Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

LAND TRANSPORTATION FRANCHISING AND REGULATORY BOARD, JAIME JACOB, as Chairman of the LTFRB, ARTHUR SAIPUDIN, MELCHOR FRONDA, NIDA QUIBIC, LILIA COLOMA, CYNTHIA DIA, GLENN ZARAGOZA and JOEL BOLANO, in their respective capacities as Chairman, Vice-Chairman and Members of the Special Bids and Awards Committee, Petitioners,	**G.R. No. 200740**
- versus -	Present: CARPIO, *J.*, Chairperson, BRION, DEL CASTILLO, PEREZ, and PERLAS-BERNABE, *JJ.*
STRONGHOLD INSURANCE COMPANY, INC., Respondent.	Promulgated: OCT 0 2 2013

x----------x

DECISION

CARPIO, *J.*:

The Case

We review[1] the ruling[2] of the Court of Appeals annulling a government bidding to accredit providers of accident insurance to operators of passenger public utility vehicles.

The Facts

Petitioner Land Transportation Franchising and Regulatory Board (LTFRB) is the government agency charged with the regulation of franchises of land-based public utility vehicles. To implement the law[3] requiring

---

1 Under Rule 45 of the 1997 Rules of Civil Procedure.

2 Decision dated 20 February 2012, penned by Associate Justice Edwin D. Sorongon with Associate Justices Noel G. Tijam and Romeo F. Barza, concurring.

3 Section 374 of Presidential Decree No. 612 (Insurance Code of the Philippines), as amended by Presidential Decree Nos. 1455 and 1814, provides:

operators of passenger public utility vehicles to obtain accident insurance policies, LTFRB created the Passenger Personal Accident Insurance Program (Program). Under the Program, LTFRB will accredit two groups of insurance providers, selected through open bidding, to provide insurance policies to public utility vehicle operators, covering their passengers against accident-related risks.

Following a bidding conducted in 2005, LTFRB accredited Universal Transport Solutions, Inc. (UNITRANS) as one of the two[4] groups of insurance providers. Respondent Stronghold Insurance Company, Inc. (Stronghold) was the lead insurer of UNITRANS. LTFRB's five-year contract with UNITRANS, embodied in a Memorandum of Agreement dated 15 September 2005 (First MOA), contained the following clause (Matching Clause):

> WHEREAS, after the expiration of the contract for accreditation, all facilities used by the accredited management groups shall be donated to the government. In consideration, however, of the initial investment and the assumption of initial risk, *the two management groups herein shall be given the right to match the best bid/proposal in event another management group qualifies at the end of the term of this agreement*.[5] (Emphasis supplied)

Shortly before the First MOA expired on 16 September 2010 and after its term was extended until 18 November 2011, LTFRB thrice opened bidding for the accreditation of new insurance providers, the first two biddings having been cancelled by the Department of Transportation and Communication (DOTC), LTFRB's mother agency.[6] In each round of bidding, LTFRB required, under the relevant Terms of Reference (Reference), minimum peso capitalization for the lead and member insurers as follows:

Minimum Capitalization (millions)	First Reference	Second Reference	Third Reference
Lead Insurer	250	500	250
Member Insurer	250	500	125

> It shall be unlawful for any land transportation operator or owner of a motor vehicle to operate the same in the public highways unless there is in force in relation thereto a policy of insurance or guaranty in cash or surety bond issued in accordance with the provisions of this chapter to indemnify the death, bodily injury, and/or damage to property of a third-party or passenger, as the case may be, arising from the use thereof.

4 The other group was Philippine Accident Managers, Inc. (PAMI) with UCPB General Insurance Company, Inc., as lead insurer.

5 *Rollo*, p. 75.

6 The records do not disclose the cause for the cancellation of the first bidding. The second, however, was cancelled to allow DOTC to "come up with a sound and defensible policy" on passenger insurance (id. at 140).

