

PEDRO P. RIVERA, PETITIONER, VS. MUNICIPALITY OF MALOLOS, RESPONDENT.*G. R. No. L-8847. October 31, 1957*

Ponente: PADILLA, J.

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This is a petition under Rule 45 to review the decision of the Auditor General dated 14 January 1955, denying the claim of Pedro P. Rivera against the Municipality of Malolos, Bulacan, for payment of 2,700 cubic meters of crushed adobe stone (cascajo) and 1,400 cubic meters of gravel delivered in 1949 to the municipality in the total sum of P19,235, and the denial of the motion for reconsideration of the decision.

Sometime in August 1949 the municipality of Malolos, Bulacan, called for bids for the supply of road construction materials to repair the roads of the municipality.

At the public bidding held on 28 August 1949 for that purpose, the petitioner's bid was the lowest (Annex B, p. 52, record of the case). On the same day, 28 August 1949, the acting municipal treasurer informed the petitioner that the contract had been awarded to him and requested him to call at his office for the execution of the contract (Annex C, p. 53, record of the case). On 31 August 1949 the contract was signed by the municipal mayor in behalf of the municipality and the petitioner. It was stipulated that 'for and in consideration of the sum of P19,235 the petitioner was to furnish and deliver to the municipality of Malolos 2,700 cubic meters of crushed adobe stone (cascajo) and 1,400 cubic meters of gravel (Annex D, p. 54, record of the case). In compliance with the contract, the petitioner delivered crushed adobe stone and gravel to the municipality at the places designated by the municipal mayor. On 29 July 1950 the petitioner wrote to the municipal treasurer, through the provincial auditor, calling his attention to the fact that the sum of (P19,339.56 due him as payment for the value of crushed adobe stone and gravel delivered to the municipality had not yet been paid and that as the fiscal year 1949-1950 had already expired, he requested that the sum be included in the appropriations for the incoming fiscal year 1950-1951 as an outstanding obligation (Annex G, p. 73, record of the case). On 2 August 1950, the principal clerk, acting in behalf of the municipal treasurer, informed the petitioner that "The Municipal Council (had) agreed to put said amount as standing obligation of the municipality authorizing payment and authorizing the Municipal Treasurer to pay as soon as funds are available." (Annex G-1, P- 74, record of the case). On 16 October 1951 the municipal council passed Resolution No. 68 ratifying the public bidding called by the municipal treasurer for the supply of road construction materials, and the contract entered into by the municipal mayor in behalf of the municipality on 31 August 1949 (Annex H, p. 75, record of the case). On 30 October 1951 the petitioner filed a complaint against the municipality of Malolos in the Court of First Instance of Bulacan to collect the sum of P19,235 for the value of crushed adobe stone and gravel delivered by the petitioner under the contract (Annex I, p. 76, record of the case). On 8 May 1952 the petitioner amended his complaint (Annex J, p. 77, record of the case). On 8 January 1954 the Court dismissed the case without prejudice (Annex K, p. 79, record of the case). On 11 January 1954 the petitioner sought the intervention of the Presidential Complaints and Action Committee, which forwarded the petitioner's claim through proper channels to the Office of the Auditor General.

On 14 January 1955 the Deputy Auditor General denied the petitioner's claim on the ground that as there was no sum of money appropriated to meet the obligation incurred before the execution of the contract, as required by section 607 of the Revised Administrative Code, the said contract is void, as provided in section 608 of the same Code; and that even if there was such sum appropriated to meet such obligation, the alleged deliveries of crushed adobe stone and gravel could no longer be verified by the Provincial Auditor of Bulacan or his representative (p. 7, record of the case). On 1 March 1955, the petitioner requested the Deputy Auditor General to reconsider his decision (p. 40, record of the case). On 5 March 1955, before the said officer could take action on the request for reconsideration, the petitioner filed his notice of appeal with the Office of the Auditor General (p. 3, record of the case), and this petition for review in this Court. On 9 March 1955, on motion of the petitioner, this Court resolved to suspend the service of notice upon the Auditor General pursuant to section 4, Rule 45, and granted the petitioner five days from receipt of notice of the action taken by the Auditor General on his request for reconsideration, within which to file a supplement to his petition for review. On 2 June 1955 the Deputy Auditor General denied his request for reconsideration, reiterating the grounds previously relied upon in his decision on 14 January 1954. On 21 June 1955 the petitioner filed a supplement to his petition for review in this Court.

