WT CONSTRUCTION, INC. AND CHIARA CONSTRUCTION (REPRESENTED BY ITS PROPRIETOR, EFREN N. RIGOR), PETITIONERS, VS. DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, BIDS AND AWARDS COMMITTE...

G.R. NO. 163352. July 31, 2007

Ponente: PUNO, C.J.

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PUNO, C.J.:

This case is a Petition for Preliminary Mandatory Injunction with Temporary Restraining Order filed by petitioners WT Construction, Inc. and Chiara Construction (represented by its proprietor, Efren N. Rigor) (the Joint Venture) against the respondents Department of Public Works and Highways (DPWH), Bids and Awards Committee-DPWH-Region VII (BAC Region VII), and WTG Construction and Development Corporation (WTG). The petition seeks the issuance of a writ of preliminary mandatory injunction against public respondents DPWH and BAC Region VII to direct the latter to award the contract for the construction of the "2[nd] Archbishop Reyes Avenue Flyover, Archbishop Reyes Avenue corner N. Escuario Extension and Mindanao Avenue, Cebu City" (the Flyover Project) to the petitioners. It likewise prays for the issuance of a temporary restraining order against DPWH and private respondent WTG from undertaking the aforesaid project.[1]

Petitioner WT Construction, Inc., a corporation duly organized and existing under Philippine law, and petitioner Chiara Construction, a single proprietorship, formed a joint venture for the purpose of participating in the bidding for and undertaking the construction of the Flyover Project, should it be so awarded. On November 29, 2002, DPWH through its BAC Region VII published in the Manila Standard, a newspaper of general circulation, an invitation to apply for eligibility and to bid on the Flyover Project. After finding the petitioners were eligible to bid, the petitioners submitted their bid contained in two envelopes, the first containing the technical component and the second the financial component.[2]

On December 27, 2002, the day of the opening of the bids, public respondent BAC Region VII excluded the bid of the petitioners from the opening of bids and disqualified the same from participating on the ground that petitioners failed to inform BAC Region VII that it has formed a joint venture to bid on the Flyover Project and has failed to present a special license from the Philippine Construction Accreditation Board (PCAB) as such joint venture. The two sealed bid envelopes of the petitioners were then forwarded by BAC Region VII to the Office of the DPWH Regional Director, Region VII, Cebu City.[3]

BAC Region VII proceeded to open and evaluate the remaining bids and thereafter declared the bid of private respondent WTG, in the amount of P61,995,000.00, as the lowest bid. After WTG's bid documents were post-evaluated and post-qualified by BAC Region VII's Technical Working Group as having passed all the legal, technical and financial requirements of the contract, BAC Region VII issued a resolution declaring the bid of WTG as the lowest responsive bid and recommending the approval of the award of the contract for the Flyover Project to WTG to then DPWH Secretary Simeon A. Datumanong.[4]

On January 8, 2003, the petitioners appealed the said award and the exclusion of its bid to the Office of the DPWH Secretary. In a decision dated May 28, 2003, DPWH Secretary Florante Soriquez directed BAC Region VII to "open and read" the bid of the petitioners contained in the two envelopes forwarded to the Regional Director. It further directed BAC Region VII to award the contract to the petitioners "in the event their (the petitioners') bid is indeed the lowest and most advantageous to the Government" after evaluation of its responsiveness and compliance to existing laws, rules and regulations.[5]

Pursuant to the above decision, BAC Region VII scheduled the opening of the petitioners' bid on November 3, 2003. In lieu of the petitioners' request to transfer the venue to the DPWH Central Office in Manila, the Secretary sent the following officers of the DPWH Central Office to Cebu to supervise and witness the opening of the petitioners' bid envelopes: (1) DPWH Assistant Secretary Mocamad M. Raki-in, Sr.; (2) DPWH Director Antonio V. Molano, the Chairman of the BAC-DPWH Central Office; (3) Atty. Camilo Foronda, DPWH Legal Counsel; and Engr. Emerson L. Benitez.[6]

On November 28, 2003, after evaluation of the petitioners' bid, public respondent BAC Region VII issued a resolution recommending the disqualification of the petitioners and reiterated its earlier recommendation to award the Flyover Project to private respondent WTG. It was the finding of BAC Region VII that while the petitioners did submit the lowest numerical bid of P52,770,947.29, the petitioners' bid, however, lacked certain vital requirements such as the special license as a joint venture from the PCAB and the required surety bond under Section 19.2 of Executive Order No. 40.[7]

On December 8, 2003, the petitioners filed a letter-complaint against public respondent BAC Region VII before the Secretary of DPWH. Without awaiting the decision of the DPWH Secretary on the aforesaid complaint, the petitioners filed a petition for mandamus with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction and preliminary mandatory injunction, Civil Case No. 29790, before the Regional Trial Court (RTC) of Cebu City, Branch VII, against public respondent BAC Region VII. It was the petitioners' contention that BAC Region VII did not comply with the May 28, 2003 Decision of the DPWH Secretary that the petitioners be awarded the Flyover Project should their bid be the lowest. The petitioners sent a letter to the DPWH Secretary informing the latter of the elevation of the case to the RTC.