Unlike in the First and Second References which allowed aggregation of the group members' capital to comply with the capitalization threshold, the Third Reference reckoned compliance with the minimum capital requirement for the lead and member insurers singly or on a "per insurer" basis. The Third Reference also required a minimum of ten members for each group of insurers, the same number in the Second Reference but half of that in the First Reference.

Stronghold participated in all three biddings but failed to qualify in the third because its group only had six members and its minimum capitalization, as lead insurer, was only ₱140 million (below the minimum of ₱250 million). Consequently, LTFRB excluded Stronghold's group from the pool of qualified bidders.

Before LTFRB could select the winning bids, Stronghold sought a writ of prohibition from the Court of Appeals to enjoin LTFRB from opening the bid documents of participating bidders and to nullify the bidding proceedings. Stronghold theorized that "per insurer" basis for reckoning compliance with the minimum capital requirement under the Third Reference violated not only its right of first refusal under the First MOA but also its right to equal protection under the Constitution. The thread of Stronghold's argument ran:

> 5.3.a) Under the 1st [Reference], the AGGREGATE minimum paid-up capital requirement for the lead company and its member insurance companies was TWO HUNDRED FIFTY MILLION (PhP 250,000,000.00) PESOS.
>
> 5.3.b) Under the 2nd [Reference], the AGGREGATE minimum paid-up capital requirement x x x for the lead company and its member insurance companies is FIVE HUNDRED MILLION (PhP 500,000,000.00) PESOS.
>
> 5.3.c) Petitioner and its member insurance companies are compliant with this paid-up requirement either under the 1st TOR or 2nd TOR because the Department of Finance and Insurance Commission's minimum paid-up requirement for any insurance company to operate is ONE HUNDRED TWENTY-FIVE MILLION (PhP 125,000,000.00) PESOS. With twenty (20) insurance companies under the 1st TOR, the aggregate minimum paid-up capital of petitioner and his group is TWO BILLION FIVE HUNDRED MILLION (PhP 2,500,000,000.00) PESOS. On the other hand, with ten (10) insurance companies under the 2nd [Reference], the aggregate minimum paid-up capital of petitioner and his group, conservatively assuming only ten (10) companies, is ONE BILLION TWO HUNDRED FIFTY MILLION (PhP 1,250,000,000.00) PESOS.
>
> 5.[3].d) Under the 3rd [Reference], however, petitioner and its group were ELIMINATED and OUTRIGHT[LY] DISQUALIFIED because the minimum paid-up capital requirement for the lead company **alone** was changed to TWO HUNDRED FIFTY MILLION (PHP 250,000,000.00) PESOS, whereas, the minimum paid-up capital requirement for each of the

> member insurance companies was ONE HUNDRED TWENTY-FIVE MILLION (PhP 125,000,000.00) PESOS. There are about eighty-seven (87) insurance companies in the Philippines and only eighteen (18) out of these companies have a minimum paid-up capital of Two Hundred Fifty Million (PhP 250,000,000.00) Pesos and above. The 3rd [Reference], therefore, is clearly discriminatory against petitioner and those similarly situated in violation of the equal protection clause guaranteed by the Constitution and a clear violation of petitioner's right as lead company and qualified participating bidder under the earlier [References].[7] (Emphasis in the original)

Notwithstanding Stronghold's prayer for the issuance of a temporary injunctive order against LTFRB, the Court of Appeals merely required the latter to file comment. This allowed LTFRB to declare the winners of the bidding and sign the contract with two new groups of insurers under a Memorandum of Agreement dated 17 November 2011 (Second MOA), effective for two years.

LTFRB prayed for the dismissal of Stronghold's petition on procedural and substantive grounds. LTFRB contended that at the time Stronghold filed its petition, the bid documents of the participating bidders were already opened, hence mooting Stronghold's prayer to enjoin their opening. On the merits, LTFRB argued that Stronghold's exclusion from the third round of bidding was grounded on its failure to comply with the terms of the Third Reference which LTFRB issued in the proper exercise of its regulatory powers.

