

RAMON BORROMEO, PLAINTIFF AND APPELLANT, VS. CITY OF MANILA AND JOSE RODRIGUEZ LANUZA, DEFENDANTS AND APPELLEES,

G.R. No. 41985. November 13, 1935

Ponente: BUTTE, J.

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BUTTE, J.:

This is an appeal from a judgment of the Court of First Instance of Manila in an action for a writ of mandamus to require the defendant City of Manila to award to the plaintiff a certain contract for the filling of a lot in the said city.

The complaint alleges in substance that the mayor of the City of Manila, under date of June 27, 1932, advertised for bids as follows:

"Sealed proposals will be received at this office until 11 o'clock a. m. of the 18th of July, 1933, and then publicly opened, for filling separately eleven parcels of low lands, as shown in plans and specifications. The filling required consists of good earth, clean ashes, or other approved material.

"A deposit of FIO is required for the prompt return of plans and specifications.

"Surety bond, cash, or certified check in the sum of P1,000 must accompany each bid.

"The right is reserved to reject any or all bids, to waive any defects, and to accept such bid as may be considered most advantageous to the City of Manila.

"TOMAS EARNSHAW

"Mayor, City of Manila"

It is further alleged that in pursuance of the said call for bids, the plaintiff submitted a sealed bid and posted a bond for the sum of KL,000; that the bid of the plaintiff as to parcel No. 350 for the sum of P1,630, the work to be completed in sixty days, was the lowest and best bid; that the defendant Lanuza, for the same work bid the sum of P1,668, the work to be completed in ninety days; that the City of Manila duly represented by its mayor unjustly and illegally and with abuse of discretion ignored the bid of the plaintiff and awarded the contract to the defendant Lanuza. The complainant prayed for a temporary injunction and a final judgment declaring the contract with Lanuza to be void and requiring the City of Manila to award the contract to the complainant.

The City of Manila sets up as a special defense that Act No. 3352, section 4, provides that the work of filling low lands shall be done by contract which shall be awarded to the lowest and best bidder upon previous advertisement and public competitive bidding; that the determination of the lowest and best bidder involves an exercise of discretion ; that the action of the city in awarding the contract to the next lowest instead of to the lowest bidder was chiefly influenced by the information which the city engineer and the mayor received from the Director of Public Works and certain correspondence between the city engineer and the plaintiff with regard to the kind of filling material to be used.

The trial court found that the government of the City of Manila did not act arbitrarily or capriciously in rejecting the bid of the plaintiff and accepting the next lowest bid as being the one most advantageous to the city.

Upon the hearing of this cause in the Court of First Instance, the plaintiff endeavored to prove that he had completed ten contracts to the satisfaction of the Government but the trial court ruled this evidence out as irrelevant and immaterial. The plaintiff admitted that he is the same Ramon Borromeo whose name appears in the firm Ramon Borromeo & Co. but testified that he was not a member of the firm but the engineer of the company working on a fixed salary.

The exhibits and evidence disclosed that before the award was made to the defendant Lanuza, the mayor had before him the report of the city engineer and the memorandum of the Director of Public Works. The Director of Public Works stated as follows:

"Respectfully returned to Mr. Santiago Artiaga, City Engineer, Manila, with the information that contracts with Ramon Borromeo & Co. for the following projects have been annulled on account of abandonment of work; Obando waterworks, Province of Bulacan, Davao waterworks, Province of Davao, Malaking Hog River Bridge, Province of Batangas, Cainta Elementary School building, Province of Rizal, Himogaan River Bridge, Province of Occidental Negros and Malabon Elementary School building, Province of Rizal." (Exhibit 1-C.)

And the city engineer's report includes the copy of a letter sent by the city engineer to Borromeo requesting information as to the kind of filling material to be used to which the latter answered as follows:

"July 24, 19 S3

"THE CITY ENGINEER

"Manila

"SIR : With reference to your letter dated July 21, 1933, re proposed filling of parcel No. 350 located at Estero de Quiapo and owned by Felipa Roxas, I have the honor to inform that the material I am going to use is mud, but at the edges facing to the river, I am very willing to use Adobe stones or escumbro to make it as wall.

