

Republic of the Philippines  
**SUPREME COURT**  
Manila

SECOND DIVISION

**G.R. No. L-30447. March 21, 1975**

**ERNESTO S. MATA, as Secretary of National Defense, ALEJANDRO MELCHOR, as Undersecretary of National Defense, NORBERTO A. ENCISO, RODOLFO C. YAN, and IRINEO J. DE GUIA, as members of the AFP Bid and Award Committee, and DOROTEO DE LEON, JR. and JUANA P. DE LEON, petitioners, vs. HON. LOURDES P. SAN DIEGO, as Judge of the Court of First Instance of Rizal, Branch IX, stationed in Quezon City, and VIRGINIA F. ESPIRITU, respondents.**

Solicitor General Felix V. Makasiar, Assistant Solicitor General Eduardo C. Abaya and Solicitor Bernardo P. Pardo for petitioners Ernesto S. Mata, etc.

Francisco de la Fuente for petitioners Doroteo de Leon, Jr. et al.

Grecia, Ceguera & Associates for respondent Virginia F. Espiritu.

SYNOPSIS

The Armed Forces of the Philippines issued invitations to bid for the supply of Khaki cloth. The "General Conditions of the Invitation for Bids" reserved to the AFP the right to reject any or all bids and accept such bids or offers as may be considered most advantageous to the best interest of the Government. It provided that the losing bidder may file a protest with the Secretary of National Defense.

Petitioners-spouses submitted the winning bid and were awarded the contract for the supply of the cloth. Respondent Espiritu, a losing bidder, instead of filing a protest with the Secretary of National Defense, filed with the Court of First Instance a petition seeking to compel by mandamus the Secretary and Undersecretary of National Defense and the members of the AFP Bid and Award Committee to award to her the bid and execute the contract in her favor. When the respondent judge issued a writ of preliminary injunction against the petitioners and refused to dissolve the same, the instant petition was filed.

The Supreme Court ruled that respondent Espiritu has no cause of action against the petitioners since she failed to exhaust the administrative remedies provided in the "General Conditions of the Invitation for Bids" and was bound by the reservation clause which vested in the authorities concerned the discretion to ascertain who among the bidders is the lowest responsible bidder. Such discretion cannot be controlled by mandamus. The respondent judge, therefore, committed a grave abuse of discretion when she granted the injunction and refused to dissolve the same.

Certiorari granted.

SYLLABUS

1. ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES; COURTS WILL NOT INTERFERE UNTIL REMEDY IS EXHAUSTED. — When, in accordance with law, a plain, speedy and adequate remedy is accorded to the aggrieved party within the Executive Department of the Government, the courts will not interfere until that remedy has been resorted to and exhausted. It implies that the aggrieved party must not merely initiate the prescribed administrative procedures to

obtain relief but must pursue them to their appropriate conclusion before seeking judicial intervention. This principle rests on the assumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. Failure of a party to exhaust the procedure of administrative remedies, therefore, effects his cause of action.

2. ID.; ID.; ID.; CASE AT BAR. — Where the "General Conditions of the Invitation for Bids" provides that the losing bidder should file a protest with the Secretary of National Defense, the petition filed by such losing bidder in the court of first instance seeking to compel the authorities concerned to award the bid to her and execute the contract in her favor should be dismissed.

3. GOVERNMENT CONTRACTS; MODIFICATION THEREOF; PROHIBITION ON MODIFICATION REFERS TO CHANGE IN VITAL PARTICULARS OF CONTRACT. — It is true that modification of government contracts, after the same had been awarded after a public bidding, is not allowed because such modification serves to nullify the effects of the public bidding and whatever advantages the government had secured thereby and may also result in manifest injustice to the other bidders. This prohibition, however, refers to a change in vital and essential particulars of the agreement which results in a substantially new contract.

