

VIRGILIO V. DIONISIO, PETITIONER, VS. HON. VICENTE PATERNO, IN SUBSTITUTION OF HON. BALTAZAR AQUINO AS MINISTER OF PUBLIC HIGHWAYS AND CHAIRMAN OF THE CONTRACT PRICE ADJUSTMENT ...

G.R. No. L-49654. July 23, 1980

Ponente: BARREDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/08ea8ea57820/>

BARREDO, J.:

Petition for mandamus against then Commissioner of Highways Baltazar Aquino and the Mayor of Makati, Metro Manila, praying as final reliefs for the issuance of the following mandates separately to each of them respectively:

"a) Commanding the respondent Hon. Baltazar Aquino or his successor in office as the case may be, to implement and comply with the directive of the NEDA as contained in its 1st Indorsement, dated May 24, 1978 to said respondent by effecting the payment to herein petitioner of the unpaid balance of the adjusted contract cost of the Buendia overpass in the amount of P1,955,060.99 and, for this purpose, the said amount be deposited with this Honorable Court within a specified period for its proper disposition to the herein petitioner.

b) Commanding the respondent Hon. Nemesio Yabut or his successor in office as the case may be, to implement and comply with the directive of the Office of the President as contained in its 1st Indorsement, dated March 29, 1978 by effecting the payment to herein petitioner, the amount of P775,263.94 as designing fee for the preparation of the construction plans of the Buendia overpass and, for this purpose, the said amount be deposited with this Honorable Court within a specified period for its proper disposition to the herein petitioner." (Page 13, Record.)

The NEDA directive referred to in (a) above reads as follows:

"1st Indorsement
May 24, 1978

Respectfully referred to the Honorable, The Secretary of Public Highways, Manila, as Co-Chairman Contract Price Adjustment Committee (CPAC) the within letter dated May 13, 1978 of Mr. Virgilio V. Dionisio in connection with the contract price adjustment for the Buendia-MSDR Overpass Project.

This office concurs with the position of the CPAC that the contract price adjustment already granted for the project is fair and reasonable. Attention is however invited to the claim of the contractor for payment of the unpaid balance of the adjustment in the amount of P1,955,060.00. It is requested that this amount, if still not paid, be settled at once in fairness to the contractor.

(Sgd.) Gerardo P. Sicat
GERARDO P. SICAT
Secretary of Economic Planning
(Director-General)"

(Page 6, Record.)

whereas the one to respondent mayor is worded thus:

"OFFICE OF THE PRESIDENT
OF THE PHILIPPINES
Malacañang

1st Indorsement
Manila, March 29, 1978

Respectfully referred to His Honor, the Municipal Mayor of Makati, Metro, Manila.

"In view of the within representations herein made and it appearing that the construction of the Buendia-MSDR complex has already been completed, this office hereby approves the negotiated contract dated April 18, 1972, entered into by and between the Municipality of Makati and K and D Engineering Management Inc., and/or V. V. Dionisio General Construction for completing the undertaking of plans, specifications and quantity estimates for professional services in connection with the Buendia-MSDR complex including subsurface exploration work as an exception to Executive Order No. 298, series of 1940, as amended and Memorandum Circular No. 593, series of 1972 and authorizes the payment to the contractor the amount of P775,263.94, subject to availability of funds and the usual accounting and auditing requirements.

By authority of the President
(Sgd.) Cesar A. Dumlao
CESAR A. DUMLAO
Presidential Finance Adviser"

(Page 11, Record.)

Both of these two directives refer to the contract for the construction of the Buendia-MSDR Overpass Project executed between petitioner and respondent Commissioner and dated January 28, 1976, which in part pertinently stipulated that:

"WHEREAS, there exists an urgent need for an overpass structure at the intersection of Buendia Avenue and the Manila South Diversion Road (MSDR), in Makati, Rizal, to ease up the motor traffic congestion at the said intersection and its immediate environs;

"WHEREAS, both the MSDR and Buendia Avenue are major arterial national roads considered vital to local, regional and national socio-economic growth;

"WHEREAS, a contract for professional services for the Buendia-MSDR Overpass, including among others the preparation of plans and specifications and preliminary estimates for its construction, was entered into by and between the Municipal Government of Makati, and K & D Engineering Management, Inc., and duly acknowledged by a Notary Public on April 18, 1972;

"WHEREAS, the SECOND PARTY agreed to complete the undertaking of the plans, specifications and quantity estimates for the construction of the Project under the supervision of the FIRST PARTY without any additional compensation therefor other than what may be due, if any, under the contract for professional services of K & D Engineering Management, Inc. with the Municipal Government of Makati;

"WHEREAS, the plans, specifications and quantity estimates of the work items involved, submitted by the SECOND PARTY, were approved by the Secretary;

"WHEREAS, the President of the Philippines has instructed the Commissioner of the Budget to advance the cost of the project, of which one half will be repaid by the Municipal Government of Makati, as has been agreed upon, by providing the Department of Public Highways with the required reinforcing steel for this project as well as in other DPH Projects until the equivalent of one half of the project cost is covered;

"WHEREAS, the President has instructed the Secretary of Public Highways to immediately negotiate the matter, with Virgilio V. Dionisio and the Municipal Government of Makati, so that work can start," (Annex A, pp. 15-16, Record.)

Now, how the above NEDA directive came about is quite accurately stated in the comment filed by respondents themselves to the petition herein wherein it is stated that:

"On January 6, 1978, respondent Aquino of the then Department of Public Highways (DPH) prepared a government estimate of the Buendia Overpass. The estimate based on prices prevailing as of January 6, 1976 aggregated to P17,741,755.80 (bottom, p. 2 of CPAC Resolution No. 215 dated January 6, 1976, Annex 1 of this comment).

"On January 28, 1976, petitioner Dionisio signed the contract with respondent Aquino to construct the Buendia Overpass at Makati (Annex A of petition). Petitioner Dionisio signed the contract allegedly upon respondent Aquino's verbal assurance that correction of the price to conform to what was current on January 28, 1976 would be made.

"The prices of petroleum products increased on January 15, 1976, resulting in the increase of cost of labor and materials. It is claimed that the government estimate for the Buendia Overpass, made as of January 6, 1976, did not reflect the oil price increase on January 15, 1976, as well as for labor and materials.

"Petitioner sent letters to respondent Aquino, seeking the adjustment of the contract price. One such letter (Annex B of petition) was dated January 29, 1976, a day after the contract. But petitioner received no reply. In another follow-up letter to respondent Aquino dated February 28, 1976 (Annex C of petition), petitioner Dionisio requested for -

'immediate consideration on the adjustment of the unit cost based on the increase in price as a result of the fuel adjustment'

and furnished President Marcos with a copy thereof. The President then made the following notation thereon: 'Sec. Aquino, work on this'.

"On March 4, 1976, respondent Aquino wrote petitioner Dionisio (Annex D of petition) a letter stating that his request for price adjustment had been forwarded to the Contract Price Adjustment Committee (CPAC) for appropriate action and -

'... that the government estimate and the contract cost and unit prices were based on the prevailing prices of petroleum products and construction materials prior to the last increase in prices of petroleum products.'

"In September 1976, the Buendia Overpass was finished, some 3 months (actually less than two months) ahead of schedule.

"On June 6, 1977, CPAC issued Resolution No. 215 (Annex 1 of this comment), granting petitioner Dionisio the adjusted contract price of P18,797,198.68 for the Buendia Overpass Project, which represented a 2.86% increase in the original contract price of P17,741,755.80. What petitioner Dionisio had sought is a 15% increase. Accordingly, he elevated the matter of contract price adjustment for review by the NEDA pursuant to LOI 218. Petitioner wrote letters to Mr. Sicat of NEDA on April 12 and May 1, 1978 (Annexes F and G of petition) wherein he cited some already granted contract price adjustments in government projects, varying in percentages from 15% (for Consortium of Cebu Contractors) up to 270.5% (for Samar project) and other percentages of price increases between these two extremes (18% to Hanil Dev. Corp. [Annex F of petition], 84.8% (Calbayog), 78.2% (Agoo-Baguio), 132.4% (Lamut-Banawe), 78.2% (Marikina-Infanta) and 55.3% (Davao-Bukidnon) as escalated contract cost & percentage of escalation, Annex G of petition). Then, in his letter to NEDA of May 13, 1978 (Annex I of petition), petitioner Dionisio stated that he was willing to settle for 13.87% instead of 15% increase in

the contract price for the Buendia Overpass Project. He thus stated his position, to wit:

Contract price updated

as of Feb. 7, 1976 by

DPH Technical Committee

P20,203,340.90

Less:

Original contract price based on government estimate prior to increase in oil last Jan. 15, 1976

P17,741,755.80

Increase in contract price: 13.87%

P 2,461,585.10

(to conform with prevailing price at time of signing of contract)

Less: Adjustment already paid

July 1977 - P367,351.44

Apr. 1978 - 139,166.67 = (2.86%)

506,524.11

Balance still unpaid

P 1,955,060.99

"In a letter of April 19, 1978 (Annex H of petition), Mr. Sicat stated that CPAC follows certain guidelines for all projects in determining price adjustments and has referred petitioner's letter to DPH for comment. On May 24, 1978 (Annex J of petition), Mr. Sicat wrote to petitioner that he agreed to the CPAC contract price adjustment

(i.e., 2.86%) but noted that the adjustment in the sum of P1,955,060.99 has not yet been paid to petitioner. Thus, in NEDA 1st Indorsement of May 24, 1978 (Annex K of petition), addressed to respondent Aquino, Mr. Sicat said: (See text quoted above.)" (pp. 107-111, Record.)

