



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

PRIVATIZATION and G.R. No. 200402
MANAGEMENT OFFICE,
Petitioner,

- versus -

STRATEGIC ALLIANCE
DEVELOPMENT CORPORATION
and/or PHILIPPINE ESTATE
CORPORATION,
Respondents.

X ----- X

STRATEGIC ALLIANCE G.R. No. 208127
DEVELOPMENT CORPORATION as
substituted by PHILIPPINE ESTATE
CORPORATION,
Petitioner, Present:

- versus -

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

PRIVATIZATION AND
MANAGEMENT OFFICE (formerly
Asset Privatization Trust), and
PHILIPPINE NATIONAL
CONSTRUCTION CORPORATION,
Respondents.

Promulgated:

JUN 18 2014

X ----- X

RESOLUTION

SERENO, *CJ*:

These consolidated cases began with the Petition for Review on Certiorari dated 16 March 2012 filed by the Privatization and Management Office (PMO) before this Court.¹ The petition assailed the Court of Appeals (CA) Decision dated 27 January 2012.² Therein, the CA had affirmed the

¹ *Rollo* (G.R. No. 200402), pp. 9-116.

² *Id.* at 118-148. The CA Decision in CA-G.R. CV No. 96368 was penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier concurring.

Decision of the Regional Trial Court (RTC)³ awarding to Strategic Alliance Development Corporation (the predecessor of Philippine Estate Corporation or “PHES”⁴), the auctioned Philippine National Construction Corporation shares, receivables, and securities (PNCC properties) owned by the Philippine government. This petition, docketed as G.R. No. 200402, was raffled to the First Division of the Court.

The Court required respondents in said case, Strategic Alliance Development Corporation and/or PHES, to file a Comment on the petition.⁵ Strategic Alliance Development Corporation complied, while PHES failed to do so. Subsequently, on 31 January 2013, the former moved for the early resolution⁶ of G.R. No. 200402.

Before the Court could act upon these incidents, the CA vacated its Decision dated 27 January 2012, which, as mentioned, was the subject of G.R. No. 200402. In the Amended Decision dated 13 February 2013 and its concomitant Resolution dated 12 July 2013,⁷ the original Decision of the appellate court in favor of Strategic Alliance Development Corporation was completely reversed in favor of PMO.

None of the parties timely informed the Court of this development. Thus, its First Division proceeded to resolve G.R. No. 200402, with the Motion for Early Resolution of the case being the last pleading filed by the parties.

On 13 June 2013, the Court, through the First Division, issued a Decision resolving G.R. No. 200402. We granted the Rule 45 petition filed by PMO and reversed the CA Decision dated 27 January 2012 for unjustifiably compelling PMO to award the PNCC properties to Strategic Alliance Development Corporation.⁸

Aggrieved, Strategic Alliance Development Corporation filed a Motion for Reconsideration on 17 July 2013.⁹ **This is the remaining incident before the Court in G.R. No. 200402.**

Thirteen days thereafter, or on 30 July 2013, the Second Division of the Court came to know of the amended rulings of the CA through the filing by PHES of its Petition for Review on even date.¹⁰ This Rule 45 petition was raffled to the Second Division of the Court and contained in its annexes the Amended Decision dated 13 February 2013 and the Resolution dated 12 July 2013 of the CA. **This petition is the matter for consideration under G.R. No. 208127.**

³ Id at. 149-170. The RTC Decision in Civil Case No. 05-882 was penned by Presiding Judge Zenaida T. Galapate-Laguilles.

⁴ *Rollo* (G.R. No. 208127), p. 276. As declared by the RTC in its Order dated 13 September 2010, PHES is declared as the substitute party plaintiff in lieu of Strategic Alliance Development Corporation.

⁵ *Rollo* (G.R. No. 200402), pp. 573-574; Resolution dated 23 April 2012.

⁶ Id. at 680-684.

⁷ *Rollo* (G.R. No. 208127), pp. 34-42, 75-87; The Amended Decision and Resolution of the CA were also penned under CA-G.R. CV No. 96368 by Associate Justice Vicente S.E. Veloso, with Associate Justices Stephen C. Cruz and Amy C. Lazaro-Javier concurring.

⁸ *Rollo* (G.R. No. 200402), p. 697.

⁹ Id. at 703-727.

¹⁰ *Rollo* (G.R. No. 208127), pp. 3-32.

