

MARIA ELENA MALAGA, DOING BUSINESS UNDER THE NAME B.E. CONSTRUCTION; JOSIELEEN NAJARRO, DOING BUSINESS UNDER THE NAME BEST BUILT CONSTRUCTION; JOSE N. OCCEÑA, DOING BUSINESS UND...

G.R. No. 86695. September 03, 1992

Ponente: CRUZ, J.

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CRUZ, J.:

This controversy involves the extent and applicability of P.D. 1818, which prohibits any court from issuing injunctions in cases involving infrastructure projects of the government.

The facts are not disputed.

The Iloilo State College of Fisheries (henceforth ISCOF) through its Pre-qualification, Bids and Awards Committee (henceforth PBAC) caused the publication in the November 25, 26, 28, 1988 issues of the Western Visayas Daily an Invitation to Bid for the construction of a Micro Laboratory Building at ISCOF. The notice announced that the last day for the submission of pre-qualification requirements (PRE C-1)* was December 2, 1988, and that the bids would be received and opened on December 12, 1988, at 3 o'clock in the afternoon.[1]

Petitioners Maria Elena Malaga and Josieleen Najarro, respectively doing business under the name of B.E. Construction and Best Built Construction, submitted their pre-qualification documents at two o'clock in the afternoon of December 2, 1988. Petitioner Jose Occeña submitted his own PRE-C1 on December 5, 1988. All three of them were not allowed to participate in the bidding because their documents were considered late, having been submitted after the cut-off time of ten o'clock in the morning of December 2, 1988.

On December 12, 1988, the petitioners filed a complaint with the Regional Trial Court of Iloilo against the chairman and members of PBAC in their official and personal capacities. The plaintiffs claimed that although they had submitted their PRE-C1 on time, the PBAC refused without just cause to accept them. As a result, they were not included in the list of pre-qualified bidders, could not secure the needed plans and other documents, and were unable to participate in the scheduled bidding.

In their prayer, they sought the resetting of the December 12, 1988 bidding and the acceptance of their PRE-C1 documents. They also asked that if the bidding had already been conducted, the defendants be directed not to award the project pending resolution of their complaint.

On the same date, Judge Lodrigio L. Lebaquin issued a restraining order prohibiting PBAC from conducting the bidding and awarding the project.[2]

On December 16, 1988, the defendants filed a motion to lift the restraining order on the ground that the court was prohibited from issuing restraining orders, preliminary injunctions and preliminary mandatory injunctions by P.D. 1818.

The decree reads pertinently as follows:

Section 1. No Court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or government official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

The movants also contended that the question of the propriety of a preliminary injunction had become moot and academic because the restraining order was received late, at 2 o'clock in the afternoon of December 12, 1988, after the bidding had been conducted and closed at eleven thirty in the morning of that date.

In their opposition to the motion, the plaintiffs argued against the applicability of P.D. 1818, pointing out that while ISCOF was a state college, it had its own charter and separate existence and was not part of the national government or of any local political subdivision. Even if P.D.1818 were applicable, the prohibition presumed a valid and legal government project, not one tainted with anomalies like the project at bar.

They also cited *Filipinas Marble Corp. vs. IAC*,[3] where the Court allowed the issuance of a writ of preliminary injunction despite a similar prohibition found in P.D. 385. The Court therein stated that:

The government, however, is bound by basic principles of fairness and decency under the due process clause of the Bill of Rights. P.D. 385 was never meant to protect officials of government-lending institutions who take over the management of a borrower corporation, lead that corporation to bankruptcy through mismanagement or misappropriation of its funds, and who, after ruining it, use the mandatory provisions of the decree to avoid the consequences of their misdeeds (p. 188, underscoring supplied).

On January 2, 1989, the trial court lifted the restraining order and denied the petition for preliminary injunction. It declared that the building sought to be constructed at the ISCOF was an infrastructure project of the government falling within the coverage of P.D. 1818. Even if it were not, the petition for the issuance of a writ of preliminary injunction would still fail because the sheriff's return showed that PBAC was served a copy of the restraining order after the bidding sought to be restrained had already been held. Furthermore, the members of the PBAC could not be restrained from awarding the project because the authority to do so was lodged in the President of the ISCOF, who was not a party to the case.[4]

