

**JUAN D. CELESTE, PAULO M. DURANO AND DOMINADOR RICARTE,
PETITIONERS, VS. THE HON. COURT OF APPEALS, AGAPITA VDA. DE
LUZON, JULIANA LOPEZ, ISIDRO LUZON, LIVINIA RIZARRI,
REBECCA ...**

G.R. No. 61024. May 19, 1992

Ponente: GUTIERREZ JR., J.

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GUTIERREZ JR., J.:

The liability of petitioners public officials, as members of the Committee on Arrastre Bidding in the Port of Cebu (Bidding Committee) is put at issue in this petition for review on certiorari.

In 1964, petitioners Juan Celeste, Paulo M. Durano and Dominador Ricarte were Collector of Customs of the Port of Cebu, Surveyor of the Port of Cebu, and Customs Operation Head, respectively.

In Special Order No. 10-64 dated May 21, 1964, the Commissioner of Customs created a committee to conduct the bidding for the arrastre service for the port of Cebu. Petitioner Celeste was named Chairman of the Bidding Committee while petitioners Durano and Ricarte were designated as its members.

The bidding, which was originally scheduled on July 6, 1964, was postponed to and actually held on August 27, 1964 upon the order of the then Customs Commissioner Jose Lingad. Four bidders participated in the bids, namely: Luzon Arrastre Service, Visayan Port Service Association, Visayan Cebu Terminal Inc., and Cebu Port Terminal, Inc.

After deliberating on the bids, the Bidding Committee submitted its report to the Commissioner of Customs on October 3, 1964. The Bidding Committee evaluated and assigned points to the bids as follows:

Luzon Cebu Port Visayan Port Vis-Cebu

wght: pts: wght: pts: wght: pts: wght: pts:

Share (30%) 90 27 90 27 90 27 85 25.5

Experience (25%) 80 20 90 25.5 80 20 90 22.5

Capital (25%) 80 20 90 22.5 90 22.5 75 18.75

Equipment (10%) 80 8 90 9 75 7.5 90 9

Labor (10%) 90 9 90 9 90 9 90 9

84 89 86 84.75

(Exh. H., pp. 76-80)

On March 4, 1965, a team of seven (7) technical men who were all knowledgeable in the field of arrastre service,

headed by Abraham C. Campo, then Acting General Manager of the Customs Arrastre Service for the port of Manila, was commissioned to review and verify the Report of the Bidding Committee. After reviewing the Bidding Committee's report, Campo's team forwarded to the Commissioner of Customs its own report dated March 12, 1965 and categorically recommended the award of the arrastre contract to Cebu Port Terminal, Inc. (CPTI). Campo's recommendation reads:

"2. Inasmuch as the Cebu Port Terminal, Inc. offered the highest bid (46.1%) and that it can operate the arrastre at a reasonable margin of profit, it should be awarded the bid." (Exhibit 2, Records, Vol. II, p. 117)

In a first endorsement dated March 16, 1965, then Acting Customs Commissioner Mariano forwarded to the Secretary of Finance the papers pertaining to the arrastre bidding and recommended that the award be given to CPTI. (See Exhibit I, p. 83)

On April 1, 1966, the Secretary of Finance decided to award the operation of the arrastre service for the port of Cebu to CPTI.

On April 5, 1966, Emedio Luzon, as proprietor of Luzon Arrastre Service and now represented by private respondents as his heirs, filed through his counsel, Atty. Cesar Cabahug, a letter-motion for reconsideration of the decision of the Secretary of Finance.

Without waiting for the resolution of his letter-motion for reconsideration, Luzon filed on April 2, 1966 an action for the annulment of the arrastre awards before Branch XII of the Court of First Instance of Manila (now Regional Trial Court). Named as defendants in said action were the Secretary of Finance and the Commissioner of Customs. The petitioners were not impleaded in the complaint as defendants.

On June 3, 1966, the Secretary of Finance, acting on Luzon's letter-motion for reconsideration, designated Atty. Conciso Osorio, Legal Officer of the Department of Finance, to undertake further inquiries into the capability of the awardee CPTI.

