



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

**DEPARTMENT OF PUBLIC WORKS
 AND HIGHWAYS (DPWH) Secretary
 SIMEON A. DATUMANONG;
 DPWH UNDERSECRETARY
 MANUEL M. BONOAN; DPWH
 CENTRAL OFFICE DIRECTOR IV
 CLARITA A. BANDONILLO;
 DPWH REGION VI REGIONAL
 DIRECTOR WILFREDO AGUSTINO;
 DPWH ILOILO CITY DISTRICT
 ENGINEER VICENTE M. TINGSON,
 JR.; and ENGINEERS RUBY P.
 LAGOC, MAVI V. JERECIA and
 ELIZABETH GARDOSE,**
Petitioners,

G.R. No. 204906

Present:

SERENO, *C.J.*, Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, *and*
 CAGUIOA, *JJ.*

- versus -

MARIA ELENA L. MALAGA,
Respondent.

Promulgated:
JUN 05 2017

X-----X

DECISION

DEL CASTILLO, J.:

Assailed in this Petition for Review on *Certiorari*¹ are the March 26, 2012 Decision² of the Court of Appeals (CA) in CA-G.R. CV No. 00889 which set aside the March 23, 2004 Order³ of the Regional Trial Court (RTC) of Iloilo City, Branch 29 in Civil Case No. 27059, and the CA's November 9, 2012 Resolution⁴ denying herein petitioners' Motion for Reconsideration.⁵

¹ *Rollo*, pp. 15-52.
² Id. at 54-70; penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Gabriel T. Ingles and Pamela Ann Abella Maxino.
³ Id. at 85-86; penned by Judge Rene B. Honrado.
⁴ Id. at 72-73; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Pamela Ann Abella Maxino and Marilyn B. Lagura-Yap.
⁵ Id. at 74-84.

Factual Antecedents

Respondent Maria Elena L. Malaga owns B.E. Construction, a private contractor and the lowest bidder for two concreting projects of the Department of Public Works and Highways (DPWH), particularly:

a. Mandurriao-San Miguel Road, Barangay Hibao-an Section in Iloilo City; and

b. Mandurriao-San Miguel Road, Guzman-Jesena Section in Iloilo City as well.

The bidding for the above projects was held on November 6, 2001, and was based upon an August 2001 published invitation to bid.

However, it appears that after the publication of the invitation to bid but prior to the scheduled November 6, 2001 bidding, the road condition of the Mandurriao-San Miguel Road in *Barangay* Hibao-an severely deteriorated to an almost impassable state on account of the prevailing typhoon and monsoon season, prompting calls for immediate repairs and other appropriate action from local government units (LGUs), a Member of the House of Representatives, and concerned private citizens and interest groups.⁶ Petitioner Vicente M. Tingson, Jr. (Tingson), DPWH Iloilo City District Engineer, thus requested his immediate superior, herein petitioner and DPWH Region VI Director Wilfredo B. Agustino (Agustino), that the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section and Mandurriao-San Miguel Road, Guzman-Jesena Section projects be implemented by administration, that is, that these projects be undertaken directly and immediately by the government, on account of urgency, and thus taken out of the list of projects bid out to private contractors. In turn, Agustino sent an August 23, 2001 1st Indorsement to then DPWH Secretary Simeon A. Datumanong (Datumanong), reiterating Tingson's request that the said projects be implemented by administration.⁷

On August 23 and 24, 2001, DPWH Undersecretary and herein petitioner Manuel M. Bonoan (Bonoan) personally inspected the area covered by the proposed projects, and in an August 29, 2001 Memorandum to Datumanong, he recommended that the subject projects be undertaken by administration.⁸

Agustino sent an October 23, 2001 letter to Datumanong reiterating his

⁶ Id. at 118-121, 122-123.

⁷ Id. at 117.

⁸ Id. at 122.

earlier request contained in the August 23, 2001 1st Indorsement.⁹

Since no response was forthcoming from Datumanong, the DPWH Regional Office VI proceeded with the dropping and opening of bids as scheduled. Thus, respondent won as the lowest bidder for the above-mentioned projects.

On November 7, 2001, Datumanong issued a Memorandum¹⁰ of even date approving the DPWH Regional Office VI request, but only with respect to the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section considering the exigent circumstances prevailing. The DPWH Regional Office VI received a copy of this Memorandum on November 12, 2001.