4. ID.; CASE AT BAR; ALLOWABLE MODIFICATION. — A change of the manufacturer of the clothing material in a contract for the supply of Khaki cloth to the AFP may be made where it has not been required that the materials to be supplied must come exclusively from a particular manufacturer; the article to be delivered is the same in kind, quality and price as the sample accepted by the government; and there has been no change in the conditions of the agreement.

5. PUBLIC OFFICERS; QUASI-JUDICIAL FUNCTIONS; EXERCISE OF DISCRETION CANNOT BE CONTROLLED BY MANDAMUS. — Where the law imposes upon a public officer the right and the duty to exercise judgment, in reference to any matter to which he is called upon to act, it is his judgment that is to be exercised and not that of the court. Mandamus will not issue to control or review such exercise of discretion.

6. ID.; ID.; ID.; CASE AT BAR. — A losing bidder has no cause of action to compel by mandamus the authorities concerned to award to her the bid and execute the contract in her favor where the "General Conditions of the Invitations for Bids" reserved to the AFP the right, as the interest of the government may require, "to reject any or all bids and to waive any technical defect or defects, and to accept such bids or offers as may be considered most advantageous to the best interest of the government."

## DECISION

### **ANTONIO, J:**

Certiorari and prohibition with preliminary injunction to set aside the orders of respondent judge granting injunction and refusing to dissolve said injunction, and to abate all further proceedings in Civil Case No. Q-12336 of the Court of First Instance of Rizal, Quezon City, Branch IX, entitled "Virginia Espiritu v. Ernesto Mata, et al."

On December 8, 1967, the Armed Forces of the Philippines issued invitations to bid for the supply of 300,000 yards of khaki cloth, cotton twill, local manufacture, brand new, with the usual reservation clause to the effect that:

"The AFP reserves the right, as the interest of the Government may require, to reject any or all bids and to waive any technical defect or defects, and to accept such bids or offers as may be considered most advantageous to the best interest of the Government." (Par. 4, General Conditions of the Invitation for Bids.)

On June 4, 1968, petitioners-spouses Doroteo de Leon, Jr. and Juana F. de Leon, doing business under the name and style of "D. de Leon & Sons," and respondent Virginia F. Espiritu, doing business under the name and style of "Flovir Sales," among others, submitted bids or offers at said public bidding. After consideration of the bids submitted, the Bid and Award Committee of the Armed Forces of the Philippines, composed of petitioners Norberto A. Enciso, Rodolfo C. Yan and Irineo J. de Guia, decided to accept the bid of petitioners-spouses Doroteo de Leon, Jr. and Juana F. de Leon, the same being the lowest bid complying with the conditions, specifications and technical requirements for said bid, and most advantageous to the Government.

On August 12, 1968, a contract was executed between the Armed Forces of the Philippines, represented by the Secretary of National Defense, and petitioners-spouses Doroteo de Leon, Jr. and Juana F. de Leon, as awardees, covering 300,000 yards of cloth, therein specified, the same to be delivered to the Armed Forces of the Philippines within one year from October 1, 1968. It appears that aside from other considerations, such as the fact that the price bid submitted by respondent Espiritu was P24,600.00 more than the price bid of petitioners-spouses, some of the bases of the award were the evaluation report dated March 6, 1968 to the Commanding General of the AFPSC on the test conducted by the National Institute of Science and Technology (NIST) on the khaki cloth samples submitted by the participating bidders wherein it was found that the sample submitted by petitioners-espouses marked "Luzon" "is the closest to the standards desired, followed by samples marked 'Visayas', 'Mindanao', and 'Manila' in that order." The sample marked "Visayas" was the sample submitted by respondent Virginia F. Espiritu. Likewise, when the analysis of the NIST was referred by the Chairman of the AFPSC Bid and Award Committee for evaluation and comment to the Textile Mills Association of the Philippines, the latter, in a letter dated May 16, 1968, reported that after a thorough study of the aforementioned analysis report, in relation to the sample submitted, found that the samples submitted by D. de Leon and Sons had longer serviceability and durability and, therefore, had an advantage over the specifications.

