

## EN BANC

[ G.R. No. 219683, January 23, 2018 ]

**HON. JONATHAN A. DELA CRUZ AND HON. GUSTAVO S. TAMBUNTING, AS MEMBERS OF THE HOUSE OF REPRESENTATIVES AND AS TAXPAYERS, PETITIONERS, V. HON. PAQUITO N. OCHOA JR., IN HIS CAPACITY AS THE EXECUTIVE SECRETARY; HON. JOSEPH EMILIO A. ABAYA, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS; HON. FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; AND HON. ROSALIA V. DE LEON, IN HER CAPACITY AS THE NATIONAL TREASURER, RESPONDENTS.**

### DECISION

**BERSAMIN, J.:**

In this special civil action for *certiorari* and prohibition, the petitioners, as Members of the House of Representatives and as taxpayers, assail the implementation of the Motor Vehicle License Plate Standardization Program (MVPSP) of the Land Transportation Office (LTO)<sup>[1]</sup> by using funds appropriated under Republic Act No. 10633 (*General Appropriations Act of 2014*), hereinafter referred to as the 2014 GAA.<sup>[2]</sup>

This case was preceded by the ruling in *Jacomille v. Abaya*,<sup>[3]</sup> which involved the procurement for the MVPSP. On May 19, 2014, Reynaldo M. Jacomille (Jacomille) filed in this Court a petition for *certiorari* and prohibition assailing the legality of the procurement under the MVPSP. He insisted therein that the MVPSP contract was void for lack of adequate budgetary appropriations in the *General Appropriations Act of 2013* (2013 GAA) as well as for the failure of the procuring entity to obtain the required Multi-Year Obligational Authority (MYOA) from the Department of Budget and Management (DBM).<sup>[4]</sup>

In the decision promulgated on April 22, 2015, the Court dismissed Jacomille's petition for having been rendered moot and academic by the passage of the 2014 GAA that already included the full appropriation necessary to fund the MVPSP. Nonetheless, the Court expressly observed therein that the appropriation made in the 2013 GAA had been insufficient for the MVPSP; and that the procurement process had been tainted with irregularities, to wit:

x x x [T]he project did not have the adequate appropriation when its procurement was commenced on February 20, 2013, contrary to the provisions of Sections 5a, 7 and 20 of R.A. No. 9184. The DOTC and the LTO likewise failed to secure the MYOA before the start of the procurement process even though MVPSP is MYP [Multi-Year Project]

involving MYC [Multi-Year Contract]. All these irregularities tainted the earlier procurement process and rendered it null and void.

At the outset, however, the Court has stated that the present petition has been rendered moot and academic by the appropriation for the full amount of the project fund in GAA 2014. Said appropriation "cured" whatever defect the process had.<sup>[5]</sup>

Jacomille moved for reconsideration but the Court, denying his motion on July 25, 2016,<sup>[6]</sup> reiterated that:

x x x Congress had appropriated the amount of P4,843,753,000.00 for the MVPSP project. **Consequently, the Court deemed it proper not to question the wisdom of the legislative department in appropriating the full budget of the MVPSP in the GAA 2014. As the MVPSP was adequately funded by law when it was signed by the contracting parties, the petition became moot and academic. With that, the duty of the Court in the present petition was discharged.** (Bold underscoring supplied for emphasis)<sup>[7]</sup>

### **Antecedents**

Given the intimate connection between this case and *Jacomille v. Abaya, supra*, we adopt and reiterate the summary of the factual antecedents rendered in *Jacomille v. Abaya* for the sake of consistency, as follows:

The Department of Transportation and Communications (*DOTC*) is the primary policy, planning, programming, coordinating, implementing, regulating, and administrative entity of the Executive Branch of the government in the promotion, development and regulation of dependable and coordinated networks of transportation and communications systems as well as in the fast, safe, efficient, and reliable postal, transportation and communication services. One of its line agencies is the Land Transportation Office (*LTO*) which is tasked, among others, to register motor vehicles and regulate their operation.

In accordance with its mandate, the LTO is required to issue motor vehicle license plates which serve to identify the registered vehicles as they ply the roads. These plates should at all times be conspicuously displayed on the front and rear portions of the registered vehicles to assure quick and expedient identification should there be a need, as in the case of motor vehicle accidents or infraction of traffic rules.

