

## SECOND DIVISION

[ G.R. No. 212894, March 04, 2020 ]

**DEPARTMENT OF HEALTH (DOH), REPRESENTED BY THE SECRETARY OF HEALTH; AND THE SECRETARY OF HEALTH, AS HEAD OF THE PROCURING ENTITY, PETITIONERS, VS. HON. BONIFACIO S. PASCUA, IN HIS CAPACITY AS THE PRESIDING JUDGE OF BRANCH 56, REGIONAL TRIAL COURT IN MAKATI CITY; AND J.D. LEGASPI CONSTRUCTION, RESPONDENTS.**

[G.R. No. 213820]

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### R E S O L U T I O N

**INTING, J.:**

Before the Court are three petitions docketed as G.R. Nos. 212894,<sup>[1]</sup> 213820,<sup>[2]</sup> and 213889<sup>[3]</sup> all filed by the Department of Health (DOH), represented by the Secretary of Health, then Secretary Enrique T. Ona, and the Secretary of Health, as Head of the Procuring Entity (collectively, petitioners) against Hon. Bonifacio S. Pascua (respondent judge), in his capacity as Presiding Judge of Branch 56, Regional Trial Court (RTC), Makati City and J.D. Legaspi Construction (respondent JDLC).

G.R. No. 212894 is a Petition for *Certiorari* (with Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) under Rule 65 of the Rules of Court. It assails the Order<sup>[4]</sup> dated June 18, 2014 of the RTC which granted a temporary restraining order (TRO) for a period of 20 days in favor of respondent JDLC enjoining the DOH from conducting a rebidding or award to a third party of the subject Dr. Jose Fabella Memorial Hospital Infrastructure Project (Project) or any aspect thereof.<sup>[5]</sup>

G.R. No. 213820 is a Petition for *Certiorari* (with Urgent Application for Temporary

Restraining Order and/or Writ of Preliminary Injunction) under Rule 65 of the Rules of Court. It assails the Order<sup>[6]</sup> dated August 7, 2014 and the Writ of Preliminary Injunction<sup>[7]</sup> dated August 18, 2014 issued by the RTC. The RTC granted respondent JDLC's application for the issuance of a writ of preliminary injunction conditioned upon the posting of an injunctive bond in the amount of P2,000,000.00 to "answer for all damages which [petitioners] may sustain by reason of an injunction (and temporary restraining order earlier issued), if the court should finally decide that the applicant is not entitled thereto."<sup>[8]</sup>

G.R. No. 213889 is a Petition for Review on *Certiorari* (With Extremely Urgent Application for Temporary Restraining Order and/or Writ of Preliminary Injunction) under Rule 45 of the Rules of Court. It assails the Decision<sup>[9]</sup> dated August 29, 2014 of the RTC which granted the writs of *certiorari* and *mandamus* in favor of respondent JDLC and awarded the Project in its favor as the lowest calculated and responsive bidder.<sup>[10]</sup>

### *The Facts*

The antecedents of these consolidated petitions are as follows:

The controversy arose from the bidding of the infrastructure project for Dr. Jose Fabella Memorial Hospital (Fabella Hospital). The modernization project has become imperative since the land it occupied is owned by Home Guaranty Corporation, and Fabella Hospital has been required to transfer to a new site.

On February 14, 2013, Architect Maria Rebecca M. Peñafiel of the National Center for Health Facility Development (NCHFD) of the DOH submitted the approved terms of reference of Phase 1 of the Project to the Central Office Bids and Awards Committee (COBAC) Secretariat, Dr. Ma. Theresa G. Vera. On April 6, 2013, the Invitation to Bid (ITB) for Phase 1 was posted on the Philippine Government Electronic Procurement System (PhilGEPS). On June 4, 2013, the ITB was published in two national newspapers, the *Philippine Star* and the *Philippine Daily Inquirer*, and posted in conspicuous places within the premises of the DOH. On June 11, 2013, the pre-bid conference was conducted.<sup>[11]</sup>

On June 25, 2013, the bids were opened. Out of the four bidders, only three were declared eligible, including respondent JDLC. On July 1, 2013, Tokwing Construction Corporation (Tokwing Construction) was declared to have submitted the Lowest Calculated Bid. However, on July 25, 2013, the COBAC informed Tokwing Construction that it failed to pass the criteria for post-qualification because it did not submit certified true copies of the necessary documents. On August 6, 2013, COBAC sent a letter to JDLC informing the latter that it was declared as having submitted the Lowest Calculated Bid. After conducting review and deliberations on respondent JDLC's bid, COBAC resolved that JDLC had submitted the second Lowest Calculated and Responsive Bid. On December 11, 2013, COBAC submitted its resolution to the head of the Procuring Entity.<sup>[12]</sup>

Thereafter, the DOH was advised to review the financing options for the modernization project of Fabella Hospital. As a result of the instruction, DOH had to

cancel the procurement for the project. The NCHFD informed the COBAC Secretariat of the cancellation of the procurement for the project.

As a result of the cancellation of the project, JDLC filed a Petition for the Issuance of the Writ of *Mandamus*<sup>[13]</sup> dated January 24, 2014 before the RTC. After petitioners filed their Comment<sup>[14]</sup> to the petition, respondent JDLC filed a Motion for Leave to File and Admit Attached Amended and Supplemental Petition for *Mandamus* and *Certiorari* (With Extremely Urgent Application for Issuance of a TRO and/or Writ of Preliminary Injunction)<sup>[15]</sup> assailing the cancellation by petitioners of the procurement process of the Project and seeking relief for the award of the Project to respondent JDLC.

### *The Ruling of the RTC*

On June 18, 2014, the RTC issued the assailed Order which granted respondent JDLC's prayer for the issuance of TRO for a period of 20 days, thus:

Accordingly, without going to the merits of the case and to prevent the issues raised in the principal case from becoming moot and academic causing grave and irreparable damage or injury, in the meantime, this Court resolves to GRANT the application and issue a temporary restraining order for a period of twenty (20) days ENJOINING respondent DOH, its agents, assigns and all persons acting for and in its behalf from conducting a re-bidding or award to a third party of the subject Dr. Jose Fabella Hospital Infrastructure Project, or of any aspect thereof, or any other such acts as would render moot and academic the issues raised in the Amended and Supplemental Petition for *Certiorari* and *Mandamus* with prayer for issuance of Temporary and/or Preliminary Injunction or as would prejudice the rights of the Petitioner.

In the meantime, respondent is hereby directed to show cause on July 11, 2014 at 8:30 a.m. why the issuance of the writ of preliminary injunction should not be granted.

SO ORDERED.<sup>[16]</sup>

Hence, petitioners filed the petition, docketed as G.R. No. 212894, alleging that respondent judge committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he issued the TRO in favor of respondent JDLC in violation of Republic Act No. (RA) 8975,<sup>[17]</sup> which bans lower courts from issuing TRO against National Government Infrastructure Projects.

The RTC then granted respondent JDLC's application for the issuance of a writ of preliminary injunction in its Order dated August 7, 2014 which states:

WHEREFORE, premises considered, the prayer for the issuance of a writ of preliminary injunction is GRANTED upon posting of an injunctive bond

in the amount of Two Million Pesos (P2,000,000.00), that will answer for all damages which respondents may sustain by reason of an injunction (and temporary restraining order earlier issued), if the court should finally decide that the applicant is not entitled thereto. Upon approval of the requisite bond, let a writ of preliminary [injunction] be issued.

SO ORDERED.<sup>[18]</sup>

A Writ of Preliminary Injunction<sup>[19]</sup> was issued on August 18, 2014.

The issuance of the Order dated August 7, 2014 and of the Writ of the Preliminary Injunction dated August 18, 2014 prompted petitioners to file the Petition for *Certiorari* (with Urgent Application for TRO and/or Writ of Preliminary Injunction) docketed as G.R. No. 213820.

On August 29, 2014, the RTC rendered a Decision granting the writ of *certiorari* and *mandamus* to JDLC. Likewise, the RTC ordered petitioners to award the project to JDLC; thus:

WHEREFORE, premises considered, judgment is hereby rendered:

1. GRANTING the writ of *certiorari* in favor [of the] petitioner to correct and reverse the cancellation of the procurement process of the Design and Build of Dr. Jose Fabella [Memorial] Hospital Infrastructure Project, under ITB No. 2013-215, ANNULING thereby all consequences of such cancellation including the re-bidding of the Design and Construction Management aspect of the Dr. Jose Fabella [Memorial] Hospital Infrastructure Project, under Solicitation No. 2014-12, and the consequences thereof;
2. GRANTING the writ of *mandamus* in favor of petitioner, ordering respondents to immediately and without further delay, issue the Notice of Award to petitioner for the Dr. Jose Fabella [Memorial] Hospital Infrastructure Project of which it has been declared the Lowest Calculated and Responsive Bidder within seven (7) days from receipt of *Writ of Mandamus* in accordance with the maximum period provided for the issuance of a Notice of Award under Annex "C" of the IRR of RA 9184, and execute all necessary succeeding procedures consequent to the issuance of such Notice of Award within the maximum period provided by RA 9184 and its IRR;
3. AWARDING the contract to petitioner as the Lowest Calculated and Responsive Bidder for the Dr. Jose Fabella [Memorial] Hospital Infrastructure Project;

Let this judgment be served personally upon Respondents pursuant to Section 9, Rule 65 of the Rules of Court.

SO ORDERED.<sup>[20]</sup>

Aggrieved, petitioners filed a Petition for Review on *Certiorari*, docketed as G.R. No. 213889. In G.R. No. 213889, petitioners insisted that their right to due process was violated when respondent judge failed to conduct hearing of the main case before issuing the subject TRO. JDLC filed its Comment/Opposition dated September 12, 2014,<sup>[21]</sup> December 22, 2014,<sup>[22]</sup> and December 22, 2014,<sup>[23]</sup> respectively, praying for the dismissal of the petitions. On February 17, 2015, petitioners filed a Reply<sup>[24]</sup> to respondent JDLC's Comment/Opposition to the Petition for Review on *Certiorari* in G.R. No. 213889.

Meanwhile, on October 8, 2014, petitioners filed a Motion to Consolidate<sup>[25]</sup> the three cases. In its Resolution<sup>[26]</sup> dated September 22, 2014, the Court consolidated the petitions. Respondent JDLC filed a Motion for Reconsideration dated November 11, 2014 praying that the Court's Resolution consolidating the instant petitions be recalled. Petitioners filed a Comment<sup>[27]</sup> dated December 16, 2014 on respondent JDLC 's Motion for Reconsideration.

In a Resolution<sup>[28]</sup> dated October 17, 2016, the Court required the parties to *MOVE IN THE PREMISES* by informing the Court, within 10 days from notice, of any supervening events or subsequent developments pertinent to the cases which may be of help in the immediate disposition of the petitions or may have rendered the consolidated cases moot.

Petitioners filed their Compliance<sup>[29]</sup> dated March 16, 2017 which provides in part:

2. As stated in its motions for extension of time, the OSG wrote to the Secretary of Health to request for the required information.

3. In a letter-reply dated March 8, 2017, the Director IV, Legal Service, DOH, Atty. Romela D. Devera, informed the OSG that:

As far as this Office is concerned, there has been no significant circumstance or incident that ensued from the time of the issuance of COBAC Resolution No. 2014-027-A dated October 10, 2014, awarding the Design and Build of Infrastructure Project for Dr. Jose Fabella Memorial Hospital in favor of J.D. Legaspi Construction and from the filing of Compliance with Manifestation on October 13, 2014.

At present, after J.D. Legaspi Construction has finalized the planning and its design, the construction of the Dr. Jose Fabella Memorial Hospital is now in progress.<sup>[30]</sup>

On the other hand, respondent JDLC submitted its Compliance<sup>[31]</sup> dated March 20, 2017 and informed the Court that on January 23, 2015, the DOH issued a Notice to Proceed (NTP) with the project and that on May 31, 2015, respondent JDLC