

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 C...

G.R. No. L-49654. February 26, 1981

Ponente: BARREDO, J.

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BARREDO, J.:

Motion for reconsideration filed by respondent Commissioner of Highways of this Court's resolution of December 17, 1980 which made definite that the amount to be paid to petitioner should be P1,955,060.99, without interest. It is the prayer of respondent in his motion for reconsideration that We deny the motion for reconsideration of petitioner dated August 24, 1980 of Our decision of July 23, 1980 in which we held that in computing the adjustment of the payment to petitioner, PD-454 cannot and should not be applied not only because of a Presidential Directive to that effect, but because legally, it is inapplicable, the adjustment requested by him being one made even before the work was began.

It should be noted at the outset that Our decision of July 23, 1980 is already final as to respondent Commissioner insofar at least as the non-application of PD 454 is concerned, with the result that the ratio of 13.874% of adjustment recommended by the CPAC Technical Committee is now binding on respondent.

What appears now to be the common thrust of the two motions for reconsideration before Us is the basis of the adjustment in question. Petitioner's theory is that such basis should be the P17,741,755.80, the price stipulated in the contract of January 28, 1976, which, however, respondent claims assumes that the contract in question is a "lump sum" one, instead of being "a unit price contract". What is striking, on the other hand, in the motion for reconsideration of respondent is the quotation from the letter of respondent himself stating that:

"Even if we do admit the legal as well as the factual basis of the Resolution, that is, the contractor should be paid based on unit prices per government estimate (g.e.) updated as of February 7, 1976, the net balance due the contractor is P518,932.08 only.

'It is informed that subject contract is a 'unit price contract' as distinguished from a 'lump sum contract' which means that payments to the contractor will be made only for the actual quantities of contract items performed (or as-built quantities) in accordance with plans and specifications. In a unit price contract, the contract amount agreed upon is merely an estimate. Actual payments may be less or more than the contract amount depending upon the actual quantities performed multiplied by the agreed unit prices.

'It is true that the estimated quantities in the contract valued at unit prices per government estimate updated as

of February 7, 1976 was P20,203,340.90. But the actual quantities of contract items performed or accomplished by the contractor as shown in the 'Final Statement of Work Accomplished' also valued at the same updated unit prices is only P19,316,124.77. Since the contractor already received P18,290,674.58 per Final Payment Voucher dated November 29, 1977 and price adjustment in the amount of P506,518.11, the net balance, therefore, due the contractor is only P518,932.08."

Indeed, the foregoing assertions are quite revealing.

First, it is now clear that there is admittedly due to the petitioner a balance of P518,932.08 on top of the P506,518.11 which was claimed was the only adjustment petitioner is entitled to per computation of Cabinet Price Adjustment Committee, and allegedly approved by the President. As will be recalled, respondent's former position was adamantly that the adjustment was definitely P506,518.11 only.

Now, it turns out after insistent protest and demand of petitioner that the actual work accomplished by petitioner, per computation and records of the MPH office itself amounted to P18,290,674.58, while the only price adjustment granted to petitioner on that basis of work actually accomplished was P506,518.11. One readily notes in these facts and figures something more than meets the eye in the way the MPH staff has been dealing with petitioner. It is true respondent asserts additionally that the amount to which petitioner is entitled, per "the Final Statement of Work Accomplished, (was) also 'valued at the same updated unit prices' is only P19,316,124.77", thereby admitting that indeed there is still a balance of P518,932.08 unpaid to petitioner, in addition to the aforementioned P506,518.11, something at least implicitly denied before, since the Ministry was insisting then that petitioner is entitled to no more than P506,518.11 already received by him as adjustment. Such assertion of respondent, however, does not persuade Us that We have approached the matter here in controversy erroneously in Our decision and earlier resolution of petitioner's motion.