Instead of exhausting her administrative remedies by filing a protest with the Secretary of National Defense under Section 17 of the "General Conditions of the Invitation for Bids", respondent Virginia F. Espiritu, on August 27, 1968, filed with the Court of First Instance of Rizal, Quezon City Branch, a "petition for injunction, prohibition and/or mandamus, with preliminary injunction" against the petitioners, wherein she alleged that the contract of August 12, 1968 was null and void because the awardees "tendered unresponsive bids" and were "disqualified" from being awarded the bid as they were not "duly authorized distributors of any textile mills capable of manufacturing or supplying the materials bidden", and consequently prayed that the Secretary of National Defense, Undersecretary of National Defense and the Members of the AFP Bid and Award Committee, be ordered to award the bid in favor of Virginia F. Espiritu and execute the contract corresponding thereto.

In view of opposition to the issuance of the writ of preliminary injunction, the petition for the issuance of said writ was denied by the respondent Judge on October 10, 1968, on the ground that the issuance of said injunctive writ "will cause great damage to respondents, while petitioner can be compensated for whatever damage can be proved, and that petitioner's rights respecting the subject of the cause of action is not indubitable . . ."

On November 20, 1960, or after the lapse of more than thirty (30) days from receipt of the aforestated Order of October 10, 1968, respondent Espiritu filed with the lower court an "Urgent Ex-Parte Motion for Preliminary Injunction alleging that ". . . Acting Secretary of National Defense, approved a request of (respondents) herein petitioners, Doroteo de Leon, Jr. and Juana F. de Leon for a change in the miller or manufacturer stated in their bid, from Union Textile Corporation to Consolidated Mills, Inc." thereby effecting "a novation tantamount to the acceptance of another bid without prior public notice and beyond the requirements of law."

This time, in spite of the opposition of petitioners-spouses, respondent Judge, on December 6, 1968, granted the writ of preliminary injunction, reasoning that irreparable injury will be caused to respondent Espiritu unless restrained as "the original allegation in the first petition that ". . . Doroteo de Leon, Jr. and Juana F. de Leon are not the authorized distributors of a textile mill capable of manufacturing or supplying the materials bidden seems to be borne out by the action of respondent Secretary of National Defense and Undersecretary of National Defense when they authorized a change in the miller or manufacturer; . . ."

Petitioners filed with the lower court on December 10, 1968 a Joint Motion for Reconsideration, contending, among others, that "nowhere in the invitation to bid is there any condition that the clothing materials to be supplied by any participating bidder should come from the particular miller specified in their offer to bid, and so when respondent Secretary of National Defense included that condition in the award, respondent D. de Leon and Sons vehemently protested the inclusion of said condition . . ." and because their aforementioned protest was found meritorious, the petitioners-spouses were expressly permitted to change their manufacturer from Union Textile Corporation to Consolidated Mills, Inc.

On January 23, 1969, respondent Judge denied the Joint Motion for Reconsideration, and on February 6, 1969, petitioners filed in the lower court an "Urgent Joint Motion to Dissolve Preliminary Injunction" to which were attached the corresponding affidavits of merit executed by the Acting Secretary of National Defense and by Doroteo de Leon, Jr., respectively, attesting to the fact that they had suffered great and irreparable damage while the respondent, Espiritu, could be fully compensated for whatever damages she may suffer, and that they "are ready, able and willing to file such bond as may be required by this Honorable Court in accordance with Rule 58, Section 6 of the Rules of Court."

On March 24, 1969, respondent Judge denied the Joint Motion to Dissolve the Writ of Preliminary Injunction, consequently, petitioners filed the present petition.

On May 6, 1969, this Court gave due course to the petition and granted the writ of preliminary injunction, restraining respondent Judge from executing or implementing her orders and from otherwise taking further cognizance of or in any manner assuming jurisdiction over Civil Case No. Q-12336.

