

PLACIDO O. URBANES, JR., DOING BUSINESS UNDER THE NAME AND STYLE OF LAGING QLEAN JANITORIAL SERVICES, PETITIONER, VS. LOCAL WATER UTILITIES ADMINISTRATION, REPRESENTED BY ITS AD...

G.R. NO. 143442. August 29, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

In August 1980,[1] Laging Qlean Janitorial Services (Laging Qlean) started rendering janitorial services for the Local Water Utilities Administration (LWUA).

In April 24, 1989, Laging Qlean and LWUA forged a contract (the contract), the material stipulation of which reads:

- This Agreement shall cover services rendered since January 1988 and shall continue to be in full force and effect for the period of one (1) year from [the] signing hereof unless sooner terminated upon notice of one party to the other; provided, that should there be no notice of termination within thirty (30) days before the expiry date, the same shall be deemed renewed; and provided further that the party desiring to terminate the contract before the expiry date, shall give thirty (30) days prior written notice to the other party[.][2] (Underscoring supplied)

Since April 1992, the contract had been extended on a monthly basis, however.

On September 25, 1992, LWUA through its In-House Procurement Bidding Committee (IHPBC) conducted a public bidding for Janitorial Services for a period of one (1) year.[3]

Twelve bidders, including petitioner, participated and submitted their respective bids. Fast Manpower, with a bid of P974,738.90, gave the lowest bid. Laging Qlean, with a bid of P1,027,174.90, lagged behind as sixth in the list of lowest bidders..

By letter of October 20, 1992, Rodolfo S. De Jesus, Deputy Administrator for Administrative Services of LWUA, advised Laging Qlean's General Manager Susana U. Lazaro (Susana) that:

Pending completion of bids for the proposed contract for janitorial maintenance services, we are hereby extending our contract with you for another month to take effect [on] October 24, 1992.

Should this extension be acceptable to you, please sign the "CONFORME" space provided below and return this letter to us for our file.[4] (Emphasis and underscoring supplied)

Susana affixed her signature below the word "CONFORME."

As a result of the bidding process, LWUA represented by De Jesus, and Fast Manpower Services represented by its General Manager Josefina C. Rosillo,[5] forged on December 22, 1992 a contract for janitorial services for a period of one year.[6] On even date, De Jesus sent Susana of Laging Qlean a letter reading:

x x x x

This is to inform you that we are extending your contract with LWUA for 12 calendar days (last extension) to take effect [on] December 24, 1992 until January 04, 1993.

In this connection, may we request your Janitor Supervisor to turn over to us all equipment and tools earlier issued to him for proper inventory and accounting, on or before the 23rd of December 1992. The cost of any unaccounted tools and equipment will be deducted from whatever billings you may have with this office.

Should this extension be acceptable to you, please sign the "CONFORME" space provided below and return this letter to us for our file.

x x x x[7] (Emphasis and underscoring supplied)

On this letter, Susana did not affix her signature below the word "CONFORME."

Alleging that the bids of the first five lowest bidders should have been rejected for not being in conformity with the mandatory requirement of the Minimum Wage Law, the policy laid down by the Secretary of Labor and Employment, and the opinion of the Chairman of the Commission on Audit (COA) dated October 27, 1988,[8] petitioner filed on December 28, 1992 a complaint before the Regional Trial Court (RTC) of Quezon City for damages, injunction with special prayer for temporary restraining order and mandamus against herein respondents LWUA, its Administrator Antonio R. de Vera, Deputy Administrator Rodolfo S. de Jesus, Jesus Capuyoc as Chairman of the Prequalification, Bids and Awards Committee (PBAC), together with the members of said committee, namely, Elizabeth P. Basa, Ditas Icalina, Yolanda Zaragoza and Rebecca A. Barbo.

