

Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 181735 **July 20, 2010**

LAND REGISTRATION AUTHORITY, represented by HON. BENEDICTO ULEP, in his capacity as Administrator, HON. EDILBERTO R. FELICIANO, Deputy Administrator and Chairman, BAC-PGSM, HON. OFELIA ABUEG-STA. MARIA, Vice-Chairman, BAC-PGM, ELISA OCAMPO, EDELMIRA N. SALAZAR, ATTY. JOSEFINA MONTANER, ROSETTE MABUNAY, CHERRY HERNANDEZ, NOEL SABARIZA, as Members, BAC-PGSM, Petitioner,

vs.

LANTING SECURITY AND WATCHMAN AGENCY, represented by ATTY. THOMAS L. LANTING,
Respondent.

DECISION

CARPIO MORALES, J.:

Petitioner Land Registration Authority (LRA) entered into a six-month security service contract with Lanting Security and Watchman Agency (respondent) from July 1, 2002 to December 31, 2002.

After several extensions of the contract or in the second quarter of 2004, LRA issued an invitation to bid for the award of a new security service contract. Respondent and 15 other prospective bidders, including Quiambao Risk Management Specialist (Quiambao), submitted their respective letters of intent to bid. Of the 16 bidders, six qualified including respondent and Quiambao.

Via letter of November 19, 2004,¹ respondent requested Edilberto R. Feliciano, LRA Chairman of the Bids and Awards Committee-Procurement of Goods, Services and Materials (BAC-PGSM), for it to be declared as the winning bidder.

Before any award could be made, respondent, alleging that BAC-PGSM committed bidding irregularities, lodged a complaint before the Philippine Association of Detective and Protective Agency Operator, Inc. (PADPAO)² which thereupon requested LRA to hold in abeyance the awarding of the contract for security service to any of the bidders pending investigation of respondent's complaint.³

By letter of November 24, 2004,⁴ LRA informed respondent that its contract was extended on a "day to day" basis. By a subsequent letter of December 6, 2004,⁵ it advised respondent to pull

out its security personnel from the LRA premises to give way to "the lowest calculated responsive bidder" which would take over on December 16, 2004.

On December 16, 2004, respondent, through its representative Atty. Thomas Lanting, filed a Petition for Annulment of Public Bidding and Award with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Prohibitive Injunction⁶ before the Regional Trial Court (RTC) of Quezon City. The petition of respondent was docketed as Civil Case No. Q-04-54385.

In its Answer with Counterclaim⁷ to respondent's petition for annulment, LRA raised lack of jurisdiction as a special and affirmative defense on the ground that respondent failed to comply with the protest mechanism provided under Article XVII of Republic Act (R.A.) No. 9184 or the Government Procurement Act.

Pending trial of the case, the trial court, acting on respondent's motion of May 20, 2005,⁸ issued Order of June 28, 2005⁹ directing LRA to pay compensation to respondent's security guards for actual services rendered from December 16, 2004 onwards. It held that in consonance with the principle of *quantum meruit* as well as with the principle against unjust enrichment, LRA must pay the compensation of respondent's security guards who actually rendered services from December 16, 2004 and every month thereafter until further order, based on their latest contract of services.

LRA assailed via certiorari before the Court of Appeals the trial court's June 28, 2005 Order.¹⁰

In the meantime, the trial court, on respondent's motion, dismissed its complaint by Order of August 24, 2006.¹¹

The appellate court, by Decision of September 19, 2007,¹² denied LRA's petition for certiorari, and held that, among other things, the trial court's order directing LRA to pay the salaries of respondent's security guards based on their latest contract, "for the sake of justice and equity, and in consonance with the salutary principle of non-enrichment at another's expense."¹³

The LRA filed a Motion for Reconsideration¹⁴ of the appellate court's decision, maintaining that the trial court did not have jurisdiction over the case because of respondent's failure to comply with the protest mechanism provided for in R.A. No. 9184 as it did not pay the protest fee as required by Section 55.¹⁵

The appellate court, by Resolution of February 15, 2008,¹⁶ denied LRA's motion in this wise:

It should be noted that Lanting wrote a letter dated November 19, 2004 to LRA stating that the bid submitted by Quiambao failed to comply with the prescribed PADPAO rate and should be disqualified and that since it submitted the lowest bid, the contract should be awarded to it. It appears that although no protest fee was paid by Lanting, LRA entertained the protest, informed the former that the contract was awarded to the lowest calculated responsive bidder

and advised it to pull out its security personnel as it would no longer be allowed access to the premises. Thus, the fact that LRA entertained the protest of Lanting without requiring the latter to pay the protest fee only showed that it waived said requirement of the filing of the protest fee, the amount of which was never mentioned by LRA in any of its pleadings.¹⁷ (underscoring supplied)

Hence, the present Petition for Review on Certiorari,¹⁸ petitioner maintaining:

1. that the trial court did not have jurisdiction over respondent's Petition for Annulment; and
2. that the appellate court gravely abused its discretion when it issued the assailed orders on the basis of quantum meruit.

The petition is meritorious.

