

GREGORIO A. VENTURANZA AND VICENTE PRICE, PETITIONERS, VS. THE HON. ANTONIO CANIZARES, ETC., ET AL., RESPONDENTS.*G. R. No. 13396. October 22, 1958*

Ponente: BAUTISTA ANGELO, J.

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This is a petition for certiorari seeking to set aside certain orders issued by respondent court in connection with the sale of certain real property, known as Legarda-Tambunting Subdivision, belonging to the estate of the late Clara Tambunting de Legarda. The preliminary writ of injunction prayed for was granted upon filing by petitioner of a bond in the amount of P10,000.

As early as November 21, 1951, respondent court authorized the sale of the Legarda-Tambunting Subdivision which sale was advertised for several days in the Manila Times and the Daily Mirror, newspapers of general circulation in the Philippines. On December 29, 1956, Gregorio A. Venturanza submitted an offer to purchase the subdivision and on January 8, 1957, the Manotok Realty, Inc. also submitted its offer. These two offers, as well as that of one A. U. Valencia, were set for hearing on January 10, 1957 and on that occasion the parties discussed for the first time the terms and conditions that would govern the bidding. As discussed and agreed upon, the important terms and conditions were: (1) payment of the purchase price should be made in cash; (2) payment should be made direct to the administrator within 48 hours after the execution of the sale; (3) the bidders should pay an earnest money of 5 per cent of a bottom amount of P650,000; (4) the real estate due up to the execution of the deed of sale should be borne by the estate, but the 1957 taxes should be proportionately paid by the buyer and the estate; (5) the estate will deliver a clean title, but the property will be delivered "as is", "where is", with all the squatters; (6) the amount of P600 shall be charged to the estate for the preparation of the document, but the expenses for registration of the document, as well as the documentary stamps, shall be borne by the bidders; and (7) all rentals due up to the date of the sale shall accrue to the estate. On that occasion it was also agreed that the bidders will submit new offers in the form of memorandum wherein they may either reiterate their offer or improve the same either with respect to the price or with respect to the terms and conditions and manner of payment. And in view of this agreement, the court issued an order on January 14, 1957 embodying the terms and conditions agreed upon, and giving the parties up to noon of January 25, 1957 within which to submit their new offers. On this latter date, January 25, 1957, the three qualified bidders, namely, Gregorio A. Venturanza, A. U. Valencia and the Manotok Realty, Inc., submitted their new bids which were set for hearing on January 28, 1957. On this date, the bids were opened and discussed, and on October 23, 1957, the court found the offer submitted by Manotok Realty, Inc. as the best and accepted it accordingly. It thereupon ordered that said offer be accepted and the property be sold to Manotok Realty, Inc. in accordance with the terms specified in its offer.

Venturanza filed a motion for reconsideration wherein he disputed the assumption made by Manotok Realty, Inc. to pay the real estate taxes due from the estate amounting to P64,000 contending that the same is in violation of one of the conditions of the bidding that said taxes should be paid by the estate. He said that because of this condition he refrained from assuming the payment of said taxes. He contended also that if the Manotok Realty,

Inc. should be allowed to pay said taxes the same privilege should be accorded to him and in this sense his offer should be deemed as better and higher than that of Manotok Realty, Inc. This motion was vigorously objected to by Manotok Realty, Inc. which contended that, while it was agreed that the taxes should be paid by the estate, the same however was later disregarded when the parties, with the sanction of the court, agreed to submit new offers with the privilege of improving not only the amount of the price but also the terms and conditions of the transaction, which necessarily include the payment of taxes. This motion was set for hearing, and after the parties had been heard and submitted written memoranda, the court denied the motion. Venturanza filed a second motion for reconsideration, as well as the heirs of the estate who evinced interest in the offer submitted by him, but both motions were denied, whereupon Venturanza and one heir of the estate, Vicente Price, interposed the present petition for certiorari.

The order which gave rise to the present petition and which petitioners seek now to set aside, reads as follows:

"Pursuant to the order of January 14, 1957, the offers of Manotok Realty, Inc. and Gregorio A. Venturanza for the purchase of the property of this estate known as 'Legarda-Tambunting Subdivision' made on January 25, 1957, are now in order for the consideration of this Court.

