



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

DEPARTMENT OF HEALTH G.R. No. 212894
(DOH), represented by the
Secretary of Health; and the
SECRETARY OF HEALTH, as
Head of the Procuring Entity,
Petitioners,

- versus -

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.

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DEPARTMENT OF HEALTH G.R. No. 213820
(DOH), represented by the
Secretary of Health; and the
SECRETARY OF HEALTH, as
Head of the Procuring Entity,
Petitioners,

- versus -

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.

X-----X

DEPARTMENT OF HEALTH
(DOH), represented by the
Secretary of Health; and the
SECRETARY OF HEALTH, as
Head of the Procuring Entity,
Petitioners,

G.R. No. 213889

Present:

PERLAS-BERNABE, *S.A.J.*,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, *JJ.*

- versus -

J.D. LEGASPI
CONSTRUCTION,
Respondent.

Promulgated:

04 MAR 2020

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RESOLUTION

INTING, J.:

Before the Court are three petitions docketed as G.R. Nos. 212894,¹ 213820,² and 213889³ 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

¹ *Rollo* (G.R. No. 212894), pp. 3-46.
² *Rollo* (G.R. No. 213820), pp. 3-49.
³ *Rollo* (G.R. No. 213889, Vol. 1), pp. 3-54.

Injunction) under Rule 65 of the Rules of Court. It assails the Order⁴ 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.⁵

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 Order⁶ dated August 7, 2014 and the Writ of Preliminary Injunction⁷ 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 ₱2,000,000.00 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."⁸

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 Decision⁹ 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.¹⁰

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

⁴ *Rollo* (G.R. No. 212894), pp. 50-55; penned by Judge Bonifacio S. Pascua.

⁵ *Id.* at 55.

⁶ *Rollo* (G.R. No. 213820), pp. 52-57.

⁷ *Id.* at 58.

⁸ *Id.* at 56-57.

⁹ *Rollo* (G.R. No. 2133889, Vol. 1), pp. 58-100.

¹⁰ *Id.* at 99-100.

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.¹¹

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.¹²

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*¹³ dated January 24, 2014

¹¹ *Rollo* (G.R. No. 212894), pp. 85-86.

¹² *Id.* at 86-87.

¹³ *Id.* at 71-83.

before the RTC. After petitioners filed their Comment¹⁴ 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)¹⁵ 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.¹⁶

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) 8975,¹⁷ which bans lower courts from issuing TRO against National Government Infrastructure Projects.

¹⁴ *Id.* at 84-97.

¹⁵ *Id.* at 98-101.

¹⁶ *Rollo* (G.R. No. 212894), p. 55.

¹⁷ An Act to Ensure the Expedious Implementation and Completion of Government Infrastructure Projects by Prohibiting Lower Courts from Issuing Temporary Restraining Orders, Preliminary Injunctions or Preliminary Mandatory Injunctions, Providing Penalties for Violations Thereof, and For Other Purposes.

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.¹⁸

A Writ of Preliminary Injunction¹⁹ 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

¹⁸ *Rollo* (G.R. No. 213820), pp. 56-57.

¹⁹ *Id.* at 58.

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.²⁰

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, 2014,²¹ December 22, 2014,²² and December 22, 2014,²³ respectively, praying for the dismissal of the petitions. On February 17, 2015, petitioners filed a Reply²⁴ 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 Consolidate²⁵ the three cases. In its Resolution²⁶ 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 Comment²⁷ dated December 16, 2014 on respondent JDLC's Motion for Reconsideration.

In a Resolution²⁸ 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

²⁰ *Rollo* (G.R. No. 213889, Vol. 1), pp. 99-100.

²¹ *Rollo* (G.R. No. 212894), pp. 243-293.

²² *Rollo* (G.R. No. 213820), pp. 458-499.

²³ *Rollo* (G.R. No. 213889, Vol. 2), pp. 578-640.

²⁴ *Id.* at 664-683.

²⁵ *Rollo* (G.R. No. 212894), pp. 354-357.

²⁶ *Id.* at 338-339.

²⁷ *Id.* at 383-390.

²⁸ *Id.* at 428.

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 Compliance²⁹ 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.³⁰

On the other hand, respondent JDLC submitted its Compliance³¹ 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 commenced works on the Project pursuant to the NTP, thus:

1. On 23 January 2015, Petitioner DOH issued the *Notice to Proceed* (NTP) to herein respondent JDLC for the project 'Procurement of the Design and Build of Infrastructure Project for Dr. Jose Fabella Memorial Hospital (DJFMH) Transfer and Redevelopment (Phase 1) – Rebid under IB No. 2013-215' (the Project), signed by then Secretary of Health Janette Loreto Garin, MD, MBA-H. Respondent commenced works on the Project pursuant to the NTP on 31 May 2015.

²⁹ *Id.* at 449-454.