Atty. Osorio submitted his report to the Secretary of Finance on July 6, 1966. He refrained from making any recommendation in view of the pendency of the annulment case. However, he pointed out that the conditions obtaining in 1964, when the Bidding Committee prepared its report were no longer the same in 1966. (See Exhibit EE, p. 243)

On October 18, 1966, the Customs Commissioner submitted the arrastre contract for the approval of the Secretary of Finance.

On October 24, 1966, the Secretary of Finance approved the arrastre contract subject to the amendment of paragraph 15 thereof. Thereafter, on December 9, 1966, he informed Emedio Luzon that no action could be taken on the latter's letter-motion for reconsideration due to the pendency of the annulment suit.

On December 16, 1966, Luzon, through a new counsel, amended the original complaint by impleading the members of the Bidding Committee, herein petitioners, as defendants.

After trial, the lower court rendered a decision on January 27, 1970, the dispositive portion of which reads:

"In view of the foregoing, judgment is rendered as follows:

(1) The award of the Arrastre Contract to respondent Terminal (Cebu Port Terminal, Inc.) is declared illegal and null and void;

(2) The Commissioner of Customs and the Secretary of Finance are ordered to award the said arrastre contract to the plaintiff (Emedio Luzon) for the same period and under the same terms and conditions as the contract

herein annulled, the period to commence from the execution of the contract;

(3) All the defendants, except the Collector of Customs and the Secretary of Finance are ordered to pay jointly and severally by way of damages during the period that the plaintiff has been prevented from exercising his right to operate the arrastre service in the Port of Cebu at the rate of P68,000.00 a year plus the sum of P20,000.00 as reasonable attorney's fee, it appearing that by reason of fraud and collusion of said defendants, plaintiff was compelled to hire counsel to prosecute this case.

(4) Costs against all defendants.

The counterclaim of the defendant Terminal is dismissed for lack of merit." (Records, pp. 282-283, Vol II)

The petitioners appealed to the Court of Appeals. On December 29, 1980, the respondent court affirmed the lower court's decision except for the portion ordering the award of the arrastre contract to Luzon Arrastre Service.

The dispositive portion of the appellate court's decision is quoted below:

"WHEREFORE, premises considered, judgment appealed from is hereby affirmed in its award for damages at P68,000.00 a year for 5 years and P20,000.00 for attorney's fees, but deny the writ for mandamus as this has become now moot and academic. Costs against defendants-appellants." (Rollo, p. 62)

The petitioners filed a motion for reconsideration which was denied by the respondent court in a resolution dated June 18, 1982. Likewise on August 23, 1983, the respondent court denied the petitioners' second motion for reconsideration.

The petitioners came to this Court seeking the reversal of the respondent court's decision dated December 29, 1980 as well as its resolution dated June 18, 1982 and August 23, 1983. The case was reassigned to the undersigned members of the Third Division on January 15, 1992.

At the outset, the Court notes the disparity in enthusiasm with which the contending parties have pursued this case. While the Solicitor-General, acting in behalf of the petitioners, had even requested that his motion for reconsideration before the Court of Appeals be set for oral argument (see C.A.-Rollo, p. 41), neither the private respondents nor their lawyer, on the other hand, appeared on the date set for oral argument. Moreover, the private respondents did not submit the required comments on the motion for reconsideration and second motion for reconsideration filed by the petitioners.

Despite the almost 3-year delay in the disposition of this case due to the difficulty in locating the surviving counsel of the private respondents, the private respondents' one and a half-page answer did not traverse the allegations of the twenty-nine page petition for review filed before this Court. We find unmeritorious the private respondents' argument that the appealed decision had already become final and executory.

Under the circumstances, this case shall be decided on the basis of the petition and the records at hand.

The petitioners raise the following arguments:

1. The petitioner's liability is anchored on a wrong premise based on a gross misapprehension of facts. (Rollo, p. 23)
2. The award of damages against the petitioners has no legal and factual basis. (Rollo, p. 28)
3. The bad faith, arbitrariness and partiality imputed to the petitioners have no factual basis. (Rollo, p. 30)

After a thorough review of the records of this case, we rule that the findings and conclusions of the two lower courts cannot be sustained. The Court is constrained to grant the petition.