The Ruling of the Court of Appeals

The Court of Appeals found merit in Stronghold's petition and nullified the third round of bidding. Consequently, it enjoined LTFRB from enforcing the Second MOA "until x x x Stronghold x x x shall have been given the chance to exercise its right to match the best bidder."

Resolving the threshold issue of the propriety of issuing a writ of prohibition despite the opening of the bid documents, the Court of Appeals held that dismissing the petition for mootness "would render [it] inutile in protecting the rights of x x x litigants who were undeniably denied due course."[8]

On the merits, the Court of Appeals, while recognizing LTFRB's power to prescribe the terms of the bidding for the Program's insurers, found LTFRB's exclusion of Stronghold from the third round of bidding for non-compliance with the terms of the Third Reference tainted with grave abuse of discretion:

---

7 Id. at 165-166.
8 Id. at 63.

> Insofar as the 3rd [Reference] is concerned, the contending parties agree that x x x Stronghold failed to qualify because it lacked the requisite capitalization. While We agree that the government should be left to exercise its discretion in setting the qualifications of private entities desiring to engage in business with it, We are of the opinion, however, that the government does not have the unbridled discretion to set aside its obligation under the September 15, 2005 MOA. x x x To our mind, Stronghold's group had already acquired a property right which the LTFRB cannot just set aside without due process of law.
>
> We are convinced that the LTFRB had *abused its discretion* when it unceremoniously released the 3rd [Reference] without considering the legal ramifications on the terms of the MOA. It must be emphasized that the last "WHEREAS clause" had given the right to the private entities therein to match the bid of any winning bidder in the next bidding process. In fine, when the LTFRB unwittingly issued the 3rd [Reference] which in effect foreclosed the right of Stronghold and its group from participating in the bidding and selection process, it went beyond its discretionary authority. x x x.
>
> On the basis of the foregoing, We x x x hold that the proceedings taken under the [Third Reference] are unconstitutional x x x. Further, it is our considered opinion that the [Third Reference] was released and made effective in due haste. Thus, the [Third Reference] *was issued with grave abuse of discretion* amounting to lack or excess of jurisdiction.[9] x x x. (Emphasis supplied)

The Court of Appeals no longer passed upon Stronghold's claim of denial of equal protection.

In this petition, LTFRB argues that the Court of Appeals erred in finding it liable for grave abuse of discretion in disqualifying Stronghold from the third round of bidding. LTFRB maintains that there was nothing irregular in Stronghold's exclusion from the bidding as such was due to Stronghold's failure to qualify under the Third Reference. LTFRB also contests the Court of Appeals' holding that Stronghold's disqualification violated its right of first refusal under the Matching Clause of the First MOA.[10]

Stronghold prays for the denial of the petition and the affirmance of the Court of Appeals' ruling.

On 30 July 2012, we issued a temporary restraining order as prayed for by LTFRB, enjoining the enforcement of the Court of Appeals' ruling.

---

9 Id. at 65-66.

10 LTFRB raises the alternative argument that Stronghold has no personality to invoke the Matching Clause because the right of first refusal was given to the two "management groups" under the First MOA, namely UNITRANS and PAMI.

The Issue

The question is whether the Court of Appeals erred in issuing the writ of prohibition, annulling LTFRB's bidding to select the second batch of insurers under its Program.

The Court's Ruling

We hold that it was error for the Court of Appeals to issue the writ of prohibition; hence, we set aside its ruling.

LTFRB Committed No Grave Abuse of Discretion

The writ of prohibition lies upon a showing that the assailed proceedings "are [conducted] without or in excess of x x x jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction."[11] It is the extra-jurisdictional nature of the contested proceedings that grounds the issuance of the writ, enjoining a tribunal or officer from further acting on the matter before it.

In its petition before the Court of Appeals, Stronghold made no claim that LTFRB lacked jurisdiction to implement the Program or to issue the References for each round of bidding to set the parameters for the accreditation of insurance providers. Rather, it rested its case on the theory that LTFRB acted with grave abuse of discretion amounting to lack or excess of jurisdiction when LTFRB required in the Third Reference a minimum capital requirement on a "per insurer" basis. Stronghold's case therefore, rises or falls on the question whether such act of LTFRB amounts to "grave abuse of discretion."