Pursuant to Datumanong's November 7, 2001 Memorandum, herein petitioners Ruby P. Lagoc (Lagoc), Mavi V. Jerecia (Jerecia) and Elizabeth Gardose (Gardose), Bids and Awards Committee members, conducted the post-evaluation/qualification of respondent's firm, but only for the Mandurriao-San Miguel Road, Guzman-Jesena Section project. Respondent was declared post-qualified for the project, and the same was awarded to her.

On November 15, 2001, Lagoc informed respondent that the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section project may not be awarded to her, in view of Datumanong's November 7, 2001 Memorandum. Respondent replied with formal written demands that the project be awarded to her in spite of Datumanong's directive, under pain of civil action and claim for damages.¹¹ Lagoc wrote back disavowing any liability and claiming that Datumanong's directive was a supervening event that prevented the award of the subject project to respondent, and until it is nullified or set aside, the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section project shall be undertaken by administration as directed.¹²

Ruling of the Regional Trial Court

On February 14, 2002, respondent filed Civil Case No. 27059 with the RTC. In her Complaint¹³ for damages against the herein individual petitioners, respondent claimed that the individual petitioners, "acting together, in cooperation and collusion with each other, have manipulated things and circumstances in a manner deliberately intended to deprive and deny her the x x x project even if she

⁹ Id. at 125.

¹⁰ Id. at 126-127.

¹¹ Id. at 183-184.

¹² Id. at 185.

¹³ Id. at 129-136.

was the lowest and complying bidder thereof;”¹⁴ that individual petitioners’ “clear intention has been indisputably to implement the project ‘by contract’ if the bidding is won by any other bidder, and to implement it ‘by administration’”¹⁵ if respondent won; that the real reason behind individual petitioners’ refusal to award the Mandurriao-San Miguel Road, *Barangay* Hibao-an Section project to her is to deny and deprive her, “harass and teach her a lesson not to file cases against the defendants even when there are valid and lawful reasons to do so;”¹⁶ that it was more expedient to implement the project by bid contract than by administration; that individual petitioners are guilty of malice and bad faith and intentionally delayed the processes relative to the bidding for the said project in order to defeat her valid claim thereto; and as a result, she was deprived of the said project and the reasonable profits she would have gained therefrom. Thus, she prayed, as follows:

WHEREFORE, it is most respectfully prayed that judgment be rendered for the plaintiff and against the defendants, ordering the defendants, jointly and solidarily, to pay the plaintiff the sums of ₱855,000.00 as actual damages; at least ₱200,000.00 as moral damages; ₱200,000.00 as attorney’s fees plus ₱3,000.00 per hearing as appearance fee; ₱50,000.00 as miscellaneous litigation and other expenses; such amount of exemplary damages this Honorable Court may fix as just and proper; and to pay the costs.

Other reliefs just and proper are also prayed for.¹⁷

In their Answer,¹⁸ herein individual petitioners prayed for the dismissal of the case, arguing that respondent has no valid cause of action; that the decision to undertake the subject project by administration was legal and justified, and was not arrived at in bad faith and with malice; that respondent had no right to the project since under the Implementing Rules and Regulations (IRR) of Presidential Decree No. 1594,¹⁹ a contractor is not automatically entitled to an award of a project subject to bidding by the mere fact that he is the lowest bidder as he must still undergo a mandatory post-qualification procedure regarding his legal, technical and financial capability and other qualifications as outlined under said IB 10.5 of the IRR;²⁰ that under the published Invitation to Bid²¹ for the subject project, it is particularly stated that government reserved the right to reject any or all bids, waive any minor defect therein, and accept the offer most advantageous to it; that respondent had a mere inchoate right but which does not give her a valid cause of action; that respondent was awarded the other project she bid for, which indicates lack of bad faith and malice on their part; and that the case is clearly an unauthorized suit against the State, as no prior consent to be sued was shown in

¹⁴ Id. at 131.

¹⁵ Id. at 132.

¹⁶ Id. at 133.

¹⁷ Id. at 135.

¹⁸ Id. at 87-113.

¹⁹ PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS.

²⁰ IB 10.5 – Postqualification of Contractor with the Lowest Calculated Bid.

²¹ *Rollo*, pp. 114-116.

the complaint.

The parties were directed to file their respective position papers on the issue of whether the case was one against the State, or one against the individual petitioners in their respective personal capacities.

On March 23, 2004, the RTC issued an Order dismissing Civil Case No. 27059 on the conclusion that it was an unauthorized suit against the State. It held, as follows:

The instant case is a suit against the state and therefore dismissible for it cannot be sued without its consent.