Petitioner posited that the bid of Laging Qlean of P1,027,174.90 for a total of 21 janitors for a one-year contract of janitorial maintenance services was the lowest complying bid and most advantageous to the government, hence, the contract should have been awarded to it.[9]

Further, petitioner contended that the December 22, 1992 notice of last extension sent by LWUA violated the earlier quoted paragraph 8 of the contract as Laging Qlean was in effect merely given a 12-day notice of termination.[10]

By Order of January 18, 1993, the trial court directed the issuance of a Writ of Preliminary Mandatory Injunction, the decretal portion of which reads:

WHEREFORE, premises above considered, upon filing of a bond in the sum of P50,000.00 duly approved by the Court, let a writ of preliminary mandatory injunction be issued enjoining the defendants, their agents and/or representatives to cancel the contract of janitorial services in favor of Fast Manpower and reinstate and award the contract of janitorial services in favor of Laging Qlean Janitorial Services, the latter being the lowest complying bidder.[11] (Emphasis and underscoring supplied)

A Writ of Preliminary Mandatory Injunction was accordingly issued.

Petitioner later twice moved to cite respondents for contempt of court[12] for allegedly disobeying the writ when its janitors were barred from doing janitorial services on January 19, 1993. Petitioner and respondents, however, agreed to proceed with the trial on the merits to fully apprise the court of the facts of the case before resolving the motion.[13]

After trial on the merits, Branch 98 of the Quezon City RTC dismissed the complaint by Decision of March 11, 1994, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing consideration, judgment is hereby rendered in favor of the defendants, ordering the dismissal of the herein complaint. The writ of preliminary mandatory injunction earlier issued by

the court is hereby ordered lifted, and the contract for janitorial maintenance services between the Fast Manpower Services and the [L]ocal Water Utilities Administration (LWUA) shall be reinstated and be enforceable between the parties. With costs against the plaintiff.[14] (Emphasis and underscoring supplied)

On appeal, the Court of Appeals narrowed down the main issue to whether the award of the contract for janitorial services to Fast Manpower was legal.[15] It, however, passed on the failure of the trial court to cite respondents in contempt of court in this wise:

The contract having expired by its terms on January 4, 1993, and the same can't be extended by injunction, the defendants are therefore not liable for contempt for they did not violate the injunction because the defendants did not terminate the contract but it was terminated by its own terms.[16]

By Decision of May 30, 2000,[17] the appellate court affirmed the decision of the trial court. Hence, the Petition for Review[18] at bar faulting the appellate court of having

I

x x x COMMITTED A SERIOUS REVERSIBLE ERROR, AMOUNTING TO GRAVE ABUSE OF DISCRETION, IN NOT HOLDING RESPONDENTS GUILTY OF CONTEMPT OF COURT FOR DISOBEYING THE TEMPORARY RESTRAINING ORDER AND WRIT OF PRELIMINARY INJUNCTION ISSUED BY BRANCH 98 OF THE REGIONAL TRIAL COURT OF QUEZON CITY.

II

x x x COMMITTED A SERIOUS REVERSIBLE ERROR, AMOUNTING TO GRAVE ABUSE OF DISCRETION, IN AFFIRMING THE DECISION OF BRANCH 98 OF THE REGIONAL TRIAL COURT OF QUEZON CITY DESPITE THE SERIOUS ERRORS AND APPLICATION OF LAWS, WHICH IF NOT RECTIFIED, WOULD CAUSE GRAVE IRREPARABLE INJURY AND DAMAGE TO HEREIN PETITIONER.[19] (Underscoring supplied)

The first assigned error relative to the failure of the trial court as well as of the appellate court to cite respondents in contempt of court fails.

Without passing on the propriety of the issuance of the writ of preliminary mandatory injunction by the trial court, it bears noting that the parties agreed to defer the resolution of the motion to cite respondents in contempt until after trial on the merits. Since the complaint was dismissed, resolution of the motion was rendered unnecessary.

At all events, the appellate court or even this Court cannot, on behalf of the trial court, cite respondents in contempt of court. *Igot v. Court of Appeals*, teaches:

The court that granted the preliminary injunction or temporary restraining order preserving the status quo is vested with the power to hear and determine the sufficiency and merit of the contempt charge. Only the court which issued the injunction can impose a sanction for contempt of that injunction, and a court without subject matter jurisdiction cannot transfer the case to another court.[20](Emphasis and underscoring supplied; italics in the original),

as does the earlier case of *San Luis v. Court of Appeals*:

"In whatever context it may arise, contempt of court involves the doing of an act, or the failure to do an act, in such a manner as to create an affront to the court and the sovereign dignity with which it is clothed. As a matter of practical judicial administration, jurisdiction has been felt to properly rest in only one tribunal at a time with respect to a given controversy." Only the court which rendered the order commanding the doing of a certain act is vested with the right to determine whether or not the order has been complied with, or whether a sufficient reason has been given for noncompliance, and, therefore, whether a contempt has been committed. It

is a well-established rule that the power to determine the existence of contempt of court rests exclusively with the court contemned. No court is authorized to punish a contempt against another.[21] (Emphasis and underscoring supplied)

As regards the second issue, petitioner posits that the "notice of last extension" was in reality a notice of termination which violated the earlier quoted paragraph 8 of the contract providing for a 30-day prior notice of termination.

