

EPG CONSTRUCTION CO., CIPER ELECTRICAL & ENGINEERING, SEPTA CONSTRUCTION CO., PHIL. PLUMBING CO., HOME CONSTRUCTION INC., WORLD BUILDERS CO., GLASS WORLD INC., PERFORMANCE BUILD...*G.R. No. 131544. March 16, 2001*

Ponente: BUENA, J.

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Sought to be reversed in the instant Petition for Certiorari is the Decision, dated 07 November 1997, of the Regional Trial Court of Quezon City, Branch 226, in Civil Case No. Q-96-29243,[1] dismissing the Petition for Mandamus filed by herein petitioners against herein respondent Hon. Gregorio Vigilar, in his capacity as Secretary of the Department of Public Works and Highways (DPWH).

The tapestry of facts unfurls.

In 1983, the Ministry of Human Settlement, through the BLISS Development Corporation, initiated a housing project on a government property along the east bank of the Manggahan Floodway in Pasig City. For this purpose, the Ministry of Human Settlement entered into a Memorandum of Agreement (MOA) with the Ministry of Public Works and Highways,[2] where the latter undertook to develop the housing site and construct thereon 145 housing units.

By virtue of the MOA, the Ministry of Public Works and Highways forged individual contracts with herein petitioners EPG Construction Co., Ciper Electrical and Engineering, Septa Construction Co., Phil. Plumbing Co., Home Construction Inc., World Builders Inc., Glass World Inc., Performance Builders Development Co. and De Leon Araneta Construction Co., for the construction of the housing units. Under the contracts, the scope of construction and funding therefor covered only around "2/3 of each housing unit." [3] After complying with the terms of said contracts, and by reason of the verbal request and assurance of then DPWH Undersecretary Aber Canlas that additional funds would be available and forthcoming, petitioners agreed to undertake and perform "additional constructions" [4] for the completion of the housing units, despite the absence of appropriations and written contracts to cover subsequent expenses for the "additional constructions."

Petitioners then received payment for the construction work duly covered by the individual written contracts, thereby leaving an unpaid balance of P5,918,315.63,[5] which amount represents the expenses for the "additional constructions" for the completion of the existing housing units. On 14 November 1988, petitioners sent a demand letter to the DPWH Secretary and submitted that their claim for payment was favorably recommended by DPWH Assistant Secretary for Legal Services Dominador Madamba, who recognized the existence of implied contracts covering the additional constructions. Notwithstanding, DPWH Assistant Secretary Madamba opined that payment of petitioners' money claims should be based on quantum meruit and should be forwarded to the Commission on Audit (COA) for its due consideration and approval. The money claims were then referred to COA which returned the same to the DPWH Auditor for auditorial action. On the basis of the Inspection Report

of the Auditor's Technical Staff, the DPWH Auditor interposed no objection to the payment of the money claims subject to whatever action the COA may adopt.

In a Second Indorsement dated 27 July 1992, the COA returned the documents to the DPWH, stating that funds should first be made available before COA could pass upon and act on the money claims. In a Memorandum dated 30 July 1992, then DPWH Secretary Jose De Jesus requested the Secretary of Budget and Management to release public funds for the payment of petitioners' money claims, stating that the "amount is urgently needed in order to settle once and for all this (sic) outstanding obligations of the government." In a Letter of the Undersecretary of Budget and Management dated 20 December 1994, the amount of P5,819,316.00 was then released for the payment of petitioners' money claims, under Advise of Allotment No. A4-1303-04-41-303.

In an Indorsement dated 27 December 1995, the COA referred anew the money claims to the DPWH pursuant to COA Circular 95-006, thus:

"Respectfully returned thru the Auditor to the Honorable Secretary, Department of Public Works and Highways, Port Area, Manila, the above-captioned subject (Re: Claim of Ten (10) contractors for payment of Work accomplishments on the construction of the COGEO II Housing Project, Pasig, Metro Manila) and reiterating the policy of this office as embodied in COA Circular No. 95-006 dated May 18, 1995 totally lifting its pre-audit activities on all financial transactions of the agencies of the government involving implementation/prosecution of projects and/or payment of claims without exception so as to vest on agency heads the prerogative to exercise fiscal responsibility thereon.

"The audit of the transaction shall be done after payment."

In a letter dated 26 August 1996, respondent DPWH Secretary Gregorio Vigilar denied the subject money claims prompting herein petitioners to file before the Regional Trial Court of Quezon City, Branch 226, a Petition for Mandamus praying that herein respondent be ordered:

"1) To pay petitioners the total of P5,819,316.00;

"2) To pay petitioners moral and exemplary damages in the amount to be fixed by the Court and sum of P500,000.00 as attorney's fees.

On 18 February 1997, the lower court conducted a pre-trial conference where the parties appeared and filed their respective pre-trial briefs. Further, respondent submitted a Memorandum to which petitioners filed a Rejoinder.

On 07 November 1997, the lower court denied the Petition for Mandamus, in a Decision which disposed as follows:

"WHEREFORE, in view of all the foregoing, the instant Petition for Mandamus is dismissed. The order of September 24, 1997, submitting the Manifestation and Motion for Resolution, is hereby withdrawn.

"SO ORDERED."

Hence, this petition where the core issue for resolution focuses on the right of petitioners-contractors to compensation for a public works housing project.

In the case before us, respondent, citing among others Sections 46[6] and 47,[7] Chapter 7, Sub-Title B, Title I, Book V of the Administrative Code of 1987 (E.O. 292), posits that the "existence of appropriations and availability of funds as certified to and verified by the proper accounting officials are conditions sine qua non for the execution of government contracts." [8] Respondent harps on the fact that "the additional work was pursued through the verbal request of then DPWH Undersecretary Aber P. Canlas, despite the absence of the corresponding supplemental contracts and appropriate funding." [9] According to respondent, "sans showing of

certificate of availability of funds, the implied contracts are considered fatally defective and considered inexistent and void ab initio." Respondent concludes that "inasmuch as the additional work done was pursued in violation of the mandatory provisions of the laws concerning contracts involving expenditure of public funds and in excess of the public official's contracting authority, the same is not binding on the government and impose no liability therefor." [10]

Although this Court agrees with respondent's postulation that the "implied contracts", which covered the additional constructions, are void, in view of violation of applicable laws, auditing rules and lack of legal requirements, [11] we nonetheless find the instant petition laden with merit and uphold, in the interest of substantial justice, petitioners-contractors' right to be compensated for the "additional constructions" on the public works housing project, applying the principle of quantum meruit.

Interestingly, this case is not of first impression. In *Eslao vs. Commission on Audit*, [12] this Court likewise allowed recovery by the contractor on the basis of quantum meruit, following our pronouncement in *Royal Trust Construction vs. Commission on Audit*, [13] thus:

"In *Royal Trust Construction vs. COA*, a case involving the widening and deepening of the Betis River in Pampanga at the urgent request of the local officials and with the knowledge and consent of the Ministry of Public Works, even without a written contract and the covering appropriation, the project was undertaken to prevent the overflowing of the neighboring areas and to irrigate the adjacent farmlands. The contractor sought compensation for the completed portion in the sum of over P1 million. While the payment was favorably recommended by the Ministry of Public Works, it was denied by the respondent COA on the ground of violation of mandatory legal provisions as the existence of corresponding appropriations covering the contract cost. Under COA Res. No. 36-58 dated November 15, 1986, its existing policy is to allow recovery from covering contracts on the basis of quantum meruit if there is delay in the accomplishment of the required certificate of availability of funds to support a contract." (Emphasis ours)

In the *Royal Construction* case, this Court, applying the principle of quantum meruit in allowing recovery by the contractor, elucidated:

"The work done by it (the contractor) was impliedly authorized and later expressly acknowledged by the Ministry of Public Works, which has twice recommended favorable action on the petitioner's request for payment. Despite the admitted absence of a specific covering appropriation as required under COA Resolution No. 36-58, the petitioner may nevertheless be compensated for the services rendered by it, concededly for the public benefit, from the general fund allotted by law to the Betis River project. Substantial compliance with the said resolution, in view of the circumstances of this case, should suffice. The Court also feels that the remedy suggested by the respondent, to wit, the filing of a complaint in court for recovery of the compensation claimed, would entail additional expense, inconvenience and delay which in fairness should be imposed on the petitioner.

"Accordingly, in the interest of substantial justice and equity, the respondent Commission on Audit is DIRECTED to determine on a quantum meruit basis the total compensation due to the petitioner for the services rendered by it in the channel improvement of the Betis River in Pampanga and to allow the payment thereof immediately upon completion of the said determination." (Emphasis ours)

Similarly, this Court applied the doctrine of quantum meruit in *Melchor vs. Commission on Audit* [14] and explained that where payment is based on quantum meruit, the amount of recovery would only be the reasonable value of the thing or services rendered regardless of any agreement as to value. [15]

Notably, the peculiar circumstances present in the instant case buttress petitioners' claim for compensation for the additional constructions, despite the illegality and void nature of the "implied contracts" forged between the

DPWH and petitioners-contractors. On this matter, it bears stressing that the illegality of the subject contracts proceeds from an express declaration or prohibition by law,[16] and not from any intrinsic illegality. Stated differently, the subject contracts are not illegal per se.

Of equal significance are circumstances attendant and peculiar in this case which necessitate allowance of petitioners' money claims--on the basis of quantum meruit-- for work accomplished on the government housing project.

To begin with, petitioners-contractors assented and agreed to undertake additional constructions for the completion of the housing units, believing in good faith and in the interest of the government and, in effect, the public in general, that appropriations to cover the additional constructions and completion of the public works housing project would be available and forthcoming. On this particular score, the records reveal that the verbal request and assurance of then DPWH Undersecretary Canlas led petitioners-contractors to undertake the completion of the government housing project, despite the absence of covering appropriations, written contracts, and certification of availability of funds, as mandated by law and pertinent auditing rules and issuances. To put it differently, the "implied contracts," declared void in this case, covered only the completion and final phase of construction of the housing units, which structures, concededly, were already existing, albeit not yet finished in their entirety at the time the "implied contracts" were entered into between the government and the contractors.