It cannot be denied that when the P506,518.11 adjustment was paid to petitioner, the same corresponded almost arithmetically exactly to 2.86% of P17,741,755.80, the contract price, which means that the CPAC considered 2.86% as the proper adjustment ratio and the lump sum stipulated in the contract of January 28, 1976 as the appropriate basis, "lump sum" as it was. In other words, such adjustment did not take into account the distinction now being pointed out by respondent between "a unit price contract", on the one hand, and a "lump sum" contract on the other.[1] The only point at issue then was whether or not to apply P.D. 454 to the work here in dispute.[2] As We have previously said as the thrust of Our decision of July 23, 1980 as well as Our resolution of December 17, 1980, the crux of this controversy lies in the failure of respondent commissioner to obey the presidential directive and even the law itself, which both make P.D. 454 inapplicable here. Parenthetically, it may be mentioned at this point that in his motion for reconsideration respondent does not discuss in any way the application or non-application of P.D. 454 hereto, seemingly agreeing that it does not. And as computed before, an adjustment applying P.D. 454 would result in an adjustment of practically 2.86% on the lump sum compensation stipulated in the contract, whereas, without applying P.D. 454, the percentage would be 13.874%, which was what petitioner asked for since the start and upheld by Us in Our decision.

With these considerations in mind, it is difficult for Us to understand how it can now be contended that the actual work accomplished by petitioner was P18,290,674.58 and that said amount already included the unit price adjustment as of February 7, 1976. If that were so, then why was petitioner paid an adjustment of P506,518.11? And further, how come it is now admitted that there is in fact still due the petitioner the sum of P518,932.08 on top of the above P506,518.11? Such varying positions on the part of the MPH staff (from 0 to P506,518.11 and now to P1,205,450.19) do not speak well of how they gave attention to petitioner's request for adjustment. We perceive some seeming attempt to reduce the same, using one excuse and explanation or another, obviously not well studied.

Now, considering that the 2.86% adjustment was predicated on the lump sum contract price of P17,741,755.80, it is but fair and logical that with the non-application of P.D. 454, the corresponding point of reference, concededly, the actual work accomplished, should remain as the basis in computing the adjustment to which petitioner is entitled. The so-called "unit price" formula only now brought to the fore by respondent does not appeal to Us to be sufficiently justifiable. We have read the contract and We have been unable to see any specific stipulation to such effect, even as the contract does provide that the lump sum stipulated is "subject to change to conform with the actual quantities of work performed." Thus, with the admitted value of work accomplished or performed by petitioner of P18,290,674.58 and applying the 13.874% factor found by the CPAC Technical Committee as reasonable and justified by the circumstances,[3] it is evident that petitioner should have been given a total adjustment of P2,537,648.19. Subtracting from this the P506,518.11 he has already received, then there is due him the sum of P2,031,130.08. Of course, the Court cannot grant him this sum because it exceeds what he has demanded and prayed for which is only P1,955,060.99.

WHEREFORE, it being anyway admitted by respondent in his own letter quoted in his motion for reconsideration that there is still due petitioner the sum of P518,932.08 on top of the P506,518.11 already received by him as adjustment, which goes to show that the figures of the MPH staff in this case cannot be readily relied upon, the motion for reconsideration of the respondent is denied, whereas that of petitioner is granted in part, in the sense that instead of leaving the amount to the adjustment to be paid petitioner to be decided administratively as already intimated in Our Resolution of December 17, 1980, We are taking it upon Ourselves to fix said amount at the same P1,955,060.99, only because the P2,031,130.08, he is actually entitled to is in excess of what he has prayed for in his petition herein.

With this resolution, the Court feels that this controversy should be considered terminated. The Government is entitled as a rule to the presumption of regularity and correctness in its actuations, but when as We have seen above, some elements of inaccuracy in its stand appear not only once but on several occasions, it is but fair and just to those who contract or deal with the government that they get what is due them, and, indeed, as soon as circumstances, giving allowance to the public interest, as should always be the case, permit, as otherwise there would be reason to agree to the proposition that even the good faith of the Government should be subject to proof.

Why mandamus lies under the above circumstances has already been explained by Us in Our decision. We hold that when the only question is whether or not there is a clear legal right on the part of a petitioner to payment of a sum, that can be determined fairly and accurately without the need of a trial and, after all, the respondent admits liability, subject only to the determination of the correct amount, mandamus is a possible remedy, when taking all circumstances into account, only unjust delay, inequity and further injury to the petitioner would result.

IT IS SO ORDERED.

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

Aquino, J., concurs in the result.

Abad Santos, J., took no part.

[1] It is to be noted that the P20,203,340.90 estimate of the CPAC Technical Committee was also on unit prices.

[2] Somehow the CPAC resolution No. 215 of June 6, 1977 implied P.D. 454 was applied, even as it was alleged the resolution had the approval of the President who, as cannot be denied, had granted petitioner exemption from the application of P.D. 454.

[3]Already binding on respondent because of the finality of Our decision of July 23, 1980.

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