The offer made by the Manotok Realty, Inc. is as follows:

Price..... P776,000.00

Term of payment..... Within 48 hours from the execution of the deed of sale

Taxes due on the property Assumes to pay all the realty taxes and the other taxes due the Government, amounting to P64,000.00 more or less

Registration expenses..... Shall pay all the execution and registration expenses, including documentary stamps and notarial fee fixed by the Court at P600.00

Commission..... No agent's commission

On the other hand, the offer made by Gregorio A. Venturanza is as follows:

Price..... P800,800.00

Term of payment..... After the award has become final and within 48 hours from the execution of the deed of sale—

Taxes due on the property All government taxes and charges shall be paid by the Estate

Registration expenses..... Shall pay expenses of execution, documentary stamps and registration of deed of sale

Commission..... No agent's commission

Additional offer..... To equal and improve 'best offers' A plus P2,500.00 over and above the amount of 'best offer'

Premises considered, this Court finds and holds (1) that the additional offer made by Gregorio A. Venturanza to the effect that in the event that this * * * Court shall consider the offer or bid of any of the other offerors to be the best in terms of the amount offered and the condition stipulated herein' he 'is willing and agreeable to equal and improve the said 'best offer' plus the amount of Two thousand five hundred pesos (P2,500.00) Philippine Currency, over and above the amount offered therein' is speculative and not a definite offer, and therefore, the same should not be considered, and (2) that the offer made by the Manotok Realty, Inc. is definite and not speculative and by its terms is the best and the highest.

WHEREFORE, the offer of the Manotok Realty, Inc. is hereby accepted and the sale of the property of this estate known as Legarda-Tambunting Subdivision' is hereby awarded to the said offer under the terms specified in its offer.

SO ORDERED.

Manila, October 23, 1957.

ANTONIO CANIZARES

Judge

It would appear that Manotok Realty, Inc. offered to buy the property by paying a price of P776,000 subject to the condition that it will assume the payment of the realty taxes due from the estate amounting to P64,000. On the other hand, the offer of Venturanza is to pay a price of P800,800, but stating that the taxes and other charges shall be paid by the estate. The other terms of payment of both offers are substantially the same. Analyzing the two offers, the trial court considered that the offer made by Manotok Realty, Inc. was the best because in effect it offered to pay to the estate a purchase price totalling P840,000, as against the price of P800,800 offered by Venturanza. The trial court also considered the offer made by Venturanza to equal or improve the best bid that may be submitted by paying an additional sum of P2,500 speculative and improper, and so it disregarded it, a finding we find well-taken, for the simple reason that, if entertained, such offer would destroy the very nature and purpose of a secret bidding. This finding is now disputed by petitioners who contend that in disregarding the offer made by Venturanza, the trial court committed a grave abuse of discretion.

We are of the opinion that the trial court acted properly in accepting the offer of Manotok Realty, Inc. as the best under the circumstances. Indeed, the offer of said company would in effect give to the estate an aggregate amount of P840,000, whereas that of Venturanza would only benefit it by P800,800. It is true that the original agreement was that the real estate taxes due the Government would be borne by the estate, but it is likewise true that in a subsequent hearing the parties agreed, with the sanction of the court, that they could submit new offers wherein they may improve not only the amount of the price but also the terms and conditions affecting the transaction which, evidently, include the payment of taxes. That that payment is an improvement on the offer cannot be denied for it relieves the estate from its liability amounting to P64,000.

It is likewise true that after the bids were known Venturanza offered the court to assume in the same manner the payment of the taxes due from the estate, but the court did not find this fair and proper after all the bids had been known and discussed. The fact that after the court has refused to reconsider its order accepting the bid of Monotok Realty, Inc. the administrator paid the taxes to the Government, cannot have the effect of rendering the offer a nullity, for to all intents and purposes, the same has become binding upon the estate. Indeed, after the sale is carried out as ordered by the court, the the same would have the effect of reimbursing the estate the amount it had paid as taxes.

Premises considered, we find no plausible reason for disturbing the order of the trial court in accepting the bid of respondent company for in our opinion the court has acted properly having in view of the circumstances of this case. Wherefore, petition is denied, without pronouncement as to costs. The writ of preliminary injunction issued by this Court is hereby dissolved.

Paras, C. J., Bengzon, Padilla, Montemayor, and Labrador, JJ., concur.

DISSENTING

REYES J. B. L., J.