To the foregoing may be added the material facts alleged in the petition which are well nigh incontrovertible:

"5. That on the following day the contract was signed, petitioner sent respondent Minister of Public Highways (then Secretary) a letter, dated January 29, 1976, reminding the said respondent of his promise to correct and/or adjust the contract cost, xerox copy of the said letter is being attached hereto as Annex 'B' and made an integral part hereof;[1]

"6. That notwithstanding receipt of the said letter (Annex B), petitioner has not received any reply from respondent Minister of Public Highways thereby prompting him to send follow up letters, dated February 14 & 28, 1976; that in his follow up letter, dated February 28, 1976, petitioner had furnished his Excellency, President Marcos with a copy of the same and, for that reason, the President bracketed a portion of the letter containing the request for correction and adjustment and thereafter wrote the following instruction which reads 'Sec. Aquino, work on this' followed by the signature of His Excellency, a xerox copy of the letter, dated February 28, 1976 containing the instruction of the President is being attached hereto as Annex 'C' and made an integral part hereof;[2]

"7. That acting in obedience to the instruction of His Excellency, President Marcos, respondent Minister of Public Highways (then Secretary) sent a letter to petitioner, the context of which reads as follows:

'This is in regard to your letters, dated January 29, February 14 and February 28, 1976, requesting adjustment of contract cost of the construction of Buendia-MSDR overpass based on the increase of fuel cost.

'We recognize the fact that the government estimate and the contract cost and unit prices were based on the prevailing prices of petro-leum products and construction materials prior to the last increase in prices of petroleum products. We also recognize and appreciate your gesture of trust in our fairness by signing the contract to avoid delay in the project implementation fully aware of this fact.

'In view hereof, we have forwarded for appropriate action to our 'Contract Price Adjustment Committee' your request for adjustment of contract cost. Rest assured that your request will be dealt with fairness.'

xerox copy of the letter, dated March 4, 1976 of respondent Minister of Public Highways is being attached hereto as Annex 'D' and made an integral part hereof;[3]

8. That after the lapse of two years, the technical committee of the Contract Price Adjustment Committee submitted a memorandum to the Head Secretariat of the Committee embodying its findings and recommendation; that in the said memorandum, the CPAC Technical Committee recommended an increase of 13.874% in the contract cost of the overpass, xerox copy of the said memorandum of the CPAC Technical Committee, dated April 12, 1978 is being attached hereto as Annex "E" and made an integral part hereof;[4]

"9. That for reasons only known to the office of respondent Minister of Public Highways, the said memorandum of the CPAC Technical Committee was suppressed and, instead, the herein petitioner was notified that he was granted only an increase of 2.86% in the contract cost;

"10. That pursuant to Letter of Instruction No. 218, petitioner elevated for review, the matter of 2.86% increase in the contract cost of the overpass to the National Economic Development Authority (NEDA), xerox copy of the letter, dated April 12, 1978 addressed to Hon. Gerardo Sicat, Secretary for Economic Plan-ning and Director General of the NEDA is being attached hereto as Annex 'F' and made an integral part hereof;[5]

"11. That under date of May 1, 1978, petitioner sent the office of the NEDA, a supplemental letter explaining his position on his request for review of the price adjustment, xerox copy of petitioner's supplemental letter, dated

May 1, 1978 is being attached hereto as Annex 'G' and made an integral part hereof;[6]

"12. That under date of April 19, 1978, the office of the NEDA thru the Hon. Gerardo Sicat replied to petitioner's letter, dated April 12, 1978 explaining to him certain guidelines that are being followed relative to the price adjustment, xerox copy of the letter of the NEDA, dated April 19, 1978 is being attached hereto as Annex 'H' and made an integral part hereof;[7]

"13. That under date of May 13, 1978, petitioner sent a communication to the Hon. Gerardo Sicat inviting his attention to the supplemental letter (Annex 'G') and, reiterated his request for review of the 2.86% increase in his contract cost, xerox copy of petitioner's letter, dated May 13, 1978 is being attached hereto as Annex 'I' and made an integral part hereof;[8]

"14. That after the NEDA has reviewed the matter of price adjustment, petitioner, under date of May 24, 1978, received a communication from the Hon. Gerardo Sicat, Secretary for Economic Planning and Director General informing him that his office had already directed the Contract Price Adjustment Committee (CPAC) through respondent Hon. Baltazar Aquino, co-chairman of the said committee, to settle petitioner's unpaid balance of the price adjustment in the sum of P1,955,060.99, xerox copy of the letter, dated May 24, 1978 of the NEDA is being attached hereto as Annex 'J' and made an integral part hereof;[9]

"15. That on the same day that the letter (Annex 'J') was sent to petitioner, the NEDA also sent a directive to respondent Hon. Baltazar Aquino as co-chairman of the Contract Price Adjustment Committee which reads as follows: (See text quoted on Page 2.)" (Pars. 5-15, pp. 3-6, Record.)

What has been related above was how matters stood as of the filing of the instant petition. However, in the comment of respondents dated September 11, 1979, already referred to earlier in this opinion, it is alleged that on February 6, 1979, or about 26 days after the petition herein had already been filed, Mr. Sicat allegedly realized his "mistake" consisting of his having understood or assumed that the P1,995,060.99 mentioned in his indorsement of May 24, 1978 represents an increase of 2.86%, which in fact had already been paid to petitioner by way of adjustment supposedly pursuant to CPAC resolution No. 215.[10]

Relative to this alleged admission of mistake by Minister Sicat, petitioner filed on October 24, 1979 a reply to respondents' comment. Considering its apparent clarity and cogency, We deem it proper to quote extensively from said reply thus:

"1. That contrary to the assertions of respondent Public Officials, the nature of petitioner's action before this Honorable Court is not for recovery of a sum of money but, to compel compliance by the said respondent Public Officials, of the administrative directives, subject matter of the petition for mandamus. It is important to state in this connection that, the administrative directive's sought to be enforced, were issued by the respective administrative agencies concerned after they have evaluated and passed upon the merits of petitioner's claim for payment. The purpose of petitioner in seeking relief from this Honorable Court is to compel action on the part of said officials who have virtually ignored the directives despite several repeated demands. On this point, mandamus will lie to compel action or to remedy official inaction (Bernabe vs. Bolinas Jr., L-22000, Nov. 29, 1966);

"2. That respondent Minister of Public Highways cannot claim justification in refusing to comply with the directive of the NEDA to pay herein petitioner, the sum of P1,955,060.99, by alleging that the Contract Price Adjustment Committee or CPAC gave the said petitioner only a 2.86% adjustment or its equivalent in the sum of P506,524.11 which he had already received because, the said amount or percentage of adjustment was arrived at by the CPAC on the basis of the application of Presidential Decree No. 454 as amended by Presidential Decree No. 906. A perusal of petitioner's letter to respondent Aquino (Annex B of Petition) will reveal that he was not asking for price adjustment in accordance with the provisions of said Presidential Decree

but for the correction of the contract cost as promised by the latter to conform with what was prevailing on Jan. 28, 1976, the date of the signing of the contract for the construction of the overpass. In fact, it was expressly admitted in CPAC Resolution No. 215 (Annex 1 of Comment) that His Excellency, President Marcos had authorized and considered petitioner's case as an exception to Presidential Decree No. 454. Thus, the 'WHEREAS' clause in CPAC resolution No. 215 states:

'WHEREAS, the adjustment of contract price for this particular project have been authorized by the President per his handwritten note on the memorandum of the Secretary of Public Highways dated December 8, 1976 as an exception to PD-454 as amended:' (Italics supplied)

"On the other hand, it is significant to note from the comment of respondent Minister of Public Highways that he admitted in his narration of the factual background of the case the following:

On January 6, 1976, the DPH prepared a government estimate of the Buendia Overpass based on prices prevailing on said date. The estimated cost of the overpass on January 6, 1976 was P17,741,795.80;

On January 15, 1976, the prices of petroleum products increased and this resulted in the increase of labor and materials;

"On January 28, 1976, petitioner signed the contract for the construction of the overpass based on the government estimate of P17,740,755.80 prepared on January 6, 1976.