"Respectfully,

(Sgd.) "RAMON BORROMEIO"

The city engineer, in his report submitting the bids and the correspondence with Borromeo and the Director of Public Works, recommended to the mayor that the contract be awarded to the next lowest bidder, the defendant Lanuza. Acting upon the city engineer's recommendation and the information submitted by him, the mayor awarded the contract to Lanuza.

The appellant makes six assignments of error but only one' argument in support of all of them. The substance of this argument is that the mayor acted arbitrarily and capriciously in rejecting the appellant's bid without giving him a hearing as to his responsibility. Counsel states in his brief:

"If the plaintiff had been heard, as the law requires, before the rejection of his bid, the defendant City of Manila would have found proper facts to rightly base on its discretionary powers in determining as to who the lowest responsible bidder is."

The courts may declare an action or resolution of an administrative authority to be illegal (1) because it violates or fails to comply with some mandatory provision of the law; or (2) because it is corrupt, arbitrary or capricious. In the present case the question before us is whether the action of the mayor in awarding the bid to the next lowest bidder under the circumstances stated was arbitrary or capricious. The contention that his action was capricious is without merit in view of the fact that he had before him the letter of Borromeo in which he proposed to fill parcel No. 350 with mud instead of "good earth, clean ashes or other approved material", as called for in the

advertisement for bids; and also the report of the Director of Public Works with reference to the experience which that Bureau had with Borromeo & Co. of which the plaintiff, according to his own admission, was the engineer.

The principal argument which the appellant advances on this appeal is that the action of the mayor was arbitrary because Borromeo was not given a hearing before the rejection of his bid and the acceptance of the next lowest bid. In support of this point, the appellant quotes in full in his brief the following decisions: *Kelly vs. Board of Chosen Freeholders of Essex County* (101 AtL, 422; 90 N. J. Law, 411) ; and *Faist vs. City of Hoboken* (72 N. J. Law, 361; 60 Atl., 1120). These cases lay down the rule for the State of New Jersey that under a statute requiring the awarding of contracts to the "lowest responsible bidder", especially where a bond is required a municipality cannot lawfully reject the lowest bidder on the ground that he is not a responsible bidder without granting him a hearing, and then only upon facts establishing the existence of such alleged lack of responsibility to the satisfaction of the municipal board or mayor, as the case may be. Although the New Jersey doctrine in this respect is not the prevailing rule in the United States, there is much force in the argumentation of the New Jersey decisions and we would not be understood as declaring that we would not follow the same rule in this jurisdiction in a proper case. But the fact which the appellant seems to overlook is that we are construing here a very different statute. There is a substantial distinction, recognized frequently in the decisions, between the expressions "lowest responsible bidder" and "lowest and best bidder". The term "responsible bidder" includes not only financial ability but also the skill and capacity necessary to complete the job for which the bidder would become answerable. The expression "best bidder" is even wider and includes not only financial responsibility, skill and capacity, but also the reputation of the bidders for dealing fairly and honestly with the government, their mechanical facilities and business organization tending to show despatch in their work and harmonious relations with the government, the magnitude and urgency of the job, the kind and quality of materials to be used, and other factors as to which one bidder may offer greater advantages to the public than another, all of which require investigation, comparison and deliberation and decision calling for the highest degree of discretion. Where the statute authorizes the letting of a contract to the "lowest and best bidder", the discretion thereby conferred is so wide that the courts will not undertake to control it. When it is exercised in good faith by an administrative authority, the public business should not be compelled to await the slow processes of the courts. Bidders impliedly accept this condition when they enter a competition in which there is an express reservation of the right to reject any and all bids, as was true in this case. Of course, such a reservation may not be used as a shield to a fraudulent award. In the present case there is nothing in the record tending in the slightest degree to impugn the good faith of the mayor.

The judgment is affirmed with costs against the appellant.

Avanceña, C.J., Malcolm, Villa-Real, Abad Santos, Vickers, Imperial, Goddard, and Recto, JJ., concur.

Judgment affirmed.

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