I regret my inability to agree to the main decision. It would seem elementary that in all competitive biddings, the bidders should be obligated to strictly conform to the basic conditions set for the bidding. If this is not done, the bids will not be comparable, because of the varying lines of departure, and the choice of the best bid becomes arbitrary. If no common base is observed, there is actually no competition, and the "bidding" is empty of any meaning. If any one who participates may alter the basic conditions at his discretion, it can not be termed a competitive bidding, except by courtesy.

There is no question that one of the basic conditions that were set is that the real estate taxes, up to execution of the deed of sale, were to be borne by the estate. Bids were called on that basis. Hence, no bidder can vary this condition by assuming the payment of the taxes, because to permit it would be unfair to the bidders who kept strictly to said condition, and who had the right to assume that all participants would act likewise. Consequently, the Manotok offer, by violating the condition regarding payment of the taxes by the estate and assuming to shoulder such payment, was really non-competitive with the others and should have been rejected outright. Thus, in *Pascoe vs. Barium, et al.*, 225 N. W. 506, 65 A. L. R. 833, the Court ruled as follows (p. 834):

"The advertised proposal presented a common basis for bidding and the bids must be measured by that standard. 'There can be no question that the bid must conform to the specifications, and the contract to both' *Andrews v. Detroit*, 233 Mich. 79, 206 N. W. 514. But not every variation from the specifications will destroy the competitive character of the bid. To have that effect, the variation must be substantial. To be substantial, it must affect the amount of the bid. It must give the bidder an advantage or benefit not allowed to other bidders. It must be an element considered in fixing the price."

And in an editorial note in 65 A. L. R. 837, the following authorities can be found:

"So, it is held in *International Motor Co. vs. Plainfield* (1921) 96 N. J. L. 364, 115 Atl. 391, that the 'lowest bidder,' within the meaning of a statute requiring a municipality to award a contract to the lowest bidder, must be a bidder who conforms to the requirements in the notice to bidders, and not one who proposes a substitute, not conforming to the published specifications."

"A bid for a public improvement must be in substantial compliance with the proposal, to warrant consideration; otherwise bidding would not be on equal terms, and the advantages of competition would be lost; and unless the bid is responsible to the proposal in all material respects, it is not a bid at all, but a new proposition. *Urbany vs. Carroll* (1916) 176 Iowa, 217, 157 N. W. 852."

"When the law requires that a contract shall be made with such person or firm as makes the lowest bid, such bid must substantially conform to the proposal made, since any other rule would destroy free competition. *Weed, P. & Co. vs. Beach* (1879) 56 How. Pr. (N.Y.) 470 (involving bids for state printing)."

"So, the view is taken in *Konig vs. Baltimore* (1915) 126 Md. 606, 95 Atl. 478, that if bids or contracts awarded for public work could depart from the specifications on the basis of which the bids were invited, the result would be the defeat of the competition which it is sought to obtain by such bidding, and a contract for something for which there was no competitive bidding. The majority decision evades this point by saying:

"It is true that the original agreement was that the real estate taxes due the Government would be borne by the estate, but it is likewise true that in a subsequent hearing the parties agreed, with the sanction of the court, that they could submit new offers wherein they may improve not only the amount of the price but also the terms and conditions affecting the transaction which, evidently, include the payment of taxes. That that payment is an improvement on the offer cannot be denied for it relieves the estate from its liability amounting to P64,000."

(p. 7)

It is not exactly correct to say that it was agreed that new offers could be made wherein "they may improve also the terms and conditions of the transaction" The order for rebidding, dictated in open court during the hearing of January 14, 1957 (Annex B, pp. 28-29) expressly authorized the respective offerors (bidders) to submit-

"an improvement thereof either with respect to the amount offered as purchase price or with respect to the terms and conditions and manner of payment."

Plainly, this authority does not warrant disregard of the basic conditions previously set; otherwise, as I stated before, the bids were non-comparable.

And if the basic conditions were to be disregarded, why was Venturanza's subsequent offer to pay P867,900.00 not considered, since it was manifestly higher than the Manotok offer? Could it be justifiable to argue that the offer was made out of time, when anyway certain bidders were permitted to disregard other equally basic conditions? As the Spanish proverb says: "O se tira de la manta para todos o para ninguno."

And if the exclusive test was to be the resulting benefit to the estate, then the last Venturanza offer, being P27,705.24 higher than that of the total amount offered by Manotok, was entitled to the award.

Concepcion and Endencia, JJ., concur.

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