

SECOND DIVISION

[G.R. No. 168656, September 22, 2010]

**DIMSON (MANILA), INC. AND PHESCO, INC., PETITIONERS, VS.
LOCAL WATER UTILITIES ADMINISTRATION, RESPONDENT.**

DECISION

PERALTA, J.:

This is an original action for *certiorari*, prohibition and mandamus under Rule 65 of the Rules of Court initiated by petitioners Dimson Manila, Inc. and PHESCO, Inc. which seeks to prevent respondent Local Water Utilities Administration (LWUA) from executing and consequently performing any act under any contract relevant to the Urdaneta Water District's Water Supply System Improvement Program on the ground of grave abuse of discretion amounting to lack or excess of jurisdiction when respondent post-disqualified petitioners despite their having placed the lowest calculated bid on the project.

Undisputed are the basic facts.

Petitioners Dimson (Manila), Inc. and PHESCO, Inc. are duly organized domestic corporations that had entered into a joint venture agreement^[1] for the specific purpose of placing their bid to execute the Urdaneta Water Supply Improvement Project (the Urdaneta Project) of respondent LWUA. LWUA is the lead government agency vested by Presidential Decree No. 198^[2] with the principal function of facilitating the improvement and development of provincial water utilities.

On December 10 and 18, 2004, LWUA had caused the publication of an invitation to bid on the Urdaneta Project^[3] -- a P113,385,979.00 contract which primarily includes the following items:

- (a) construction of 2 well pump station structures complete with related civil and electromechanical works; furnishing of 2 submersible pump sets with an average capacity of 50 lps at 17m TDH.
- (b) construction of 2 booster pump stations with 6 pump sets with variable speed drives and with an average capacity of 21 lps at 39m TDH, complete with pipes, valves and fittings; furnishing of power line extension and tapping.
- (c) construction of 2 100 cu.m. capacity circular concrete ground reservoirs complete with related civil and electromechanical works.
- (d) supply and installation of approximately 66 km. of transmission and distribution pipelines with sizes ranging from 50mm-300mm diameter complete with valves, fittings, blow-offs, fire hydrants and related pipe appurtenances.^[4]

Sixteen contractors, including petitioners' joint venture, responded to the invitation and eight of them submitted bid proposals.^[5] Following the pre-bid conference in Urdaneta City, Pangasinan, petitioners submitted to LWUA's Bids and Awards Committee (BAC) their proposal in two (2) sealed envelopes each containing their compliance with eligibility requirements as a joint venture and their financial proposal as such to undertake the project. Petitioners passed the eligibility requirements and were found to have placed the lowest calculated bid at P107,666,358.17^[6] --besting R-II Builders, Inc. at P108,812,800.20 and CM Pancho Construction, Inc. at P135,695,674.94.^[7]

However, on April 19, 2005, petitioners were informed by LWUA Administrator Lorenzo Jamora that following the post-qualification stage of the evaluation process, the joint venture would have to be disqualified by the BAC on the finding that Dimson (Manila), Inc.'s joint venture with another contractor was, as of March 17, 2005, suffering from a 30.4% slippage in the Santiago Water Supply and Treatment Project -- an ongoing project likewise under LWUA's administration.^[8]

Aggrieved, petitioners, through counsel, sent a letter^[9] to Administrator Jamora on April 21, 2005 asserting that their post-disqualification had no factual and legal basis. They claimed that their joint venture in relation to the Urdaneta Project was distinct from the Dimson's joint venture in the Santiago Project where Dimson was only a minority partner that merely supplied the construction equipment. The alleged slippage, according to them, would not be sufficient to justify their post-disqualification, especially because it could be attributed to several other factors. Significantly, they asserted that it was in fact LWUA which ordered the suspension of the Santiago Project on December 6, 2004 on account of certain variation orders that up to the present remained unresolved. They then asked that their post-disqualification be reconsidered and the contract for the Urdaneta Project be awarded to them.^[10]

Pending action on this request, the BAC, on May 31, 2005, issued Resolution No. 12,^[11] s. 2005 recommending the award of the Urdaneta Project to the second lowest calculated bidder, R-II Builders. Consequently, on June 7, 2005, the LWUA Board of Trustees issued Resolution No. 102,^[12] s. 2005 and awarded the contract to it.

Expectedly, petitioners' request for reconsideration was declined. In a letter^[13] dated June 8, 2005, Administrator Jamora emphasized that, in any event, the BAC had the reserved right to reject any and all bids on the project, and that petitioners' post-disqualification was not without justification, because the 30.4% slippage suffered by Dimson's ongoing Santiago Project was a reason compelling enough to cause such disqualification following the pertinent provisions in the bid documents.

