

CITY OF QUEZON, PETITIONER, VS. LEXBER INCORPORATED, RESPONDENT.

G.R. No. 141616. March 15, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Before us is a petition for review on certiorari assailing the October 18, 1999 decision of the Court of Appeals in CA-G.R. CV No. 59541[1] which affirmed in toto the January 26, 1998 decision of the Regional Trial Court of Quezon City in Civil Case No. Q-94-19405.[2]

Briefly stated, the facts are as follows -

On August 27, 1990, a Tri-Partite Memorandum of Agreement[3] was drawn between petitioner City of Quezon, represented by its then Mayor Brigido R. Simon, Jr., respondent Lexber, Inc. and the then Municipality of Antipolo, whereby a 26,010 square meter parcel of land located in Antipolo[4] was to be used as a garbage dumping site by petitioner and other Metro Manila cities or municipalities authorized by the latter, for a 5-year period commencing in January 1991 to December 1995. Part of the agreement was that the landowner, represented by respondent Lexber, shall be hired as the exclusive supplier of manpower, heavy equipment and engineering services for the dumpsite and shall also have the right of first refusal for contracting such services.

This led to the drawing of the first negotiated contract[5] between petitioner, represented by Mayor Simon, and respondent Lexber on September 10, 1990, whereby the latter was engaged to construct the necessary infrastructure at the dumpsite, designated as the Quezon City Sanitary Landfill, for the contract price of P4,381,069.00. Construction of said infrastructure was completed by respondent Lexber on November 25, 1991, and the contract price agreed upon was accordingly paid to it by petitioner.

Meanwhile, on November 8, 1990, a second negotiated contract[6] was entered into by respondent Lexber with petitioner, again represented by Mayor Simon, whereby it was agreed that respondent Lexber shall provide maintenance services in the form of manpower, equipment and engineering operations for the dumpsite for the contract price of P1,536,796.00 monthly. It was further agreed that petitioner shall pay respondent Lexber a reduced fee of fifty percent (50%) of the monthly contract price, or P768,493.00, in the event petitioner fails to dump the agreed volume of 54,000 cubic meters of garbage for any given month. On December 11, 1991, respondent was notified by petitioner, through the City Engineer, Alfredo Macapugay, Project Manager, Rene Lazaro and Mayor Simon to commence maintenance and dumping operations at the site starting on December 15, 1991.[7]

Respondent Lexber alleged that petitioner immediately commenced dumping garbage on the landfill site continuously from December 1991 until May 1992. Thereafter, petitioner ceased to dump garbage on the said site for reasons not made known to respondent Lexber. Consequently, even while the dumpsite remained unused, respondent Lexber claimed it was entitled to payment for its services as stipulated in the second negotiated contract.

On December 12, 1992, respondent's counsel sent a demand letter to petitioner demanding the payment of at least 50% of its service fee under the said contract, in the total amount of P9,989,174.00. In view of the idle state of the dumpsite for more than a year, respondent also sought a clarification from petitioner regarding its intention on the dumpsite project, considering the waste of equipment and manpower in the meantime, as well as its loss of opportunity for the property.

Petitioner, this time acting through Mayor Ismael A. Mathay, Jr. who succeeded Mayor Simon in the interim, denied any liability under the contract on the ground that the same was invalid and unenforceable. According to Mayor Mathay, the subject contract was signed only by Mayor Simon and had neither the approval nor ratification of the City Council, and it lacked the required budget appropriation.

Thus, a complaint for Breach of Contract, Specific Performance or Rescission of Contract and Damages was filed by respondent Lexber against petitioner on February 21, 1994 before the Regional Trial Court of Quezon City. Respondent Lexber averred that because petitioner stopped dumping garbage on the dumpsite after May 1992, Lexber's equipment and personnel were idle to its damage and prejudice. Respondent prayed that petitioner be ordered to comply with its obligations under the subject contract or, in the alternative, that the said contract be rescinded and petitioner be ordered to pay damages.

On January 26, 1998, after trial on the merits, the lower court rendered judgment in favor of respondent, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant:

- Ordering the defendant to pay the plaintiff the amount of SEVEN HUNDRED SIXTY EIGHT THOUSAND FOUR HUNDRED NINETY THREE PESOS (P768,493.00) per month starting December 15, 1991 until December 31, 1995 with legal interest starting December 16, 1992, the date defendant received plaintiff's extra-judicial demand, until defendant finally pays the entire amount;
- Ordering defendant to pay costs of suit.

The claims for attorney's fees and other damages are hereby denied for lack of merit.

SO ORDERED.[8]

On appeal to the Court of Appeals, the said Judgment was affirmed in toto. With the denial of its Motion for Reconsideration on January 26, 2000, petitioner now comes to this Court with the instant petition arguing that the Court of Appeals gravely erred:

- (a) When it refused to hold that the second Negotiated Contract of November 8, 1990 is null and void ab initio, notwithstanding that the execution thereof was in violation of Secs. 85, 86 and 87 of the Auditing Code of the Philippines (PD 1445) and LOI 968.
- (b) When it refused to categorically hold that the said Negotiated Contract of November 8, 1990 required the prior approval of the City Council, notwithstanding the fact that the said contract would require the expenditure of public funds in the amount of P18,817,920.00 for one-year dumping operation, or the total amount of P94,089,600.00 for five years, and that it is the City Council that is vested by the Local Government Code (BP Blg. 337) with the power to appropriate city funds to cover expenses of the City Government.
- (c) When it held that Petitioner started to dump garbage at the dumpsite and paid for such service, despite the fact that Respondent's evidence proved otherwise; furthermore, the Court of Appeals failed to cite any specific evidence to support said conclusions of fact.