The respondent court, in affirming the lower court's award of damages, ascribed to the Bidding Committee bad faith, arbitrariness and partiality amounting to abuse of discretion on the basis of these findings:

- (a) CPTI did not accompany its bid proposal with either cash or certified check in the amount of P5,000, in violation of paragraph I of the Instructions to Bidders;
- (b) CPTI failed to state in its bid proposal its commitment to charge rates provided for under Section 3109 of the Tariff and Customs Code;
- (c) Petitioner Celeste, the chairman of the Bidding Committee, postponed the bidding to enable CPTI to organize and take part in the bidding;
- (d) The bid proposal of CPTI was not inside a sealed envelope but was merely stapled;
- (e) CPTI made a very unrealistic bid as to the percentage of government share, which amount was handwritten, not typewritten.
- (f) Mr. Luzon's request to examine the bid proposal of CPTI, due to the former's doubts as to the latter's compliance with the Instructions to Bidders, was denied by petitioner-chairman Celeste.
- (g) After the bidding, petitioner-chairman Celeste resigned from the position of Collector of Customs to become the General Manager of CPTI.

The above findings, however, are either contrary to the evidence on record or are based on a grave misapprehension of facts for reasons hereinafter discussed.

(a) There is proof that CPTI actually submitted to the Bidding Committee, together with its bid offer, a P5,000 certified check. The private respondents themselves, in their amended complaint, stated that "the withdrawal of the certified check by CPTI before the signing of the management contract constitutes a forfeiture of the right it might have had to be awarded the arrastre service contract." (Records, p. 189, Vol. I) This Court is not concerned here with the alleged withdrawal of the certified check, which allegation was not even proven by the private respondents. The aforequoted statement by the private respondents, however, is an admission that there was indeed a P5,000 certified check submitted to the Bidding Committee. Whether or not the check was withdrawn before the signing of the arrastre service contract, the undisputed fact remains that during the evaluation of the bids, the Bidding Committee did not disqualify CPTI because the latter complied with the Instructions to Bidders by submitting a certified check.

(b) The Instructions to Bidders provides that "the successful bidder shall charge the rates provided under Section 3108 of Republic Act No, 1937 otherwise known as the Tariff and Customs Code of the Philippines. (Underlining supplied.) Contrary to the appellate court's declaration, we find that CPTI's failure to state in its bid proposal its commitment to charge the required rates will certainly not vitiate its bid offer. By the very fact of submitting a bid proposal, CPTI agreed to be bound by the condition in the Instructions to Bidders that in case it becomes the winning or successful bidder, it shall charge the required rates under the Tariff and Customs Code.

(c) The records clearly show that the postponement of the bidding was made by Commissioner Jose Lingad, not by petitioner Celeste. (See Exhibit 7, Records, p. 128, Vol. II.)

(d) The allegation that CPTI's bid proposal was not in a sealed envelope but in a stapled envelope was not only vehemently denied by CPTI but it was an accusation which was not mentioned in the earlier letters of Mr. Luzon and Atty. Cabahug to the Bidding Committee and the Secretary of Finance and which was raised by them only four years after the bidding took place. This circumstance alone should have aroused the suspicion of the two lower courts as to the verity of Mr. Luzon's and Atty. Cabahug's allegations.

(e) Both the trial court and the respondent court found that "a manipulation was made by writing (not by typewriting) its offer of percentage of government share even to a very unrealistic amount on its bid proposal which was not sealed but merely stapled for convenience." (Rollo, p. 59) But the two courts did not even explain why they viewed a handwritten amount, a very unrealistic percentage of government share and a stapled envelope as badges of irregularity. The public respondent has unwittingly left to this Court the task of building inferences from the aforementioned facts. We must emphasize that an imputation of an anomaly should not rest on the basis of loose insinuations or speculations. Where a public official's liability is at issue, this Court, and certainly the two courts below, cannot ascribe bad faith or arbitrariness upon mere conjecture.

