

## SECOND DIVISION

[ G.R. No. 212381, April 22, 2015 ]

**REYNALDO M. JACOMILLE, PETITIONER, VS. HON. JOSEPH EMILIO A. ABAYA, IN HIS CAPACITY AS SECRETARY OF TRANSPORTATION AND COMMUNICATIONS (DOTC); ATTY. ALFONSO V. TAN, JR., IN HIS CAPACITY AS ASSISTANT SECRETARY OF THE LAND TRANSPORTATION OFFICE (LTO); HON. FLORENCIO ABAD, IN HIS CAPACITY AS SECRETARY OF BUDGET AND MANAGEMENT (DBM); HON. ARSENIO M. BALISACAN, IN HIS CAPACITY AS DIRECTOR GENERAL OF THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY (NEDA); HON. MARIA GRACIA M. PULIDO TAN, IN HER CAPACITY AS CHAIRPERSON OF THE COMMISSION ON AUDIT (COA) AND POWER PLATES DEVELOPMENT CONCEPTS, INC.,/J. KNIERIEM B.V. GOES (JKG) (JOINT VENTURE) REPRESENTED BY ITS MANAGING DIRECTOR, CHRISTIAN S. CALALANG, RESPONDENTS.**

### DECISION

**MENDOZA, J.:**

Government projects are the tangible manifestation of hard-earned public funds. These undertakings are built brick-by-brick through the combined efforts of the nation's taxpayers. Our laws have ventured into great lengths to establish the rigorous safeguards and procedures in the planning, procurement and implementation of these projects, through robust policies on fiscal governance and public accountability. And the Judiciary must do its part and carry out its duty to ensure that these projects do not result in regretful potholes, stale construction sites and substandard products, looming into the memories of empty promises and generic assurances.

Before this Court is a petition for *certiorari* and prohibition under Rule 65 of the 1997 Revised Rules of Civil Procedure which assails the legality of the procurement of the Land Transportation Office Motor Vehicle License Plate Standardization Program.

#### **The Antecedents**

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 (Php 3,851,600,100.00) being the Approved Budget for the Contract (ABC), for payment of approximately 5,236,439 for Motor Vehicles (MV) and approximately 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".<sup>[1]</sup>

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, BAG 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 Datatrial Corporation (*Industrias Samar't-Datatrial*).

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-Datatrial 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-Datatrial'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<sup>[5]</sup> 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>[6]</sup>

On May 19, 2014, petitioner Reynaldo M. Jacomille (*petitioner*) filed this subject

petition for *certiorari* and prohibition, assailing the legality of MVPSP anchored on the following:

## **GROUND**

### **I**

**LACK OF ADEQUATE BUDGETARY APPROPRIATIONS IN THE GENERAL APPROPRIATIONS ACT OF 2013, WHEN THE PROJECT WAS BIDDED;**

### **II**

**FAILURE OF THE PROCURING ENTITY TO OBTAIN FIRST THE REQUIRED MULTI-YEAR OBLIGATION AUTHORITY (MYOA) FROM THE DEPARTMENT OF BUDGET AND MANAGEMENT;**

### **III**

**NON-REFERRAL OF THE MULTI-BILLION PROJECT TO THE INVESTMENT COORDINATION COMMITTEE/NATIONAL ECONOMIC DEVELOPMENT AUTHORITY FOR ITS REVIEW AND APPROVAL.<sup>[7]</sup>**

### **Arguments of Petitioner**

Petitioner, by counsel and assisted by Retired Justice Leonardo A. Quisumbing, instituted this taxpayer suit, averring that he was a diligent citizen paying his correct taxes to the Philippine Government regularly; that he was a registered vehicle owner, as evidenced by the Certificate of Registration of his motor vehicle and a registered licensed driver; that he would be affected by the government issuance of vehicle plates thru its MVPSP upon his renewal of the registration of his vehicle; that not being a participant to the bidding process, he could not avail of the administrative remedies and procedure provided under Republic Act (R.A.) No. 9184 or the Government Procurement Reform Act, and its Implementing Rules and Regulations (*IRR*); that as far as he was concerned, there was no appeal or any plain or speedy remedy available to him; and that he firmly believed that the actuation of the DOTC in proceeding with the bidding process and giving the award to JKG-Power Plates without the requisite MYOA and adequate budgetary appropriations was null and void.