On 11 November 2013, the Second Division of the Court resolved to consolidate G.R. No. 208127 with G.R. No. 200402,¹¹ the latter being the lower docket number.¹² Thus, remaining at bench in the First Division are (1) the Motion for Reconsideration filed by Strategic Alliance Development Corporation and (2) the Petition for Review filed by PHES. As PHES has already substituted for Strategic Alliance Development Corporation in G.R. No. 208127, the Court appreciates the former as petitioner in these consolidated cases.

THE FACTS

These consolidated cases stem from a common set of undisputed facts.

Briefly stated, PMO, then operating as the Asset Privatization Trust (APT), held a public bidding on 30 October 2000 to sell the PNCC properties in order to generate maximum cash recovery for the government. The Asset Specific Bidding Rules (ASBR) governed the bidding process, which had the following pertinent rules:¹³ (1) the indicative price of the PNCC properties shall be announced on the day of the bidding; (2) the winning bidder is the one that submits the highest total bid and that complies with all the terms of the ASBR; (3) PMO reserves the right to reject any or all bids, including the highest bid; and (4) the delivery of financial information regarding the PNCC properties shall not give rise to a warranty with respect to the said data or information. Strategic Alliance Development Corporation, as a participant in the bidding process,¹⁴ signified its acceptance under these terms.

On the day of the bidding, the indicative price was announced at ₱7,000,000,000. None of the bidders met the threshold. Strategic Alliance Development Corporation, despite giving the highest offer, only gave ₱1,228,888,800 as its bid offer. Consequently, PMO rejected all the bids.

As a result, Strategic Alliance Development Corporation protested the rejection of its bid and insisted that a notice of award¹⁵ of the PNCC properties be issued in its favor. PMO refused. Subsequently, the former filed a Complaint for Declaration of Right to a Notice of Award and/or Damages before the RTC.¹⁶ Ruling in the bidder's favor, the trial court held that the failure to explain the basis of the indicative price of ₱7 billion constituted a grave abuse of discretion and a violation of the public's right to information, warranting the issuance of a notice of award of the PNCC properties to Strategic Alliance Development Corporation.

On appeal, the CA affirmed the ruling of the RTC in its Decision dated 27 January 2012. PMO questioned the aforesaid ruling before this Court via a

¹¹ *Rollo* (G.R. No. 208127), pp. 514-519; *rollo* (G.R. No. 200402), pp. 761-766.

¹² The Internal Rules of the Supreme Court, A.M. No. 10-4-20-SC, Rule 9, Section 5.

¹³ *Rollo* (G.R. No. 200402), pp. 199-220.

¹⁴ *Id.* at 419; Strategic Alliance Development Corporation was one of the entities that formed Dong-A Consortium, which was the bidder of the PNCC properties.

¹⁵ *Id.* at 416. A notice of award is issued to a winning bidder, who must satisfy and comply with all the requirements of the ASBR, as well as the Indicative Price.

¹⁶ *Id.* at 263-275; filed on 3 October 2005.

Petition for Review on Certiorari dated 16 March 2012. Meanwhile, PMO's co-petitioner, PNCC, moved for reconsideration.

In resolving the Motion for Reconsideration filed by PNCC, the CA totally reversed itself in its Amended Decision dated 13 February 2013 and Resolution dated 12 July 2013. The CA held that PMO and PNCC cannot be compelled to accept the bidder's meager offer, which was grossly disadvantageous to the Filipino people. The CA also considered that PMO had the right under the ASBR to reject any or all bids; and that its exercise of discretion to reject the bid of Strategic Alliance Development Corporation had not been attended by unfairness, arbitrariness or grave abuse.

Unfortunately, these later rulings were never timely brought to the attention of the Court. Hence, prior to the issuance of these rulings by the CA, this Court had already adjudicated the Rule 45 petition earlier filed by the PMO in our Decision dated 13 June 2013.

In our Decision, we ruled against the propriety of compelling PMO to award the PNCC properties to Strategic Alliance Development Corporation. In particular, we held that, regardless of the alleged violation of the public's right to information as regards the valuation of the indicative price, the PNCC properties could not be automatically awarded to a losing bidder. In effect, we reversed the RTC Decision dated 1 July 2010 and the CA Decision dated 27 January 2012.