Section 55 of R.A. No. 9184 provides:

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 non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR,

while Section 58 thereof provides:

Resort 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 procuring entity. Court action 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 or injunctions relating to Infrastructure projects of the government.

Section 55 of R.A. No. 9184 sets three requirements that must be met by a party desiring to protest the decision of the Bids and Awards Committee (BAC). These are: (1) the protest must be in writing, in the form of a verified position paper; (2) the protest must be submitted to the head of the procuring entity; and (3) the payment of a non-refundable protest fee.¹⁹

Respondent's letter of November 19, 2004²⁰ to the BAC-PGSM Chairman cannot be considered as the protest required under Section 55 of R.A. No. 9184 as it was not verified and the protest fee was not paid.

Respondent thus failed to avail of the correct protest procedure prescribed under Section 55 of R.A. No. 9184 before it filed its petition for annulment of the award before the RTC. Section 58 of the said law explicitly requires that cases filed in violation of the protest process of Section 55 "shall be dismissed for lack of jurisdiction."

Thus, in *Department of Budget and Management Procurement Service v. Kolonwel Trading*,²¹ this Court declared null and void the trial court's order annulling Inter-Agency Bids on Awards Committee's (IABAC's) resolution disqualifying Kolonwel from the bidding for the supply and delivery of textbooks and teacher's manuals to the Department of Education due to its non-compliance with Section 55 of R.A. No. 9184.

Respondent's letters of May 18, 2006 and June 28, 2006 in which it requested reconsideration of its disqualification cannot plausibly be given the status of a protest in the context of the aforementioned provisions of R.A. No. 9184. For one, neither of the letter-request was addressed to the head of the procuring entity, in this case the DepEd Secretary or the head of the DBM Procurement Service, as required by law. For another, the same letters were unverified. And not to be overlooked of course is the fact that the third protest-completing requirement, i.e., payment of protest fee, was not complied with.

Given the above prospective, it cannot really be said that the respondent availed itself of the protest procedure prescribed under Section 55 of R.A. No. 9184 before going to the RTC of Manila via a petition for certiorari. Stated a bit differently, respondent sought judicial intervention even before duly completing the protest process. Hence, its filing of SP Civil Case No. 06-116010 was precipitate. Or, as the law itself would put it, cases that are filed in violation of the protest process "shall be dismissed for lack of jurisdiction."

Considering that the respondent's petition in RTC Manila was actually filed in violation of the protest process set forth in Section 55 of R.A. No. 9184, that court could not have lawfully acquired jurisdiction over the subject matter of this case. In fact, Section 58, *supra*, of R.A. No. 9184 emphatically states that cases filed in violation of the protest process therein provided "shall be dismissed for lack of jurisdiction."²² (*italics in the original; underscoring supplied*)

Even if the Court were to credit the appellate court's pronouncement that the LRA had waived payment of the protest fee, the trial court still could not have validly acquired jurisdiction over respondent's petition for annulment for failure to heed the requirement under Section 58 that court actions may be resorted to only after the protest contemplated in Section 55 shall have been completed.

The trial court not having acquired jurisdiction over respondent's complaint, discussion of the issue on respondent's claim for unpaid compensation against LRA is rendered unnecessary. Suffice it to state that respondent can pursue such claim before the proper forum, within the proper period.

WHEREFORE, the petition is GRANTED. The Court of Appeals Decision of September 19, 2007 and Resolution of February 15, 2008 are REVERSED and SET ASIDE. The RTC's order of June 28, 2005 and Resolution of August 22, 2005 are declared NULL and VOID for lack of jurisdiction.

SO ORDERED.

CONCHITA CARPIO MORALES

Associate Justice

Chairperson

WE CONCUR:

ARTURO D. BRION

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

ROBERTO A. ABAD*

Associate Justice

MARTIN S. VILLARAMA, JR.

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

RENATO C. CORONA

Chief Justice

Footnotes

* Additional member per Special Order No. 843 dated May 17, 2010.

¹ Records, Vol. I, p. 37.

² Id. at 38-39.

³ Id. at 58.

⁴ Id. at 59.

⁵ Id. at 60.

⁶ Id. at 1-11.

⁷ Id. at 203-210.

⁸ Id. at 278-281.

⁹ Id. at 284-286.

¹⁰ CA rollo, pp. 10-35.

¹¹ Records, Vol. II, p. 385.

¹² CA rollo, pp. 153-167. Penned by Justice Marina L. Buzon, with the concurrence of Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

¹³ Id. at 165.

¹⁴ CA rollo, pp. 168-176.

¹⁵ **Section 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 non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

¹⁶ CA rollo, pp. 185-187. Penned by Justice Marina L. Buzon, with the concurrence of Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

¹⁷ Id. at 186.

¹⁸ Rollo, pp. 7-50

¹⁹ Department of Budget and Management Procurement Service v. Kolonwel Trading, G.R. No. 175608, June 8, 2007, 524 SCRA 591 (601-602).

²⁰ Supra note 1.

²¹ Vide Department of Budget and Management Procurement Service v. Kolonwel Trading, G.R. No. 175608, June 8, 2007, 524 SCRA 591.

²² Id. at 601-602.