The Court of Appeals answered in the affirmative, holding that "LTFRB had *abused its discretion* when it unceremoniously released the 3rd Reference without considering the legal ramifications on the terms of the [First] MOA." In the same breath, it concluded that "the [T]hird [Reference] was released and made effective in undue haste x x x thus it was issued with *grave abuse of discretion* amounting to lack or excess of jurisdiction." This is error, procedurally and substantially.

In the first place, the standard under Rule 65 for the issuance of the writ of prohibition is "*grave* abuse of discretion" and not mere "abuse of discretion." The difference is not a simple matter of semantics. The writs governed by Rule 65 – certiorari, mandamus, and prohibition – are extraordinary remedies designed to correct not mere errors of judgment (*i.e.*, in the appreciation of facts or interpretation of law) but errors of jurisdiction

---

[11] Section 2, Rule 65, 1997 Rules of Civil Procedure.

(*i.e.*, lack or excess of jurisdiction). Unlike the first category of errors which the lower tribunal commits in the exercise of its jurisdiction, the latter class of errors is committed by a lower tribunal devoid of jurisdiction or, alternatively, for exercising jurisdiction in an "arbitrary or despotic manner."[12] By conflating "abuse of discretion" with "grave abuse of discretion," the Court of Appeals failed to follow the rigorous standard of Rule 65, diluting its office of correcting only jurisdictional errors.

Further, LTFRB committed no abuse of discretion, much less a grave one, in disqualifying Stronghold from the third round of bidding. It is not disputed that Stronghold did not meet the minimum capitalization required for a lead insurer under the Third Reference, leaving LTFRB no choice but to disqualify it. To find fault in its exclusion, Stronghold charges LTFRB with committing grave abuse of discretion in abandoning the aggregated mode to reckon compliance with the minimum capitalization requirement under the First and Second References and in adopting the new non-aggregated, "per insurer" basis under the Third Reference. In short, Stronghold questions the change in the *manner* by which the minimum capitalization of lead and member insurers is determined under the Third Reference.

We are hard-pressed to see how any grave or even simple abuse of discretion attended LTFRB's policy determination. The Third Reference, which screens providers of accident insurance for passengers of public utility vehicles mandated by law, is simply the result of LTFRB's proper exercise of its power under its charter to "formulate, promulgate, administer, implement and enforce rules and regulations on land transportation public utilities."[13] True, the effect of the minimum capitalization rule under the Third Reference is to make the lead insurer of any participating group raise at least ₱250 million capital on its own (as it can no longer rely on the pooled capital of its group). As LTFRB explains, however, this scheme "ensure[s] that the accredited providers are able *to cover all potential claims* arising out of the insurance policies issued pursuant to the [Program], for *the protection of the general riding public*."[14] We find this policy basis eminently reasonable.

We take judicial notice that as of the end of last year (2012), LTFRB had issued a total of 260,026 franchises to bus, jeepney and taxi operators covering 312,703 units.[15] These units transport millions of Filipino commuters all over the country who avail of their services day and night, all

---

12 *Presidential Commission on Good Government v. Silangan Investors and Managers, Inc*., G.R. Nos. 167055-56, 25 March 2010, 616 SCRA 382, 397, citing *Garcia, Jr. v. Court of Appeals*, G.R. No. 185132, 24 April 2009, 586 SCRA 799.

13 Under Section 5(k) of Executive Order No. 202.

14 *Rollo*, p. 41 (Emphasis supplied).

