

SECOND DIVISION

[G.R. Nos. 115121-25, February 09, 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.**

D E C I S I O N

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 bidders^[7] 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 collusion^[8] 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