Against these unexplained accusations, we find the following justification of the petitioners more logical and convincing:

"So much fuss is being made by private respondent as to the reason why in the bid proposals of Cebu Port Terminal, Inc. the percentage of government share was written in handwriting and not typewritten. From this, private respondents maliciously insinuate that the percentage of government share was surreptitiously inserted.

"This is a classical (sic) example of non sequitur. It is not uncommon in public biddings that estimates are handwritten at the eleventh hour because bidders try to prevent any premature leak in their bid proposals to a competitor bidder or they try to infiltrate their competitors in the hope of submitting a more favorable bid. If the percentage of government share was surreptitiously inserted as charged, then it would not have been as high as 46.1%, considering that the second highest offer was 44% only. Moreover, whether the percentage is 46.1% as offered by Cebu Port Terminal, Inc. or 43% as offered by private respondents, both offers received the same rating of 90% or 27 points as shown in Exhibit "H", pages 76-80, Folder of Exhibits. There is, therefore, nothing to gain to surreptitiously insert a high percentage of government share. It would mean only less income for the operator, and there is the danger that the offer would be rejected for being too high and unrealistic. All these circumstances negate private respondents' claim of surreptitious insertion." (Rollo, pp. 36-37)

(f) Contrary to the appellate court's finding, the private respondents' request to examine the bid proposals was not denied by Chairman Celeste, as shown by Atty. Cabahug's letter dated August 28, 1964 addressed to the members of the Bidding Committee, the pertinent parts of which are quoted below:

"In view of the foregoing, the undersigned counsel make (sic) representation to the Chairman of the Cebu Arrastre Bidding Committee requesting the same to examine the bid proposals of the above-named bidders. The Chairman acknowledge (sic) such personal request but only promise (sic) to allow us to examine after the Committee deliberate (sic) on the said proposals duly submitted. Further, the Chairman give (sic) us the assurance that the Committee may furnish interested bidder of whatever deliberation they may have taken to give said party the opportunity to file its protest of whatever believed (sic) worthwhile." (See Exhibit P -7, Records, p. 159; Underling Supplied.)

The foregoing indicates that the private respondents were allowed to examine the bid proposals after the Committee had deliberated on said bids.

g) The two lower courts found that after the bid was awarded to CPTI, petitioner Celeste resigned from his position to become the General Manager of CPTI. (See Rollo, p. 59). This is incorrect. The records reveal that Celeste did not resign from his position; he retired in July, 1965. (TSN, May 25, 1968, p. 11) He ran for Congress in the November 1965 elections. (TSN, May 7, 1968, p. 20) True, petitioner Celeste later on became CPTI's manager, but this was at the time when the arrastre service for the Cebu port was already being undertaken by the Government. (TSN, May 7, 1968, p. 24) Because of the annulment case filed in court, CPTI was never able to operate the arrastre project.

Moreover, during the trial, petitioner Celeste attempted to narrate the circumstances as to how he was designated as General Manager of CPTI. However, he never had the opportunity to explain because the trial judge did not allow him and instead ordered him to "just answer my question" (TSN, May 25, 1968, p. 9)

The respondent appellate court agreed with the lower court's finding that the petitioners showed marked partiality towards CPTI when they gave the latter higher ratings than it deserved, to the detriment and prejudice of Luzon Arrastre Service. If, indeed, these public officials exhibited manifest bias towards CPTI, then the Campo Committee, which was tasked to review the Bidding Committee's evaluation of the bid offers and which was comprised of seven (7) experts in the field of arrastre service, could easily have discovered these unreasonably high ratings assigned to CPTI. If the Bidding Committee had committed bad faith and arbitrariness in evaluating the bids, then Campo's team could easily have rejected the former's evaluation report. Instead, the Campo Committee came out with substantially the same findings as that of the Bidding Committee and specifically recommended that the arrastre contract be given to CPTI. On the basis of the Campo Committee's recommendation, the then Acting Commissioner indorsed to the Secretary of Finance the award of the arrastre contract to CPTI.

