

RUFINO O. ESLAO, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.*G.R. No. 110634. October 06, 1995*

Ponente: KAPUNAN, J.

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The architectural and construction firm, C.T. Serna and Associates, was responsible for the design and planning of Phase 1 of the Engineering Building of the Pangasinan State University (PSU) in 1983. Following approval of its request for a supplemental budget for the construction and extension of the building in December of 1986, authorities of the University, represented by its President, petitioner Rufino O. Eslao, entered into a contract for the preparation of perspective and detailed plans, specifications, bills of materials and estimates, programs of work and structural designs for the extension.[1] C.T. Serna Consultants was particularly chosen because of its role in the design of the existing building.

Cost estimates for the extension were pegged at P1 Million (P1,000,000.00), equal to the agency estimate made by the Regional Office of the Ministry of Public Works and Highways (now DPWH). During the process of negotiating the design and specification contract, C.T. Serna Consultants offered its services for a fee equivalent to 6% of the amount actually released for the project. However, in a letter addressed to the firm dated December 18, 1986, petitioner made a counteroffer equivalent to 3% of the released amount, an offer which the firm accepted.[2]

The completed plans and specifications were turned over to the university on December of 1986. Said plans were subsequently approved by the Department of Public Works and Highways on March 11, 1987.[3] On the basis of the approval of the plans and specifications, the Pangasinan State University prepared Voucher No. 8703204, in the amount of Thirty Thousand Pesos (P30,000.00), for the payment of the professional services rendered by the firm.[4] C.T. Serna Consultants received Twenty Seven Thousand Pesos (P27,000.00) of the amount released after deduction of the 10% Withholding Tax.[5]

At the first quarter of 1987, the Pangasinan State University, with an approved budget of Two Million Pesos (P2,000,000.00), began construction of Phase Three of its Engineering Building. As stipulated in the contract for services entered into between the university and C.T. Serna Consultants in 1986, the latter also prepared the plans and specifications for the building, for which it was paid the amount of Sixty Thousand Pesos (P60,000.00), less 10% withholding tax.[6]

On March 16, 1988, almost to the year after the last payment was made by the university to C.T. Serna Consultants, a letter from the Commission on Audit, signed by Auditor-in-Charge Cornelia M. Espanol, was received by petitioner, informing him 1) that the COA disallowed the professional (architectural) fees paid to C.T. Serna Consultants; 2) that petitioner, C.T. Serna Consultants and Atty. Gil A. Madrid, Administrative Officer of the university were jointly and severally liable for the amount paid to the architectural and construction firm; and that, 3) petitioner, C.T. Serna Consultants and Atty. Madrid were required to "adopt the necessary measures to

enforce settlement thereof." [7]

Responding to the Commission on Audit's letter of March 16, 1988, petitioner on March 17, 1988 requested that said disallowance be lifted. He stressed that: 1) the architectural fee paid to C.T. Serna Consultants was not disadvantageous to the government; 2) there was lack of material time for the Ministry of Public Works and Highways to prepare the engineering papers because the project had to be obligated not later than January 30, 1987; 3) the contract was entered into after a discussion with Mr. Santos Guiang, the resident auditor who gave his full consent thereto; and 4) the said architectural fee was for preparation of the plan of Engineering Building No. 2 in Urdaneta which was part of the 1986 capital outlay but which was subject to very late release by the Ministry of Budget. [8]

However, on March 25, 1988, the Commission on Audit, through Auditor-in-Charge Bonifacio B. Ico, wrote another letter-notice increasing the amount disallowed to Ninety Thousand Pesos (P90,000.00) by including the first payment of Thirty Thousand Pesos (P30,000.00) covered by Voucher No. 8703204. The letter likewise included PSU's Chief Accountant, Ms. Ma Heda H. Co and its Cashier Ms. Marlene S. Bernabe as among those jointly and severally liable for the disbursements. Said letter was, however, returned to Auditor-in-Charge Ico on April 5, 1988 by petitioner with the information that the disallowance indicated in the March 25, 1988 letter was the subject of a request by the petitioner to the National Office of the Commission on Audit after the same was disallowed by the Regional Director, COA Region I. [9] In returning the letter-notice, petitioner requested that the disallowance be temporarily shelved pending resolution of the issue by COA's national office. [10] Petitioner, likewise requested for a ruling on the liability of Auditor Santos Guiang for his earlier concurrence to petitioner's acceptance of the contract. [11] The last request, seeking a ruling on the liability of Auditor Guiang, was the subject of a separate letter dated April 5, 1988 to the Regional Director of the Commission on Audit. [12]

On February 9, 1989, the Commission on Audit issued Decision No. 765 [13] clearing Auditor Santos Guiang of any liability, stating that his concurrence was made three years after the contract for the construction of the proposed Engineering Building No. 2 was perfected. Following our decision in G.R. No. 89745 dated April 18, 1991, [14] petitioner wrote a letter-request dated June 5, 1991 seeking a lifting of the disallowance of the disbursements covered by Vouchers Nos. 8703204 and 8706430 in view of this Court's April 8, 1991 decision overturning COA's disallowance of the construction costs of the building. In a second indorsement addressed to the Chairman of the Commission on Audit dated July 19, 1991, Auditor Ico recommended denial of petitioner's letter-request. On April 15, 1993, the Commission on Audit denied petitioner's request, hence, the instant petition.