In the petition now before us, it is reiterated that P.D. 1818 does not cover the ISCOF because of its separate and distinct corporate personality. It is also stressed again that the prohibition under P.D. 1818 could not apply to the present controversy because the project was vitiated with irregularities, to wit:

1. The invitation to bid as published fixed the deadline of submission of pre-qualification document on December 2, 1988 without indicating any time, yet after 10:00 o'clock of the given date, the PBAC already refused to accept petitioners' documents.
2. The time and date of bidding was published as December 12, 1988 at 3:00 p.m. yet it was held at 10:00 o'clock in the morning.
3. Private respondents, for the purpose of inviting bidders to participate, issued a mimeographed "Invitation to Bid" form, which by law (P.D. 1594 and Implementing Rules, Exh. B-1) is to contain the particulars of the project subject of bidding for the purposes of
 - (i) enabling bidders to make an intelligent and accurate bids;

- (ii) for PBAC to have a uniform basis for evaluating the bids;
- (iii) to prevent collusion between a bidder and the PBAC, by opening to all the particulars of a project.

Additionally, the Invitation to Bid prepared by the respondents and the Itemized Bill of Quantities therein were left blank.[5] And although the project in question was a "Construction," the private respondents used an Invitation to Bid form for "Materials." [6]

The petitioners also point out that the validity of the writ of preliminary injunction had not yet become moot and academic because even if the bids had been opened before the restraining order was issued, the project itself had not yet been awarded. The ISCOF president was not an indispensable party because the signing of the award was merely a ministerial function which he could perform only upon the recommendation of the Award Committee. At any rate, the complaint had already been duly amended to include him as a party defendant.

In their Comment, the private respondents maintain that since the members of the board of trustees of the ISCOF are all government officials under Section 7 of P.D. 1523 and since the operations and maintenance of the ISCOF are provided for in the General Appropriations Law, it should be considered a government institution whose infrastructure project is covered by P.D. 1818.

Regarding the schedule for pre-qualification, the private respondents insist that PBAC posted on the ISCOF bulletin board an announcement that the deadline for the submission of pre-qualification documents was at 10 o'clock of December 2, 1988, and the opening of bids would be held at 1 o'clock in the afternoon of December 12, 1988. As of ten o'clock in the morning of December 2, 1988, B.E. Construction and Best Built Construction had filed only their letters of intent. At two o'clock in the afternoon, B.E. and Best Built file through their common representative, Nenette Garuello, their pre-qualification documents which were admitted but stamped "submitted late." The petitioners were informed of their disqualification on the same date, and the disqualification became final on December 6, 1988. Having failed to take immediate action to compel PBAC to pre-qualify them despite their notice of disqualification, they cannot now come to this Court to question the bidding proper in which they had not participated.

In the petitioners' Reply, they raise as an additional irregularity the violation of the rule that where the estimated project cost is from P1M to P5M, the issuance of plans, specifications and proposal book forms should be made thirty days before the date of bidding.[7] They point out that these forms were issued only on December 2, 1988, and not at the latest on November 12, 1988, the beginning of the 30-day period prior to the scheduled bidding.

In their Rejoinder, the private respondents aver that the documents of B.E. and Best Built were received although filed late and were reviewed by the Award Committee, which discovered that the contractors had expired licenses. B.E.'s temporary certificate of Renewal of Contractor's License was valid only until September 30, 1988, while Best Built's license was valid only up to June 30, 1988.

The Court has considered the arguments of the parties in light of their testimonial and documentary evidence and the applicable laws and jurisprudence. It finds for the petitioners.

The 1987 Administrative Code defines a government instrumentality as follows:

Instrumentality refers to any agency of the National Government, not integrated within the department framework, vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. This term includes regulatory agencies, chartered institutions, and government-owned or controlled corporations. (Sec. 2 (5) Introductory Provisions).

The same Code describes a chartered institution thus:

Chartered institution - refers to any agency organized or operating under a special charter, and vested by law with functions relating to specific constitutional policies or objectives. This term includes the state universities and colleges, and the monetary authority of the state. (Sec. 2 (12) Introductory Provisions).

It is clear from the above definitions that ISCOF is a chartered institution and is therefore covered by P.D. 1818.