Recently, the LTO formulated the Motor Vehicle License Plate Standardization Program (*MVPSP*) to supply the new license plates for both old and new vehicle registrants. On February 20, 2013, the DOTC published in newspapers of general circulation the Invitation To Bid for the supply and delivery of motor vehicle license plates for the MVPSP, to wit:

The Department of Transportation and Communications (DOTC)/Land Transportation Office (LTO) are inviting bids for its LTO MV Plate Standardization Program which involves the procurement, supply and delivery of Motor Vehicle License

Plates. The program shall run from July 2013 until June 2018 when the supply and delivery of the Motor Vehicle License Plates of the LTO MV Plate Standardization program is completed.

The LTO, through the General Appropriations Act, intends to apply the sum of Three Billion Eight Hundred Fifty One Million Six Hundred Thousand One Hundred Pesos (Php3,851,600,100.00) being the Approved Budget for the Contract (ABC), for payment of approximately [P]5,236,439 for Motor Vehicles (MV) and approximately [P]9,968,017 for motorcycles (MC), under the contract for the Supply and Delivery of Motor Vehicle License Plate for the Land Transportation Office Motor Vehicle License Plate Standardization Program or the "LTO MV Plate Standardization Program".

On February 25, 2013, the DOTC Bids and Awards Committee (BAC) issued BAC General Bid Bulletin No. 002-2013 setting the Submission and Opening of Bids on March 25, 2013. On February 28, 2013, the first Pre-Bid Conference was held at the offices of the BAC.

On March 6, 2013, BAC General Bid Bulletin No. 003-2013 was issued, amending paragraph 1 of the Invitation to Bid, to wit:

The Department of Transportation and Communication (DOTC)/Land Transportation Office (LTO), through the General Appropriations Act, intends to apply the sum of Three Billion Eight Hundred Fifty One Million Six Hundred Thousand One Hundred Pesos (Php 3,851,600,100.00) being the Approved Budget for the Contract (ABC), to payments for:

- a. Lot 1 - Motor Vehicle License Plates (MV): 5,236,439 pairs for MV amounting to Two Billion Three Hundred Fifty Six Million Three Hundred Ninety Seven Thousand Five Hundred Fifty Pesos (Php 2,356,397,550.00)
- b. Lot 2 - Motorcycles Plates (MC): 9,968,017 pieces for MC amounting to One Billion Four Hundred Ninety Five Million Two Hundred Two Thousand Five Hundred Fifty Pesos (Php 1,495,202,550.00) under the contract for the Supply and Delivery of Motor Vehicle License Plate for the Land Transportation Office Motor Vehicle License Plate Standardization Program (herein after the "LTO MV Plate Standardization Program").

On March 7, 2013, the second Pre-Bid Conference was held at the office of the BAC. On March 8, 2013, BAC General Bid Bulletin No. 005-2013 extended the submission and opening of bids to April 8, 2013 to give the prospective bidders ample time to prepare their bidding documents. On April 22, 2013, the BAC again rescheduled the submission and opening of bids to May 6, 2013.

On May 6 and 7, 2013, the BAC proceeded with the opening of bids. After examining the eligibility documents and technical proposals submitted by eight (8) interested groups, only two (2) were found eligible by the DOTC, to wit:

- a. The joint venture of the Netherlands' J. Knieriem B.V. Goes and local company Power Plates Development Concepts, Inc. (*JKG-Power Plates*); and
- b. The joint venture of Spain's Industrias Samar't and local company Datatrail Corporation (*Industrias Samar't-Datatrail*).

As the only eligible bidders, their financial proposals were then opened to reveal that JKG-Power Plates made the lowest offers. For Lot 1, JKG-Power Plates proposed to supply the MV License Plates for a total of P1.98 Billion, while Industrias Samar't-Datatrail offered it at P2.03 Billion. On the other hand, for Lot 2, JKG-Power Plates aimed to supply the MC License Plates for a total of P1.196 Billion, while Industrias Samar't-Datatrail's offer was at P1.275 Billion.

On July 22, 2013, the DOTC issued the Notice of Award to JKG-Power Plates.<sup>2</sup> It was only on August 8, 2013[,], however, when JKG-Power Plates signified its *conforme* on the Notice of Award.<sup>3</sup> On August 12, 2013, the Notice of Award was posted in the DOTC website; while the Award Notice Abstract was posted in the Philippine Government Electronic Procurement System (*PhilGEPS*) website on even date.