At this point it must be stressed that the Bidding Committee merely evaluated the bids received and made no categorical recommendation as to whom the arrastre contract should be awarded. Therefore, the conclusion of the Court of Appeals that "the Bidding Committee had committed bad faith, arbitrariness and partiality xxx in awarding the management contract to appellant Terminal" (Underlining supplied) is erroneous and arises from a misapprehension of facts.

Both the trial court and the appellate court relied heavily on the deposition of Atty. Cabahug, Emedio Luzon's counsel, wherein the petitioners were implicated in the alleged rigging of the bids.

The two lower courts, however, overlooked certain circumstances which would otherwise have cautioned them against giving credence to the lawyer's deposition.

In the first place, Atty. Cabahug was not cross-examined because his deposition was taken before a notary public in Cebu while the original case was filed in Manila. No compelling reason was given as to why he could not testify in open court in Manila.

Secondly, it was only in said deposition, taken four years after the bidding, that Atty. Cabahug revealed for the first time the alleged rigging of the bids.

Thirdly, the petitioners were not even impleaded in the original complaint for the annulment of the arrastre award to CPTI.

Lastly, Atty. Cabahug may not be considered a disinterested witness because his daughter is married to Luzon's son. (Rollo, p. 27) Indirectly, he stood to benefit if ever the arrastre contract was awarded to Luzon Arrastre Service.

Considering the aforementioned circumstances, we find that the self-serving testimony of Atty. Cabahug cannot defeat and overthrow the presumption of regularity accorded to the petitioners in the performance of their duty.

Moreover, paragraph 15 of the Instructions to Bidders states that "the Government hereby reserves the right to reject any or all bids submitted." In the case of *A.C. Esguerra and Sons v. Aytona*, 4 SCRA 1245, 1249 [1962], we held:

"xxx[I]n the invitation to bid, there is a condition imposed upon the bidders to the effect that the bidders shall be subject to the right of the government to reject any and all bids subject to its discretion. Here the

government has made its choice, and unless an unfairness or injustice is shown, the losing bidders have no cause to complain, nor right to dispute that choice." (Underlining Supplied)

Since there is no evidence to prove bad faith and arbitrariness on the part of the petitioners in evaluating the bids, we rule that the private respondents are not entitled to damages representing lost profits.

Even assuming *arguendo* that the petitioners acted with bad faith and arbitrariness, still the private respondents would not be entitled to damages.

Luzon Arrastre Service ranked the lowest among the bidders. Hence, even if the award to CPTI was nullified, the private respondents would still not be entitled to the award.

Also, acting Commissioner of Customs Pablo Mariano, relying on the report of the Campo Committee, eliminated Luzon Arrastre Service as a potential awardee for the following reasons:

xxx xxx xxx

"1. The Luzon Arrastre Service - for the reason that the same is a sole proprietorship and is presently owned by an old man, Mr. Luzon, who could neither speak English nor Tagalog, and the office of the said firm is located in a ground floor of the house of the owner, located in a semi-slum area in Cebu City, and the same corporation has only six forklifts, two of which are on deadline and they are at present engaged on arrastre service for coastwise trade. It is feared that they could not give a very efficient service, not to mention the fact that their offer on government share is only the third highest." (Exhibit 3, Records, V. II, p. 120)

Lastly, despite Mr. Luzon's letter-motion for reconsideration and Atty. Osorio's report which stated that conditions obtaining at the time the Bidding Committee made the report in 1964 were no longer obtaining in 1966, the Secretary of Finance nevertheless approved the arrastre award in favor of CPTI. This manifests an intent, on the part of the Secretary, acting in behalf of the Government, not to award the contract to Luzon Arrastre Service. Absent any proof that the Secretary acted arbitrarily and in bad faith, such exercise of discretion may not be questioned.

WHEREFORE, the petition is hereby granted. The decision of the respondent Court of Appeals dated December 29, 1980 as well as its Resolutions dated June 18, 1982 and August 23, 1983 are reversed and set aside.

SO ORDERED.

Feliciano, Bidin, Davide, Jr., and Romero, JJ., concur.

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