PHIL PHARMAWEALTH, INC., PETITIONER, VS. PHILIPPINE CHILDREN’S MEDICAL CENTER BIDS AND AWARDS COMMITTEE, BENJAMIN T. LIM, EMMA A. MARIANO, NENA U. CALDEO AND DAHLIA CARRIOS, RES...

G.R. NO. 167806. June 26, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for review under Rule 45 of the Rules of Court assails the December 20, 2004 Order[1] of the Regional Trial Court of Quezon City, Branch 217 in Civil Case No. Q-04-54416 which dismissed petitioner's Petition for Certiorari, Prohibition and Mandamus with Complaint for Damages, and the March 29, 2005 Order[2] denying petitioner's motion for reconsideration.

Petitioner Phil Pharmawealth, Inc., (PPI for brevity), is a duly organized corporation licensed to import and distribute medical devices and finished pharmaceutical products. Respondent Philippine Children's Medical Center Bids and Awards Committee (PCMC-BAC) was organized pursuant to Republic Act No. 9184,[3] also known as the Government Procurement Reform Act (GPRA), to manage the procurement of goods and services by the Philippine Children's Medical Center, a government hospital created by special charter. The PCMC-BAC is composed of respondents Benjamin T. Lim, Emma A. Mariano, Nena U. Caldeo and Dahlia Carrios.

The facts as culled from the records are as follows:

Respondent PCMC-BAC undertook a public bidding for the procurement of its supplies for the first semester of calendar year 2005. Petitioner prepared to participate in the bidding by obtaining a list of eligibility requirements. When it submitted on October 25, 2004 the required documents, respondent Carrios required petitioner's representative to submit additional documents such as a notarized "Statement of Non-Blacklisted" which should be printed using the company's letterhead and also a statement of the company's policy on returned goods.

On November 17, 2004, petitioner re-submitted its eligibility requirements but PCMC-BAC refused to give it a copy of the "Instructions to Bidders" as well as other documents issued to the other bidders. Instead, respondents Mariano and Lim informed petitioner's representatives Jemalyn C. Salazar and Lalaine Rocero, that petitioner cannot participate in the bidding because it has been suspended for one year by PCMC's Therapeutics Committee pursuant to its finding that one of petitioner's products was of a substandard quality.

Petitioner requested for a copy of the order banning it from joining the bidding but despite repeated reminders, PCMC-BAC failed to issue the requested document.

The bidding proceeded as scheduled without its participation, thus petitioner filed a Petition for Certiorari, Prohibition and Mandamus with Complaint for Damages and Application for a Temporary Restraining Order and/or Writ of Preliminary Injunction before the Regional Trial Court of Quezon City, which was docketed as Civil Case No. 04-54416 and raffled to Branch 217.

As already stated, the trial court dismissed the petition on December 20, 2004 for failure to attach certified true copies of the annexes. Petitioner's motion for reconsideration was denied, hence this petition.

Petitioner maintains that the rule requiring that the assailed decision must be attached to the petition for certiorari must be dispensed with where, as in this case, the tribunal, board or officer refuses to reduce its decision in writing and furnish the affected party with it. Otherwise, the rule will result in absurdity and manifest injustice because it would require the petitioner to do something which the tribunal, board or officer has rendered impossible.

Petitioner likewise argues that the trial court erred in denying its motion for reconsideration and holding that there exists other remedies that it could avail of. It claims that in the absence of a written decision, the aggrieved party cannot appeal the decision of the PCMC-BAC to the head of the procuring entity pursuant to Sections 55 and 58 of GPRA.

Respondents on the other hand insist that the absence of a written notice barring petitioner from participating in the bidding will not render the verbal notifications made by PCMC-BAC inoperative or defective. They maintain that petitioner had administrative remedies under the law which it unfortunately failed to avail of.

The petition lacks merit.

It is settled that a petition for certiorari under Rule 65 of the Rules of Court is availed of when there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law.[4] In the instant case, petitioner failed to avail of the administrative remedies before resorting to certiorari.