On April 30, 2004, the case was dismissed by the RTC on the ground of non-exhaustion of administrative remedies for failure of the petitioners to await the decision of the DPWH Secretary. On the other hand, DPWH Secretary Soriquez issued a resolution on March 12, 2004 denying the petitioners' appeal and affirmed the recommendation of public respondent BAC Region VII. Thereafter, the contract for the Flyover Project was approved by DPWH Secretary Soriquez. The Notice to Commence Work was issued to private respondent WTG on March 15, 2004.[8] Private respondent WTG then proceeded with the construction of the Flyover Project.

Hence, this petition.

The petitioners allege that as the bidder who submitted the lowest numerical bid, they are entitled to the award of the contract on the Flyover Project. It is their position that the PCAB special license is necessary only after the award of the contract has been made and the bidder's bond they submitted should be considered as a surety bond which is sufficient compliance with the requirements. They likewise contend that bad faith attended their disqualification and the subsequent award of the contract to private respondent WTG. They allege, among others, that the award of the contract to WTG was premature considering they have filed an appeal to the DPWH Secretary and that the approval of the contract by then Acting Secretary Soriquez was a forgery. They further insist that the decision of the DPWH Secretary on the letter-complaint of the petitioners after the opening of their bid is of doubtful origin and validity.

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Public respondent BAC Region VII, on the other hand, disputes the allegations made by the petitioners. They contend that they complied with the May 28, 2003 Decision of the DPWH Secretary to "open and read" the bid envelopes of the petitioners and "to evaluate the same as to the responsiveness and compliance with existing laws, rules and regulations." It was only after passing such evaluation was the BAC Region VII mandated to award the Flyover Project to the petitioners. The petitioners, however, failed to present a special PCAB license for the joint venture and to submit a surety bond, both of which are required in order to declare the petitioners' bid the lowest and most advantageous to the Government. Further, the public respondent BAC Region VII contends that the contract with private respondent WTG was only approved by the DPWH Secretary after the issuance of the Order denying the appeal of the petitioners. As such, the notice to commence was issued only after the award has been made.

Private respondent WTG, for its part, maintains that the petitioners were rightfully disqualified due to lack of a special license for the joint venture and the failure to submit a surety bond. It also contends that the submission of the lowest bid alone does not give the petitioners the right to insist that the contract be awarded to them. The bid is still subject to post evaluation and acceptance of the Government which reserved the right to reject any and all bids that are not deemed responsive or compliant to its requirements.[9]

The petition is without merit.

A preliminary mandatory injunction is a provisional remedy that parties may avail of for the preservation or protection of their rights or interests, and for no other purpose, during the pendency of the principal action.[10] Unlike an ordinary preliminary injunction, however, the writ of preliminary mandatory injunction is more cautiously regarded for the reason that it requires the performance of particular acts that go beyond the maintenance of the status quo.[11] As such, the requirements for its issuance are more stringent. Generally, a preliminary mandatory injunction may only issue in cases of extreme urgency and where the rights of the requesting party are clear and unmistakable. It may also issue in cases where the relative inconvenience bears strongly in the requesting party's favor, and where the effect of the mandatory injunction is to re-establish and maintain a pre-existing continuing relation between the parties, which was recently and arbitrarily interrupted by another party, rather than to establish a new relationship between and among the parties. Being an extraordinary remedy, the burden is on the requesting party to clearly show entitlement to the issuance thereof.[12] The requesting party or movant must show the existence of the right to be protected and that the subject of the injunction violates such right. Further, the movant must show that the invasion of such right is material and substantial and that there is an urgent need for the writ to prevent serious damage.[13] The petitioners failed to discharge such burden.

In the case at bar, the petitioners pray for the issuance of a writ of preliminary mandatory injunction to direct public respondent BAC Region VII to award the contract to the Flyover Project to the petitioners. The petitioners claim that they are entitled to the award as the lowest bidder for the construction of the said infrastructure project of the Government. In support of their claim, the petitioners allege fraud and bad faith on the part of public respondent BAC Region VII. They allege conspiracy, forgery and fraud on the part of the public respondent in awarding the subject contract to private respondent WTG. These grave allegations were not sufficiently substantiated.