The plaintiff, being the lowest bidder of the San Miguel-Mandurriao Road (Barangay Hibao-an) Project, has no automatic right to be awarded of [sic] the said project since the plaintiff has still to undergo post-qualification regarding his legal, technical and financial capability as mandated by law and the government reserves the right to reject any or all bids, waive any minor defect therein, and accept the offer most advantageous to it. The rejection of the government to award the project to the herein plaintiff is well within its prerogative to best serve the interest of the citizenry. It is worth stressing that when the project was taken 'by administration', it passed thru proper procedures. Due to public clamor of the unpassable [sic] status of the said San Miguel-Mandurriao Road, the drivers of public utility vehicles plying the said route, the Mandurriao Transport Integrated Association, Inc. (MITAD), and the residents of the said community were howling protest and indignant words against the office of DPWH. This prompted x x x Tingson x x x to recommend that the said project be undertaken by administration which was favorably endorsed by x x x Agustino to x x x Datumanong. Thus, on August 23-24, 2001, x x x Bonoan inspected the said road and submitted a memorandum to x x x Datumanong, confirming the unbearable and hazardous conditions of the said road and recommended that the project be undertaken 'by administration'. x x x Datumanong issued a memorandum to x x x Agustino dated November 12, 2001, directing the implementation of the concreting of Mandurriao-San Miguel Road (Barangay Hibao-an Section) 'by administration'. Hence, x x x Lagoc, x x x Jerecia and x x x Gardose, in their capacities as BAC Chairman and members, respectively, did not conduct the post evaluation/qualification of plaintiff's firm for the said project. The foregoing acts of the above-named defendants were all committed in the performance of their official functions and cannot be said to have been tainted with malice and bad faith as it [sic] passed thru proper procedures as mandated by law.

WHEREFORE, the defendants' affirmative defenses is [sic] granted and this case is hereby DISMISSED.

SO ORDERED.²²

Respondent moved to reconsider, but the RTC held its ground.

²² Id. at 85-86.



Ruling of the Court of Appeals

Respondent interposed an appeal before the CA, docketed as CA-G.R. CV No. 00889, arguing that when the DPWH entered into contract with her, it descended to the level of an ordinary person and impliedly gave its consent to sue and be sued; that her complaint did not seek relief from the State, but against individual petitioners in their respective personal capacities on the ground that they acted in bad faith and with malice in dealing with her.

On March 26, 2012, the CA rendered the assailed Decision, declaring as follows:

We perceive merit in plaintiff-appellant's postulations.

An unincorporated government agency such as the DPWH is without any separate juridical personality of its own and hence enjoys immunity from suit. Even in the exercise of proprietary functions incidental to its primarily governmental functions, an unincorporated agency still cannot be sued without its consent.

'While the doctrine appears to prohibit only suits against the state without its consent, it is also applicable to complaints filed against officials of the state for acts allegedly performed by them in the discharge of their duties. The rule is that if the judgment against such officials will require the state itself to perform an affirmative act to satisfy the same, such as the appropriation of the amount needed to pay the damages awarded against them, the suit must be regarded as against the state itself although it has not been formally impleaded.'

It bears emphasis that when the suit is against an officer of the State, enquiry must be made whether in fact ultimate liability will fall on the officer or on the government. If it is the government which will ultimately be accountable, the suit must be considered as one against the state itself.

In the case at bench, plaintiff-appellant reasoned that no relief was claimed against the government. The Complaint showed that the Republic was not impleaded and only the public officers were made parties thereto. The gist of the initiatory pleading was to ascertain and adjudicate defendants-appellees' joint and several liability for damages. There was no express mention whatsoever of State liability. What was explicit was plaintiff-appellant's allegation of bad faith on the part of the public officers who denied her the award of the project which resultantly deprived her of prospective profits.

On this score, it cannot be concluded that the Complaint was barred by immunity of the State from suit inasmuch as no appropriation or liability was sought from the government coffer. On the contrary, liability was directly limited to the public officers as an incident of their alleged wanton and malicious acts.

'The doctrine of immunity from suit will not apply and may not be invoked where the public official is being sued in his private and personal



capacity as an ordinary citizen. The cloak of protection afforded the officers and agents of the government is removed the moment they are sued in their individual capacity. This situation usually arises where the public official acts without authority or in excess of the powers vested in him. It is a well-settled principle of law that a public official may be liable in his personal private capacity for whatever damage he may have caused by his act done with malice and in bad faith, or beyond the scope of his authority or jurisdiction.'