In lieu of Comment because he took the side of petitioner, the Solicitor General submitted a Manifestation and Motion urging that the vouchers subject of the instant controversy be allowed in audit. Consequently, the public respondent filed its own Comment wherein it asserts its constitutionally mandated duty to promulgate and implement "accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties," [15] and urges the disallowance of the vouchers in question, for being made in violation of COA Circular No. 82--191, dated July 5, 1992, equivalent to — in the public respondent's words — "a palpable display of defiance against the mandate of the Constitution to which the public respondent is duty bound to uphold and protect." [16]

The pertinent portion of said circular states:

This commission believes that the present practice of stating the fees for architectural, engineering design, and similar professional services in terms of percent of the Project Cost is inconsistent with our national goal of economy in fiscal operations because the percentage fee motivates the architect/designer to design a project so as

to maximize its cost since his fee will be computed as a direct proportion to the resulting project cost.

The settlement of percentage fees has often been the subject of disagreement between the contractor and the government especially in contracts where the definition of the project cost is so broad to allow inclusion into the computation the costs of equipment as package type air-conditioning, hospital, kitchen and laundry equipment and other similar equipment which were not covered by the architect's/designer's services.

In order to prevent and avoid these effects which are detrimental to the government's interests contracts for architectural, engineering design, and similar professional services should invariably specify the fees in monetary or peso amount. The fee may be computed as a percent of the estimated project cost in accordance with the schedule of rates in the Architects' National Code or similar accepted schedule of rates for professional services, but the amount should then be stipulated in pesos in the contract.[17]

The public respondent's contentions are untenable. While finding that respondent Commission's rulings on the disbursements made by petitioner on the main construction contract were "not without cogent basis," in *Eslao vs Commission on Audit*, G.R. No. 8975[18] we nonetheless upheld petitioner's disbursements therein valid for several reasons. First, petitioner secured the construction contracts in question in good faith and for the benefit of the university.[19] Second, the construction of the buildings in question ultimately redounded to the benefit of the government. Finally, the project, at that time was already 95% complete, and we allowed recovery by the contractor on the basis of quantum meruit.[20] Although the contracts subject of the instant controversy involve a different aspect of the project, we find no reason to deviate from our earlier holding. The fact that the design contract and the construction contract involve different sets of accounting and auditing rules cannot be utilized as reason to altogether ignore the overwhelming evidence of the good faith exhibited by petitioner not only in respect to the construction of the latter phases of the engineering building but also in procuring the best terms possible for the building's design. It was logical, given the time constraints, that the original design contractor be utilized for the plans for the extensions of the engineering building. Nothing in the design and planning contracts eventually drawn by the university and C.T. Serna could be characterized as unnecessary, extravagant, irregular, unconscionable or excessive. The amounts covered by Vouchers No. 8703204 and 8706340 were, at P30,000.00 and P60,000.00 respectively, well within — if not way below — the amounts of P80,000.000 and P120,000.00, if the usual trade practice of charging an average of 8% of the value of the construction or amount released were followed. Furthermore, a reasonable construction of Circular No. 82-191, which belongs to the class of audit rules and regulations designed to implement COA's constitutional mandate to stem "unnecessary, excessive, extravagant or unconscionable expenditures"[21] would reveal nothing which would absolutely disallow the pegging of the amount involved in such contracts at a reasonable value consistent with established trade practices because even the said circular allows computation of the fee on the basis of "estimated project cost" provided that the said computation could be expressed in a sum certain and were based on values consistent with the values proposed by the National Code for Architect's Services. As stated earlier, the payments made to C.T. Serna Consultants — based on 3% of the amount released — were way below the 8% floor recommended by the National Code of Architect's Services, and was a compromise amount, agreed upon by the parties, which was below the 6% (of amount released) originally proposed by the design firm. From all indications, the government clearly emerged the winner in the contract in question.

We are aware of the fact that the practice of pegging the contract value on the basis of the amount released could lead to a pernicious practice of bloating the value of the amount released by including other costs, such as cost of equipment in the latter. However, there is no allegation, much less proof, here that the project costs were "so broad as to include into the computation" other costs not covered by the designer's/architect's services. In fact, while the exact peso value was not expressed or specified in the contract, it was definitely capable of being

expressed or stipulated in a sum certain. Even within the parameters of Circular 82-191, which do not absolutely proscribe the method of computation utilized by petitioner and C.T. Serna Consultants in the assailed design contract, the expenditures were hardly irregular, unnecessary, extravagant nor unconscionable. Moreover, the contract in question was first impliedly authorized by the Ministry of Public Works when it approved, on March 11, 1987,[22] the details and plans of the extensions prepared by C.T. Serna Associates and by later expressly, by COA's auditor Mr. Santos Guiang.