The petitioner contends that the respondent should not be allowed to invoice legal technicalities to delay or refuse payment after its municipal council has acknowledged the indebtedness, because the respondent municipality had received an annual allotment or a certain percentage of the amount collected under the provisions of Act No. 8992, known as the Motor Vehicle Law, out of which it could pay said indebtedness, and that there is no issue as to the validity of the contract entered into by and between the petitioner and the respondent, nor is there any question as to the delivery by the petitioner and receipt by the respondent of the road construction materials. Before a contract may be entered into validly by a municipality, the law requires that there should be an appropriation of municipal funds to meet the obligation validly passed by the municipal council and approved by the municipal mayor. In answer to the statement of the Solicitor General that there is no provision of law which authorizes a municipal mayor to enter into a contract with a private contractor for furnishing the municipality with public works materials, the petitioner cites sections 2165 and 2196 of the Revised Administrative Code. Section 2165 provides that "Municipalities * * * are endowed with the faculties of municipal corporations to be exercised by and through their respective municipal governments in conformity with law." "It shall be competent for them, in their proper corporate name, - - * to contract and be contracted -with, * * *." The power or authority conferred upon -municipal corporations must be exercised in conformity with law, and the law provides that such contracts must be entered into by the district engineer.[1] The petitioner contends, however, that section 1920 of the Revised Administrative Code must be read in connection with sections 1912 and 1913 of the same Code and concludes that section 1820 does not abrogate the general rule that a municipal council may designate an officer of the municipal corporation to execute such a contract in behalf of the municipality. Section 1912 refers to investigations and survey by the district engineer for a proposed construction or repair of public works and submission by him to the mayor to reports and estimates of the cost of such construction or repair with his recommendations, and to the preparation of plans and specifications for such public works and supervision of the construction or repair of the same. The provisions of sections 1912 and 1913 of the Revised Administrative Code do not refer to contracts entered into by the municipality for the supply of road construction materials.

If the law requires that before a contract involving the expenditure of P2,000 or more may be entered into or authorized, the municipal treasurer must certify to the officer entering into such contract that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof;[2] and that a purported contract entered into contrary to the requirements just stated is wholly void, the petitioner's claim that there is no longer any question as to the validity of the contract entered into by and between the petitioner and the municipal mayor of Malolos is not correct.

Likewise, if the law provides that, the provincial auditor or his representative must check up the deliveries made by a contractor pursuant to a contract lawfully and validly entered into,[3] and there was no such check up, the petitioner's claim that there is no longer an issue as to whether the road construction materials have been actually delivered by the petitioner and received by the respondent is groundless. The Auditor General is not in duty bound to pass and allow in audit the sum claimed by the petitioner if he or his authorized representative did not check up the delivery of the crushed adobe stone and gravel. To say that the purpose and aim of this checking requirement is to forestall fraud and collusion is to state what is obvious.

The petitioner enlisted the aid of the Presidential Complaints and Action Committee to request the Auditor General to pass in audit and authorize the payment of the petitioner's claim. The Auditor General had no alternative but to comply with the provisions of the law and as the contract entered into by the municipal mayor of Malolos, Bulacan, was not in accordance with law, the Auditor General was correct in denying the petitioner's claim.

Section 73, Act No. 3992, otherwise known as the Motor Vehicle Law, as amended by section 2, Republic Act No. 314, invoked by the petitioner, merely allocates 10 per cent of the money collected under its provisions to the road and bridge funds of the different municipalities in proportion to population, as shown in the latest available census, for the repair, maintenance, and construction of municipal roads. This alone is not sufficient appropriation and authority to disburse part of the 10 per cent collected under the Motor Vehicle Law for the purpose of paying the claim of the petitioner. And the section cited, as amended by section 5 of Republic Act No. 917, approved on 20 June 1953, provides:

Moneys collected under the provisions of this Act shall be deposited in a special trust account in the National Treasury to constitute the Highway Special Fund, which shall be apportioned and expended in accordance with the provisions of the Philippine Highway Act of nineteen hundred and fifty-three.

Section 608 of the Revised Administrative Code affords the petitioner a remedy.

The decision under review is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencio, and Felix, JJ., concur.

[1] Section 1920, paragraph 3, Revised Administrative Code. 2

[2] Section 607, paragraph 2, Revised Administrative Code.

[3] Section 58-A, Revised Administrative Code.

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