Petitioner's position does not persuade.

Petitioner had, as early as April 1992, become aware that the LWUA was going to conduct a bidding and that it was on that account that the contract had since been renewed on a monthly basis. And by participating in the September 25, 1992 bidding, it was fully aware that a new contract for janitorial maintenance services would be forged as a result thereof. Furthermore, it was advised, by letter of October 20, 1992, that its contract was being extended (not renewed) for one month, to which extension, it through Susana affixed its conformity.

Petitioner further posits that the award of the contract to Fast Manpower also violated the law on public bidding, its sole objective of which is to be fair, just and competitive. This too does not persuade.

From the Memorandum dated November 23, 1992[22] prepared by the IHPBC, all the necessary factors were taken into account in choosing a contract which is most advantageous to the government. Consider the following:

2.0 COMMITTEE EVALUATION AND FINDINGS

2.1 "Labor" Bid Portion

All the twelve (12) bidders conformed with the minimum wage (@P118.00 per day for non-agricultural sector of the NCR) set by law. The Villaseran Maintenance Services had the lowest bid for the "Labor" portion, followed by both Fast Manpower Services and Ultimate Care Services. The Laging Qlean Janitorial Services, on the other hand, quoted the highest when it comes to labor. This is attributable, as can be seen in the attached Abstract of Bids, to the higher rate of monthly SSS employer's contribution used by the Laging Qlean Janitorial Services compared to the rate used by the rest of the bidders (P177.30 vs. P152.00). Laging Qlean apparently opted to include the 13th month pay in computing the SSS premium, which the other bidders did not.

To verify the correct amount of monthly SSS premium contribution a private employer should remit, a letter of inquiry dated October 19, 1992, was sent by the IHPBC Chairman to the Social Security System (ANNEX C). From the response of the Chief, Correspondence Section of the Member Assistance Group of the SSS, Mr. Jovenito F. Tagoc dated October 21, 1992 (ANNEX D), the right amount for monthly SSS employer's contribution should have been P152.

x x x x

2.4 Total Bid Price

In totality, Fast Manpower Services is the lowest complying bidder from among the twelve (12) prequalified contractors. As part of the post-qualification evaluation, the Committee sent letters to the present government clients of Fast Manpower Services to verify its latest annual performance with other companies. From among the list of Fast Manpower's clients, the Committee chose four (4) government agencies for this purpose, namely: (1) the Bureau of Fisheries and Aquatic Resources, (2) Philippine Heart Center, (3) Lung Center of the Philippines, and (4) the Social Security System, all of which gave very satisfactory remarks on the Fast Manpower's performance (refer to ANNEX G). The same proves the credibility Fast Manpower Services has established with their present clients.

3.0 COMMITTEE RECOMMENDATIONS

3.1 The LWUA Janitorial Services Contract for one year is hereby recommended for award to the FAST MANPOWER SERVICES for the following reasons:

3.1.1 Fast Manpower Services has the most economical bid that is most advantageous to LWUA among the twelve (12) bidders, in the amount of NINE HUNDRED SEVENTY FOUR THOUSAND SEVEN HUNDRED THIRTY NINE AND 30/100 PESOS ONLY (P974,739.30), including taxes, subject to compliance with the usual administrative and legal requirements; and

3.1.2 Fast Manpower Services has proven to be a responsive (i.e., in the sense that it has a record of complying with its contractual commitments) and credible contractor, based on the results of a postqualification inquiry with four (4) big government institutions as respondents.

x x x x[23] (Emphasis in the original; Underscoring supplied)

Further, LWUA made a reservation to reject bids as the Invitation to Prequalify and Bid published in the June 6, 1992 issue of the Philippine Daily Inquirer[24] shows:

LWUA reserves the right to reject any or all the bids, to waive any formality found therein and to accept such bid or a part thereof as may be deemed most advantageous to LWUA.[25] (Emphasis and underscoring supplied)

The discourse in his "A TREATISE ON GOVERNMENT CONTRACTS UNDER PHILIPPINE LAW" of former Commissioner of the Commission on Audit Bartolome C. Fernandez, Jr. is enlightening:

It is a settled rule that where the invitation to bid contains a reservation for the Government to reject any or all bids, the lowest or highest bidder, as the case may be, is not entitled to an award as a matter of right for it does not become the ministerial duty of the Government to make such award. Thus, it has been held that where the right to reject is so reserved, the lowest bid or any bid for that matter may be rejected on a mere technicality, that all bids may be rejected, even if arbitrarily and unwisely, or under a mistake, and that in the exercise of a sound discretion, the award may be made to another than the lowest bidder. And so, where the Government as advertiser, availing itself of that right, makes its choice in rejecting any or all bids, the losing bidder has no cause to complain nor right to dispute that choice, unless an unfairness or injustice is shown. Accordingly, he has no ground of action to compel the Government to award the contract in his favor, nor to compel it to accept his bid.

Verily, a reservation in the advertisement for bids of the right to reject any bid generally vests in the authorities a wide discretion as to who is the best and most advantageous bidder. The exercise of such discretion involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions, and when honestly performed, may not be reviewed by the courts. In such cases, there is no binding obligation to award the contract to any bidder and in the exercise of such discretion the award may be made validly to whoever among the participating bidders has submitted the most advantageous bid.[26] (Citations omitted) (Emphasis and underscoring supplied)

Contrary then to the assertion of petitioner, the bidding was carried out in accordance with its purpose of protecting public interest by giving the public the best possible advantages through open competition.[27]

WHEREFORE, the Petition is DENIED. The assailed Decision of the Court of Appeals is, in light of the foregoing disquisition, AFFIRMED.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Tinga and Velasco, Jr., JJ., concur.

[*] Inadvertently omitted in the Petition for Review.

[**] Also referred in the records as the In-House Procurement Bidding Committee (IHPBC).

[1] Annex "A" of the Complaint, Records, pp. 19-23.

[2] Records, p. 27.

[3] Id. at 7.

[4] Annex "H," records, p. 41.

[5] Also spelled Rosello in some parts of the records.

[6] Exh. "11," folder of exhibits, pp. 84-90.

[7] Records, p. 81.

[8] Id. at 42.

[9] Complaint, records, p. 9.

[10] Id. at 11.

[11] Records, p. 150.

[12] Petitioner earlier filed a Petition to declare respondents in contempt of court (records, pp. 84-88) but it was not resolved by then Judge Cesar Peralejo for alleged defiance of the December 29, 1992 Order which enjoined respondents, their agents and representatives from proceeding with the termination of petitioner's existing contract and pursuing with the award of the janitorial contract in favor of any of the five lowest bidders.

[13] Records, p. 203.

[14] Id. at 283-284.

[15] CA Decision, CA rollo, p.103.

[16] Id. at 111.

[17] Id. at 102-111. Penned by Justice Eloy R. Bello, Jr. with the concurrence of Justices Delilah Vidallon-Magtolis and Elvi John S. Asuncion.

[18] Rollo, pp. 9- 31.

[19] Id. at 20.

[20] G.R. No. 150794, August 17, 2004, 436 SCRA 668, 676.

[21] 417 Phil. 598, 606-607 (2001).

[22] Exh. "3," folder of exhibits, pp. 67- 72.

[23] Id. at 68-71.

[24] Exh. "1," folder of exhibits, p. 64.

[25] Exh."1-A," folder of exhibits, p. 64.

[26] FERNANDEZ, JR., A TREATISE ON GOVERNMENT CONTRACTS UNDER PHILIPPINE LAW 41-42

(2003).

[27] Vide *Agan, Jr. v. Phil. International Air Terminals Co, Inc.*, 450 Phil. 744, 814 (2003); *NFA v. CA*, 323 Phil. 558, 574 (1996); *Republic v. Capulong*, G.R. No. 93359, July 12, 1991, 199 SCRA 134, 147.

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