"Actually the contract cost of the project which was embodied in the contract was no longer the true cost when it was signed and this fact was admitted by respondent Aquino in his letter to petitioner (Annex D of Petition) when he stated:

'that the government estimate and the contract cost and unit prices were based on the prevailing prices of petroleum products and construction materials prior to the last increase in prices of petroleum products.'

"In the memorandum of the CPAC Technical Committee to the Head Secretariat of the CPAC (Annex E of Petition), the said Technical Committee gave the information that the original government estimate of P17,741,755.80 was updated to conform with the prices prevailing after the increase on January 15, 1976 of the prices of fuel. Per its finding, the updated estimate reached a total of P20,203,340.90 or an increase of 13.87%. Observe the following statements in the memorandum, thus:

'Relative thereto, please be informed that the total original government estimate for Buendia-Manila South Diversion Road overpass STA-0-370 to STA-0-385 Makati, Metro Manila, prepared on Jan. 6, 1976 was P17,741,755.80. On August 9, 1976 per request of that office, the original government estimate for said project was updated as of February 7, 1976 and the total updated cost was P20,203,340.90 or an increase of 13.874%.' (Italics supplied)

"In elevating the case to the NEDA, petitioner stated his position in claiming the amount of P1,955,060.99 as follows:

"Contract cost as updated by the CPAC Technical Committee

P20,203,340.90

Less:

Original Contract cost based on government estimate prepared on January 6, 1976

17,741,755.80

Increase in contract cost to conform to what was prevailing on January 28, 1976 when contract was signed

2,461,585.10

Less:

Adjustment already paid

506,524.11

Balance unpaid

P 1,955,060.99

And after passing upon the foregoing, the NEDA directed respondent Aquino to pay the unpaid balance indicated above in the following tenor:

'x x x It is requested that this amount (P1,955,060.99), if still not paid, be settled at once in fairness to the contractor.' (Italics supplied)

Contrary to what has been asserted in the comment of respondent Aquino, the NEDA could not have acted under a mistake of fact when it directed the said respondent to pay the sum of P1,955,060.99 because the said amount actually reflect the amount due to petitioner if we were to implement not only the promise of said respondent to correct the contract cost to conform with what was prevailing when the contract was signed but also the mandate of the President to consider petitioner's case as an exception to PD-454.

Indeed, the 2.86% increase pointed out by respondent Aquino in his comment appears to be arbitrary and inequi-tous. It was awarded in violation of the mandate of the President to treat petitioner's case as an exception to PD-454. The 2.86% increase must be the result of an adjustment made pursuant to PD-454 as amended, that is, the adjustment on the balance of petitioner's work after the lapse of six months from January 28, 1976 when the contract was signed. This is evident from the fact that according to the undisputed computation of the CPAC Technical Committee resulted in the conclusion that the adjustment as of February 7, 1976 should be P20,203,340.90.

"Thus, in respondent's comment, it is stated:

'Moreover, the adjustment in price may only be made every six months after the date of bidding of the unit price of materials. Section 1 of PD 906 reads:

Section 1.

Section 2 of Presidential Decree No. 454 is hereby amended to read as follows:

Section 2. Notwithstanding the provisions of Section 3 hereof, the initial adjustment of contract prices or projects covered by this Decree shall not be earlier than six (6) months after the date of bidding. Readjustments on the unit price shall be made every six months thereafter. In the case at bar, the contract was signed on January 28, 1976. The project was finished in September, 1976 or a period of eight months from contract date. It is obvious that even if petitioner is entitled to a price adjustment, the same is only negligible in view of the provisions of PD 906 above quoted.' (p. 12 comment)

"Thereby implying that the adjustment of 2.86% considered only the around two months balance of work after July 1976.

In other words, it is quite evident that it was the application of PD-906 amending PD-454, that resulted in the claim of petitioner being reduced to P506,524.11 only; he was not granted any adjustment on works which he had completed before the lapse of the six months period from the signing of the contract. Clearly, the procedure adopted by the CPAC in adjusting the price on the basis of the balance of work remaining after six months from the signing of contract is manifestly contrary to the real intention for which CPAC resolution No. 215 was issued. According to its title, the purpose was 'ADJUSTING THE UNIT PRICES OF ALL ITEMS OF WORK AS OF JANUARY 28, 1976 ON THE CONSTRUCTION OF BUENDIA MANILA SOUTH DIVERSION ROAD OVERPASS MAKATI, METRO MANILA UNDER CONTRACT WITH V. V. DIONISIO GENERAL CONSTRUCTION.'

"3. That respondent Aquino cannot likewise ignore the findings and/or recommendation of the CPAC Technical Committee for a 13.86% increase in the original government estimate by alleging that said findings and/or recommendation was not approved by the CPAC. Respondent's claim in this regard is belied by CPAC Resolution No. 215 itself which shows that the CPAC concurred with the said findings of the Technical Committee for the reason that the criteria used by the latter were found to be adequate and in accordance with its guidelines. Witness the following portion of CPAC Resolution No. 215, thus:

'WHEREAS, in the deliberation of the request for adjustment on contract unit prices, the Committee reviewed and compared the adjusted unit prices submitted by the Contractor with those which was estimated by the Technical Committee for all items of work of the project as of January 28, 1976 in accordance with the guidelines adopted by the Committee on Price Adjustment on July 1974;

'WHEREAS, the Adjustment Committee found out that the Technical Committee considered the following factors in determining the proposed adjusted unit prices;

- a. The price of cement as of January 28, 1976 on the region where the project is located is the price set by the Price Control Council as of February 16, 1976;
- b. The price of reinforcing steel bars as of January 28, 1976 was based on the average prices prevailing during the months of February and March 1976;
- c. The equipment rental used was based on the ACEL rates Issues No. 11 as of March 1976 that included the salary of the operators, cost of fuel, spare parts and depreciation;

d. The updated unit prices of items of work involved has been derived from the original government estimate and also on the present existing field conditions;

e. Prices of other materials not covered above were based on the average prices prevailing during the months of February and March 1976 per existing records based on the reports of the Regional Director or Project Engineer;

"WHEREAS, the Adjustment Committee found the criteria used by the Technical Committee to be adequate and consistent with the existing conditions at the project area and with the guidelines adopted by the Contract Price Adjustment Committee;

Respondent made no explanation in his comment why the findings of the Technical Committee and the CPAC itself do not coincide notwithstanding that the former used criteria which were adequate and consistent with the CPAC guidelines. The excuse, therefore, that the CPAC did not approve the findings and/or recommendation of the CPAC Technical Committee hangs on a limb and remains as a baseless and unjustified denial of the rightful claim of petitioner.

What is more, respondent has not been able to explain petitioner's cited percentage of adjustment granted to other contractors ranging from 15% to 270.5% as contained in petitioner's letter to him (see Annexes F and G of Petition). The trend of price adjustment due to oil price increase occurring on January 15, 1976 was established from 15% upward and not lower as borne out by daily news item as follows:

Bulletin Today, Jan. 16, 1976 –

Headline: 'Gasoline up 22 and 18 etc., also LPG, etc.'

Since the 15-centavo price grant is an average, regular and premium gasoline will actually sell at P1.40 and 150 liter, or an increase of 18 and 22 centavos, respectively.

Last price increase was granted in May 1975.

Bulletin Today or simply BT, Jan. 17, 1976 –

Transport fare hikes; BOAP for 62% in fare rate.

BT, Jan. 18, 1976, p. 6 –

Editorial: 'Chain Reaction'

BT, Jan. 20, 1976, p. 13 –

First Fuel Price Casualty: Cement Industry Facing Crisis. Re: impact of the 10.5-centavo increase on a liter of bunker oil.

BT, Jan. 22, 1976, p. 14 –

PAL now wants 35% hike in fares.

"BT, Jan. 24, 1976 –

'Ask P18 daily wage', a headline.

BT, Jan. 26, 1976 –

Minimum Wage Proposal re: 44% raise.

CB Review, Jan. 27, 1976 –

Tire prices to increase 4%-10% due to higher price of crude oil.

BT, Jan. 28, 1976 –

Headline - 'Hike proposed fare rates for bus, jeep, cab' re: jeepney and bus operators asked for 50% increase over present rate.

BT, Jan. 31, 1976 –

NEDA recommends a 15% across board in passenger fares of inter island ship.