Despite the notice of award, the contract signing of the project was not immediately undertaken. On February 17, 2014, the DOTC issued the Notice to Proceed<sup>4</sup> to JKG-Power Plates and directed it to commence delivery of the items within seven (7) calendar days from the date of the issuance of the said notice.

On February 21, 2014, the contract for MVPSP was finally signed by Jose Perpetuo M. Lotilla, as DOTC Undersecretary for Legal Affairs, and by Christian S. Calalang, as Chief Executive Officer of JKG-Power Plates. It was approved by public respondent Joseph Emilio A. Abaya (*Secretary Abaya*), as DOTC Secretary.

On March 11, 2014, the Senate Committee on Public Services, pursuant to Resolution No. 31, conducted an inquiry in aid of legislation on the reported delays in the release of motor vehicle license plates, stickers and tags by the LTO. On April 4, 2014, JKG-Power Plates delivered the first batch of plates to the DOTC/LTO.<sup>[8]</sup>

The Commission on Audit (COA) issued three Audit Observation Memoranda (AOM) to the LTO, namely: AOM No. 14-013 dated September 2, 2014; AOM No. 14-014 dated November 17, 2014; and AOM No. 15-004 dated March 5, 2015. The COA later on issued Notice of Suspension No. 15- 002-101-(14) dated April 10, 2015.<sup>[9]</sup>

The COA ultimately issued Notice of Disallowance No. 2015-001-101-(14) dated July 13, 2015 stating therein that it had disallowed the advance payment of P477,901,329.00 to JKG Power Plates for the supply and delivery of motor vehicle

plates on the ground that the transaction had been irregular and illegal for being in violation of Sections 46(1) and 47, Book V of the *Administrative Code of 1987*; Sections 85(1) and 86 of the *Government Auditing Code of the Philippines*; DBM Circular Letter No. 2004-12 dated October 27, 2004; and the implementing rules of the *Government Procurement Reform Act*.<sup>[10]</sup>

On September 1, 2015, the petitioners instituted this special civil action. Initially, the Court consolidated this case with G.R. No. 212381 (Jacomille).<sup>[11]</sup> However, the cases were deconsolidated and treated separately<sup>[12]</sup> because G.R. No. 212381 raised legal issues centering on the procurement of the MVPSP but this case raised issues referring to the implementation of the MVPSP.

To be clear, the petitioners herein do not seek the review of the COA's issuance of Notice of Disallowance No. 2015-001-101-(14). They only assail the constitutionality of the implementation of the MVPSP using funds appropriated under the 2014 GAA, arguing that:

- A. The transfer of the appropriation for the Motor Vehicle Registration and Driver's Licensing Regulatory Services under the GAA 2014 and the application and implementation of said transferred appropriation to the LTO-MVPSP is unconstitutional.
- B. The fact that LTO-MVPSP does not appear as an item under the Motor Vehicle Registration and Driver's Licensing Regulatory Services in effect deprives the President of its veto powers under Section 27.(2) of Article VI of the Constitution and must be declared as unconstitutional.

x x x

- C. The public expenditure in the amount of [P]3,186,008,860 for the LTO-MVPSP in the absence of an appropriation under the GAA 2013 and GAA 2014 is unconstitutional.<sup>[13]</sup>

On June 14, 2016, the Court issued a temporary restraining order enjoining the release and distribution of the license plates for both motor vehicles and motorcycles.<sup>[14]</sup>

The Office of the Solicitor General (OSG) filed its *Manifestation and Motion in Lieu of Comment*,<sup>[15]</sup> whereby it affirmed that the 2014 GAA did not contain an appropriation for the MVPSP, a fact that was known to the DOTC; that the transfer of funds allotted for **Motor Vehicle Registration and Driver's Licensing Regulatory Services** under the 2014 GAA to the MVPSP was contrary to the Constitution because the DOTC Secretary lacked the authority to transfer funds, and because the timing of the transfer belied the existence of savings; and that without a valid transfer or realignment, the release of funds for the MVPSP violated Section 29, Article VI of the Constitution.

In its own *Comment and Opposition-in-Intervention*,<sup>[16]</sup> JKG-Power Plates contended that the legality of the MVPSP had been settled by the Court in its decision and resolution in G.R. No. 212381 (Jacomille); and that the Court could not yet rule on the propriety of Notice of Disallowance No. 2015-001-101-(14) because it was still pending review by the COA.