

Republic of the Philippines
SUPREME COURT
Manila

SECOND DIVISION

G.R. Nos. 115121-25 February 9, 1996

NATIONAL FOOD AUTHORITY and ROMEO G. DAVID, petitioners,
vs.

THE HON. COURT OF APPEALS, HON. BERNARDO P. ABESAMIS, Presiding Judge, Regional Trial Court, Branch 85, Quezon City, **HON. RODOLFO ORTIZ**, Presiding Judge, Regional trial Court, Branch 89, Quezon City, **HON. TIRSO D. C. VELASCO**, Presiding Judge, Regional Trial Court, Branch 88, Quezon City, **HON. BENEDICTO B. ULEP**, Presiding Judge, Branch 105, Quezon City, **HON. JUSTO M. SULTAN**, Presiding Judge, Branch 98, Quezon City, **COL. FELIX M. MANUBAY**, **MASADA SECURITY AGENCY, CONTINENTAL WATCHMAN AND SECURITY AGENCY, ALBERTO T. LASALA**, and **NORMAN D. MAPAGAY**, respondents.

DECISION

PUNO, J.:

The case at bar involves the legality of negotiated security contracts awarded by the National Food Authority (NFA), a government-owned and controlled corporation and its Administrator, Romeo G. David, to several private security agencies, in default of a public bidding. Petitioners NFA and David seek a modification of the decision of the Court of Appeals insofar as it nullifies and enjoins the implementation of the said negotiated security contracts.

The facts are not disputed.

In 1990, the NFA, through then Administrator Pelayo J. Gabaldon, conducted a public bidding to award security contracts for the protection of its properties and facilities all over the country . Twelve security agencies were awarded one-year contracts, among whom were private respondents Col. Felix M. Manubay (doing business under the name Greenview Investigation and Security Agency), Continental Watchman and Security Agency, Alberto T. Lasala (doing business under the name PSF Watchman and Investigation Agency) and Norman D. Mapagay (doing business under the name People's Protective and Security Agency).

In August 1992, petitioner Romeo G. David became NFA Administrator. He caused a review of all security service contracts, procedures on the accreditation of private security agencies and the bidding for security services. Pending this review, Administrator David extended the services of private respondents and the other incumbent security agencies on a periodic basis.

The review was completed in March 1993 and new terms for accreditation, bidding and hiring of security agencies were made. The bidding areas were also reclassified and reduced from fourteen NFA regions to only five NFA areas nationwide. A special order was thereafter issued for the implementation of the new rules and procedure.

On April 6, 1993, Special Order No. 04-07 was issued under which Administrator David created a Prequalification, Bids and Awards Committee (PBAC) to undertake the prequalification of prospective bidders, conduct the bidding, evaluate the bids tendered and recommend to the Administrator the bids accepted. Notices for prequalification and bidding for security services were published in a newspaper of national circulation. All incumbent security contractors were required to prequalify and only those prequalified were to be allowed to participate in the prebidding and bidding scheduled on June 4 and 18, 1993, respectively.

The prebidding and bidding dates were later reset to June 18 and 30, 1993 to give more time for the participants to comply with documentary requirements. Forty-one security agencies, composed of the incumbents and new applicants, including private respondent Masada Security Agency, submitted the necessary documents for prequalification.

Upon a review of the documents submitted, the PBAC disqualified respondent Mapagay for failure to submit proof of his financial capability to support his bid. It also disqualified respondent Lasala for alleged failure to meet the five-year service requirement. Only respondents Manubay, Continental and Masada participated in the prebidding and were declared on June 17, 1993 prequalified to bid.

Meanwhile, however, two of the applicants who failed to prequalify, namely Lanting Security and Watchman Agency and respondent Lasala, filed separate complaints with the Regional Trial Court, Quezon City to restrain Administrator David and the PBAC from proceeding with the public bidding. As prayed for, restraining orders were issued by the two courts on June 29, 1993 which the NFA received on June 30, 1993, the day of the scheduled bidding. No bidding thus took place on said date.