CB Review, Feb. 3, 1976, p. 12, citing.

TJ Jan. 25, 1976 –

Cement companies seek price increase to offset adverse effects of recent fuel price increases.

"The foregoing only goes to show that herein petitioner have not been treated fairly in the office of respondent Minister of Public Highways and at the same time it evinces the motive of respondent for not complying with the NEDA directive." (pp. 153-159, Record.)

Reading together all the communications of petitioner quoted in the footnotes of the preceding pages of this opinion, one would readily note that the basic and fundamental thrust of petitioner's position is that he has not been asking for any adjustment or escalation of his contract price on account of the increase in the price of gasoline after he had started the work but rather the correction of the contract price stipulated in the contract signed by him on January 28, 1976, for the simple reason that said stipulated price was prepared on or before January 6, 1976 before the rise in price that took effect on January 15, 1976. He explained that he signed the contract with the clear understanding and agreement with then Commissioner Aquino that the stipulated price would be correspondingly adjusted later. Respondent Aquino has never denied but on the contrary admitted that there was such understanding. The obvious reason why the contract had to be signed hurriedly was because the construction of the overpass was considered a very urgent project by no less than President Marcos himself, as may be gleaned from the whereases of the contract We have quoted earlier. Of course, it is not usual and perhaps of very much legal effect that such a verbal agreement existed, but under the circum-stances, could petitioner be blamed for taking the Commissioner's assurance on its face value as a gesture of cooperation and assistance to the administration that for reasons of public interest desired immediate action? And even such observation regarding the force and effect of a mere verbal assurance relative to the construction price of a government project holds no water in this particular case of the Buendia Overpass, because on March 4, 1976, albeit after several call ups from petitioner finally put the agreement in question in writing. (See the pertinent portion of the Commissioner's letter of March 4, 1976 quoted earlier.)

But what is most important in this case is not only that there was such an agreement to correct the stipulated contract price in order to take into account the increase in price of gasoline of January 15, 1976. Ordinarily, adjustment or escalation of contract prices are made pursuant to existing guidelines based on the provisions of Presidential Decree No. 454, as amended as well standard factors that the Highway authorities usually consider.

Now, in connection with the claim of petitioner before Us, what strike Our attention inescapably are the following circumstances:

1. Resolution 215 on which the respondent mainly rests his case states that taking into account the "adjusted unit prices", the total cost of all construction of the project in question would be P18,441,993.58 indicating an increase of P700,237.58 or 3.95% which is also 3.95% of the revised contract amount," and yet, it is indisputable that even on that basis, petitioner was paid only P506,524.11 or the equivalent of only 2.86%. Why the difference?
2. Resolution 215 states that "in the deliberation for the request for adjustment of contract unit prices submitted by the Contractor with those which were estimated by the Technical Committee for all items of work of the project as of January 28, 1976, etc." and that "the Adjustment Committee found the criteria used by the Technical Committee to be adequate and consistent with the existing conditions at the project area and with the Guidelines adopted by the Contract Price Adjustment Committee", but there is no explanation whatsoever how it came about that whereas according to the report of the Technical Committee dated April 12, 1978, signed by its chairman and all its six members, "on August 9, 1976, per request of that office (CPAC), the original government estimate for said project was updated as of February 7, 1976, and the total updated cost was P20,203,340.90 or an increase of 13.874%", (see Annex E of petition) the CPAC arrived only at the figure of 3.95%. In other words, while Resolution No. 215 acknowledges clearly that the Technical Committee did its work properly, for no reason at all stated or at least indicated or implicit in the resolution, the CPAC arrived at a vastly reduced adjustment. Was the Technical Committee wrong or right? If wrong, in what respect or aspect did it err?

3. The comment of respondent on the petition, which was filed already on behalf of Minister Paterno, who had replaced Commissioner Aquino, Annex 7 of the comment of the Solicitor General, is apparently based on said Minister's letter to the Solicitor General of August 21, 1979. In brief, said comment is centered on Resolution 215, without in any way explaining the discrepancies and apparent inconsistencies We have observed above. But very importantly, We note that the comment reveals what indeed the CPAC did that resulted in the reduced adjustment granted by it to petitioner. Pertinently, the said comment states:

"In any event, what is controlling is the adjusted amount approved by the CPAC, which is an adjustment of only 2.86% increase. the CPAC was constituted pursuant to Section 1 of PD 459 which reads:

'SECTION 1. Paragraph (b) of Section 10 of Republic Act No. 5979, as amended, is hereby amended to read as follows:

'(b) Should the Government, at any time during the effectivity of a contract, impose, abolish, modify any tax, customs duties, license, impost, fee, or other similar charges, or enact, amend or repeal any law affecting the number of hours of labor permissible a day or the number of days a week or the wages or salaries to be paid to laborers and employees, which would directly increase or decrease the cost of materials or the cost of the construction work beyond or under the amount stipulated in the contract, or should there be any abnormal or extraordinary increase or decrease in the cost of construction materials due to any cause beyond the control of either or both parties, the contract amount shall be readjusted accordingly by a committee, hereby created for this purpose, composed of the following:

Chairman - Secretary of Public Works, Transportation and Communications

Vice-Chairman - Secretary of Public Highways

Member - National Economic and Development Authority (NEDA) Representative

Member - Bureau Agency Head concerned

Member - Commission on Audit Representative

Provided, That the party seeking adjustment shall first apply for same in writing, stating therein the reasons justifying the change as well as the data computation in sufficient detail which would determine accurately the amount of the change; Provided, however, That for projects behind schedule, unless properly covered by extension of time, no adjustments shall be considered.'

"It is presumed that the CPAC, in arriving at the price adjustment of 2.86%, took into accounts all relevant facts. Moreover, petitioner has no legal right to any specific amount or percentage of increase in contract price. Section 3 of PD 454 reads:

'SEC. 3. All contracts for the construction of public works projects existing upon the effectivity of this decree, shall be reviewed and revised at the current costs of labor, equipment rentals, materials and supplies in accordance herewith: Provided, That adjustments with respect to existing contracts shall apply only to the balance of work outstanding as of May 1, 1974 which shall be further adjusted in accordance with Section 2 hereof; Provided, That only bid items involving a change in prices of more than five (5%) per cent shall be adjusted and, Provided, further, That where existing agreements contain provisions for cost variations on certain specific items the agreed provisions shall govern but only in respect to the item or items specified.'

"Petitioner has to show that the requisites provided for in the above provision are present. And even if such requisites are present, he can not be entitled to any specific percentage of increase in contract price. Moreover, the adjustment in price may only be made every six months after the date of bidding of the unit price of materials. Section 1 of PD 906 reads:

'SECTION 1. Section 2 of Presidential Decree No. 454 is hereby amended to read as follows:

'SEC. 2. Notwithstanding the provisions of Section 3 hereof, the initial adjustment of contract prices of projects covered by this Decree shall not be earlier than six (6) months after the date of bidding. Readjustments

on the unit price shall be made every six months thereafter.'

"In the case at bar, the contract was signed on January 28, 1976. The project was finished in September, 1976 or a period of eight (8) months from contract date. It is obvious that even if petitioner is entitled to a price adjustment, the same is only negligible, in view of the provisions of PD 906, above-quoted. Moreover, while Resolution No. 215 of the CPAC states that the 'price adjustment is now being submitted as an exception to Section 1 of P.D. 494 for the President's consideration,' there is no showing that the President ever approved petitioner's claim for a 13.87% increase in contract price."

In other words, despite the two whereases of Resolution 215 saying that the adjustment it was making was "an exception to P.D. 454" (the third and eighth whereases), the fact is that those whereases were vain words because P.D. 454 was applied just the same. In the words of respondent's comment, "It is obvious that even if petitioner is entitled to a price adjustment, the same is only negligible, in view of the provisions of P.D. 906" (amending PD 454).

Indeed, respondent's foregoing position is reiterated and amplified in his rejoinder of February 4, 1980 thus:

"However, respondent Minister of Public Highways stresses the fact that petitioner, in accordance with the said promise and the directive of President Marcos to give him an adjustment, already received the amount of P506,524.11 which was the amount awarded to him by the Contract Price Adjustment Committee, taking into account the provisions of Section 2 of Presidential Decree No. 454 as amended by PD 906 which reads:

'Section 1.

Section 2 of Presidential Decree No. 454 is hereby amended to read as follows:

Section 2.

Notwithstanding the provisions of Section 3 hereof, the initial adjustment of contract prices of projects covered by this Decree shall not be earlier than six (6) months after the date of bidding. Readjustments on the unit price shall be made every six months thereafter.'