As to the substantive merits, petitioner raised several arguments. *First*, the procurement process of MVPSP exceeded the mandatory periods prescribed by R.A. No. 9184 and its *IRR*. The notice of award was issued by the DOTC *beyond the three (3)-month period set by law* since the last day fell on August 7, 2013. The said notice was posted in the PhilGEPS website only on August 12, 2013.

Moreover, with R.A. No. 9184 requiring that the contract signing be done within (10) calendar days from the receipt of the winning bidder of the notice of award, which in this case was posted on August 12, 2013, the contract was signed only on February 21, 2014, way beyond the required 10-day period, because MVPSP was not adequately funded.

*Second, when the procurement for MVPSP was commenced, there was no adequate funding.* The invitation to bid for MVPSP, published on February 20, 2013, stated that the source of funding in the amount of P3,851,600,100.00 would be the General Appropriations Act (GAA).

A perusal of R.A. No. 10352 or the General Appropriations Act of 2013 (GAA 2013), would show that Congress appropriated only the amount of P187,293,000.00 under the specific heading of Motor Vehicle Plate-Making Project.<sup>[8]</sup>

Noticeably then, *the DOTC bidded out MVPSP even while there was no sufficient funds legally appropriated* for this purpose under the GAA 2013. Petitioner saw this as a clear misrepresentation or even a deception by the said office against the government and the general public as a whole. Petitioner also pointed to the Senate Committee on Public Services Hearing on March 11, 2014, wherein it was admitted that there was no adequate budgetary appropriation for MVPSP in GAA 2013.

In his Reply,<sup>[9]</sup> dated October 16, 2014, petitioner claimed that the appropriation in the *General Appropriations Act of 2014 (GAA 2014) could not be applied to MVPSP*. The said project, as contemplated in the invitation to bid, was not the same as the "Motor Vehicle Registration and Driver's Licensing Regulatory Services" mentioned in GAA 2014.

*Third, the DOTC failed to obtain the required Multi-Year Obligational Authority (MYOA) from the Department of Budget and Management (DBM).* The invitation to bid for MVPSP provided for the payment of license plates, which would be delivered within a period of five (5) years.

Section 33 of the General Provisions of R.A. No. 9206, or the General Appropriations Act of 2009, states that "[i]n the implementation of multi-year projects, no agency shall enter into a multi-year contract without a Multi-Year Obligational Authority issued by the DBM for the purpose." This provision had been substantially re-enacted under the General Provisions of GAA 2013. Given that MVPSP would entail the delivery of plates within a period of five (5) years, petitioner posited that it was a multi-year project (MYP) which would necessitate a MYOA as a jurisdictional requirement.

Petitioner added that MVPSP involved a multi-year contract (MYC), requiring a MYOA, because at the time of its implementation, the appropriation for it was not available under GAA 2013. The implementation was supposed to have taken place in Fiscal Year 2013 when the notice of award was issued on July 22, 2013.

*Lastly,* the project had the proposed budget of P3,851,600,100.00 for the year 2013 when it was intended to be bidded out and awarded to the lowest bidder. As required by law, particularly the IRR of R.A. No. 7718 or the Built-Operate-Transfer Law, all projects with substantial investment must be reviewed and approved first by Investment Coordination Committee (ICC) of the National Economic Development Authority (NEDA).

### **Arguments of Public Respondents**

On August 15, 2014, the Office of the Solicitor General (OSG), as counsel for the