Of primordial significance was the fact that no contract was inked between DPWH and plaintiff-appellant with respect to the disputed project. In fact, the instant suit was intended to compel the public officers to compensate plaintiff-appellant for the prospective profits she would have earned had she been awarded the project as the bidder who submitted the lowest numerical bid.

It was defendants-appellees' contention that the submission of the lowest bid alone does not give the plaintiff-appellant the right to insist that the contract be awarded to her. Citing IB 10.5 of the Implementing Rules and Regulations of Presidential Decree No. (P.D.) No. 1594, x x x, defendants-appellees posited that the bid was still subject to post evaluation and acceptance of the Government which reserved in the Invitation to Bid (ITB) the right to reject any and all bids that are not deemed responsive or compliant to its requirements.

Indeed, the executive department is acknowledged to have wide latitude to accept or reject a bid, or even after an award has been made, to revoke such award. From these options, the court will not generally interfere with the exercise of discretion by the executive department, unless it is apparent that the exercise of discretion is used to shield unfairness or injustice.

The Court, the parties, and the public at large are bound to respect the fact that official acts of the Government, including those performed by governmental agencies such as the DPWH, are clothed with the presumption of regularity in the performance of official duty and cannot be summarily, prematurely and capriciously set aside.

However, the presumption that official duty has been regularly performed is among the disputable presumptions. 'It is settled that a disputable presumption is a species of evidence that may be accepted and acted on where there is no other evidence to uphold the contention for which it stands, or one which may be overcome by other evidence. One such disputable/rebuttable presumption is that an official act or duty has been regularly performed...' Such, presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty.

True, the Government's reservation subjected the bidders to its right to reject, and consequently accept any and all bids at its discretion. Unless such discretion has been arbitrarily exercised causing patent injustice, the Court will not supplant its decision to that of the agency or instrumentality which is presumed to possess the technical expertise on the matters within its authority.

Yet, it is worthy of consideration that 'Our legal framework allows the pursuit of remedies against errors of the State or its components available to those entitled by reason of damage or injury sustained. Such litigation involves demonstration of legal capacity to sue or be sued, an exhaustive trial on the merits, and adjudication that has basis in duly proven facts and law.'



In this case, in order to properly determine the supposed existence of capricious exercise of governmental discretion, in the guise of performance of official duty, this Court deemed it best that the matter of damages be fairly litigated before the trial court. In the process, the plaintiff-appellant can refute, by way of competent evidence, the presumptive regularity in the performance by defendants-appellees of official functions.

WHEREFORE, the appeal is GRANTED. Hence, the Order of March 23, 2004 rendered by the Regional Trial Court, Branch 29, Iloilo City in Civil [Case] No. 27059 is hereby SET ASIDE. Let this case be remanded to the trial court for proper disposition on its merits.

SO ORDERED.²³ (Citations omitted)

Petitioners sought to reconsider, but were rebuffed. Hence, the present Petition.

Issues

In a June 22, 2015 Resolution,²⁴ this Court resolved to give due course to the Petition, which contains the following assignment of errors:

I.

THE COURT OF APPEALS ERRED IN SETTING ASIDE THE ORDER OF DISMISSAL BY THE LOWER COURT BECAUSE THE COMPLAINT WAS A SUIT AGAINST THE STATE TO WHICH IT HAS NOT GIVEN ITS CONSENT TO BE SUED.

II.

THE COURT OF APPEALS ERRED IN GRANTING THE RESPONDENT'S APPEAL AND REMANDING THE CASE TO THE LOWER COURT FOR TRIAL BECAUSE RESPONDENT FAILED TO ALLEGE ANY ACTIONABLE WRONG THAT WOULD ENTITLE HER TO THE DAMAGES CLAIMED.

III.

THE COURT OF APPEALS ERRED IN REQUIRING THAT THE MATTER OF DAMAGES BE LITIGATED BEFORE THE LOWER COURT BECAUSE THE PRESUMPTION OF GOOD FAITH AND REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY, WHILE ADMITTEDLY DISPUTABLE, NEED NOT ALWAYS BE THRESHED OUT IN A FULL-BLOWN TRIAL ESPECIALLY WHERE THE FACTS ARE UNDISPUTED.²⁵



²³ Id. at 66-69.