"As already stated in our comment, the contract was signed on January 28, 1976 and the project was finished in September 1976 or a period of eight months. Following the above quoted provision of the Decree on adjustment, petitioner cannot claim price adjustment earlier than six months from January 28, 1976. The reason why the result of his adjustment was only for 2.86% increase as compared with the other contractors who were granted increases ranging from 15% to 270.5% was primarily because after six months from the commencement of the prosecution of the project, only very little work was left, as evidenced by the fact that petitioner was able to completely finish the project in only two more months.

"While it is true that the CPAC Technical Committee submitted a report that the government estimate of the project was updated as of February 7, 1976 to P20,203,340.90 or an increase of 13.87% from the original government estimate of P17,741,755.80, the same was not utilized as basis by the Contract Price Adjustment Committee considering that it will contravene the provisions of Section 2 of PD-454 as amended by PD-906 above quoted regarding the adjustment not earlier than six months. The amount of P506,524.11 given to petitioner by the Contract Price Adjustment Committee and which he admitted to have received was not only fair but in accordance with the intent and provisions of both PD-454 and PD 906. On the other hand, the P1,955,060.99 stated in the directive of the NEDA to respondent Aquino was based on petitioner's own computation disregarding the provisions of said Presidential Decrees and was adopted by the said government agency under a mistake of fact." (pp. 175-177, Record.)

4. It is contended by respondent that whereas Resolution 215 of the CPAC states that the "price adjustment is now

being submitted as an exception to Section 1 of P.D. 454 for the President's consideration" and that said resolution was actually approved by the President, "there is no showing the President ever approved petitioner's claim for a 13.87% increase in contract price."

Frankly, the Court cannot but be seriously bothered by this rather confusing theory or position of respondent. While it is claimed that Resolution 215 merely submitted to the President, seemingly for his approval, the adjustment therein specified, by way of exception to P.D. 454, as amended by P.D. 906, almost in the same breath, it is clearly admitted both in the comment and in the rejoinder that in the computation which resulted in the adjusted price stated in said resolution, the provisions of the presidential decrees referred to were taken into account. It results then that if it be true that the President actually approved Resolution 215, very likely, he was not made aware that P.D. 454, as amended, was applied therein. It is not only that the President has been wittingly or unwittingly deceived, there is here a heavy dose of unfairness to the petitioner.

We are most impressed that the project was not only important but of utmost urgency to the President in the public interest. That much appears in the contract itself and in Annex AA of the petition, particularly item 6. Petitioner, We reiterate, was in fact practically inveigled into signing the contract notwithstanding his protestations that the stipulated price of P17,741,755.86 was not feasible, considering that such government estimate was prepared before the increase in price of gasoline on January 15, 1976, but he signed it just the same upon the verbal promise of respondent Aquino, later confirmed by him in writing on March 14, 1976, that the appropriate adjustment would be made later. To comply with this agreement or understanding, respondent submitted the government estimate for reevaluation by the Technical Committee of CPAC; and on August 9, 1976, the said committee came out with a revised estimate of P20,203,340.90. But in its Resolution No. 215, dated June 6, 1977, wherein the CPAC expressly acknowledged that its technical committee had adhered to the established guidelines, it nevertheless concluded, without giving any reason therefor, that petitioner is entitled only to an increase of 3.95% equivalent to P700,237.58. And now it is contended that the additional payment made to petitioner of P506,524.11, which is equivalent to only 2.86%, in addition to the P17,741,755.80 stipulated in the contract, also already paid, has resulted in complete settlement of the claim of petitioner.

What is outstanding in all these, We reiterate, is that whereas the amount recommended by CPAC in its Resolution 215 is pretended to be based on a computation "by way of exception to P.D. 454", as amended by P.D. 906, the truth is that according to the comment and rejoinder submitted to this Court by respondent, both during the incumbency already of Minister Paterno, it is evident that the mentioned presidential decrees were actually applied. And the irony of petitioner's situation is that whereas admittedly other contractors to whom adjustments were given from 75% to 270%, following the formula laid down by the presidential decrees of not allowing any adjustment for the first six months of the work but only for that remaining still undone every six months thereafter, which strongly suggests that those contractors accomplished very little within the first six months presumably to augment the basis for adjustment, which is the unfinished portion thereof thereafter, petitioner who, abiding by the wishes of the President to hurry the job and, therefore, did his utmost and actually finished it almost two months before schedule, was, it would appear, "punished" by basing the adjustment of his contract on what respondents almost nonchalantly refer to as "only negligible" unfinished portion of the project.

Coming now to the legal issue of whether or not mandamus would lie in this case as prayed for by petitioner, respondent insists that for petitioner to be exempted from the application of P.D. 454, as amended, Presidential approval is essential, and without such approval petitioner is without any cause of action for any additional adjustment, much less a mandamus for the payment of the amount referred to in the indorsement of Minister Sicat of March 24, 1978. On the other hand, petitioner contends that no mention of exception to P.D. 454 would have been made at all in Resolution 215, if there were no directive of some kind of the President to that effect. Hence,

if We understand petitioner correctly, his theory is that P.D. 454 is immaterial to his case. He is not asking for an adjustment of a contract price accepted by him and found to be inadequate after he has started the job, which indeed, as We see it, is the contemplation of P.D. 454. Petitioner vehemently pleads that the rise in price of gasoline affecting his contract occurred even before he accepted the contract based on a government estimate prepared before such rise in the price of gasoline, and to avoid sure and certain loss, he demurred from signing the contract until respondent Commissioner assured him that the proper adjustment would be made later. The first attempts of petitioner to make Commissioner Baltazar comply with their clear and definite understanding failed until the President, in a handwritten note, ordered the Commissioner to "work on this." (Annex C, Petition.) In view of its importance, We shall requote, Commissioner Aquino's reaction to the Presidential directive:

"March 4, 1976

VIRGILIO V. DIONISIO GEN. CONSTRUCTION
1358 Apolinario Street
Makati, Rizal

Gentlemen:

This is in regard to your letters dated January 29, February 14 and February 28, 1976, requesting adjustment of contract cost of the Construction of Buendia-MSDR Overpass based on the increase of fuel cost.

We recognize the fact that the government estimate and the contract cost and unit prices were based on the prevailing prices of petroleum products and construction materials prior to the last increase in prices of petroleum products. We also recognize and appreciate your gesture of trust in our fairness by signing the contract to avoid delay in the project implementation fully aware of this fact.

In view hereof, we have forwarded for appropriate action to our 'Contract Price Adjustment Committee' your request for adjustment of contract cost. Rest assured that your request will be dealt with fairness.

Very truly yours,
(Sgd.)
BALTAZAR AQUINO
Secretary

TEN/ve"
(Annex D)

We have here, therefore, a situation wherein, in conscience, We feel petitioner was being given a veritable run around, which even in equity alone move the Court to extend some kind of remedy to him. And indeed, mandamus is a remedy in equity, (Aytona vs. Castillo, 4 SCRA 1, L-19313, Jan. 19, 1962) but generally its principal and only function is to compel obedience to the law where disobedience or disregard thereof by an officer, board or tribunal appears clear and indubitable. Unquestionably, the law must be obeyed; deliberate or indifferent disobedience thereof calls for mandamus. In fact, the most basic function of the judiciary is to see to it that the rule of law and justice prevails and is observed both by the inhabitants of the country and the government and its officers alike. The authority and power of the courts to do this are both expressly vested by the Constitution and, to be sure, inherent. And incidentally, the Courts of First Instance and the Supreme Court have concurrent jurisdiction in cases of mandamus.

In the case of petitioner, We are inclined to believe that the presidential directives extant in the record hereof, which in the ordinary course of official cabinet procedure, Commissioner Aquino must have checked with the President, cannot have any meaning other than that petitioner's contract price should be adjusted. What is more, We agree with petitioner that P.D. 454, whether it was ever invoked by him or not, does not apply to his case. As

We read it, P.D. 454 regulates escalations or adjustments when the rise in the price of gasoline occurs after a job has already been started. That is not the case here, as already explained above. It results then that in not granting the petitioner an adjustment of his contract price without regard to P.D. 454, the original respondent Commissioner of Highways, and this goes also for Minister Paterno, clearly disregarded a presidential directive having the effect of law. We hold that said directive should be obeyed and mandamus can issue to compel obedience. But with regard to the question of whether or not the resulting figure of the adjustment should be an addition of 13.874% in accordance with the claim of petitioner which appears to be based on the computation and recommendation of the Technical Committee of the CPAC, We believe it is best to leave that matter to be decided administratively, up to the office of the President, where the petitioner may resort to directly or otherwise. All that We command here by mandamus is that the adjustment to be granted to petitioner be by way of exception to P.D. 454 as amended by P.D. 906, which We have found was applied when petitioner was paid an adjustment of only 2.86%. In doing so, it can be seen that We do not consider this case as having the nature of an action for specific performance. Rather, it is merely a special civil action to compel the Commissioner of Highways to obey not only a presidential directive to grant an adjustment or escalation to petitioner, which respondent admits he deserves anyway, but also to exempt petitioner from P.D. 454, as amended, since the said decree does not apply in his case. We are not commanding anyone to pay any amount —We leave this aspect of the case to the sense of justice and honesty of the administrative authorities concerned.

