

## **EN BANC**

**[ G.R. No. 210805, May 11, 2021 ]**

**DAISY JOY ROJALLO CERVANTES, BASILIO DAYSON MANJARES, JAY-R MEDINILLA LADUB, ARMANDO MAMARIN DE GUZMAN, INDIGENT PATIENTS AT THE PHILIPPINE ORTHOPEDIC CENTER (POC), SEAN HERBERT VELCHEZ, RN, DANTE A. PEREZ, RICARDO ANTONIO, MINNELIE I. CAGARA, RN, AND VALENTIN ABALOS ARCIAGA OF THE NATIONAL ORTHOPEDIC HOSPITAL WORKERS' UNION-ALLIANCE OF HEALTH WORKERS (NOHWU-AHW); FRESCO BASCARA YAPENDON, MD, AMELIA MANGAY MAGLACAS, RN, JOSSEL I. EBESATE, RN, OF THE ALLIANCE OF HEALTH WORKERS; CECILIA M. LAURENTE, RN, OF THE NETWORK OPPOSED TO PRIVATIZATION OF PUBLIC HOSPITALS AND HEALTH SERVICES (NOP); ELEANOR A. JARA, MD, OF THE COUNCIL FOR HEALTH AND DEVELOPMENT, DARBY E. SANTIAGO, MD, OF THE HEALTH ALLIANCE FOR DEMOCRACY; EDELINA P. DELA PAZ, MD, OF THE PEOPLE'S HEALTH MOVEMENT; JOSEPH P. CARABEO, MD, OF THE COMMUNITY MEDICINE PRACTITIONERS AND ADVOCATES ASSOCIATION (COMPASS); REGINALD PAMUGAS, MD, OF THE HEALTH ACTION FOR HUMAN RIGHTS (HAHR); ELEANOR M. NOLASCO, RN, OF THE NARS NG BAYAN COMMUNITY HEALTH NURSES' ASSOCIATION; SATURNINO C. OCAMPO, OF THE MAKABAYAN; JOAN MAY E. SALVADOR, OF THE GABRIELA ALLIANCE OF WOMEN; GLORIA ARELLANO, OF THE KALIPUNAN NG DAMAYAN NG MAHIHIRAP (KADAMAY); ELMER LABOG, OF THE KILUSANG MAYO UNO; BAYAN MUNA REP. NERI JAVIER COLMENARES AND REP. ISAGANI CARLOS ZARATE, AND KABATAN PARTYLIST REP. TERRY RIDON, PETITIONERS, VS. H.E. BENIGNO SIMEON AQUINO III, CHAIRPERSON OF THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY; HON. ENRIQUE T. ONA, SECRETARY OF DEPARTMENT OF HEALTH; HON. TEODORO J. HERBOSA, UNDERSECRETARY, DOH HEAD, MPOC-PBAC; COSETTE C. CANILAO, EXECUTIVE DIRECTOR OF THE PUBLIC PRIVATE PARTNERSHIP CENTER; JAN IRISH P. VILLEGAS, PROJECT MANAGER, MODERNIZATION OF THE PHILIPPINE ORTHOPEDIC CENTER; ARSENIO M. BALISACAN, DIRECTOR GENERAL AND VICE CHAIRMAN OF THE NATIONAL ECONOMIC DEVELOPMENT AUTHORITY; CESAR V. PURISIMA, CHAIR OF THE NEDA-INVESTMENT COORDINATING COMMITTEE (ICC); AND CONSORTIUM OF MEGAWIDE CONSTRUCTION CORPORATION AND WORLD CITI MEDICAL CENTER, REPRESENTED BY MANUEL LOUIE B. FERRER, RESPONDENTS.**

**D E C I S I O N**

## **HERNANDO, J.:**

This special civil action for *Certiorari* and Prohibition<sup>[1]</sup> with Application for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order seeks to annul and set aside the proposed privatization or commercialization of the Philippine Orthopedic Center (POC) and the subsequent award of the Modernization of the POC Project (MPOC Project) to private respondents. It further seeks to permanently prohibit and restrain public respondents from implementing the said modernization project.