On respondent Lasala's application, the Regional Trial Court, Branch 93, Quezon City issued on July 20, 1993 a preliminary injunction ordering the PBAC to refrain from proceeding with the bidding until the merits of the case shall have been heard and resolved.

During the effectivity of the writ of preliminary injunction, Administrator David sent to all incumbent security agencies, including four of herein private respondents, notices of termination dated July 30, 1993. Private respondents were informed that their services were to end on August 16, 1993 inasmuch as their respective contracts had expired and they no longer enjoyed the trust and confidence of the NFA. They were thus instructed to withdraw their security guards from all NFA installations.

On August 4, 1993, Administrator David contracted the services of seven new security agencies starting August 16, 1993 on a month-to-month basis pending resolution of the injunction

against the bidding. Private respondents forthwith filed separate complaints with the Regional Trial Court, Branches 85, 89, 88, 105 and 98, Quezon City for prohibition, *mandamus* and damages with a prayer for the issuance of a preliminary injunction and restraining order.¹

The trial courts issued five separate restraining orders and injunctions ordering the NFA to desist from terminating the services of respondents, and from awarding and installing the new security agencies replacing them.

These orders were challenged by NFA and David in separate petitions before the Court of Appeals alleging grave abuse of discretion by respondent judges. The Court of Appeals consolidated the petitions and on March 11, 1994 rendered a decision partially granting the same by annulling that part of the orders restraining NFA from terminating the contracts with the incumbent security agencies but affirming the orders insofar as they enjoined NFA from awarding the contracts to the seven new security agencies. The Court of Appeals ordered:

WHEREFORE, premises considered, the petition is found meritorious in part and partially given DUE COURSE . The assailed orders and writs of preliminary injunction are ANNULLED and SET ASIDE insofar as they order petitioners to cease and desist from terminating or implementing the termination of private respondents' expired security contracts with NFA. The said assailed orders and writs of preliminary injunction issued are, however, declared LEGAL, VALID and NOT issued in excess of jurisdiction or with grave abuse of discretion insofar as they enjoin petitioners from awarding the security service contracts to the seven (7) security agencies named by petitioners and/or implementing said awards. To this extent the petitions are DISMISSED for lack of merit.²

Reconsideration was denied on April 15, 1994.

Petitioners now assail that part of the decision of the Court of Appeals nullifying and enjoining the implementation of the contracts with the new security agencies. They plead that we restrain the lower courts from enforcing the injunction as against the new security agencies. They argue that the new security agencies were hired as an "emergency measure" after the contracts with the incumbent security agencies expired. They claim that without the new security agencies, the properties of the NFA worth billions of pesos would be exposed to danger of loss and dissipation.³

On May 18, 1994, we issued a temporary restraining order enjoining respondents from enforcing the decision of the Court of Appeals and the writs of preliminary injunction issued by the trial courts "insofar as the same nullify or otherwise stop the implementation of the subject interim negotiated NFA security contracts." We however ordered petitioners to "proceed with the public bidding of the security contracts without delay and submit to us a report on the result of such bidding within 30 days from the holding thereof."⁴

On July 21, 1994, petitioners submitted a report dated July 19, 1994 informing the Court that a public bidding was held on June 21, 1994 but no contract had been awarded because the PBAC had to study and evaluate each and every bid proposal.⁵

A second report dated March 3, 1995 was filed by petitioners informing us that deliberation on the bids was prolonged by the necessity of passing upon the technical merits of each bid and by the discovery of collusion between two bidders "which spawned threats against the life of the members of the PBAC." The PBAC decided to conduct a rebidding in Areas 1, 2 and 3 and apprise the court of the results thereof.⁶