It may be added here that petitioner's pose that the directive of Minister Sicat of March 24, 1978 should be the one followed is not sufficiently well grounded. To start with, We doubt the Minister's authority or power to make such an order in the sense petitioner apparently has in mind. In the second place, as We have discussed above, that directive was based on what is claimed to be misapprehension of facts, and it is not for this Court to straighten out what really happened beyond what We have already done above.

The case of Mayor Yabut involves principles of both law and equity. Indeed, it is very simple, if only, it is viewed in the right perspective.

It is an undeniable fact that the Municipality of Makati, thru Mayor Yabut clothed with due authority, entered into a contract with K and D Engineering Management, Inc. and/or V. V. Dionisio General Construction. (See Annex V, Petition.) The contract was for the services of K and D Engineering Management, Inc. and/or V. V. Dionisio General Construction in preparing "(1) the schematic design plans, (2) design development phase, (3) contract document phase and (4) construction phase" (See Annex I of respondent Yabut's answer) in connection with the construction of an overpass at Buendia Avenue, crossing the South Superhighway" (Id.). It is admitted that K and D Engineering Management, Inc. and/or V. V. Dionisio General Construction performed its part of the agreement. The stipulated price was the equivalent of 4% of the Project Construction Cost, payable in parts as provided for in Article II of that contract. Only a portion of this contract price which according to Annex V of the petition amounts to P734,544.88, disregarding already, as We see it, the adjustment or escalation of the project cost being claimed by petitioner.

To be noted, of course, is that the contract aforementioned relates to an overpass along Buendia-Avenue and across the South Superhighway. Such original idea was disapproved by higher authorities, and so, in the government's contract of January 28, 1976 with petitioner, the following pertinent provision appears:

"WHEREAS, the SECOND PARTY agreed to complete the undertaking of the plans, specifications and quantity estimates for the construction of the Project under the supervision of the FIRST PARTY without any additional compensation therefor other than what may be due, if any, under the contract for professional services of K & D Engineering Management, Inc. with the Municipal Government of Makati;" (Page 15, Rec.)

Upon the foregoing factual background, respondent Yabut sets up in effect the following defenses in his comment

dated June 29, 1979:

1. This is not a proper case for mandamus;
2. Mayor Yabut is not the proper party defendant;
3. That petitioner has no right to a preliminary injunction.

The third defense needs no discussion. The plea for an injunction has not been pressed by petitioner. Moreover, it has become moot and academic, because in both of these two cases of the Commissioner of Highways and the Mayor, the Court has resolved to give due course to the petition, deemed the comments of the respondents as their answers and considered the cases submitted for decision, without having to act on the petition for preliminary injunction.

The point of whether it should be Mayor Yabut or the Municipality of Makati that should be the respondent, while adjectively significant, may be considered as a merely technicality, under the peculiar circumstances of this case. True it is that in a large sense, it is the Municipality that is the real party in interest in this suit, but both Annexes V and X of the petition, the indorsements of the Office of the President to respondent Mayor, are based on the due approval by all the corresponding municipal authorities of the very contract invoked by said respondent, Annex 1 of his answer and already referred to above. As a matter of fact, not only by the municipal authorities but by Malacañang. Thus, for emphasis, We requote Annex X just mentioned:

"1st Indorsement
Manila, March 29, 1978

"Respectfully referred to His Honor, the Municipal Mayor of Makati, Metro Manila.

In view of the within representations herein made and it appearing that the construction of the Buendia-MSDR complex has already been completed, this Office hereby approves the negotiated contract dated April 18, 1972, entered into by and between the Municipality of Makati and K and D Engineering Management Inc., and/or V. V. Dionisio General Construction for completing the undertaking of plans, specifications and quantity estimates for professional services in connection with the Buendia-MSDR complex includ-ing subsurface exploration work as an exception to Executive Order No. 298, series of 1940, as amended and Memorandum Circular No. 593, series of 1972 and authorizes the payment to the contractor the amount of P775, 26 3.94, subject to the availability of funds and the usual accounting and auditing requirements.

By authority of the President:
(Sgd.)
CESAR A. DUMLAO
Presidential Finance Adviser"

Additionally, and to explain further the point that while, on the one hand, petitioner was under pressure to hasten the start and termination of the project in question, on the other, the governmental authorities concerned both national and local seem to be dragging their feet and making it extremely difficult for petitioner to be paid for services already rendered, with the unusual particularity of having accomplished the same for use by the public about two months ahead of schedule, it may be mentioned that in his letter to respondent Mayor of July 21, 1978, Annex AA of the petition, the following relevant matters are specified:

"In support of this appeal, we attach xerox copies of the following documents:

x x x x x x x x

"3.

Contract for Professional Services between the Municipal Government of Makati and K & D Engineering Management, Inc. dated April 18, 1972;

“4.

Secretary Baltazar Aquino's letter to this Office dated March 21, 1974 giving information that Scheme No. 6 as prepared by our Office and as corrected had been approved, and instructing our Office to proceed with preparation of construction plans;

“5.

Your Honor's letter to Secretary Baltazar Aquino dated December 9, 1974 acknowledging adoption of Scheme No. 6 for the Buendia-MSDR Overpass Project;

“6.

The President's handwritten Memorandum dated December 27, 1975 to Secretary R. Aquino, Commissioner F. Sychangco, and Mayor N. Yabut issuing instructions to effect immediate start of work;

“7.

1st Indorsement of Office of the President to the Mayor of Makati dated March 29, 1978 authorizing payment to contractor the amount of P775,263.94;" (Italics ours.) (pp. 54-55, Record.)

The foregoing facts considered, mandamus as an equitable remedy is appropriate, with the qualification that respondent Mayor is not hereby being commanded to pay petitioner outright. All that We hold is that, taking all relevant extant circumstances into account, it is respondent Mayor's legal duty to see to it that payment is made to petitioner subject to the conditions attached to the authority contained in Annex X quoted above. It little matters that the overpass ultimately constructed is not across the South Superhighway, as probably originally wished by the Makati authorities, the fact is that petitioner had to draw all the plans and make the specifications for the overpass as it is now, and in the contract Annex A, it is specifically provided that the compensation for the original plans prepared by virtually the same party (for it is undeniable, and the office of the President concedes that K and D Engineering Management, Inc. are, the fiction of corporate veils set aside, one and the same), would serve already as the compensation for the preparation of the plans of the corrected project.

It might be best to close this opinion with the clarification that instead of granting the prayers for mandamus in the two instances in question above, the Court could have referred them to the trial courts for full-dress proceedings, but We have opted to act Ourselves because after all the material facts are hardly disputable, even if they have been somehow messed in regard as to whether or not Resolution 215 of the PCAC, on which the respondent's case solely rests, applied P.D. 454, as amended, a point, however, which in the comment and rejoinder of the Solicitor General has been admitted as a fact - i.e., that the said decrees were indeed made the basis of the computation that resulted in 2.86% adjustment awarded by said resolution. With that particular point clarified, We see no reason why We have to burden petitioner by asking him to begin his calvary in the lower courts and, thereby, probably wait for years before his just claim could be finally settled. The Supreme Court has plenary powers to do justice and equity as long as no positive law is violated. We can do this even to the extent of suspending in appropriate instances the force and applicability of the Rules of Court. After all, We have held that "where government contracts are completely performed by a private party, and there is nothing more to do but to effect payment, mandamus will (–) avail to command the government's proper officer to sign and issue the corresponding warrant." (Moran, Rules of Court, Vol. III, p. 184, 1970 ed., citing *Vda. de Serra vs. Salas*, L-27150, Nov. 28, 1969.) The instant pleas for mandamus differ from the decided case cited by Moran only in an insignificant degree.

IN VIEW OF ALL THE FOREGOING, the prayers for mandamus against the Commissioner (now Minister) of Highways and the Mayor of Makati are hereby granted in accordance with the tenor of the foregoing opinion. No costs.

Concepcion, Jr., Fernandez, and De Castro, JJ., concur.

Aquino, J., in the result.

Abad Santos, J., did not part.

[1]

"January 29, 1976

Honorable Baltazar Aquino
Secretary
Department of Public Highways
Manila

Re: Readjustment of Contract Cost of the Construction of Buendia-South Super Highway Overpass Based on the Increase of Fuel Cost.