²⁴ Id. at 297-298.

²⁵ Id. at 36-37.

Petitioners' Arguments

In praying that the assailed CA dispositions be set aside and that, instead, Civil Case No. 27059 be dismissed as ordered by the RTC, petitioners argue in their Petition and Reply²⁶ that respondent's case for damages is actually an unauthorized suit against the State, as the individual petitioners are being sued in relation to acts committed in the performance of their official duties; that as such, individual petitioners should be protected by the mantle of state immunity and allowed to perform their functions without fear of unwarranted lawsuits in order to better serve the public; that respondent should not be allowed to circumvent the principle of state immunity by the expedient of impleading the individual petitioners in their private capacities; that the individual petitioners were indubitably acting within the bounds of their official mandate when they implemented the subject project by administration instead of awarding the same to respondent; that the decision to undertake the project by administration was not made capriciously but with utmost consideration and legal justification; that there is no actionable wrong committed against respondent; that she is not entitled to relief as her bid was not subjected to the required post-qualification process; that her claim of being singled out with malice and bad faith is belied by the fact that she was awarded one of the projects by the petitioners; and that the presumption of regularity in the performance of official duty should prevail in this case, as against respondent's claims and arguments to the contrary.

Respondent's Arguments

Respondent, on the other hand, counters in her Comment²⁷ that as the individual petitioners conspired in bad faith to deprive her of the subject project and unduly utilized their official functions to achieve such end, they opened themselves to a damage suit in their respective individual capacities; that by their actions, individual petitioners waived the cloak or protection afforded by their office; and that, as correctly held by the CA, the issue of existence of an actionable wrong resulting from the individual petitioners' acts is for the RTC to determine after trial on the merits, and cannot be passed upon summarily in the proceedings before the CA or this Court.

Our Ruling

The Court grants the Petition.

The procurement process basically involves the following steps: (1) pre-procurement conference; (2) advertisement of the invitation to bid; (3) pre-bid

²⁶ Id. at 288-295.

²⁷ Id. at 283-285.

conference; (4) eligibility check of prospective bidders; (5) submission and receipt of bids; (6) modification and withdrawal of bids; (7) bid opening and examination; (8) bid evaluation; (9) **post qualification**; (10) **award of contract and notice to proceed.** x x x²⁸

Thus, before a government project is awarded to the lowest calculated bidder, his bid must undergo a mandatory post-qualification procedure whereby the “procuring entity verifies, validates, and ascertains all statements made and documents submitted by the bidder with the lowest calculated or highest rated bid using a non[-]discretionary criteria as stated in the bidding documents.”²⁹

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability. These principles permeate the provisions of R.A. No. 9184 from the procurement process to the implementation of awarded contracts. It is particularly relevant in this case to distinguish between the steps in the procurement process, such as the declaration of eligibility of prospective bidders, the preliminary examination of bids, the bid evaluation, and the **post-qualification stage, which the Bids and Awards Committee (BAC) of all government procuring entities should follow.**

X X X X

After the preliminary examination stage, the BAC opens, examines, evaluates and ranks all bids and prepares the Abstract of Bids which contains, among others, the names of the bidders and their corresponding calculated bid prices arranged from lowest to highest. The objective of the bid evaluation is to identify the bid with the lowest calculated price or the Lowest Calculated Bid. **The Lowest Calculated Bid shall then be subject to post-qualification to determine its responsiveness to the eligibility and bid requirements. If, after post-qualification, the Lowest Calculated Bid is determined to be post-qualified, it shall be considered the Lowest Calculated Responsive Bid and the contract shall be awarded to the bidder.**³⁰ (Emphasis supplied)

In one case, bidders in a government project sought to enjoin the award and implementation thereof, arguing that as the bidders who submitted the lowest numerical bid, they were entitled to the award. This Court disagreed, for the reason, among others, that mere submission of the lowest bid did not automatically entitle them to an award; their bid must still undergo post-qualification/evaluation. Thus, the Court held in said case that –

²⁸ *Abaya v. Ebdane, Jr.*, 544 Phil. 645, 684 (2007).

²⁹ *Querubin v. Commission on Elections En Banc*, G.R. No. 218787, December 8, 2015, 776 SCRA 715, 769, citing Sec. 34.3 of the Revised Implementing Rules and Regulations of Republic Act No. 9184 (RA 9184), the Government Procurement Reform Act, which took effect on January 26, 2003 and repealed PD 1594. While the post-qualification procedure under the new law, RA 9184, may have been amended, both laws nonetheless require the conduct of such a procedure before the project may be awarded to a successful bidder.