I

The issue, therefore, is whether or not respondent Judge, in the light of the attendant facts, committed a grave abuse of discretion, amounting to an excess of jurisdiction, in granting the injunction and in refusing to dissolve the same in Civil Case No. Q-12336. This question, in turn, hinges on whether or not the records of said civil case disclose that the private respondent has any sufficient cause of action against herein petitioners.

1. Pursuant to the "General Conditions of the Invitation for Bids", any losing bidder may, in writing, file a protest within five (5) days from the date recommendation is made, with the Chief of Staff of the Armed Forces of the Philippines against the recommendation of the Bid and Award Committee, and the Chief of Staff shall promulgate his decision in writing within five (5) days from receipt of such protest. From any adverse decision of the Chief of Staff, AFP, the losing party may, within ten (10) days from receipt thereof, still appeal to the Secretary of National Defense, whose decision on the protest, appeal, or request for reconsideration "shall be final" (Par. 17, General Conditions of the Invitation for Bids). Indeed, under his power of direction and supervision, he can affirm, reverse or modify the decision of the Chief of the offices under his jurisdiction [Section 79 (c), Revised Administrative Code]. It is not disputed that private respondent has not filed any valid protest with the Chief of Staff, AFP, against the recommendation of the Bid and Award Committee, much less did she post any protest bond required by the rules. It is a familiar principle that when, in accordance with law, a plain, speedy and adequate remedy is accorded to the aggrieved party within the Executive Department of the Government, the courts will not interfere until that remedy has been resorted to and exhausted. It implies that the aggrieved party must not merely initiate the prescribed administrative procedures to obtain relief but must pursue them to their appropriate conclusion before seeking judicial intervention. This principle rests on the assumption that the administrative agency, if afforded a complete chance to pass upon the matter, will decide the same correctly. Failure of a party to exhaust the procedure of administrative remedies, therefore, affects his cause of action.<sup>1</sup> On this ground alone, therefore, the action of private respondent should have been ruled out.

Private respondent, however, claims that her case comes within one of the recognized exceptions to the rule on exhaustion of administrative remedies. She has not, however, specified in what manner her case should be considered as an exception to the rule. On the basis of the facts, it could not be concluded that the actions of said officers are patently illegal or were performed without or in excess of their jurisdiction. Private respondent, however, argues that petitioners Secretary and Undersecretary of National Defense, in allowing a change of the supplier of the clothing material from Union Textile Corporation to Consolidated Mills, Inc., acted arbitrarily as this amounted to the award of the bid to a non-bidder, or the acceptance of a bid without prior public notice.

It should be recalled, however, that the "General Conditions of the Invitation for Bids" did not require that the materials to be supplied must come exclusively from a particular manufacturer or miller. According to the Solicitor General, the petitioners-spouses opportunely protested the requirement that "the materials shall be supplied by Union Textile Corporation", as this was not one of the conditions in the bid. The protest was considered favorable because it did not involve a "change in the materials to be delivered or was there any increase in price" apart from the fact that "the Consolidated Textile Mills, Inc. is a more stable and responsible corporation than the Union Textile Corporation which had undergone a financial crisis that led to a change in its management." This statement of facts by the Solicitor General has not been contradicted by private respondent. As the article to be delivered is the same in kind, quality and price as the sample accepted by the Government and there has been no change in the conditions of the agreement, there has been, therefore, no material or substantial alteration of the contract. Even under existing rules, substitution of articles may be authorized. Thus, "substitutions of articles under contract with another may be authorized if the requisitioner offers no objection thereto and the interest of the Government will not be prejudiced thereby; provided that the substitute must at least be equal or better in quality and provided further, that the contract price shall in no case be increased by reason of such substitution . . ." <sup>2</sup>

*It is true that modification of government contracts, after the same had been awarded after a public bidding, is not allowed because such modification serves to nullify the effects of the public bidding and whatever advantages the Government had secured thereby and may also result in manifest injustice to the other bidders. **This prohibition, however, refers to a change in vital and essential particulars of the agreement which results in a substantially new contract.** Such is not the case here.*

