

G.R. No. 167840. June 29, 2005]

J.V. LAGON CONSTRUCTION vs. PANGARUNGAN

THIRD DIVISION

Sirs/Mesdames:

*Quoted hereunder, for your information, is a resolution of this Court dated **JUN 29 2005**.*

G.R. No. 167840 (*J.V. Lagon Construction Corporation vs. Nata M. Pangarungan, et al.*)

In this petition for certiorari under Rule 65 of the Rules of Court, with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction, petitioner J.V. Lagon Construction Corporation seeks to nullify and set aside the award of the contract for the construction of the Batodo Bridge at Batodo Arc, Alabel, Sarangani to private respondent, AJYSC Marketing.

The antecedent facts are as follows:

On March 8, 2005, petitioner participated in the public bidding conducted by the duly constituted Bids and Awards Committee (BAC) in accordance with Republic Act No. 9184,^[1] otherwise known as the Government Procurement Reform Act, for the construction of the subject bridge, a national government infrastructure project.

In that bidding, petitioner emerged as the bidder with the Lowest Calculated Bid, as shown in the results thereof, to wit:

BIDDER	AMOUNT
a. JV LAGON Construction -----	P17,620,224.81
b. AJYSC Marketing -----	P21,500,000.00
c. Masulot Construction -----	P21,520,488.33
d. Vicente T. Lao Const.-----	P21,526,714.43
e. DIMSON (Manila), Inc. -----	P21,588,270.42
f. AFG Const. & Const. Supply -----	P21,613,865.99
g. ALGON Engineering Cost. Corp.-----	P21,614,078.26
h. ULTICON Builders, Inc. -----	P21,614,499.98
i. MAMSAR ENT. Agro-Ind'l. Corp. -----	P25,652,333.67
j. O.G. SANTOS Const. -----	“Failed” (No Bid Security)
k. MONOLITHIC Const. -----	“Failed” (No Cash Flow in 2 nd Envelope) ^[2]

During post qualification, however, the BAC found petitioner disqualified on the technical aspect of the project, allegedly because in connection with petitioner’s two ongoing government projects also in Sultan Kudarat, namely: a) construction of the *Isulan-*

Kalamansig Road, Chua Section, Bagumbayan; and b) widening of the *Kapingkong Bridge* along Kidapawan-Allah Junction Road, petitioner incurred a negative slippage of 60% and 58%, respectively.

Thus, on March 17, 2005, the BAC issued a resolution^[3] disqualifying petitioner as awardee of the contract for the Batodo Bridge, thus:

NOW THEREFORE, anent with above premises, the Committee RESOLVED as it hereby RESOLVES to declare the bid submitted by J.V. Lagon Const. Corp. to be post disqualified for award because it failed to pass the criteria on post-disqualification particularly on the technical aspect as shown by the negative slippages which are above 15% and subject bidder's performances to be below par.

Aggrieved, petitioner filed with the BAC a request for reconsideration of the same resolution.

On March 28, 2005, petitioner received a Notice of Denial^[4] of its request, to which notice was attached a copy of the BAC's denial resolution,^[5] also dated March 28, 2005, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the Committee resolves as it hereby resolved to recommend for the **outright denial of the request of Mr. Jose V. Lagon, Sr. to reconsider his postdisqualification** on the proposed contract for the Const. of BATODO Br. BATODO ARC, Alabel, Sarangani. (Emphasis in the original)

Thereafter, petitioner filed with respondent Nata M. Pangarungan, Regional Director of the DPWH (Region XII), a verified protest/position paper.

On April 25, 2005, Regional Director Pangarungan dismissed petitioner's protest for lack of merit,^[6] thereby affirming the two (2) earlier BAC resolutions.

Invoking Section 3 of R.A. 8975,^[7] petitioner went directly to this Court via the instant petition for certiorari imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the herein public respondents when they –

- a) Post-disqualified petitioner on alleged slippages which are totally false and baseless;
- b) After realizing that their alleged claim of slippages cannot be sustained in the light of the incontrovertible evidence to the contrary, consisting of progress reports on the said projects and certification of the project engineer, Engr. Nuruddin-Ali M. Magarang, of the District Engineering Office of Sultan Kudarat, in charge of the projects wherein the alleged slippages occurred, they (respondents) over-turned their own earlier finding that petitioner had submitted sufficient Bank Guarantee and Commitment for the subject project (Batodo Bridge) and, in a 180-degree turnabout, now claim there is no such Bank Guarantee and Commitment, despite the irrefutable fact and evidence that there are,

adding that “graft and corruption attended or caused its (petitioner’s) post-disqualification.”

Not having been filed with the proper court, the petition must be dismissed.

Article XVII, Section 58 of Republic Act No. 9184, relating to protest mechanisms, expressly states that regional trial courts shall have jurisdiction over final decisions of the head of the procuring entity, in this case the respondent DPWH Regional Director.

SEC. 58. *Report 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 head of the procuring entity.** Court actions shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This procedure is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Project of Government. (Emphasis supplied)

It is clear that petitioner should have filed the instant petition for certiorari with the appropriate regional trial court, and not directly with this Court.

Petitioner argues, however, that since there is an extreme urgency in enjoining respondents from awarding the contract to the second lowest bidder AJYSC Marketing, its immediate resort to this Court is justified “by way of an exception to the general rule against issuances of injunctions and restraining orders by courts on infrastructure projects of the government... because if respondents are not enjoined, the government and petitioner will suffer injustice and irreparable injury due to the blatant graft and corruption collectively committed by all the respondents, in confabulation with one another, to defraud the government of its funds and deprive petitioner of its constitutional right to due process and equal protection of the law.”^[8]

In justifying its direct resort to this Court, petitioner invokes Section 3 of Republic Act No. 8975, which reads:

SEC. 3. *Prohibition on the Issuance of Temporary Restraining Orders, Preliminary Injunctions and Preliminary Mandatory Injunctions.* – **No court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or preliminary mandatory injunction** against the government, or any of its subdivisions, officials or any person or entity, whether public or private, acting under the government’s direction, to restrain, prohibit or compel the following acts:

- (a) Acquisitions, clearance and development of the right-of-way and/or site or location of any national government project;
- (b) Bidding or awarding of contract/project of the national government as defined under Section 2 hereof;

(c) Commencement, prosecution, execution, implementation, operation of any such contract or project;

(d) Termination or rescission of any such contract/project; and

(e) The undertaking or authorization of any other lawful activity necessary for such contract/project.

This prohibition shall apply in all cases, disputes or controversies instituted by a private party, including but not limited to cases filed by bidders or those claiming to have rights through such bidders involving such contract/project. **This prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.** The applicant shall file a bond, in an amount to be fixed by the court, which bond shall accure (sic) in favor of the government if the court should finally decide that the applicant was not entitled to the relief sought.

If after the hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws. (Emphasis supplied)

Petitioner does not persuade.

There is no doubt that under the first paragraph of Section 3, “[N]o court, except the Supreme Court, shall issue any temporary restraining order, preliminary injunction or prohibitory mandatory injunction” to restrain, among others, the award of contracts for any national government project. It should be noted, however, that under the second paragraph of the same section, it is there expressly stated that “[T]his prohibition shall not apply when the matter is of extreme urgency involving a constitutional issue, such that unless a temporary restraining order is issued, grave injustice and irreparable injury will arise.” The recent case of *Republic v. Nolasco*^[9] is in point:

Republic Act No. 8975 definitively enjoins all courts, except the Supreme Court, from issuing any temporary restraining order, preliminary injunction, or preliminary mandatory injunction against the government, or any of its subdivisions, officials or any person or entity to restrain, prohibit or compel the bidding or awarding of a contract or project of the national government, precisely the situation that obtains in this case with respect to the Agno River Project. **The only exception would be if the matter is of extreme urgency involving a constitutional issue, such that unless the temporary restraining order is issued, grave injustice and irreparable injury will arise.** The TRO issued by the RTC failed to take into consideration said law. Neither did it advert to any extreme urgency involving a constitutional issue, as required by the statute. The law ordains that such TRO is void, and the judge who issues such order should suffer the penalty of suspension of at least sixty (60) days without pay. (Emphasis and underscoring supplied; citations omitted)

When, as in this case, the matter of issuing a temporary restraining order, preliminary injunction or preliminary mandatory injunction is of “extreme urgency involving a constitutional issue”, *i.e.* deprivation of petitioner’s constitutional right to due process and equal protection of the law, as petitioner was not allowed by the public respondents to traverse the imputation of slippage against it in connection with its two (2) ongoing projects, even regional trial courts may issue injunctive remedies.

Again, the case of *Republic v. Nolasco*,^[10] is instructive.

However, it must be clarified that Republic Act No. 8975 does not ordinarily warrant the outright dismissal of any complaint or petition before the lower courts seeking permanent injunctive relief from the implementation of national government infrastructure projects. What is expressly prohibited by the statute is the issuance of the provisional reliefs of temporary restraining orders, preliminary injunctions, and preliminary mandatory injunctions. It does not preclude the lower courts from assuming jurisdiction over complaints or petitions that seek as ultimate relief the nullification or implementation of a national government infrastructure project. A statute such as Republic Act No. 8975 cannot diminish the constitutionally mandated judicial power to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of government. Section 3 of the law in fact mandates, thus:

If after due hearing the court finds that the award of the contract is null and void, the court may, if appropriate under the circumstances, award the contract to the qualified and winning bidder or order a rebidding of the same, without prejudice to any liability that the guilty party may incur under existing laws.

Thus, when a court is called upon to rule on an initiatory pleading assailing any material aspect pertinent to a national government infrastructure project, the court ordinarily may not dismiss the action based solely on Republic Act No. 8975 but is merely enjoined from granting provisional reliefs. If no other ground obtains to dismiss the action, the court should decide the case on the merits. As we recently held in *Opiña v. NHA*:

Unquestionably, the power to issue injunctive writs against the implementation of any government infrastructure project is exclusively lodged with this Court, pursuant to Section 3 of Rep. Act No. 8975. But while lower courts are proscribed thereunder from issuing restraining orders and/or writs of preliminary injunction to stop such projects, *the proscription does not mean that such courts are likewise bereft of authority to take cognizance of the issue/issues raised in the principal action, as long as such action and the relief sought are within their jurisdiction.* (Emphasis and underscoring supplied; italics in the original; citations omitted)

Accordingly, it was not proper for the RTC to cite Republic Act No. 8975 as basis for the dismissal of Nolasco’s petition since the statute does not bar the institution of

an action that seeks to enjoin the implementation of a national government project, but merely the issuance of provisional orders enjoining the same.

WHEREFORE, the instant petition is DISMISSED.

Sandoval-Gutierrez and Garcia, JJ., voted to grant a Temporary Restraining Order and to require respondents to file their Comment.

Very truly yours,

(Sgd.) **LUCITA ABJELINA-SORIANO**

Clerk of Court

^[1] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES.

^[2] *Rollo* at 39.

^[3] *Id.* at 26-28.

^[4] *Id.* at 29.

^[5] *Id.* at 30-31.

^[6] *Id.* at 39-41.

^[7] AN ACT TO ENSURE THE EXPEDITIOUS IMPLEMENTATION AND COMPLETION OF GOVERNMENT INFRASTRUCTURE PROJECTS BY PROHIBITING LOWER COURTS FROM ISSUING TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS OR PRELIMINARY MANDATORY INJUNCTIONS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF, AND FOR OTHER PURPOSES.

^[8] *Rollo* at 3-4.

^[9] G.R. No. 155108, April 27, 2005.

^[10] *Ibid.*