A third report dated July 13, 1995 was submitted where petitioners manifested that still no contract had been awarded because the minimum number of bidders per area was not met. Two bidders⁷ for Areas 3, 4 and 5 submitted identical bids which were held collusive by the PBAC per advice of the Office of the Government Corporate Counsel. The rejection of the two agencies reduced the number of bidders in each area below the required minimum compelling the PBAC to recommend a failure of bidding in all five NFA areas. Petitioners, however, could not act on the PBAC's recommendation because a temporary restraining order was issued on April 10, 1995 by the Regional Trial Court, Branch 17, Davao. One of the bidders found in collusion⁸ filed a complaint with the said Regional Trial Court questioning the legality of the PBAC's rejection of its bids and enjoining NFA and the PBAC from awarding security contracts to any lowest or next lowest qualified bidder.⁹

We shall now resolve the contentions of petitioners that the Court of Appeals gravely erred:

I

IN FAILING TO CONSIDER THAT PRIVATE RESPONDENTS HAVE NO RIGHT AND CAUSE OF ACTION AGAINST PETITIONERS, AND THEREFORE, ARE NOT ENTITLED TO THE QUESTIONED RELIEF GRANTED THEM BY RESPONDENTS RTC JUDGES AND COURT OF APPEALS;

II

IN FAILING TO CONSIDER THAT PRIVATE RESPONDENTS DID NOT AVAIL OF, MUCH LESS EXHAUST, AVAILABLE ADMINISTRATIVE REMEDIES, THEREBY RENDERING THEIR COMPLAINT PREMATURE AND LEGALLY DEFICIENT TO MERIT THE GRANT OF JUDICIAL RELIEF;

III

IN ITS FAILURE TO RECOGNIZE THAT THE EXECUTION OF THE NEW INTERIM MONTHLY NEGOTIATED SECURITY CONTRACTS OF NFA, INTENDED TO PROVIDE NFA WITH AMPLE SECURITY DURING THE TEMPORARY EMERGENCY PERIOD THAT A PUBLIC BIDDING CANNOT BE CONDUCTED BY REASON OF THE INJUNCTIVE ORDERS OF THE COURTS A

QUO, ARE SANCTIONED BY LAW, BEING LEGITIMATE EXCEPTION TO THE GENERAL REQUIREMENT OF A PUBLIC BIDDING;

IV

IN ITS GENERAL FAILURE TO RECOGNIZE THAT THE EXECUTION OF THE INTERIM MONTHLY NEGOTIATED NFA SECURITY CONTRACTS ARE A VALID EXERCISE OF BUSINESS JUDGMENT WITHIN THE PERIMETERS OF NFA MANAGEMENT'S AREA OF COMPETENCE. THE CA, MOREOVER, SERIOUSLY ERRED WHEN IT FAILED TO CONSIDER THAT THE LAW AND THE SITUATIONAL FACTS OF THE CASE SANCTION AND EVEN CALL FOR THE IMMEDIATE IMPLEMENTATION OF SAID INTERIM CONTRACTS.¹⁰

We reject these contentions.

The principle of exhaustion of administrative remedies is not a hard and fast rule. It is subject to some limitations and exceptions. In this case, private respondents' contracts were terminated in the midst of bidding preparations and their replacements hired barely five days after their termination. In fact, respondent Masada, a prequalified bidder, submitted all requirements and was preparing for the public bidding only to find out that contracts had already been awarded by negotiation. Indeed, an appeal to the NFA Board or Council of Trustees and the Secretary of Agriculture pursuant to the provisions of the Administrative Code of 1987¹¹ was not a plain, speedy and adequate remedy in the ordinary course of the law.¹² The urgency of the situation compelled private respondents to go to court to stop the implementation of these negotiated security contracts.

We are neither impressed by petitioners' claim that the subject contracts were negotiated as a necessity to stave off a crisis that gripped the NFA, i.e., the loss, destruction and dissipation of their properties, warehouses, rice and corn stocks and facilities with an estimated value of P19 billion. Petitioners allege they were merely exercising their sound business judgment in an emergency situation brought about by respondent security agencies themselves who, in the first place, obtained the injunctions from the Quezon City trial courts.