Further, petitioners-contractors sent to the DPWH Secretary a demand letter pressing for their money claims, on the strength of a favorable recommendation from the DPWH Assistant Secretary for Legal Affairs to the effect that implied contracts existed and that the money claims had ample basis applying the principle of quantum meruit. Moreover, as can be gleaned from the records, even the DPWH Auditor interposed no objection to the payment of the money claims, subject to whatever action the COA may adopt.

Beyond this, the sum of P5,819,316.00 representing the amount of petitioners' money claims, had already been released by the Department of Budget and Management (DBM), under Advise of Allotment No. A4-1303-04-41-303. Equally important is the glaring fact that the construction of the housing units had already been completed by petitioners-contractors and the subject housing units had been, since their completion, under the control and disposition of the government pursuant to its public works housing project.

To our mind, it would be the apex of injustice and highly inequitable for us to defeat petitioners-contractors' right to be duly compensated for actual work performed and services rendered, where both the government and the public have, for years, received and accepted benefits from said housing project and reaped the fruits of petitioners-contractors' honest toil and labor.

Incidentally, respondent likewise argues that the State may not be sued in the instant case, invoking the constitutional doctrine of Non-suability of the State,[17] otherwise known as the Royal Prerogative of Dishonesty.

Respondent's argument is misplaced inasmuch as the Principle of State Immunity finds no application in the case before us.

Under these circumstances, respondent may not validly invoke the Royal Prerogative of Dishonesty and conveniently hide under the State's cloak of invincibility against suit, considering that this principle yields to certain settled exceptions. True enough, the rule, in any case, is not absolute for it does not say that the state may not be sued under any circumstance.[18]

Thus, in *Amigable vs. Cuenca*,[19] this Court, in effect, shred the protective shroud which shields the State from suit, reiterating our decree in the landmark case of *Ministerio vs. CFI of Cebu*[20] that "the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice on a citizen." It is

just as important, if not more so, that there be fidelity to legal norms on the part of officialdom if the rule of law were to be maintained.[21]

Although the *Amigable* and *Ministerio* cases generously tackled the issue of the State's immunity from suit vis a vis the payment of just compensation for expropriated property, this Court nonetheless finds the doctrine enunciated in the aforementioned cases applicable to the instant controversy, considering that the ends of justice would be subverted if we were to uphold, in this particular instance, the State's immunity from suit.

To be sure, this Court - as the staunch guardian of the citizens' rights and welfare - cannot sanction an injustice so patent on its face, and allow itself to be an instrument in the perpetration thereof. Justice and equity sternly demand that the State's cloak of invincibility against suit be shred in this particular instance, and that petitioners-contractors be duly compensated - on the basis of quantum meruit - for construction done on the public works housing project.

IN VIEW WHEREOF, the instant petition is GRANTED. The assailed decision of the Regional Trial Court dated 07 November 1997 is REVERSED AND SET ASIDE.

ACCORDINGLY, the Commission on Audit is hereby directed to determine and ascertain with dispatch, on a quantum meruit basis, the total compensation due to petitioners-contractors for the additional constructions on the housing project and to allow payment thereof upon the completion of said determination. No costs.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 14-20.

[2] Now Department of Public Works and Highways.

[3] Rollo, p. 104.

[4] Rollo, p. 188.

[5] Rollo, p. 14.

[6] "Section 46. Appropriation Before Entering into Contract.

(1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; X X X"

[7] "Section 47. Certificate Showing Appropriation to Meet Contract.

Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the

government agency concerned under the contract is fully extinguished."

[8] Rollo p. 94.

[9] Ibid.

[10] Ibid.

[11] Section 48, Chapter 7, Sub-Title B, Title I, Book V, Executive Order 292, otherwise known as The Administrative Code of 1987, provides: "Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties."

[12] 195 SCRA 730 [1991].

[13] G.R. No. 84202, November 23, 1988 (Resolution of the Supreme Court En Banc).

[14] 200 SCRA 705 [1991].

[15] Tantuico, State Audit Code of the Philippines Annotated, 471 [1982], cited in Melchor vs. COA, Ibid.

[16] Section 48, Chapter 7, Sub-Title B, Title 1, Book V, E.O. 292; Article 1409, par. (7), Civil Code.

[17] Section 3, Article XVI, 1987 Constitution provides: "The State may not be sued without its consent."; Section 10, Book I, Chapter 3, E.O. 292, provides: "Non-suability of the State.- No suit shall lie against the state except with its consent as provided by law."

[18] Department of Agriculture vs. NLRC, 227 SCRA 693 [1993].

[19] 43 SCRA 360; See also De los Santos vs. Intermediate Appellate Court, 223 SCRA 11 [1993].

[20] 40 SCRA 464 [1971].

[21] Ibid.

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