³⁰ *Id.* at 450.

³¹ *Id.* at 498-504.

1.1 Since the issuance of the NTP, respondent has been diligently working on the Project with the full cooperation of the end user. To date, respondent has an estimated accomplishment of around 70%, taking into account recently completed works, ongoing works and materials on site. Barring factors beyond the control of the respondent, the project shall be completed on schedule.

1.2 The budget for the Project was not reverted and had instead been allotted and is being successfully utilized by petitioner DOH. In fact, on 24 February 2017, respondent JDLC's 5th Progress Billing had been indorsed to the Finance Management Services of the DOH for payment in the amount of Eighty Three Million Seven Hundred Ninety Three Thousand Eight Hundred Seventy Three Pesos and 43/100 (PhP83,793,873.43) for accomplishment as of 31 December 2016.

2. On 16 November 2015, the Government Procurement Policy Board issued GPPB Resolution No. 30-2015 approving the DOH's request to resort to Negotiated Procurement to award Phase II of the DJFMH Transfer and Redevelopment to respondent JDLC under Section 53.4 of the Revised IRR of R.A. 9134. Thereafter, on 29 December 2015, respondent JDLC was awarded and issued the corresponding Notice to Proceed for the Phase II of the Project in the total contract amount of Seven Hundred Thirteen Million Eight Hundred Sixty Eight Thousand Five Hundred Fifty Pesos and 65/100 (PhP713,868,550.65). Phase II consists of the construction of the second to sixth floors of the same hospital and is being simultaneously implemented with and on top of the Project subject of the instant petitions.

2.1 It must be noted that the award of Phase II to herein respondent is in effect a recognition of the respondent's eligibility and qualification for the Project thereby disproving the petitioners' false claim of ineligibility. The procurement rules explicitly require adjacent projects to be *within the contracting capacity of the contractor* to whom such will be awarded. Respondent submits that the subsequent award of Phase II completely negates the former Health Secretary's erroneous claims and has thereby rendered the petitions moot.³²

³² *Id.* at 498-500.

In the Resolution³³ dated July 19, 2017, the Court noted the parties' respective Compliances.

Our Ruling

The petitions have become moot.

The Court acknowledges that the reliefs prayed for in the petitions *i.e.*, to declare that respondent judge committed grave abuse of discretion in issuing the 20-day TRO in violation of RA 8975, which bans the lower courts from issuing restraining orders against government infrastructure projects; to declare that respondent judge committed grave abuse of discretion in granting the prayer for, and issuing the writ of preliminary injunction; and to declare that the RTC committed reversible error in ordering the petitioners to award the project to respondent JDLC have been rendered moot by the following:

1. Notice to Proceed issued by petitioner DOH in favor of respondent JDLC on January 23, 2015 giving the latter the green light to commence the Infrastructure Project;
2. Commencement of works by petitioner JDLC of the first phase of the Project on May 31, 2015;
3. 70% estimated accomplishment by respondent JDLC of the Project; and
4. Notice to Proceed issued by petitioner DOH in favor of respondent JDLC to commence the Phase II of the Project in the total contract amount of ₱713,868,550.65.

In *Prof. David v. Pres. Macapagal-Arroyo*³⁴ (*David*), the Court defined a moot and academic case in this wise:

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness.³⁵

³³ *Id.* at 516-517.

³⁴ 522 Phil. 705 (2006).

³⁵ *Id.* at 753-754. Citations omitted.

Although the Court recognized in *David*³⁶ that there are instances³⁷ wherein the Court can decide the merit of *moot and academic* cases, none of the exceptions are present in the instant petitions.


The cases before the Court cease to present a justiciable controversy by virtue of the DOH's issuance of the Notices to Proceed Phase I and II of the Project in favor of respondent JDLC. As a consequence of the award of the Project in favor of respondent JDLC, the latter already commenced the modernization of the subject hospital. Any decision regarding the legality of the act of respondent judge in issuing the subject TRO and writ of preliminary injunction and his subsequent issuance of a decision awarding the Project to respondent JDLC would be of no practical use or value because of the above-mentioned supervening events. Hence, the petitions should be dismissed for being moot.

WHEREFORE, the petitions in G.R. No. 212894 and G.R. No. 213820 are **DISMISSED** for being moot. The petition in G.R. No. 213889 is **DENIED** for being moot.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson

³⁶ *Id.* at 754.

³⁷ *Id.* the following are the exceptional instances: (1) there is a grave violation of the Constitution; (2) the exceptional character of the situation and the paramount public interest is involved; (3) when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and (4) the case is capable of repetition yet evading review.

Reyes
ANDRES B. REYES, JR.
Associate Justice

R. P. Hernando
RAMON PAUL L. HERNANDO
Associate Justice

Edgardo
EDGARDO L. DELOS SANTOS
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.

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Acting Chief Justice

PS