As correctly pointed out by the respondents, the mere submission of the lowest bid does not automatically entitle the petitioners to the award of the contract. The bid must still undergo evaluation and post qualification in order to be declared the lowest responsive bid and thereafter be awarded the contract. As provided in the Invitation to Apply for Eligibility and to Bid, "the Government reserve[s] the right to reject any and all bids, waive any minor defect therein, and accept the offer most advantageous to the Government."[14] Such reservation subjects the

bidders to the right of the Government to reject, and consequently accept, any and all bids at its discretion. Unless such discretion has been arbitrarily exercised causing patent injustice, the Court will not supplant its decision to that of the agency or instrumentality which is presumed to possess the technical expertise on the matters within its authority.[15]

In the case of the petitioners, while both the technical and financial envelopes were opened in accordance with the May 28, 2003 Decision of the DPWH Secretary, a post evaluation and qualification of the said bids is still essential in order to determine whether the lowest bid is responsive to and in compliance with the requirements of the project, the laws, rules and regulations. With regard to the PCAB license, despite the assurance of the petitioners that the same was inside the sealed envelopes, what was actually submitted was a notarized application for the license which does not indicate that it has been filed with the PCAB. Further, what was submitted by the petitioners was a bidder's bond instead of a surety bond. For the foregoing defects, the petitioners' bid was disqualified by public respondent BAC Region VII. The said decision of public respondent BAC Region VII was thereafter affirmed by the DPWH Secretary, notwithstanding the subsequent presentation of a special license issued on November 17, 2003. While the petitioners dispute such findings, the veracity of the claims of either party is a question of fact that cannot properly be threshed out in this petition.

The same may be said of the allegation of forgery on the signature of DPWH Secretary Soriquez on the contract with private respondent WTG. The petitioners' allegation, without more, is not sufficient to determine whether or not the alleged forgery was committed. This involves a factual issue that requires evidentiary proof as forgery cannot be presumed but must be substantiated by clear and convincing evidence.

Finally, we reject the contention of the pubic respondents that the filing of the present petition with this Court violates the policy on hierarchy of courts. Pursuant to the mandate of Republic Act No. 8975 (R.A. 8975), only the Supreme Court has the authority to issue a temporary restraining order, preliminary injunction and preliminary mandatory injunction against the Government or any of its instrumentalities, officials and agencies in cases such as those filed by bidders or those claiming to have rights through such bidders involving such contract or project. R.A. 8975 prohibits lower courts from issuing injunctive orders in connection with the implementation of government infrastructure projects unless the case pertains to matters of extreme urgency involving constitutional issues such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.[16] The foregoing provisions, however, do not deprive the lower courts of the authority to take cognizance of the issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction.[17]

In the instant case, the controversy arose from the complaint filed by a bidder seeking to enjoin the award and implementation of a government infrastructure project. As such, the petition for preliminary mandatory injunction with prayer for temporary restraining order was properly filed with this Court in accordance with the provisions of R.A. 8975.

IN VIEW WHEREOF, the petition is DENIED. No pronouncement as to costs.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

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[1] Rollo, p. 4.

[2] Id. at p. 6.

[3] Id. at pp.163-164.

[4] Id. at p. 8.

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[5] Id. at p. 10, citing Decision of Acting Secretary Florante Soriquez dated May 28, 2003. Caption supplied.

[6] Id. at pp. 11, 166.

[7] Id. at pp. 166-167.

[8] Id. at p. 283.

[9] Rollo, pp. 234-241.

[10] The Commissioner of Customs v. The Honorable Judge Cloribel, 125 Phil. 651 (1967); Uniciano Paramedical College, Inc. v. Court of Appeals, G.R. No. 100335, April 7, 1993, 221 SCRA 285.

[11] Joycelyn Pablo-Gualberto v. Crisanto Rafaelito Gualberto, G.R. No. 154994, June 28, 2005; Prosperity Credit Resources, Inc. v. Court of Appeals, 361 Phil. 30, 37 (1999).

[12] The Commissioner of Customs v. The Honorable Judge Cloribel, see note at 10; Philippine Virginia Tobacco Administration v. Walfrido de los Angeles, G.R. No. L-27829, August 19, 1988, 164 SCRA 543.

[13] Rimeo Gustillo v. Ricardo Real, Sr., A.M. No. MTJ-00-1250, February 28, 2001, 353 SCRA 1, 9.

[14] Rollo, p. 287.

[15] Eduardo J. Jalandoni v. National Resettlement and Rehabilitation Administration, 108 Phil. 486, 491 (1960); Bureau Veritas v. Office of the President, G.R. No. 101678, February 3, 1992, 205 SCRA 705.

[16] An Act to Ensure the Expeditious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations thereof, and for Other Purposes, November 7, 2000.

[17] Heherson Alvarez v. PICOP Resources, Inc., G.R. No. 162243, November 29, 2006.

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