts, U.P. Law Center.

[5] The same requirement of public bidding is imposed for public works of construction or repair, pursuant to

Sections 1917 and 1919, Rev. Adm. Code and more recently Section 62 of the Administrative Code of 1987 and Section 4 of P. D. 1594.

[6] E. O. No. 98, S. 1937; E. O. No. 298, S. 1940; E. O. No. 146, dated December 27, 1938; E. O No. 212, dated November 6, 1956; E. O. No. 318 dated September 17, 1958, and E. O. No. 358, dated September 23, 1959.

[7] Sec. 21, R. A. 6831, GAA for 1990; Section 31, R.A. 7078, GAA for 1991; Section 31, GAA for 1993; Section 78, GAA for 1995.

[8] Tantuico, Jr. State Audit Code of the Philippines, 1982 ed. p. 450.

[9] Tantuico, Jr., supra, at p. 448.

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