There are also indications in its charter that ISCOF is a government instrumentality. First, it was created in pursuance of the integrated fisheries development policy of the State, a priority program of the government to effect the socio-economic life of the nation. Second, the Treasurer of the Republic of the Philippines shall also be the ex-officio Treasurer of the state college with its accounts and expenses to be audited by the Commission on Audit or its duly authorized representative. Third, heads of bureaus and offices of the National Government are authorized to loan or transfer to it, upon request of the president of the state college, such apparatus, equipment, or supplies and even the services of such employees as can be spared without serious detriment to public service. Lastly, an additional amount of P1.5M had been appropriated out of the funds of the National Treasury and it was also decreed in its charter that the funds and maintenance of the state college would henceforth be included in the General Appropriations Law.[8]

Nevertheless, it does not automatically follow that ISCOF is covered by the prohibition in the said decree.

In the case of *Datiles and Co. vs. Sucaldito*,^[9] this Court interpreted a similar prohibition contained in P.D. 605, the law after which P.D. 1818 was patterned. It was there declared that the prohibition pertained to the issuance of injunctions or restraining orders by courts against administrative acts in controversies involving facts or the exercise of discretion in technical cases. The Court observed that to allow the courts to judge these matters would disturb the smooth functioning of the administrative machinery. Justice Teodoro Padilla made it clear, however, that on issues definitely outside of this dimension and involving questions of law, courts could not be prevented by P.D. No. 605 from exercising their power to restrain or prohibit administrative acts.

We see no reason why the above ruling should not apply to P.D. 1818.

There are at least two irregularities committed by PBAC that justified injunction of the bidding and the award of the project.

First, PBAC set deadlines for the filing of the PRE-C1 and the opening of bids and then changed these deadlines without prior notice to prospective participants.

Under the Rules Implementing P.D. 1594, prescribing policies and guidelines for government infrastructure contracts, PBAC shall provide prospective bidders with the Notice to Pre-qualification and other relevant information regarding the proposed work. Prospective contractors shall be required to file their ARC-Contractors Confidential Application for Registration & Classifications & the PRE-C2 Confidential Pre-qualification Statement for the Project (prior to the amendment of the rules, this was referred to as Pre-C1) not later than the deadline set in the published Invitation to Bid, after which date no PRE-C2 shall be submitted and received. Invitations to Bid shall be advertised for at least three times within a reasonable period but in no case less than two weeks in at least two newspapers of general circulations.^[10]

PBAC advertised the pre-qualification deadline as December 2, 1988, without stating the hour thereof, and announced that the opening of bids would be at 3 o'clock in the afternoon of December 12, 1988. This schedule was changed and a notice of such change was merely posted at the ISCOF bulletin board. The notice advanced the cut-off time for the submission of pre-qualification documents to 10 o'clock in the morning of December 2, 1988, and the opening of bids to 1 o'clock in the afternoon of December 12, 1988.

The new schedule caused the pre-disqualification of the petitioners as recorded in the minutes of the PBAC meeting held on December 6, 1988. While it may be true that there were fourteen contractors who were pre-qualified despite the change in schedule, this fact did not cure the defect of the irregular notice. Notably, the petitioners were disqualified because they failed to meet the new deadline and not because of their expired licenses.**

We have held that where the law requires a previous advertisement before government contracts can be awarded, non-compliance with the requirement will, as a general rule, render the same void and of no effect.[11] The fact that an invitation for bids has been communicated to a number of possible bidders is not necessarily sufficient to establish compliance with the requirements of the law if it is shown that other possible bidders have not been similarly notified.[12]

Second, PBAC was required to issue to pre-qualified applicants the plans, specifications and proposal book forms for the project to be bid thirty days before the date of bidding if the estimated project cost was between P1M and P5M. PBAC has not denied that these forms were issued only on December 2, 1988, or only ten days before the bidding scheduled for December 12, 1988. At the very latest, PBAC should have issued them on November 12, 1988, or 30 days before the scheduled bidding.

It is apparent that the present controversy did not arise from the discretionary acts of the administrative body nor does it involve merely technical matters. What is involved here is non-compliance with the procedural rules on bidding which required strict observance. The purpose of the rules implementing P.D. 1594 is to secure competitive bidding and to prevent favoritism, collusion and fraud in the award of these contracts to the detriment of the public. This purpose was defeated by the irregularities committed by PBAC.