THE ISSUES

The present issues before this Court – in the Motion for Reconsideration in G.R. No. 200402 and in the Petition for Review in G.R. No. 208127 – are identical. We note that these issues also rehash the previous pleadings submitted by the parties.

Firstly, PHES repeats the argument that the announcement of the indicative price after the submission of the sealed bids constituted an act of fraud on the part of PMO. Secondly, PHES reiterates that the valuation of the indicative price was erroneous, and that the public's right to information was violated by the failure of PMO to explain the high indicative price. For PHES, these reasons warrant the issuance of a notice of award of the PNCC properties to Strategic Alliance Development Corporation.

THE RULING OF THE COURT

We deny the entreaty of PHES. It fails to raise substantial arguments warranting us to maintain our Decision dated 13 June 2013, and to affirm the Amended Decision of the CA dated 13 February 2013, and its concomitant Resolution dated 12 July 2013.

According to PHES, the late announcement of the indicative price amounted to fraud. But PMO timely announced the indicative price on the day of the bidding pursuant to the ASBR.¹⁷ Therefore, absent a clear and convincing evidence of fraud, and given that PMO followed the protocol, fraud on its part cannot be presumed.¹⁸

To justify the acceptance of its bid for the PNCC properties, PHES reiterates that PMO erred in computing and explaining the indicative price of ₱7 billion, in violation of the public's right to due process. However, its allegations are irrelevant considering that the Civil Code¹⁹ and the ASBR²⁰ pertinently provide that bids are mere offers, which may be rightfully rejected by PMO. Moreover, PHES unsuccessfully anchors its claim on a violation of the public's right to information because the said right merely gives access to public records, and does not precipitate a positive right to obtain an award of the PNCC properties.²¹

Other issues have also been raised in these consolidated cases. These include the arguments that a notice of award is not tantamount to a sale, and that the Decision of this Court dated 13 June 2013 is already moot, given that the CA – through its amended rulings – has already abandoned its original Decision dated 27 January 2012.

The first new issue presents no substantial argument, considering that the issuance of a notice of award, as admitted by PHES itself,²² is the initial step towards the perfection of the contract of sale involving the auctioned PNCC properties. The second new issue is likewise flawed. Considering that the amended rulings of the CA are the subjects of the instant appeal in G.R. No. 208127, its Amended Decision dated 13 February 2012 and Resolution dated 12 July 2013 cannot be considered as final and executory rulings that will effectively vacate its Decision dated 27 January 2012.²³

Therefore, we reiterate the denial of the prayer for the issuance of a notice of award to Strategic Alliance Development Corporation.

IN VIEW THEREOF, the Motion for Reconsideration dated 17 July 2013 in G.R. No. 200402 and Petition for Review dated 30 July 2013 in G.R. No. 208127 are hereby **DENIED** for lack of merit.

¹⁷ Id. at 200; Section 3.1 of the ASBR provides that the Indicative Price for the Shares, Receivables and the Securities shall be announced on the day of the bidding.

¹⁸ *Rementizo v. Vda. de Madarieta*, G.R. No. 170318, 15 January 2009, 576 SCRA 109.

¹⁹ Art. 1326 of the Civil Code provides that advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears.

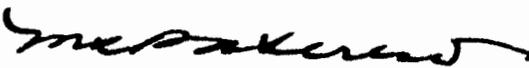
²⁰ *Rollo* (G.R. No. 200402), p. 200; Section 4.3 of the ASBR provides that APT reserves the right to reject any or all bids, including the highest bid, or to waive any defect or required formality therein.

²¹ CONSTITUTION, Art. III, Sec. 7 reads as follows: The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen, subject to such limitations as may be provided by law.

²² *Rollo* (G.R. No. 200402), p. 723; *rollo* (G.R. No. 208127), p. 26.

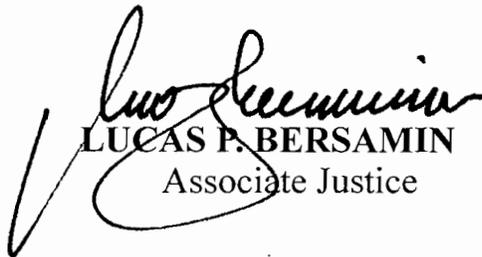
²³ See *Ipapo v. Court of Appeals*, G.R. No. L-49793, 20 August 1981, 193 Phil. 791 (1981).

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution 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