

## **INTEGRATED CONSTRUCTION SERVICES, INC., AND ENGINEERING CONSTRUCTION, INC., PETITIONERS, VS. THE HONORABLE LORENZO RELOVA, AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, AND...**

*G.R. No. L-41117. December 29, 1986*

Ponente: PARAS, J.

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### **PARAS, J.:**

This is a petition[1] for mandamus as a special civil action and/or, in the alternative, an appeal from orders of the Court of First Instance of Manila under Republic ACT 5440 in Civil Case No. 80390 entitled "Integrated Construction Services, Inc. and Engineering Construction, Inc., plaintiffs, versus National Waterworks & Sewerage Authority (now Metropolitan Waterworks & Sewerage System), defendant. Petitioners complied with the requisites for both remedies.

The facts are not in dispute:

Petitioners on July 17, 1970 sued the respondent Metropolitan Waterworks and Sewerage System (MWSS), formerly the National Waterworks and Sewerage Authority (NAWASA), in the Court of First Instance of Manila for breach of contract, docketed as Civil Case No. 80390 in that Court. Meanwhile, the parties submitted the case to arbitration.

The Arbitration Board, after extensive hearings, rendered its decision-award on August 11, 1972. Respondent Judge confirmed the Award on September 9, 1972 and the same has long since become final and executory.

The decision-award ordered MWSS to pay petitioners P15,518,383.61 - less P2,329,433.41, to be set aside as a trust fund to pay creditors of the joint venture in connection with the project - or a net award of P13,188,950.20 with interest thereon from the filing of the complaint until fully paid.

Subsequently, however, petitioners agreed to give MWSS some discounts in consideration of an early payment of the award. Thus, on September 21, 1972, MWSS adopted Board Resolution No. 132-72, embodying the terms and conditions of their agreement. On October 2, 1972, MWSS sent a letter-agreement to petitioners, quoting Board Resolution No. 132-72, granting MWSS some discounts from the amount payable under the decision award (consisting of certain reductions in interests, in the net principal award and in the trust fund), provided that MWSS would pay the judgment, less the said discounts, within fifteen days therefrom or up to October 17, 1972.

Upon MWSS request, the petitioners signed their "Conforme" to the said letter-agreement, and extended the period to pay the judgment less the discounts aforesaid to October 31, 1972. MWSS, however, paid only on December 22, 1972, the amount stated in the decision but less the reductions provided for in the October 2, 1972 letter-agreement.

Three years thereafter, or on June, 1975, after the last balance of the trust fund had been released and used to

satisfy creditors' claims, the petitioners filed a motion for execution in said civil case against MWSS for the balance due under the decision-award. Respondent MWSS opposed execution setting forth the defenses of payment and estoppel. (p. 174, Rollo)

On July 10, 1975, respondent judge denied the motion for execution on the ground that the parties had novated the award by their subsequent letter-agreement. Petitioners moved for reconsideration but respondent judge, likewise, denied the same in his Order dated July 24, 1975.

Hence, this Petition for Mandamus, alleging that respondent judge unlawfully refused to comply with his mandatory duty - to order the execution of the unsatisfied portion of the final and executory award.

In a Resolution dated October 17, 1975, the Supreme Court dismissed the Petition for lack of merit. (p. 107, Rollo) and denied petitioners' Motion for Reconsideration of the same. (p. 131, Rollo)

At the hearing on petitioners' Second Motion for Reconsideration, however, respondent MWSS asserted new matters, (p. 186, Rollo) arguing that: the delay in effecting payment was caused by an unforeseen circumstance-the declaration of martial law, thus, placing MWSS under the management of the Secretary of National Defense, which impelled MWSS to refer the matter of payment to the Auditor General and/or the Secretary of National Defense; and that the 15-day period was merely intended to pressure MWSS officials to process the voucher. Petitioners, however, vehemently deny these matters which are not supported by the records.

We agree with the petitioners.

While the tenor of the subsequent letter-agreement in a sense novates the judgment award there being a shortening of the period within which to pay (*Kabangkalan Sugar Co. vs. Pacheco*, 55 Phil. 555), the suspensive and conditional nature of the said agreement (making the novation conditional) is expressly acknowledged and stipulated in the 14th whereas clause of MWSS' Resolution No. 132-72, (p. 23, Rollo) which states:

"WHEREAS, all the foregoing benefits and advantages secured by the MWSS out of said conferences were accepted by the Joint Venture provided that the remaining net amount payable to the Joint Venture will be paid by the MWSS within fifteen (15) days after the official release of this resolution and a written CONFORME to be signed by the Joint Venture;" (Emphasis supplied.)

MWSS' failure to pay within the stipulated period removed the very cause and reason for the agreement, rendering same ineffective. Petitioners, therefore, were remitted to their original rights under the judgment award.

The placing of MWSS under the control and management of the Secretary of National Defense thru Letter of Instruction No. 2, dated September 22, 1972 was not an unforeseen supervening factor because when MWSS forwarded the letter-agreement to the petitioners on October 2, 1972, the MWSS was already aware of LOI No. 2.

MWSS' contention that the stipulated period was intended to pressure MWSS officials to process the voucher is untenable. As aforesaid, it is apparent from the terms of the agreement that the 15-day period was intended to be a suspensive condition. MWSS, admittedly, was aware of this, as shown by the internal memorandum of a responsible MWSS official, stating that necessary steps should be taken to effect payment within 15 days, "for otherwise, MWSS would forego the advantages of the discount". (p. 426, Rollo)

As to whether or not petitioners are now in estoppel, to question the subsequent agreement, suffice it to state that petitioners never acknowledged full payment; on the contrary, petitioners refused MWSS' request for a conforme or quit-claim. (p. 125, Rollo)

Accordingly, the award is still subject to execution by mere motion, which may be availed of as a matter of right any time within (5) years from entry of final judgment in accordance with Section 5, Rule 39 of the Rules of

Court.

WHEREFORE, We hereby set aside the assailed orders, and issue the writ of Mandamus directing the present Regional Trial Judge of the Branch that handled this case originally to grant the writ of execution for the balance due under the award.

**SO ORDERED.**

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., Cruz, and Feliciano, JJ., concur.

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[1] The parties submitted their memoranda on January 4, 1977.

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