In fine we agree with the Solicitor General's submission that the vouchers in question should be allowed in audit. As he states:

At this point in time, phases 2 and 3 of Engineering Building 2 of the Pangasinan State University has long been completed. It is now being used by the university for classrooms and teaching purposes. The university, the studentry and the government has benefitted and is benefitting from its construction.

In allowing the payment of the construction cost of the Engineering Building No. 2 (which was earlier disallowed by COA), this Court found and held that petitioner acted in good faith in entering into contracts with the construction companies for the good and interest of the university and the government.

Considering the foregoing, there is no justifiable reason why the professional fees of C.T. Serna Consultants should not be compensated for its architectural services consisting in the drawing of the perspective plan, design, estimates and specifications for phases 2 and 3 of said Engineering Building No. 2. After all, as constructed, Engineering Building No. 2 conformed to such architectural design, plan etc. prepared by C.T. Serna Consultants.

Following the ruling in the earlier case, since the services of C.T. Serna Consultants redounded to the benefit of the general public, it should be compensated because to deny the payment to the contractor x x x would be to allow the government to unjustly enrich itself at the expense of another. Justice and equity demand compensation."[23]

In the instant case, the Court finds that the expenditures in question were plainly for the benefit of the university, the government and the public. Nothing in the circumstances of the case at bench even remotely suggests that the disbursements were irregular or excessive, unnecessary or unconscionable. As equity and justice follow law, allowing the public respondent's rigid and unbending interpretation of its circular would amount to sanctioning unjust enrichment on the part of the government at the expense of its well-meaning public servants and in defiance of the purpose and intent of the fundamental law.

Finally, there is no question that the disallowances involving the construction cost and the cost of design are intimately related, although both involve different contracts subject to different audit rules. Believing in good faith that the disallowances were connected to each other, petitioner requested that the disallowance on the design contract be temporarily shelved until questions involving the construction cost were resolved with finality.[24] This request was never answered by respondent. Given this Court's eventual decision in G.R. No. 89745, petitioner had every reason to either assume that his request was not denied or was still pending. The fact of the matter is that prior to respondent's last denial of petitioner's request to lift the disallowance of the design cost of April 15, 1993, respondent had made no definitive ruling on the matter, except to exonerate (its) Auditor Santos Guiang in COA Decision No. 765 dated February 9, 1989.[25] Said decision never resolved the question of the design cost's disallowance, hence, petitioner's action never prescribed.

WHEREFORE, PREMISES CONSIDERED, the instant petition is GRANTED. The decision of respondent Commission on Audit dated April 15, 1993 is REVERSED and SET ASIDE, and said Commission is directed to pass in audit the amounts covered by Vouchers Nos. 8703204 and 8706430.

SO ORDERED.

Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Puno, Vitug, Mendoza, Francisco, and Hermosisima, Jr., JJ., concur.

Narvasa, C.J., and Melo, J., on leave.

[1] Rollo, p. 14., See, Contract, Rollo, p. 39.

[2] Rollo, p. 37, Annex "B."

[3] Eslao v Commission on Audit, G.R. No. 89745, April 8, 1991; 195 SCRA 730, 732 (1995).

[4] Rollo, p. 41.

[5] Id.

[6] Rollo, p. 42, Voucher No. 8706430.

[7] Rollo, p. 43.

[8] Rollo, pp. 44-45.

[9] Rollo, p. 47.

[10] Id.

[11] Id.

[12] Rollo, p. 48, Annex "K."

[13] Rollo, p. 49, Annex "L."

[14] The COA's disallowance of the construction cost of the building was the subject of a parallel controversy in Eslao v. COA, G.R. No. 89745, promulgated by this Court on April 18, 1991, 195 SCRA 730 (1991). There we held that the "petitioner entered into the two contracts in good faith and for the good of the university", and on the basis of quantum meruit, allowed recovery by the contractor of the costs of construction. Id at 739.

[15] CONST., art. IX-D, sec. 2(1). cited in public respondent's Memorandum, Rollo, p. 106.

[16] Rollo, p. 108.

[17] Rollo, pp. 119-120, cited in public respondent's Memorandum, Id, at 108.

[18] Eslao, supra, note 3 at 737.

[19] Id.

[20] Id., at 738.

[21] Supra, note 14.

[22] Supra, note 3 at 732.

[23] Rollo, pp. 95-96.

[24] Rollo, p. 48, Annex "K."

[25] See, Annex "L," supra, note 13.

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