First of all, the restraining orders and writ of preliminary injunction issued by the two Quezon City trial courts on complaint by Lanting and respondent Lasala suspending the public bidding scheduled on June 30, 1993 did not result in the emergency situation petitioners alleged. The security vacuum was created when petitioners terminated the services of the incumbent security agencies *after* the issuance of the said orders and *before* the injunctions issued by respondent trial courts on application by private respondents.

When the bidding did not take place on June 30, 1993, the incumbent security agencies continued rendering services to petitioners, albeit on a temporary and provisional basis. However, one month later, they were all terminated on grounds of expiration of contract and loss of trust and confidence.

We agree with the Court of Appeals that it was well within the power of petitioners to discontinue the services of the incumbent security agencies. Their contracts with the NFA expired in 1992, hence, their services were deemed terminated on said date.¹³ The fact that these agencies continued rendering services to NFA did not amount to an implied renewal of their respective contracts. Respondents do not have any vested right to continue their contracts with NFA. They remained and continued performing their tasks at the tolerance of NFA who, by sending the notices of termination, simply reminded them of the expiration of their contracts.¹⁴ These contracts can be renewed, revived or extended only by mutual consent of the parties. No court can compel a party to agree to a contract thru the instrumentality of a writ of preliminary injunction.

Nevertheless, what causes eyebrows to arch is the act of petitioners in discontinuing the incumbents' services. Respondents Manubay and Lasala allege that their agencies had been rendering security services to the NFA since 1985¹⁵ and 1988,¹⁶ respectively. Moreover, Manubay and Continental passed the prequalification stage and were declared by the PBAC eligible to join the public bidding. Scarcely a month later, however, their services were terminated at the same time and for the same reasons as the rest of the incumbent security agencies. It is certainly strange why petitioners chose to do away with the incumbents' services at a time when a "security void" would directly and most necessarily result from their withdrawal. The least petitioners could have done under the circumstances was to maintain the *status quo* until the writ of preliminary injunction obtained by respondent Lasala shall have been lifted.

Assuming *arguendo* that an emergency actually existed and the negotiated contracts were justified, petitioners' continued failure to conduct a public bidding and select the bidder within a reasonable time casts doubts on the good faith behind the negotiated contracts. This Court, on May 18, 1994, specifically ordered petitioners to conduct a public bidding and report the results within thirty days from holding thereof. In compliance, a public bidding was conducted on June 21, 1994 but until now no bidder has been chosen and no contract has been awarded.

Petitioners cited various reasons for the delay. They alleged that the minimum number of bidders in three of the five areas had not been met and that two bidders in the other two areas were in collusion. This suspicion of collusion generated so much controversy that the PBAC could not decide whether to include the bids of the two agencies. Finally, the PBAC excluded them and recommended that the Administrator declare a failure of bidding in all five areas of responsibility.

The Administrator should have immediately acted upon the PBAC's recommendation and accordingly scheduled another public bidding but somehow petitioners chose to abide by a restraining order of the Davao trial court. It must be noted that what the Davao trial court issued was a temporary restraining order enjoining petitioners from awarding the contracts to the lowest or next lowest bidder at the June 21, 1994 public bidding. It was not a writ of preliminary injunction nor was an order restraining the holding of another bidding.

Petitioners and the PBAC are obviously taking their sweet time to select and award security contracts to winning bidders. They took one year evaluating and deliberating on thirteen bid proposals only to declare a failure of bidding in all five areas of responsibility. Then they relied on a restraining order of a trial court after no less that this Highest Court specifically ordered them to conduct and conclude a public bidding.

Litigants should be conscious of the position lower courts occupy in the operation of the integrated judicial system of the nation.¹⁷ There is only one Supreme Court and all courts and litigants should take their bearings from this Court.¹⁸

Petitioners' manifest reluctance to hold a public bidding and award a contract to the winning bidder smacks of favoritism and partiality toward the security agencies to whom it awarded the negotiated contracts and cannot be countenanced. A competitive public bidding aims to protect the public interest by giving the public the best possible advantages thru open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.¹⁹

The General Appropriations Act (GAA) of 1993²⁰ cannot be used by petitioners to justify their actuations. An appropriations act is primarily a special type of legislation whose content is limited to specified sums of money dedicated to a specific purpose or a separate fiscal unit.²¹ Section 31 on the General Provisions of the GAA of 1993 merely authorizes the heads of departments, bureaus, offices or agencies of the national government to hire, through public bidding or negotiated contracts, contractual personnel to perform specific activities or services related or incidental to their functions. This law specifically authorizes expenditures for the hiring of these personnel.²² It is not the governing law on the award of service contracts by government agencies nor does it do away with the general requirement of public bidding.²³

IN VIEW WHEREOF, the petition is dismissed and the decision dated March 11, 1994 and resolution dated April 15, 1994 of the Court of Appeals in CA-G.R. SP Nos. 32213, 32230 and 32274-76 are affirmed. The temporary restraining order issued by this Court on May 18, 1994 is hereby lifted. Treble costs against petitioners.

SO ORDERED.

Regalado, Romero and Mendoza, JJ., concur.

Footnotes

- ¹ Civil Cases Nos. Q-93-17202, Q-93-17209, Q-93-17139, Q-93-17278, and Q-93-17155.
- ² CA Decision, p. 12; *Rollo*, p. 377.
- ³ Amended Petition, p. 14; *Rollo*, p. 321.
- ⁴ *Rollo*, p. 299.
- ⁵ *Id.*, p. 694.
- ⁶ *Id.*, pp. 970-972.
- ⁷ Davao Security and Investigation Agency, Inc. (DASIA) and Metroguard .
- ⁸ DASIA.
- ⁹ *Id.*, pp. 1038-1043.
- ¹⁰ Amended Petition, pp. 23-24; *Rollo*, pp. 330-331.
- ¹¹ E.O. 292, Bk. IV, Title IV Chapter 6 Sec. 47; Bk. VII, Chapter 4, Secs. 1, 19; Chapter 9 Sec. 42.
- ¹² *Laganapan v. Asedillo*, 154 SCRA 377 [1987]; *Sta. Maria v. Lopez*, 31 SCRA 637 [1970]; *Fernandez v. Cuneta*, 108 Phil. 427 [1960].
- ¹³ *Brent School, Inc. v. Zamora*, 181 SCRA 702, 709 [1990].
- ¹⁴ *Brent School, Inc. v. Zamora*, *supra.*; *Escudero v. Office of the President of the Philippines*, 172 SCRA 783 [1989]; *Labajo v. Alejandro*, 165 SCRA 747 [1988].
- ¹⁵ Comment of Greenview, Annexes "1" and "2," *Rollo*, pp. 760, 761-767.
- ¹⁶ Memorandum of Lasala, p. 2; *Rollo*, p. 1136.
- ¹⁷ *People v. Vera*, 65 Phil. 56, 81-82 [1937].
- ¹⁸ *Ang Ping v. RTC of Manila, Branch 40*, 154 SCRA 77 [1987]; *Albert v. CFI of Manila*, 23 SCRA 948 [1968].
- ¹⁹ *Danville Maritime, Inc. v. Commission on Audit*, 175 SCRA 701 [1989]; *Malaga v. Penachos*, 213 SCRA 516 [1992].
- ²⁰ Republic Act No. 7645.
- ²¹ *Philippine Constitution Association v. Enriquez*, 235 SCRA 506, 533 [1994].

²² R.A. No. 7645, p. 1204.

²³ Executive Order No. 301, Section 1 provides:

"Sec. 1. *Guidelines for Negotiated Contracts*. Any provision of law, decree, executive order or other issuances to the contrary notwithstanding, no contract for public services or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities shall be renewed or entered into without public bidding, except under any of the following situations: . . . ".