To prevent the execution of the project by R-II Builders, petitioners filed the instant petition for *certiorari*, prohibition and mandamus alleging grave abuse of discretion on the part of LWUA when it post-disqualified their joint venture from taking part in the project. The grounds raised by petitioners are essentially factual and they are as follows: that the alleged 30.4% slippage in the Santiago Project is baseless, erroneous and unfounded, and that considering the LWUA-BAC's finding that the Santiago Project slippage was only 14.634%, Dimson (Manila), Inc. would be ahead

of schedule if the same is reflected in the approved project bar chart.^[14]

In its Comment,^[15] respondent LWUA, through the Office of the Government Corporate Counsel, stood by its decision and maintained that petitioners' post-disqualification was factually and legally justified. On the facts, LWUA pointed out that the slippage attributable to Dimson, relative to the Santiago Project, gravely affected petitioners' technical requirements during post-qualification. Likewise, it noted that petitioners failed to exhaust the available remedies prior to the filing of the instant petition, citing the Implementing Rules and Regulations of Republic Act (R.A.) No. 9184 on protest mechanism and stating that there was no motion for reconsideration filed by petitioners of the Resolution No. 12 s. of 2005 dated May 31, 2005. Thus, petitioners lacked a cause of action against respondent. Also, respondent states that injunctive relief does not lie against it and that the writs of *certiorari*, *mandamus* and prohibition are unavailing under the circumstances of the case.

The Court dismisses the petition.

To begin with, there is a serious jurisdictional issue that must be addressed in this petition. Section 58 of R.A. No. 9184 and Section 58 of the IRR-A uniformly state that it is the regional trial court which has jurisdiction over *certiorari* petitions involving questions on the procurement and bidding process in infrastructure projects administered by the various procuring entities in the government. Be that as it may, the viability of this remedy would still have to depend on whether the protest mechanisms outlined in both the law and its implementing rules have been availed of until completion by the aggrieved bidder or party. Section 58 of R.A. No. 9184 materially provides:

SEC. 58. Reports 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 provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

Implementing this provision, the IRR-A states in detail:

Section 58. Resort to Regular Courts; Certiorari

58.1. Court action may be resorted to only after the protests contemplated in this Rule shall have been completed, *i.e.*, resolved by the head of the procuring entity with finality. 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.

58.2. This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders and injunctions relating to Infrastructure Projects of Government.

58.3. The head of the BAC Secretariat of the procuring entity concerned shall ensure that the GPPB shall be furnished a copy of the cases filed in accordance with this Section.

Clearly, the proper recourse to a court action from decisions of the BAC, such as this one, is to file a *certiorari* not before the Supreme Court but before the regional trial court which is vested by R.A. No. 9184 with jurisdiction to entertain the same. In the recent case of *First United Constructors Corporation v. Poro Point Management Corporation*,^[16] we held that while indeed the *certiorari* jurisdiction of the regional trial court is concurrent with this Court's, that fact alone does not allow an unrestricted freedom of choice of the court forum.^[17] But since this is not an iron-clad rule and the full discretionary power to take cognizance of and assume jurisdiction over special civil actions for *certiorari* directly filed with the Court may actually be exercised by it, it is nevertheless imperative that the Court's intervention be called for by exceptionally compelling reasons^[18] or be warranted by the nature of the issues involved.^[19] In other words, a direct invocation of the Supreme Court's original jurisdiction to issue the writ will be allowed only when there are special and important reasons clearly and specifically set out in the petition.^[20]

In the present case, at no given time have petitioners adduced any special and important reasons to justify their direct resort to this Court on *certiorari*. Neither have they established that the issues for resolution could not properly be addressed by the proper court, nor that the remedy they were seeking could not possibly be availed of before that same court. Thus, we can only reaffirm the judicial policy that this Court must dismiss a direct invocation of its jurisdiction in the absence of any compelling and exceptional circumstances calling for a resort to the extraordinary remedy of a writ of *certiorari* and in the absence of any showing that the redress desired may never be obtained through proper recourse in the appropriate courts.

Moreover, it appears that compliance with the mandatory protest mechanisms of the law is jurisdictional in character. Section 58 of R.A. No. 9184 requires that there be exhaustion of the statutorily available remedies at the administrative level as a precondition to the filing of a *certiorari* petition. This requirement points to the mechanisms for protest against decisions of the BAC in all stages of the procurement process that are outlined in both the provisions of Section 55 as well in Section 55 of the implementing rules. Pertinently the provision of Section 55 of R.A. No. 9184 states:

SEC. 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 nonrefundable protest fee.