³⁰ *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 555-556, 559 (2009).

In the case at bar, the petitioners pray for the issuance of a writ of preliminary mandatory injunction to direct public respondent BAC Region VII to award the contract to the Flyover Project to the petitioners. The petitioners claim that they are entitled to the award as the lowest bidder for the construction of the said infrastructure project of the Government. In support of their claim, the petitioners allege fraud and bad faith on the part of public respondent BAC Region VII. They allege conspiracy, forgery and fraud on the part of the public respondent in awarding the subject contract to private respondent WTG. These grave allegations were not sufficiently substantiated.

As correctly pointed out by the respondents, **the mere submission of the lowest bid does not automatically entitle the petitioners to the award of the contract. The bid must still undergo evaluation and post qualification in order to be declared the lowest responsive bid and thereafter be awarded the contract.** As provided in the Invitation to Apply for Eligibility and to Bid, 'the Government reserve[s] the right to reject any and all bids, waive any minor defect therein, and accept the offer most advantageous to the Government.' Such reservation subjects the bidders to the right of the Government to reject, and consequently accept, any and all bids at its discretion. Unless such discretion has been arbitrarily exercised causing patent injustice, the Court will not supplant its decision to that of the agency or instrumentality which is presumed to possess the technical expertise on the matters within its authority.

In the case of the petitioners, while both the technical and financial envelopes were opened in accordance with the May 28, 2003 Decision of the DPWH Secretary, **a post evaluation and qualification of the said bids is still essential in order to determine whether the lowest bid is responsive to and in compliance with the requirements of the project, the laws, rules and regulations.** x x x³¹ (Emphasis supplied; citations omitted)

From the foregoing, it must be concluded that since respondent's lowest calculated bid for the subject project did not undergo the required post-qualification process, then she cannot claim that the project was awarded to her. And if the project was never awarded to her, then she has no right to undertake the same. If she has no right to the project, then she cannot demand indemnity for lost profits or actual damages suffered in the event of failure to carry out the same. Without a formal award of the project in her favor, such a demand would be premature. Consequently, she has no right of action against petitioners, and no cause of action in Civil Case No. 27059. Indeed, "only when there is an invasion of primary rights, not before, does the adjective or remedial law become operative. Verily, a premature invocation of the court's intervention renders the complaint without a cause of action and dismissible on such ground."³²

It may be argued that respondent's claim for damages is likewise potentially premised on Article 27 of the Civil Code, which provides that –

³¹ *WT Construction, Inc. v. Department of Public Works and Highways*, 555 Phil. 642, 649-650 (2007).

³² *Turner v. Lorenzo Shipping Corporation*, 650 Phil. 372, 390 (2010).

Art. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

In this case, respondent may claim that individual petitioners' refusal or neglect to award the project to her is the cause of her injury. However, this Court still finds that respondent has no cause of action. Individual petitioners could not have awarded the project to her precisely for the reason that her bid still had to undergo a post-qualification procedure required under the law. However, such post-qualification was overtaken by events, particularly Datumanong's November 7, 2001 Memorandum.

In short, respondent's causes of action solely and primarily based on a supposed award, actual or potential, do not exist. This is so for the precise reason that such an award and the whole bidding process for that matter, no longer exist, as they were mooted and superseded by the DPWH's decision to undertake the subject project by administration, as well as by the reservation contained in the Invitation to Bid that at any time during the procurement process, government has the right to reject any or all bids.

The proper remedy for respondent should have been to seek reconsideration or the setting aside of Datumanong's November 7, 2001 Memorandum, and then a reinstatement of the bidding or post-qualification process with a view to securing an award of the contract and notice to proceed therewith. After all, said Memorandum enjoys the same presumption of regularity that is attached to all official acts of government.

With the foregoing disquisition, the Court finds no need to resolve the other issues and arguments raised by the parties.

WHEREFORE, the Petition is **GRANTED**. The March 26, 2012 Decision and November 9, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 00889 are **REVERSED and SET ASIDE**. Civil Case No. 27059 before the Regional Trial Court of Iloilo City, Branch 29 is ordered **DISMISSED**.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

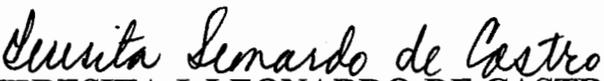
WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

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