Section 23.3 of Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184 explicitly provides:

23.3. The BAC shall inform an eligible prospective bidder that it has been found eligible to participate in the bidding. On the other hand, the BAC shall inform an ineligible prospective bidder that it has been found ineligible to participate in the bidding, and the grounds for its ineligibility. Those found ineligible have seven (7) calendar days upon written notice or, if present at the time of opening of eligibility requirements, upon verbal notification, within which to file a request for a reconsideration with the BAC: Provided, however, That the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The BAC may request a prospective bidder to clarify its eligibility documents, if it is deemed necessary. The BAC shall not be allowed to receive, hold and/or open the bids of ineligible prospective bidders: Provided, however, That if an ineligible prospective bidder signifies his intent to file a motion for reconsideration, the BAC shall hold the eligibility documents of the said ineligible prospective bidder until such time that the motion for reconsideration has been resolved. Furthermore, for procurement of goods, the BAC shall hold the bid of the said ineligible prospective bidder unopened and duly sealed until such time that the motion for reconsideration has been resolved.

Following the above procedure, petitioner has until November 24, 2004, or seven days from the time it was verbally notified on November 17, 2004 of its ineligibility to participate in the bidding, within which to file a request for reconsideration. By its failure to file a motion for reconsideration with the PCMC-BAC, petitioner was precluded from protesting the decision of the BAC with the head of the procuring entity in accordance with Section 55.1, Rule XVII of the Implementing Rules and Regulations of R.A. No. 9184, which reads:

Section 55. Protests on Decisions of the BAC.

55.1. Decisions of the BAC with respect to the conduct of bidding may be protested in writing to the head of the procuring entity: Provided, however, That a prior motion for reconsideration should have been filed by the party

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concerned within the reglementary periods specified in this IRR-A, and the same has been resolved. The protest must be filed within seven (7) calendar days from receipt by the party concerned of the resolution of the BAC denying its motion for reconsideration. A protest may be made by filing a verified position paper with the head of the procuring entity concerned, accompanied by the payment of a non-refundable protest fee. The non-refundable protest fee shall be in an amount equivalent to no less than one percent (1%) of the ABC.

In view thereof, the petition for certiorari filed with the Regional Trial Court by the petitioner is premature. Section 58.1, Rule XVII of the Implementing Rules and Regulations of R.A. 9184 is explicit:

Section 58. Resort to Regular Courts; Certiorari.

58.1. Court action may be resorted to only after the protests contemplated in this Rule shall have been completed, i.e. resolved by the head of the procuring entity with finality. The regional trial court shall have jurisdiction over final decisions of the head of the procuring entity. Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

In Batelec II Electric Cooperative, Inc. v. Energy Industry Administration Bureau (EIAB),[5] this Court held –

> The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities to accord them the prior opportunity to decide controversies within their competence before the same may be elevated to the courts of justice for review. It is presumed that an administrative agency, if afforded an opportunity to pass upon a matter, will decide the same correctly, or correct any previous error committed in its forum. Furthermore, reasons of law, comity and convenience prevent the courts from entertaining cases proper for determination by administrative agencies. Hence, premature resort to the courts necessarily becomes fatal to the cause of action of the petitioner.

We are aware of instances when resort to administrative remedies may be dispensed with and judicial action may be validly resorted to immediately, among which are: 1) when the question raised is purely legal; 2) when the administrative body is in estoppel; 3) when the act complained of is patently illegal; 4) when there is urgent need for judicial intervention; 5) when the claim involved is small; 6) when irreparable damage will be suffered; 7) when there is no other plain, speedy and adequate remedy; 8) when strong public interest is involved; and 9) in quo warranto proceedings.[6] However, petitioner failed to satisfactorily show that the instant case falls among the recognized exceptions to the rule on exhaustion of administrative remedies.

WHEREFORE, in view of the foregoing, the petition is DENIED.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

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[1] Rollo, p. 23. Penned by Judge Lydia Querubin Layosa.

[2] Id. at 24.

[3] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES.

[4] See RULES OF COURT, Rule 65, Sec. 1.

[5] G.R. No. 135925, December 22, 2004, 447 SCRA 482, 496.

[6] Id.

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