The petitioners in this case are patients and employees of the POC, health-allied professionals and legislators. They contend that they are suing on their own behalf and on behalf of the general public, who will be directly affected by the privatization of the POC which is the country's only specialized orthopedic hospital that treats patients who are mostly indigents or otherwise unable to pay the high cost of medical care. They assert that being taxpayers, they have a clear interest in the disbursement of public funds to be allocated for the whole process of privatizing the POC, hence, they will suffer direct and substantial injury therefrom, thus clothing them with legal standing to institute the instant petition.<sup>[2]</sup>

Further, petitioners invoke the concurrent jurisdiction of this Court to resolve the present controversy claiming that they do not have other available practical administrative remedies. Moreover, given the paramount importance or transcendental significance of the issues involved and the magnitude of the actual and imminent injury as well as the adverse effects of the questioned acts of respondents, petitioners submit that they have no speedy, plain and adequate remedy except to seek urgent judicial intervention from this Court.<sup>[3]</sup>

Public respondents, on the other hand, are being sued in their capacity as officials of the government while private respondents are private corporations duly registered under Philippine laws.<sup>[4]</sup>

The facts as culled from the records are as follows:

The MPOC Project consists of the construction of a new hospital facility within the National Kidney and Transplant Institute Compound along East Avenue, Quezon City, wherein the project proponent will undertake the construction of a 700-bed capacity specialty care hospital providing orthopedic clinical services and allied services; procurement, installation, operations and management of modern diagnostics and clinical equipment; procurement, installation, operations and management of IT facilities; operation and maintenance of the new hospital facility; provision of administrative and ancillary services; provision of appropriately qualified staff; and provision of teaching and training facilities to be used in the conduct of training programs to be offered in the new hospital facility.

To summarize, the concessionaire will design, build, finance, operate and maintain the facility for a period of 25 years and thereafter, transfer the said facility to the Department of Health (DOH). The MPOC Project shall be implemented through a Build-Operate-Transfer (BOT) arrangement under the provisions of Republic Act No. (RA) 6957<sup>[5]</sup> as amended by RA 7718, otherwise known as the "Build-Operate-and-Transfer (BOT) Law" and pursuant to the Public Private Partnership (PPP) Program of public respondent former President Benigno S. Aquino III (respondent Aquino).<sup>[6]</sup>

On November 18, 2012, the Modernization of the Philippine Orthopedic Center - Pre-Qualification, Bids and Awards Committee (MPOC-PBAC) issued an invitation to pre-qualify and bid for the MPOC Project.<sup>[7]</sup>

On January 28, 2013, the MPOC-PBAC conducted a Pre-Qualification Conference wherein it recommended the pre-qualification of the following prospective bidders:

1. Siemens, Inc. Health Sector;
2. G.E. Healthcare General Electric Philippines, Inc.;
3. Sta. Clara International Corp.;
4. Mount Grace Hospital Venture;
5. Philips Electronics and Lighting, Inc.;
6. Metro Pacific Investments;
7. Megawide Engineering Excellence;
8. Strategic Alliance Holding, Inc.; and
9. Data Trail Corporation.<sup>[8]</sup>

On June 4, 2013, the Consortium of Megawide Construction Company (Megawide) and World Citi Medical Center (WCMC; collectively, the Consortium), submitted its proposal as the sole bidder. After declaring the technical and financial bid of Megawide to be complete, the MPOC-PBAC submitted the pertinent documents to the Investment Coordination Committee of the National Economic and Development Authority (ICC-NEDA) for evaluation. The same was approved by the NEDA Board chaired by respondent Aquino on November 21, 2013. Thus, the MPOC-PBAC issued Resolution No. 13 on November 28, 2013 recommending to Enrique T. Ona (respondent Ona) the award of the MPOC Project to Megawide. On December 9, 2013, respondent Ona issued a Notice of Award<sup>[9]</sup> in favor of Megawide.