15 Posted at the LTFRB website http://ltfrb.gov.ph/media/downloadable/Distribution_of_Land_Transportation_Services-for_web.pdf (last visited on 12 September 2013).

year round. The sheer scale of these beneficiaries of LTFRB's insurance program and their constant exposure to accident-related risks furnish reasonable basis for LTFRB's capitalization scheme. It ensures the operation of a financially sound mandatory passenger insurance system. As a measure partaking of the state's police power to promote public safety and public welfare, the Third Reference need only be tested by this liberal standard of reasonableness.[16]

Nor is there basis for the Court of Appeals' finding on LTFRB's alleged grave abuse of discretion for releasing the Third Reference "in undue haste." The records disclose that the "Invitation to Apply for Accreditation under the [Program]" for the Second MOA was published in a newspaper of general circulation on 23 September 2011, one month before the scheduled opening of bids.[17] The following day, 24 September 2011, LTFRB's "Invitation to Bid" was posted on the website of the Philippine Government Electronic Procurement System.[18] Subsequently, the Third Reference and Selection Criteria were made available to interested bidders. Eight groups, including Stronghold's, purchased the Third Reference and related documents. On the day of the opening of bids, 24 October 2011, five groups were able to submit complete accreditation documents. Instead of doing so, Stronghold merely gave an undertaking to submit its complete documentation "as soon as possible."[19] When it did, it still failed to comply with the terms of the Third Reference as its group only had six members and its minimum capital fell short by ₱110 million. Clearly, it was not the alleged "hasty" issuance of the Third Reference but Stronghold's difficulty in forming a consortium of ten members, each compliant with the minimum capital requirement.

The Matching Clause in the First MOA Void

The Matching Clause in the First MOA, which Stronghold invokes as basis for its right to participate in the third round of bidding, provides:

> [T]he two management groups herein shall be given the right to match the best bid/proposal in event another management group qualifies at the end of the term of this agreement[.]

The Court of Appeals sustained Stronghold's claim, effectively reading the Matching Clause to vest in Stronghold not only "the right to match the best bid/proposal in event another management group qualifies at the end of the term of this agreement," but also the prerogative not to comply with the

---

16 The use of the standard of reasonableness to weigh claims of substantive due process rights violation (as here), on one hand, and the validity of police power measures, on the other, is illustrated in *Ermita-Malate Hotel & Motel Operators Association, Inc. v. The City Mayor of Manila*, 128 Phil. 473 (1967).

17 *Rollo*, p. 143.

18 Id. at 144.

19 Id. at 156.

terms of the succeeding bidding. We find it unnecessary to pass upon the correctness of the Court of Appeals' construction of the Matching Clause. It is, in the first place, void.

The Matching Clause contains what is referred to in contract law as the right of first refusal or the "right to match." Such stipulations grant to a party the right to offer the **same** amount as the highest bid to beat the highest bidder. "Right to match" stipulations are different from agreements granting to a party the so-called "right to top." Under the latter arrangement, a party is accorded the right to offer a **higher** amount, usually a fixed sum or percentage, to beat the highest bid.

In the field of public contracts, these stipulations are weighed with the taint of invalidity for contravening the policy requiring government contracts to be awarded through public bidding.[20] Unless clearly falling under statutory exceptions, government contracts for the procurement of goods or services are required to undergo public bidding[21] "to protect the public

[20] Such policy has a long statutory history in this jurisdiction:

> [P]ublic bidding in government contracts has been observed in this jurisdiction since the time of the Philippine Commission:
>
> > Bidding was introduced in the Philippines by the American Laws on Public Bidding until finally Act No. 22 (1900) of the Philippine Commission was enacted which became the first law on public bidding in this jurisdiction. This was followed by several related Acts such as Act Nos. 74(1901), 82(1901) and 83(1901) culminating in the promulgation by President Quezon on February 3, 1936, of Executive Order No. 16 declaring as a general policy that public bidding must be the means adopted in the purchase of supplies, materials and equipment except on very extraordinary cases and with his prior approval. These Acts and Executive Order as well as the rules and regulations promulgated pertinent thereto were later incorporated in the Administrative Code and in subsequent Public Works Acts, although with slight modifications. Up to the present, this policy and medium still hold both in procurement and construction contracts of the government, and the latest enactment relative thereto is Presidential Decree No. 1594 (1978) and its Implementing Rules and Regulations.
>
> As early as 1936, then President Quezon declared as a matter of general policy that Government contracts for public service or for furnishing supplies, materials and equipment to the Government should be subjected to public bidding. There were a number of amendments, the latest of which, Executive Order No. 40 dated June 1, 1963 of President Diosdado Macapagal, reiterated the directive that no government contract for public service or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities, shall be entered into without public bidding except for very extraordinary reasons to be determined by a Committee constituted thereunder. Of more recent date is Executive Order No. 301, S. 1987, issued by President Corazon Aquino, which prescribed the guidelines for decentralization of negotiated contracts. Section 1 of this issuance reiterated the legal requirement of public bidding for the award of contracts for public services and for furnishing supplies, materials and equipment to the government, and expressly specified the exceptions thereto. (*Manila International Airport Authority v. Mabunay*, 379 Phil. 833, 842-843 [2000] [internal citations omitted]).

[21] For the procurement of goods and consulting services, see Republic Act No. 9184 (Government Procurement Reform Act). For contracts involving "public services or for furnishing supplies, materials and equipment to the government," see Section 1 of Executive Order No. 301, 26 July 1987.

interest by giving the public the best possible advantages thru open competition."[22] The inclusion of a right of first refusal in a government contract executed post-bidding, as here, negates the essence of public bidding because the stipulation "gives the winning bidder an x x x advantage over the other bidders who participated in the bidding x x x."[23] Moreover, a "right of first refusal," or "right to top," whether granted to a bidder or non-bidder, discourages other parties from submitting bids, narrowing the number of possible bidders and thus preventing the government from securing the best bid.

These clauses escape the taint of invalidity only in the narrow instance where the right of first refusal (or "right to top") is founded on the beneficiary's "interest on the *object* over which the right of first refusal is to be exercised"[24] (such as a "tenant with respect to the land occupied, a lessee vis-à-vis the property leased, a stockholder as regards shares of stock, and a mortgagor in relation to the subject of the mortgage"[25]) and the government stands to benefit from the stipulation. Thus, we upheld the validity of a "right to top" clause allowing a private stockholder in a corporation to top by 5% the highest bid for the shares disposed by the government in that corporation.[26] Under the joint venture agreement creating the corporation, a party had the right of first refusal in case the other party disposed its shares. The government, the disposing party in the joint venture agreement, benefitted from the 5% increase in price under the "right to top," on outcome better than the right of first refusal.

The Matching Clause in this case does not fall under this narrow exception. The First MOA (and for that matter the Second MOA) was a contract for the procurement of *services*; hence, there is no "object" over which Stronghold can claim an interest which the Matching Clause protects. Nor did the government benefit from the inclusion of the Matching Clause in the First MOA. The Matching Clause was added in the First MOA "in consideration, x x x of the initial investment and the assumption of initial risk" of the two accredited management groups. These "initial investment" and "initial risk," however, are inherent in the business of providing accident insurance to public utility vehicle operators, which the bidders for the First MOA, including Stronghold's group UNITRANS, logically took into account when they submitted their bids to LTFRB. The government was under no obligation to reward the accredited insurers' investment and risk-taking with a right of first refusal stipulation at the expense of denying the public the benefits public bidding brings, and did bring, to select the insurance providers in the Second MOA.

---

22 *National Food Authority v. Court of Appeals*, 323 Phil. 558, 574 (1996).

23 *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines, Inc.*, G.R. No. 183789, 24 August 2011, 656 SCRA 214, 232.

24 Id. at 234 (Emphasis supplied).

25 Id. at 235-236.

26 *JG Summit Holdings, Inc. v. Court of Appeals*, G.R. No. 124293, 24 September 2003, 412 SCRA 10 (Resolution).

WHEREFORE, we **GRANT** the petition. The Decision dated 20 February 2012 of the Court of Appeals is **SET ASIDE**.

The temporary restraining order issued on 30 July 2012 is made permanent.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice