DIMSON (MANILA), INC. AND PHESCO, INC., PETITIONERS, VS. LOCAL WATER UTILITIES ADMINISTRATION, RESPONDENT.

G.R. No. 168656. September 22, 2010

Ponente: PERALTA, J.

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PERALTA, J.:

This is an original action for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court initiated by petitioners Dimson Manila, Inc. and PHESCO, Inc. which seeks to prevent respondent Local Water Utilities Administration (LWUA) from executing and consequently performing any act under any contract relevant to the Urdaneta Water District's Water Supply System Improvement Program on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction when respondent post-disqualified petitioners despite their having placed the lowest calculated bid on the project.

Undisputed are the basic facts.

Petitioners Dimson (Manila), Inc. and PHESCO, Inc. are duly organized domestic corporations that had entered into a joint venture agreement[1] for the specific purpose of placing their bid to execute the Urdaneta Water Supply Improvement Project (the Urdaneta Project) of respondent LWUA. LWUA is the lead government agency vested by Presidential Decree No. 198[2] with the principal function of facilitating the improvement and development of provincial water utilities.

On December 10 and 18, 2004, LWUA had caused the publication of an invitation to bid on the Urdaneta Project[3] -- a P113,385,979.00 contract which primarily includes the following items:

> (a)
>
> construction of 2 well pump station structures complete with related civil and electromechanical works; furnishing of 2 submersible pump sets with an average capacity of 50 lps at 17m TDH.
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> (b)
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> construction of 2 booster pump stations with 6 pump sets with variable speed drives and with an average capacity of 21 lps at 39m TDH, complete with pipes, valves and fittings; furnishing of power line extension and tapping.
>
> (c)
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> construction of 2 100 cu.m. capacity circular concrete ground reservoirs complete with related civil and electromechanical works.
>
> (d)
>
> supply and installation of approximately 66 km. of transmission and distribution pipelines with sizes ranging from 50mm-300mm diameter complete with valves, fittings, blow-offs, fire hydrants and related pipe appurtenances.[4]

Sixteen contractors, including petitioners' joint venture, responded to the invitation and eight of them submitted bid proposals.[5] Following the pre-bid conference in Urdaneta City, Pangasinan, petitioners submitted to LWUA's Bids and Awards Committee (BAC) their proposal in two (2) sealed envelopes each containing their compliance with eligibility requirements as a joint venture and their financial proposal as such to undertake the project. Petitioners passed the eligibility requirements and were found to have placed the lowest calculated bid at P107,666,358.17[6] --besting R-II Builders, Inc. at P108,812,800.20 and CM Pancho Construction, Inc. at P135,695,674.94.[7]

However, on April 19, 2005, petitioners were informed by LWUA Administrator Lorenzo Jamora that following the post-qualification stage of the evaluation process, the joint venture would have to be disqualified by the BAC on the finding that Dimson (Manila), Inc.'s joint venture with another contractor was, as of March 17, 2005, suffering from a 30.4% slippage in the Santiago Water Supply and Treatment Project -- an ongoing project likewise under LWUA's administration.[8]

Aggrieved, petitioners, through counsel, sent a letter[9] to Administrator Jamora on April 21, 2005 asserting that their post-disqualification had no factual and legal basis. They claimed that their joint venture in relation to the Urdaneta Project was distinct from the Dimson's joint venture in the Santiago Project where Dimson was only a minority partner that merely supplied the construction equipment. The alleged slippage, according to them, would not be sufficient to justify their post-disqualification, especially because it could be attributed to several other factors. Significantly, they asserted that it was in fact LWUA which ordered the suspension of the Santiago Project on December 6, 2004 on account of certain variation orders that up to the present remained unresolved. They then asked that their post-disqualification be reconsidered and the contract for the Urdaneta Project be awarded to them.[10]

Pending action on this request, the BAC, on May 31, 2005, issued Resolution No. 12,[11] s. 2005 recommending the award of the Urdaneta Project to the second lowest calculated bidder, R-II Builders. Consequently, on June 7, 2005, the LWUA Board of Trustees issued Resolution No. 102,[12] s. 2005 and awarded the contract to it.

Expectedly, petitioners' request for reconsideration was declined. In a letter[13] dated June 8, 2005, Administrator Jamora emphasized that, in any event, the BAC had the reserved right to reject any and all bids on the project, and that petitioners' post-disqualification was not without justification, because the 30.4% slippage suffered by Dimson's ongoing Santiago Project was a reason compelling enough to cause such disqualification following the pertinent provisions in the bid documents.

To prevent the execution of the project by R-II Builders, petitioners filed the instant petition for certiorari, prohibition and mandamus alleging grave abuse of discretion on the part of LWUA when it post-disqualified their joint venture from taking part in the project. The grounds raised by petitioners are essentially factual and they are as follows: that the alleged 30.4% slippage in the Santiago Project is baseless, erroneous and unfounded, and that considering the LWUA-BAC's finding that the Santiago Project slippage was only 14.634%, Dimson (Manila), Inc. would be ahead of schedule if the same is reflected in the approved project bar chart.[14]

In its Comment,[15] respondent LWUA, through the Office of the Government Corporate Counsel, stood by its decision and maintained that petitioners' post-disqualification was factually and legally justified. On the facts, LWUA pointed out that the slippage attributable to Dimson, relative to the Santiago Project, gravely affected petitioners' technical requirements during post-qualification. Likewise, it noted that petitioners failed to exhaust the available remedies prior to the filing of the instant petition, citing the Implementing Rules and Regulations of Republic Act (R.A.) No. 9184 on protest mechanism and stating that there was no motion for reconsideration filed by petitioners of the Resolution No. 12 s. of 2005 dated May 31, 2005. Thus, petitioners lacked a cause of action

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against respondent. Also, respondent states that injunctive relief does not lie against it and that the writs of certiorari, mandamus and prohibition are unavailing under the circumstances of the case.

The Court dismisses the petition.

To begin with, there is a serious jurisdictional issue that must be addressed in this petition. Section 58 of R.A. No. 9184 and Section 58 of the IRR-A uniformly state that it is the regional trial court which has jurisdiction over certiorari petitions involving questions on the procurement and bidding process in infrastructure projects administered by the various procuring entities in the government. Be that as it may, the viability of this remedy would still have to depend on whether the protest mechanisms outlined in both the law and its implementing rules have been availed of until completion by the aggrieved bidder or party. Section 58 of R.A. No. 9184 materially provides:

> SEC. 58. Reports to Regular Courts; Certiorari.--Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. 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.
>
> This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

Implementing this provision, the IRR-A states in detail:

> 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.
>
> 58.2. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.
>
> 58.3. The head of the BAC Secretariat of the procuring entity concerned shall ensure that the GPPB shall be furnished a copy of the cases filed in accordance with this Section.

Clearly, the proper recourse to a court action from decisions of the BAC, such as this one, is to file a certiorari not before the Supreme Court but before the regional trial court which is vested by R.A. No. 9184 with jurisdiction to entertain the same. In the recent case of First United Constructors Corporation v. Poro Point Management Corporation,[16] we held that while indeed the certiorari jurisdiction of the regional trial court is concurrent with this Court's, that fact alone does not allow an unrestricted freedom of choice of the court forum. [17] But since this is not an iron-clad rule and the full discretionary power to take cognizance of and assume jurisdiction over special civil actions for certiorari directly filed with the Court may actually be exercised by it, it is nevertheless imperative that the Court's intervention be called for by exceptionally compelling reasons[18] or be warranted by the nature of the issues involved.[19] In other words, a direct invocation of the Supreme Court's original jurisdiction to issue the writ will be allowed only when there are special and important reasons clearly and specifically set out in the petition.[20]

In the present case, at no given time have petitioners adduced any special and important reasons to justify their direct resort to this Court on certiorari. Neither have they established that the issues for resolution could not properly be addressed by the proper court, nor that the remedy they were seeking could not possibly be availed of

before that same court. Thus, we can only reaffirm the judicial policy that this Court must dismiss a direct invocation of its jurisdiction in the absence of any compelling and exceptional circumstances calling for a resort to the extraordinary remedy of a writ of certiorari and in the absence of any showing that the redress desired may never be obtained through proper recourse in the appropriate courts.

Moreover, it appears that compliance with the mandatory protest mechanisms of the law is jurisdictional in character. Section 58 of R.A. No. 9184 requires that there be exhaustion of the statutorily available remedies at the administrative level as a precondition to the filing of a certiorari petition. This requirement points to the mechanisms for protest against decisions of the BAC in all stages of the procurement process that are outlined in both the provisions of Section 55 as well in Section 55 of the implementing rules. Pertinently the provision of Section 55 of R.A. No. 9184 states:

> SEC. 55. Protests on Decisions of the BAC.--Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a nonrefundable protest fee. The amount of the protest fee and the periods during which the protest may be filed and resolved shall be specified in the IRR.

Implementing this provision, Section 55 of the IRR-A of the law states:

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 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 [approved budget for the contract].
>
> 55.2. The verified position paper shall contain the following information:
> a) The name of bidder;
> b) The office address of the bidder;
> c) The name of project/contract;
> d) The implementing office/agency or procuring entity;
> e) A brief statement of facts;
> f) The issue to be resolved;
> g) Such other matters and information pertinent and relevant to the proper resolution of the protest.

The position paper is verified by an affidavit that the affiant has read and understood the contents thereof and that the allegations therein are true and correct of his personal knowledge or based on authentic records. An unverified position paper shall be considered unsigned, produces no legal effect and results to the outright dismissal of the protest.

Under these relevant sections of the law and the rules, the availment of the judicial remedy of certiorari must be made only after the filing of a motion for reconsideration of the BAC's decision before the said body. Subsequently, from the final denial of the motion for reconsideration, the aggrieved party must then lodge a protest before the head of the procuring entity through a verified position paper that formally complies with requirements in Section 55.2 of the IRR-A. Only upon the final resolution of the protest can the aggrieved party be said to have exhausted the available remedies at the administrative level. In other words, only then can he viably avail of the remedy of certiorari before the proper courts. Non-compliance with this statutory requirement,

under Section 58 of R.A. No. 9184, constitutes a ground for the dismissal of the action for lack of jurisdiction.

We find that petitioners have not completely availed of the protest mechanisms under the law. To recall, the only communication that ensued between the parties in this case following the post-disqualification of petitioners was when the latter sent a letter dated April 21, 2005 addressed to Administrator Jamora questioning the legal and factual bases on which the BAC had disqualified petitioners from the project and asking for a reconsideration.[21] It is apparent from the available records that petitioners had never sought reconsideration first from the BAC to allow the said body an opportunity to correct whatever mistake it might have supposedly committed at the post-qualification stage of the bidding process. Instead, petitioners at once coursed a remedy before Administrator Jamora, the head of the procuring entity. Even assuming petitioners deserved a measure of liberality in the application of the protest procedure in the law and the implementing rules, still, the present petition would face a certain failure inasmuch as the April 21, 2005 letter-protest has not been verified and hence, produces no legal effect such as to result in the outright dismissal of the protest.[22]

The doctrine of exhaustion of administrative remedies requires that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before judicial intervention may be availed of. No recourse can be had until all such remedies have been exhausted, and the special civil actions against administrative officers should not be entertained if there are superior administrative officers who could grant relief.[23] Carale v. Abarintos[24] explains the reason for the rule, thus:

> Observance of the mandate regarding exhaustion of administrative remedies is a sound practice and policy. It ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters within the competence of the administrative agency, avoidance of interference with functions of the administrative agency by withholding judicial action until the administrative process had run its course, and prevention of attempts to swamp the courts by a resort to them in the first instance. The underlying principle of the rule rests on the presumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. There are both legal and practical reasons for this principle. The administrative process is intended to provide less expensive and [speedier] solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts, for reasons of law, comity and convenience, will not entertain the case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.
>
> Accordingly, the party with an administrative remedy must not merely initiate the prescribed administrative procedure to obtain relief, but also pursue it to its appropriate conclusion before seeking judicial intervention in order to give the administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.[25]

One final note. The doctrine of exhaustion of administrative remedies is a judicial recognition of certain matters that are peculiarly within the competence of the administrative agency to address. It operates as a shield that prevents the overarching use of judicial power and thus hinders courts from intervening in matters of policy infused with administrative character. The Court has always adhered to this precept, and it has no reason to depart from it now.

WHEREFORE, the Petition is DISMISSED.

SO ORDERED.

Carpio, (Chairperson), Carpio Morales,[*] Velasco, Jr.,[**] and Bersamin,[**][*] JJ., concur.

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[*] Designated as an additional Members in lieu of Associate Justice Roberto A. Abad, per Raffle dated September 20, 2010.

[**] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 886 dated September 1, 2010.

[***] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 894 dated September 20, 2010.

[1] Annex "D," "D-1" and "D-2" of the petition. rollo, pp. 31-33.

[2] Presidential Decree No. 198 is short-titled, "The Provincial Water Utilities Act of 1973."

[3] Rollo, p. 7.

[4] Id. at 30.

[5] Id. at 47.

[6] Annex "F" of the petition, id. at 35.

[7] Annex "H" of the petition, id. at 37.

[8] Annex "I" of the petition, id. at 38.

[9] Annex "J"-"J-2" of the petition, id. at 39-41.

[10] Rollo, pp. 39-40.

[11] Annexes "N," "N-1" and "N-2" of the petition, id. at 47-49.

[12] Id.

[13] Annex "K" of the petition, id. at 42-43.

[14] Rollo, p. 12.

[15] Id. at 55-81.

[16] G.R. No. 178799, January 19, 2009, 576 SCRA 311.

[17] Id. at 318-319, citing Page-Tenorio v. Tenorio, 443 SCRA 560 (2004).

[18] Roque, Jr. v. Commission on Elections, G.R. No. 188456, September 10, 2009, 599 SCRA 69, 112-113, citing, Chavez v. National Housing Authority, 530 SCRA 235 (2007).

[19] Id. at 113, citing Cabarles v. Maceda, 516 SCRA 303 (2007).

[20] Id. at 318-319, citing Page-Tenorio v. Tenorio, supra note 17.

[21] See rollo, pp. 39-41. The June 8, 2005 communication sent by Administrator Jamora suggest that petitioners sent another letter to him on May 31, 2005 likewise opposing the action of the BAC in post-disqualifying their joint venture. See rollo, p. 42.

[22] See last paragraph, Section 55.2, Implementing Rules and Regulations-A of R.A. No. 9184.

[23] Gonzales, Administrative Law--A Text, 1979, p. 137.

[24] 336 Phil. 126 (1997).

[25] Id. at 135-136.

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