Pursuant thereto, public respondent DOH, through respondent Ona, executed a Build-Operate-Transfer Agreement<sup>[10]</sup> (BOT Agreement) with private respondents, through their authorized representative, private respondent Manuel Louie B. Ferrer, on March 6, 2014.

These prompted petitioners to file before this Court on February 3, 2014 the present petition seeking to annul and set aside the privatization of the POC including the award to Megawide of the MPOC Project and accordingly prohibit the building, operation and transfer of the POC to Megawide.

Petitioners impute grave abuse of discretion amounting to lack or excess of jurisdiction against public respondents when they:

1. relinquished the duty and responsibility to provide and ensure basic social service such as health to a private entity through privatization or commercialization of a government hospital (the POC) to the prejudice of the poor and underprivileged; and
2. expanded the application of the Build, Operate and Transfer (BOT) Law to cover the privatization of health services.<sup>[11]</sup>

Petitioners contend that the privatization of the POC will result in the denial of medical services to thousands of indigent Filipinos, a clear violation of their constitutional right to health.<sup>[12]</sup> According to petitioners, under the present set-up,

POC has a 700-bed capacity, 85% of which or a total of 562 are allocated to service non-paying patients while only 15% or 95 beds are allotted to pay patients.

However, with the privatization of the POC, Megawide is required to apportion only 10% of the 700 beds to service patients or a measly 70 beds. Thus, the reduction of the beds to be devoted to service patients is practically a denial of expert medical care for thousands of Filipinos who do not have the means to pay for their medical needs.<sup>[13]</sup>

Moreover, petitioners argue that the privatization of the POC violates Section 6 of RA 1939 which prescribes that all government hospitals shall operate with not less than 90% of its bed capacity as free or charity beds.<sup>[14]</sup>

Additionally, petitioners assert that the privatization of the POC violates POCs employees' right to security of tenure because they are only given two options: to either work in the Modernized POC in which case, they will have to resign or, if eligible, to retire from government service, or they may be transferred to another DOH hospital.<sup>[15]</sup>

Also, petitioners argue that public respondents' act of privatizing the POC amounts to grave abuse of discretion amounting to lack or excess of jurisdiction because they illegally expanded the application of the Build Operate and Transfer (BOT) Law to cover the privatization of health services.

Petitioners submit that under the BOT Law, only health facilities, which are limited to equipment and installations or physical structures like buildings, roads, bridges and similar installations, are allowed to be contracted out to private entities. It does not include the activities or services being undertaken in such installations such as health/medical services being offered in a hospital.<sup>[16]</sup>

Lastly, petitioners aver that the DOH committed grave abuse of discretion in awarding to the Consortium a contract which is greatly disadvantageous to the government and the consumers as the public will eventually pay for higher medical expenses contrary to the mandate of the BOT Law which provides that tolls, fees and rentals to be charged or collected should be reasonable.<sup>[17]</sup>

Accordingly, petitioners pray for the annulment of the MPOC Project and issuance of a temporary restraining order and/or writ of preliminary injunction commanding respondents to cease and desist from implementing the challenged project and, after hearing the merits of the petition, that We render judgment permanently enjoining respondents from implementing the complained acts.<sup>[18]</sup>

The Consortium and public respondents filed their respective Comments.<sup>[19]</sup>

Respondents counter that petitioners have no legal standing to initiate the instant action as they do not stand to suffer any direct substantial injury from the implementation of the MPOC Project. As taxpayers, they lack the requisite capacity in the absence of any illegal expenditure or an allegation of disbursement of public funds. Anent petitioners-employees of the POC and health-related professionals, they will not sustain direct or substantial injury from the implementation of the MPOC Project as they will not be terminated from their employment.