2. As an unsuccessful bidder, private respondent had no cause of action to compel the Secretary and Undersecretary of National Defense and the members of the AFP Bid and Award Committee to grant to her the bid and execute the corresponding contract in her favor. An invitation to bid is not an "offer" which, if accepted, matures into a contract. Thus, "advertisements for bidders are simply invitations to make proposals and the advertiser is not bound to accept the highest or lowest bidder unless the contrary appears."<sup>3</sup> As a bidder, private respondent was bound by the reservation clause which reserves to the Armed Forces of the Philippines the right, as the interest of the Government may require, "to reject any or all bids and to waive any technical defect or defects, and to accept such bids or offers as may be considered most advantageous to the best interest of the Government." (Par. 4, General Conditions of the Invitation for Bids). This reservation certainly vests in the authorities concerned the discretion to ascertain who among the bidders is the lowest responsible bidder or the lowest and best bidder or most advantageous to the best interest of the Government. This necessarily requires inquiry, investigation, comparison, deliberation and decision. When this quasi-judicial function is honestly exercised, it may not be reviewed by the courts. It is elementary that where the law imposes upon a public officer the right and the duty to exercise judgment, in reference to any matter to which he is called upon to act, it is his judgment that is to be exercised and not that of the court. Mandamus will not issue to control or review the exercise of discretion by a public officer where the law imposes upon him the right or duty to exercise judgment in reference to any matter in which he is required to act.<sup>4</sup> It is, therefore, evident that private respondent Espiritu has no cause of action to compel, by mandamus, the Secretary and Undersecretary of National Defense and the members of the AFP Bid and Award Committee to award to her the bid and execute the contract in her favor. Moreover, she has not shown that her bid was the best and most advantageous to the Government. As a matter of fact, her bid price was P24,600.00 more than the bid price of petitioners-spouses Doroteo de Leon, Jr. and Juana F. de Leon, whose sample cloth was found to be of "longer serviceability and durability" than the one submitted by private respondent. Under those circumstances, it is evident that private respondent has no cause of action against petitioners. Unless an unfairness or injustice is shown, after the Government has made its choice, the losing bidder has no cause to complain, nor right to dispute that choice.<sup>5</sup> WHEREFORE, certiorari is granted and the Orders of respondent Judge dated December 6, 1968 and March 24, 1969 in Civil Case No. Q-12336 are hereby set aside. The writ of preliminary injunction issued by this Court is made permanent. Costs against private respondent.

Makalintal, C.J., Fernando, Barredo and Fernandez, JJ., concur.  
Aquino, J., is on sick leave.

## Footnotes

1. Vda. de Villanueva, et al. v. Ortiz, et al., 103 Phil., 875; Lamb v. Phipps, 22 Phil., 456; Arnedo v. Aldanese, 63 Phil., 768; Gonzales v. Secretary of Education, 5 SCRA 657; Cruz v. del Rosario, 9 SCRA 755; Bongcawil v. Provincial Board of Lanao del Norte, 10 SCRA 327; Gonzales v. Provincial Auditor of Iloilo, 12 SCRA 711; Manuel v. Jimenez, 17 SCRA 55; Acting Collector of Customs v. Caluag, 20 SCRA 204; Garcia v. Teehankee, 27 SCRA 937; Go Kiong Ochura v. Commissioner of Immigration, 22 SCRA 400; Ganob v. Ramos, 27 SCRA 1174; Quintos v. National Stud Farm, 54 SCRA 210.
2. Cobacha, Law on Public Bidding and Government Contracts, citing par. 2, No. IV, Dept. Order No. 20, Department of Finance, Apr. 15, 1946.
3. Surigao Mineral Reservation Board v. Cloribel, citing Article 1326, Civil Code, 24 SCRA 491, 494.
4. Aprueva v. Ganzon, 18 SCRA 8.
5. A.C Esguerra & Sons v. Aytona, 4 SCRA 1245; Ameris v. Cuesta, 31 SCRA 604.