It has been held that the three principles in public bidding are the offer to the public, an opportunity for competition and a basis for exact comparison of bids. A regulation of the matter which excludes any of these factors destroys the distinctive character of the system and thwarts the purpose of its adoption.[13]

In the case at bar, it was the lack of proper notice regarding the pre-qualification requirement and the bidding that caused the elimination of petitioners B.E. and Best Built. It was not because of their expired licenses, as private respondents now claim. Moreover, the plans and specifications which are the contractors' guide to an intelligent bid, were not issued on time, thus defeating the guaranty that contractors be placed on equal footing when they submit their bids. The purpose of competitive bidding is negated if some contractors are informed ahead of their rivals of the plans and specifications that are to be the subject of their bids.

P.D. 1818 was not intended to shield from judicial scrutiny irregularities committed by administrative agencies such as the anomalies above described. Hence, the challenged restraining order was not improperly issued by the respondent judge and the writ of preliminary injunction should not have been denied. We note from Annex Q of the private respondent's memorandum, however, that the subject project has already been "100% completed as to the Engineering Standard." This fait accompli has made the petition for a writ of preliminary injunction moot and academic.

We come now to the liabilities of the private respondents.

It has been held in a long line of cases that a contract granted without the competitive bidding required by law is void, and the party to whom it is awarded cannot benefit from it.[14] It has not been shown that the irregularities committed by PBAC were induced by or participated in by any of the contractors. Hence, liability shall attach only to the private respondents for the prejudice sustained by the petitioners as a result of the anomalies described above.

As there is no evidence of the actual loss suffered by the petitioners, compensatory damage may not be awarded to them. Moral damages do not appear to be due either. Even so, the Court cannot close its eyes to the evident bad faith that characterized the conduct of the private respondents, including the irregularities in the announcement of the bidding and their efforts to persuade the ISCOF president to award the project after two days from receipt of the restraining order and before they moved to lift such order. For such questionable acts, they are liable in nominal damages at least in accordance with Article 2221 of the Civil Code, which states:

Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant may be vindicated or, recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

These damages are to be assessed against the private respondents in the amount of P10,000.00 each, to be paid separately for each of petitioners B.E. Construction and Best Built Construction. The other petitioner, Occeña Builders, is not entitled to relief because it admittedly submitted its pre-qualification documents on December 5, 1988, or three days after the deadline.

WHEREFORE, judgment is hereby rendered: a) upholding the restraining order dated December 12, 1988, as not covered by the prohibition in P.D. 1818; b) ordering the chairman and the members of the PBAC board of trustees, namely, Manuel R. Penachos, Jr., Alfredo Matangga, Enrico Ticar, and Teresita Villanueva, to each pay separately to petitioners Maria Elena Malaga and Josieleen Najarro nominal damages of P10,000.00 each; and c) removing the said chairman and members from the PBAC board of trustees, or whoever among them is still incumbent therein, for their malfeasance in office. Costs against PBAC.

Let a copy of this decision be sent to the Office of the Ombudsman.

SO ORDERED.

Griño-Aquino, Medialdea, and Bellosillo, JJ., concur.

* Implementing Rules and Regulations on PD 1594 (Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts) as amended. Official Gazette, Vol. 84, No. 23, p. 3340-3365, June 6, 1988.

[1] Annex A, Rollo, p. 134.

[2] Annex B, Rollo, p. 31.

[3] 142 SCRA 180.

[4] Annex F, Rollo, pp. 44-48.

[5] Exhibit E-2, Rollo of Exhibits.

[6] Exhibit E-3-a, Rollo of Exhibits.

[7] Rollo, p. 87.

[8] Presidential Decree No. 1523.

[9] 186 SCRA 704.

[10] IB 13 1.2-19, Implementing Rules and Regulations of P.D. 1594 as amended.

** B.E. & Best Built's licenses were valid until June 30, 1989. (Ex. P & O respectively: both were marked on December 28, 1988)

[11] Caltex Phil. v. Delgado Bros., 96 Phil. 368.

[12] 51 CT. Cl. 211, 214, 249, U.S. 313, 39 S. Ct. 300 25 Comp. Gen. 859.

[13] Hannan v. Board of Education, 25 Okla. 372.

[14] Johnson County Savings Bank, et al. v. City of Creston, 212 Iowa 929, 231 N.W. 705; Zottman v. San Francisco, 20 Cal. 96, 81 Am. Dec. 96; Richardson v. Grant County (c.c.) 27 F. 495; People v. Gleason, 121 N.Y. 631; 25 N.E. 4; Wagner v. Milwaukee, 196 Wis. 328, 220 N.W. 207.

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