Sir:

We write you in connection with the contract for the construction of the Buendia South Superhighway Over-pass which was signed only yesterday, January 28, 1976 by Engineer Virgilio V. Dionisio in behalf of his firm and Undersecretary Jaime P. Resultan for the Department of Public Highways, and approved by Secretary Baltazar Aquino.

In this connection, we noted that the proposal book-let which was incorporated in the contract by reference contained schedule of unit prices which were prepared and determined long before the present increase in fuel was enforced so much so that said unit prices were no longer applicable when the contract was signed.

"On the other hand, we signed the contract without considering any possible obstacle arising from the inter-pretation of its provisions more particularly the 'Esca-latory Clause' in our earnest desire to proceed early and finish the project in the interest of the public.

"In view of these circumstances attending the signing of the contract, we feel that there is need for us to inform you that we have accepted the construction of the Buendia South Superhighway Overpass on the condition that we shall be entitled to the corresponding adjustment in accordance with the rights granted us under Presidential Decree No. 454 as amended notwithstanding that we signed the contract after there had been an increase in the price of fuel and other construction materials.

"We are therefore requesting your conformity to the above condition by affixing your signature at the bottom hereof.

Very truly yours,
VIRGILIO V. DIONISIO GENERAL
CONSTRUCTION

By:

(Sgd.)

VIRGILIO V. DIONISIO
General Manager

CONFORME:

BALTAZAR AQUINO
Secretary, Department of Public Highways"
(Annex "B")

[2]

"February 28, 1976

Honorable Baltazar Aquino
Secretary
Department of Public Highways
Manila

Thru: Engineer Antonio Goco
Director, Special Project
DBH

Sir:

May I request information about the implementation of the approval of His Excellency President Ferdinand E. Marcos regarding the release to us of 30% of the estimated construction cost of the Buendia-South Superhighway Overpass.

May I also inquire whether the Committee has already corrected the actual unit cost appearing in our proposal unit cost submitted to you.

You will please recall both of us agreed to all items contained in our proposal except two items, namely item 106-c for excavation amounting to P128 per cubic meter which we are amenable to be reduced to P99.00 per cubic meter and item 405 for concrete at P884.50 per cubic meter which will remain as it is. The pit excavation under item 106-b which is P91.50 per cubic meter as contained in our proposal and which you have already accepted was noticed by me to have been changed to P21.50 per cubic meter.

I only noticed this discrepancy after the contract was signed by both of us and for that matter, I immediately called your attention right away since the change which you have made was not agreed upon during our discussions of item 106-c and 405.

"Lastly, I also would like to request for your immediate consideration on the adjustment of the unit cost based on the increase in price as a result of the fuel adjustment. You probably still remember what I said before we signed the contract. I quote: 'Sir, how about the increase of price due to fuel adjustment.' Your reply was that 'it will be made later.' Because of the present prevailing conditions, I am requesting that the adjustment be made now to avoid conflict later on.

"For your guidance, I am attaching herewith my letter to you, dated February 20, 1976.

Very truly yours,
VIRGILIO V. DIONISIO GENERAL
CONSTRUCTION

By:

(Sgd.)

VIRGILIO V. DIONISIO

General Manager

Encl.: As stated"

(Annex "C")

[3]

"March 4, 1976

VIRGILIO V. DIONISIO GEN. CONSTRUCTION

1358 Apolinario Street

Makati, Rizal

Gentlemen:

This is in regard to your letters dated January 29, February 14 and February 28, 1976, requesting adjustment of contract cost of the Construction of Buendia-MSDR Overpass based on the increase of fuel cost.

We recognize the fact that the government estimate and the contract cost and unit prices were based on the prevailing prices of petroleum products and construction materials prior to the last increase in prices of petroleum products. We also recognize and appreciate your gesture of trust in our fairness by signing the contract to avoid delay in the project implementation fully aware of this fact.

In view hereof, we have forwarded for appropriate action to our 'Contract Price Adjustment Committee' your request for adjustment of contract cost. Rest assured that your request will be dealt with fairness.

Very truly yours,

(Sgd.)

BALTAZAR AQUINO

Secretary

TMM/ve"

(Annex "D")

[4]

"April 12, 1978

MEMORANDUM FOR:

The Head Secretariat

CPAC, This Department

Reference is being made to your memorandum requesting for comment on the 2nd Indorsement dated March 15, 1978 of the Secretary of Economic Planning particularly with regards to the second paragraph thereof.

Relative thereto, please be informed that the total original government estimate for Buendia-Manila South Diversion Road Overpass, Sta. 0-370 to Sta. 0-385, Makati, Metro Manila, prepared on Jan. 6, 1976, was P17,741,755.80. On August 9, 1976, per request of that office, the original government estimate for said project was updated as of February 7, 1976 and the total updated cost was P20,203,340.90 or an increase of 13.874%.

CPAC TECHNICAL COMMITTEE:

(Sgd.)

(Sgd.)

AMOR C. CENIDOZA

OMAR C. COSTIBOLO

Member for Road Project

Representative of COA, Member

(Sgd.)

(Sgd.)

JACINTO L. LAWAS

DIOSDADO I. LAGMAN

Member

Representative of DPWTC, Member

(Sgd.)

NICASIO T. LEONCIO

Member for Bridge Projects

(Sgd.)

(Sgd.)

ERWIN I. PATTUGALAN

ALFREDO Z. REYES

Member for SPS & ADB Projects

Chairman

(Annex "E")

[5]

"April 12, 1978

Honorable Gerardo P. Sicat

Director General

National Economic and Development Authority

Padre Faura

Subject: Contract Price Adjustment for the Buendia-MSDR Overpass Project.

Sir:

This is a follow-up of our letter dated February 6, 1978 soliciting the ministration of that Office in effecting settle-ment of accounts due this contractor from the Department of Public Highways.

Among the contents of our letter is a request for an equitable adjustment in contract price. By application of Presi-dential Decree No. 454, the Department of Public Highways have granted this firm a price adjustment

equivalent to slightly over 3% of the contract price. We have been signifying our dis-enchantment over the inadequacy of the adjustment granted, especially so, when compared to the price adjustment of 18% granted to Hanil Development Corporation, a foreign contractor, and to the price adjustment of 15% granted to the Consortium of Cebu Contractors. It would appear that the rational behind the award of such percentage of adjustment which is directly proportional to the increase in price of fuel oil authorized by the government last January 15, 1976 is because the projects undertaken respectively by Hanil and by the Consortium of Cebu were fuel oil intensive projects.

"In this connection, we submit that having devoted 6 cranes, 4 bulldozers, 2 payloaders, 2 compressors, 10 dump trucks, and slip forming machines to the construction of the Buendia Overpass Project, our direct consumption of fuel oil was substantial. We submit, further, that the percentage increase in price of other materials used such as cement, concrete aggregates, and lumber for falsework and for formworks, which was sustained by the construction project, was higher than the percentage increase in price of gasoline that was authorized by the government last January 15, 1976, which increase in price transpired between the establishment last December, 1975 of the negotiated contractual unit prices and the effectivity of the contract for construction which was signed last January 28, 1976. We attribute the higher percentage of increase in price of the above stated materials to the mark-ups placed by manufacturers that were usually higher than the percentage of increase in price of gasoline.

"Respectfully asking for the application of a price adjustment factor that would really be equitable for the attendant circumstances, may we be favored with a reply as to the position of the National Economic and Development Authority on this matter?

Very truly yours,
VIRGILIO V. DIONISIO GENERAL
CONSTRUCTION

By:

(Sgd.)
VIRGILIO V. DIONISIO
General Manager

PET/vrd"
(Annex "F")

[6]

"May 1, 1978

Honorable Gerardo P. Sicat
Director General
National Economic and Development Authority
Padre Faura, Manila

Subject: Contract Price Adjustment for the Buendia-MSDR Overpass Project

Sir:

As supplement to our letter dated April 12, 1978 seeking the intervention of your office in obtaining an equitable adjust-ment of our contract relative to the construction of the Buendia--MSDR Overpass, permit us to point out further the following:

Our position is to claim for a 15% adjustment in the con-tract price. We believe this is fair and reasonable considering the percentage of adjustment given by the Department of Public Highways to the following

contractors:

PROJECT

ORIGINAL CONTRACT COST

ESCALATED CONTRACT COST

PERCENTAGE OF ESCALATION

1. PJHL San Isidro Samar

P 8,017,494.00

P29,702,568.40

270.5%

2. PJHL Calbayog Tinambacan

P 8,668,788.65

P16,019,289.75

84.8%

3. Agoo-Baguio

P42,000,000.00

P74,000,000.00

78.2%

4. Lamut-Banawe

P11,264,000.00

P26,174,000.00

132.4%

5. Marikina-Infanta

P44,876,000.00

P70,965,000.00

78.2%

6. Davao-Bukidnon

P11,928,000.00

P18,520,000.00

55.3%

"As we have mentioned to you in our letter of April 12, 1978, Hanil Development Corporation, a foreign contractor and the Consortium of Cebu contractors were given a contract price adjustment of 18% and 15% respectively. We do not see any justification why these aforementioned contractors were given such percentage of

escalation in the contract price of their respective projects while the percentage given to us measures only to about 2.86% considering the amount of adjustment given to us - July, 1977 P367,357.44; April, 1978 - P139,166.67 or a total of P506,524.11 (2.86% of P17,741,755.80).

