

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. December 19, 1980

Ponente: BARREDO, J.

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BARREDO, J.:

Motion for reconsideration dated August 24, 1980 of petitioner of the decision of this Court in this case of July 23, 1980. Despite copy thereof having been duly served upon respondents, no comment on nor opposition thereto has been filed by any of them with this Court up to this day.

Incidentally, the case against respondent Mayor Nemesio Yabut has already become final and executory, no motion for reconsideration having been filed by either party in relation thereto. Anent to it, however, We might clarify that while We have not ordered immediate payment by respondent Mayor to petitioner, it is understood that said respondent is under immediate obligation to comply with the conditions specified in the Presidential directive of March 29, 1978 quoted in Our decision, namely, to promptly seek funds for the purpose and secure accounting and auditing approval thereof like a good judgment debtor, considering the comparatively better resources of the Municipality of Makati than other local governments.

The main gripe of petitioner against Our decision insofar as the respondent Minister of Public Highways and his successors are concerned,[1] is that We have failed to hold categorically that he is entitled to the amount of adjustment prepared, computed and recommended by the CPAC Technical Committee dated April 12, 1978, and instead left the reconciliation of the discrepancy between the 13.874% adjustment arrived at by the said CPAC Technical Committee, on the one hand, and the 2.86% adjustment approved by the CPAC itself and subsequently by the President, on the other, to the respondents and his subordinates and the CPAC, as well as the NEDA. Petitioner maintains that the record is replete with incontrovertible showing that it should be the former percentage of adjustment that should prevail and made the subject of Our mandamus.

After a careful review of the record, We are sufficiently persuaded that petitioner is right, for the following reasons:

1. There can be no dispute that the CPAC Technical Committee's report and recommendation adhered to the directive of the President as regards the non-application to petitioner of PD 454, as amended, the commitment of Commissioner Aquino, We have found to be binding upon the Government and, as stated by the CPAC itself, in its Resolution 215, "the criteria used by the Technical Committee (was found by the Adjustment Committee - CPAC -) to be adequate and consistent with the existing conditions at the project area and with the guidelines adopted by the Contract Price Adjustment Committee."
2. From the very start, petitioner has been making it more than plain that more accurately, he has not been

demanding an adjustment under P.D. 454, even tho he has referred to it, evidently, in a hurried effort to obtain relief from his predicament. For it is indeed clear that P. D. 454 and its amendment do not cover or contemplate petitioner's situation. Said presidential decree refers to adjustment of the contract price of constructions due to unexpected rise in the price of gasoline occurring after the job has already been started. That is not the case of petitioner. In his case, what happened was that the original government estimate of P17,741,755.80 was based on prices prevailing on January 6, 1976. It occurred, however, that an unforeseen increase in the price of gasoline and the consequent increase of the other items involved in the construction took effect on January 15, 1976. Petitioner who was being urged, because of Presidential directives enjoining immediate start of the work in question, to proceed and accept by negotiation the construction. Petitioner demurred, citing the adverse effects of the January 15th rise of prices. But Commis-sioner Aquino could not wait; he urged petitioner to go ahead, assuring him that the G.E. (government estimate) would be correspondingly adjusted. In the spirit of cooperation with the administration of President Marcos, petitioner acceded to Commissioner Aquino's request and assurance, which he naturally assumed was made in good faith, although not without making of record in writing the circumstances and the reasons that impelled him to start the job by writing Commissioner Aquino immediately about it. At first Commissioner Aquino was non-committal but after several tries on the part of petitioner, Commissioner Aquino finally reiterated his commit-ment in writing on March 4, 1978 as follows:

"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 imple-mentation 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.'" (Page 10, of Decision)

3. What transpired subsequently is not very easy to comprehend. Upon instructions of Commissioner Aquino, on April 12, 1978, the CPAC Technical Committee submitted a report signed by all its seven members. The report reads thus:

"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 Over pass, 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 govern-ment 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. CEÑIDOZA

OMAR C. COSTIBOLO

Member for Road Project

Representative of COA, Member

(Sgd.)

(Sgd.)

JACINTO L. LAWAS

DIOSDADO I. LAGMAN

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") (Page 12 of Decision)

The above adjustment figures represent a percentage of 13.874.

When this report was submitted to the CPAC itself, of which Commissioner Aquino was either co-chairman or member, surprisingly said committee, came out with a substantially different conclusion, notwithstanding its recognition that the criteria used by the Technical Committee was adequate and consistent with existing conditions and with the guidelines adopted by the CPAC. The CPAC reduced the adjustment only to 2.86%.

We have endeavored to look deeply into this apparent inconsistency and We have discovered that, as contended by petitioner, the Technical Committee and the CPAC proceeded from different premises. While the figures in either case do not appear to be disputed, it has turned out that whereas its Technical Committee computed the GE as of February 7, 1976, almost at the commencement of the work, the CPAC, applying PD No. 454, as amended, and based its figures on the work that was unaccomplished after six months from its commencement, which were barely two months, petitioner having commendably exerted unusual efforts to finish the job long before the contracted deadline, thus leaving very little to be done during the last two months of the eight months within which the construction was completed and delivered. No less than in the rejoinder of respondent are these circumstances revealed. Pertinently, said rejoinder states:

"As of February 7, 1976, the original government estimate of P17,741,755.80 was updated and the total updated cost was P20,203,340.90 as found by the DPH Technical Committee.

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 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 contract-ors 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 direct-ive 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 of Record)

And so, the crux of the problem now is whether the computation of the CPAC which applied PD No. 454, as amended, to petitioner's requested adjustment, is correct and legally tenable. In Our decision now under reconsider-ation We have ruled on this point negatively, and We have not found, for none has been given, any reason why We should now rule differently. We reiterate that it would not be fair to apply PD No. 454, as amended, to petitioner, not only because the President had so ordered, but also because the rise in the prices of the material items of the construction in question took place before he started working and he accordingly opportunely asked for the corresponding updating of the GE. He was promised, it would be done provided, he started work immediately. Indeed, We say it is unfair to apply PD No. 454, as amended, to petitioner because as of the date he commenced, the prices had already gone up. It is so attested by the Technical Committee which updated the GE as of February 7, 1976, barely seven days after the work was started.

As We have already noted in Our decision of July 23, 1980, it is quite remarkable and does not speak well of those concerned, that whereas other contractors who seemed to have delayed their work in order to get higher adjustments after six months were given up to 270% adjustment, on the other hand, petitioner who labored cooperatively with the administra-tion to finish his job long before the contract time is ironically being made to suffer by computing his adjustment only on the work left undone after six months. If only to erase the manifest inequity that appears in the premises, and more, for the legal reasons given above, We are convinced that to make petitioner seek from respondents the reconciliation of the CPAC 2.86% ad-justment with its Technical Committee 13.874% adjustment is to unnecessarily make things difficult for petitioner. He would have to begin a calvary all

over again, as We already intimated in Our decision.

AND SO, setting aside what appears to be strict technicality anyway, We hereby GRANT petitioner's motion for reconsideration and the mandamus enjoined in Our decision is hereby amended so as to order as We hereby order the res-pondent to pay petitioner the updated GE estimate as of February 7, 1976, such that he is entitled to and should be paid the additional sum of P1,955,060.99, without interest.

IT IS SO ORDERED.

Barredo (Chairman), Aquino, Concepcion Jr., Fernandez, and De Castro, JJ., concur.
Abad Santos, J., took no part.

[1] Here We take judicial notice of the fact that Commissioner Paterno has been replaced by Minister Jesus Hipolito who is deemed joined hereto and bound hereby.

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