We believe that the adjustment granted to us is not fair and just especially considering that our situation is far better than the other contractors who were favored by the Department of Public Highways. For in our case, we are not actually seeking a price adjustment but only a reformation of our contract so that the unit cost mentioned therein will conform to the true unit cost prevailing at the time we signed the contract. However, the Secretary of Public Highways had prevailed upon us to sign the contract by promising that the correction shall be made later on.

The day immediately following the signing of the contract, we addressed a letter to the Secretary of Public Highways requesting confirmation of his verbal promise to adjust the unit prices to the prevailing price (see Annex A). There was no action taken on our request, so we sent follow up letters dated February 14, 1976 and February 28, 1976 (see Annexes B and C) but still, there was no reply. However, the fact that the contract price adjustment has been due us prior to the start of the construction was recognized by the Secretary of Public Highways in his letter, dated March 4, 1976 (see Annex D). Portion of said letter reads 'We recognize the fact that the government estimate and the contract cost and unit prices were based on the prevailing prices of petroleum products and construction materials prior to the last increase in prices of petroleum products.

Relying on the commitment of the Secretary in his said letter of March 4, 1976, we devoted ourselves to the full scale prosecution of the project.

In spite of having finished the project, the promised adjustment has not been implemented. So on December 1, 1976, we sent the Secretary another follow up letter (see Annex E).

"Finally, after the lapse of eight months, we were granted an adjustment of P367,367.44 (see Annex F) and another adjustment of P139,166.67 (see Annex G) on April 18, 1978 or a total of P506,524.11 which is equivalent to 2.86% of the original contract price of P17,741,755.80.

We believe that the percentage of adjustment given us is not only unfair and unjust considering the percentage of adjustment given to the other contractors as illustrated above but is illegal and not in accord with Presidential Decree No. 454.

What is more, we were able to secure a xerox copy of a memorandum (see Annex H) dated April 12, 1978 signed by the members of the DPH Technical Committee of the Contract Price Adjustment Committee which stated among others that the Technical Committee has updated the original estimate for the Buendia MSDR Overpass in the amount of P17,741,755.80 to P20,203,346.90 thereby implying an increase of 13.87% of the contract price. We were really puzzled why this increase was not implemented and instead we were given only a 2.86% increase.

In the light of the foregoing, we shall therefore appreciate your office reviewing once more the decision of the Department of Public Highways on our contract price adjustment to the end that we be given a fair and just treatment like the other contractors we have mentioned earlier.

Very truly yours,

VIRGILIO V. DIONISIO GENERAL
CONSTRUCTION

By:

(Sgd.)

VIRGILIO V. DIONISIO

General Manager

Encl.: As stated.

FSD/vrd"

(Annex "G")

[7]

"April 19, 1978

Mr. V. V. Dionisio
1358 Apolinario Street
Makati, Metro Manila

Sir:

This refers to your letter dated 12 April 1978 requesting for reconsideration of the price adjustment for the construction of the Buendia-MSDR Overpass Project, which price adjustment was determined and adopted by the Contract Price Adjustment Committee (CPAC) in its Resolution No. 215 and approved by the President on 2 March 1978.

In the determination of price adjustments, the CPAC follows certain guidelines and procedures, which are applied to all projects. Basically, the procedure involves the up-dating of government estimates (G.E.), using the prevailing prices of construction materials and equipment rentals as of the cut-off date authorized for the price adjustment. The difference between the original G.E. and the revised G.E. less some factors such as the 5% escalation assumed to be absorbed by the contractor and other items not subject to price adjustments, e.g., profit, contingency, etc., is added to the original contract amount to get the updated contract price. Thus, if the original G.E. is already high, the corresponding contract price adjustments will relatively be small.

We have, however, referred your letter to the Department of Public Highways (DPH) for comments and/or appropriate action. Please communicate directly with the DPH in case they may need some clarifications/additional documents on the matter. Rest assured that we are always for equitable payment of contract price adjustment.

Very truly yours,
(Sgd.)
GERARDO P. SICAT
Secretary of Economic Planning
(Director-General)"

(Annex "H")

[8]

"May 13, 1978

Honorable Gerardo P. Sicat
Secretary of Economic Planning
(Director General)
National Economic & Development Authority
Manila

Re: Our Request for Assistance on Price Adjustment of the Buendia MSDR Overpass Project

Sir:

This is to acknowledge and thank you for your letter, dated April 19, 1978 replying to our request for assistance on price adjustment of the Buendia-MSDR Overpass Project.

We noted that your letter was in response to our letter, dated April 12, 1978 and considering that it was prepared on April 19, 1978, you did not have an opportunity to pass upon the context of our subsequent letter, dated May 1, 1978 sup-plementing our position on the matter.

As we have emphasized and pointed out in our letter of May 1, 1978, our situation is entirely different from the other contractors who have sought for price adjustment. In our case, we are not really seeking for price adjustment on account of subsequent increase in prices brought about by subsequent increase in fuel cost but we are only seeking a correction in the unit cost appearing in our contract because said unit cost did not conform to the actual price prevailing at the time we signed it. As borne out by our letter of May 1, 1978, we signed the contract for the construction of the overpass on the verbal assurance of the Secretary of Public Highways that said unit cost will be adjusted and/or corrected later on. The Secretary, himself, had recognized this flaw in our contract in his letter dated March 4, 1976 (attached as Annex D to our letter, dated May 1, 1978) by stating that 'the unit prices in our contract were based on the prevailing prices of petroleum products and construction materials prior to the last increase in prices of petroleum products.'

"Moreover, we are seeking the assistance of your office to implement the decision of the DPH Technical Committee of the Contract Price Adjustment Committee (Annex H of our letter, dated May 1, 1978) giving a 13.87% increase in our original contract price.

In view thereof, we are therefore constrained through the assistance of your office, to press for the payment at least of the balance of the amount due us for adjustment as recommended by the DPH Technical Committee in its memorandum, dated April 12, 1978 based on the attached updated construction cost as of January 28, 1976, the date the contract was signed by both parties by the DPH and V. V. Dionisio General Construction.

Contract Price as Updated

February 7, 1976 by the DPH

Technical Committee

P20,203,340.90

Less: Original Contract Price

17,741,755.80

Increase in Contract Price (13.874%)

P 2,461.585.10

Less: Adjustment already paid

July 1977 - P367,351.44

April 1978 - 139,166.67 - (2.86%)

P 506,524.11

Payment Due

P1,955,060.99

Attached herewith are:

- a) DPH Technical Committee Memorandum dated April 12, 1978.
- b) DPH Technical Committee on Contract Price Adjustment updating the Buendia - MSDR construction cost as of January 28, 1976.
- c) Letter of the Director General of NEDA dated April 19, 1978.

Very truly yours,

VIRGILIO V. DIONISIO

GENERAL CONSTRUCTION

By:

(Sgd.)

VIRGILIO V. DIONISIO

General Manager

Encl.: As stated

FSD/vrd

[9]

"May 24, 1978

Mr. Virgilio V. Dionisio

1358 Apolinario St.

Makati, Metro Manila

Sir:

In reply to your letter dated May 13, 1978, we are pleased to furnish you herewith a copy of the letter dated May 8, 1978 of the Secretary of Public Highways in connection with the contract price adjustment for the Buendia-MSDR Overpass Project.

For reasons sufficiently explained in the letter of Secretary Aquino, we concur with the position of the Contract Price Adjustment Committee (CPAC) that the contract price adjustment already granted for the project is fair and reasonable. We have however requested the CPAC through the Department of Public Highways for the

immediate settlement of your claim for the payment of the unpaid balance of the adjustment which, as indicated in your letter, amounts to P1,955,060.99.

Very truly yours,

(Sgd.)

GERARDO P. SICAT

Secretary of Economic Planning

(Director-General)

RCH/mtf"

(Annex "J")

[10] In the meanwhile, Hon. Baltazar Aquino resigned and so, Hon. Vicente Paterno, the new head of the Ministry of Public Highways was substituted in his place.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.