(d) When it held that the said Negotiated Contract of November 8, 1990 was ratified by the Petitioner by the aforesaid initial dumping of garbage and payment of services, overlooking the elementary doctrine that a void contract cannot be ratified.

(e) When it wrongly applied an Executive Order and administrative resolution as the applicable law to govern the aforesaid contract, notwithstanding that the Auditing Code of the Philippines (PD 1445) and the Local Government Code (BP 337) then had not been repealed by any legislative enactment, nor could the said executive issuances repeal them.

(f) When it held that the equities of the case should lean in favor of the respondent and thus failed to apply the doctrine that Government is not estopped to question the illegal acts of its officials.

(g) When it wrongly applied the Imus case, not the Osmeña case, to the present case.[9]

Petitioner's remonstrations can be reduced to two (2) essential arguments:

First.

That the second negotiated contract is null and void ab initio because its execution was done in violation of existing laws, more particularly Sections 85, 86 and 87 of Presidential Decree No. 1445 (otherwise known as the Auditing Code of the Philippines) and Section 177 (b) of Batas Pambansa Blg. 337 (also known as the Local Government Code of 1983); and

Second.

That the facts and evidence do not support the Court of Appeals' conclusion that, notwithstanding the lack of appropriation, subsequent acts of the petitioner constituted a ratification of the subject negotiated contract.

The issue of whether or not the subject negotiated contract is null and void ab initio will be discussed first.

Petitioner insists that the subject contract failed to comply with the mandatory requirements of Presidential Decree No. 1445, otherwise known as the Auditing Code of the Philippines.

Section 85 thereof provides:

Section 85. 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 unexpected balance of which, free of other obligations, is sufficient to cover the proposed expenditure; (2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriation account. (Underscoring ours)

Section 86 of PD 1445 also provides as follows:

Section 86. Certificate showing appropriation to meet contract. - Except in a 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 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 or 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 fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certification 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. (Underscoring ours)

Petitioner stresses that failure to comply with the requirements underlined in Sections 85 and 86 of PD 1445 rendered the subject contract void, invoking Section 87 of PD 1445 which provides:

Section 87. Void contract and liability of officer. - Any contract entered into contrary to the requirements of the two 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.

Is a contract entered into by the city mayor involving the expenditure of public funds by the local government without prior appropriation by the city council valid and binding? Petitioner insists that the answer is in the negative, arguing that there is no escaping the stringent and mandatory requirement of a prior appropriation, as well as a certification that funds are available therefor.

If we are to limit our disquisition to the cited provisions of Presidential Decree No. 1445, or the Auditing Code of the Philippines, in conjunction with Section 177 (b) of Batas Pambansa Blg. 337, or the Local Government Code of 1983, which empowered the Sangguniang Panlungsod to "appropriate funds for expenses of the city government, and fix the salaries of its officers and employees according to law," there would be no debate that prior appropriation by the city council and a certification that funds are available therefor is indeed mandatorily required.

There is no denying that Sections 85 and 86 of P.D. 1445 (Auditing Code of the Philippines) provide that contracts involving expenditure of public funds:

- 1) can be entered into only when there is an appropriation therefor; and
- 2) must be certified by the proper accounting official/agency that funds have been duly appropriated for the purpose, which certification shall be attached to and become an integral part of the proposed contract.

However, the very same Presidential Decree No. 1445, which is the cornerstone of petitioner's arguments, does not provide that the absence of an appropriation law ipso facto makes a contract entered into by a local government unit null and void. Section 84 of the statute specifically provides:

Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority. (Underscoring ours)

Consequently, public funds may be disbursed not only pursuant to an appropriation law, but also in pursuance of other specific statutory authority, i.e., Section 84 of PD 1445. Thus, when a contract is entered into by a city mayor pursuant to specific statutory authority, the law, i.e., PD 1445 allows the disbursement of funds from any public treasury or depository therefor. It can thus be plainly seen that the law invoked by petitioner Quezon City itself provides that an appropriation law is not the only authority upon which public funds shall be disbursed.

Furthermore, then Mayor Brigido Simon, Jr. did not enter into the subject contract without legal authority. The Local Government Code of 1983, or B.P. Blg. 337, which was then in force, specifically and exclusively empowered the city mayor to "represent the city in its business transactions, and sign all warrants drawn on the city treasury and all bonds, contracts and obligations of the city."^[10] Such power granted to the city mayor by B.P. Blg. 337 was not qualified nor restricted by any prior action or authority of the city council. We note that while the subsequent Local Government Code of 1991,^[11] which took effect after the execution of the subject contracts, provides that the mayor's representation must be "upon authority of the sangguniang panlungsod or pursuant to law or ordinance,"^[12] there was no such qualification under the old code.

We must differentiate the provisions of the old Local Government Code of 1983, B.P. Blg. 337, which was then in force, from that of the Local Government Code of 1991, R.A. No. 7160, which now requires that the mayor's

representation of the city in its business transactions must be "upon authority of the sangguniang panlungsod or pursuant to law or ordinance" (Section 455 [vi]). No such prior authority was required under B.P. Blg. 337. This restriction, therefore, cannot be imposed on the city mayor then since the two contracts were entered into before R.A. No. 7160 was even enacted.

Under B.P. Blg. 337, while the city mayor has no power to appropriate funds to support the contracts, neither does said law prohibit him from entering into contracts unless and until funds are appropriated therefor. In fact, it is his bounden duty to so represent the city in all its business transactions. On the other hand, the city council must provide for the "depositing, leaving or throwing of garbage"[13] and to appropriate funds for such expenses.[14] (Section 177 [b]). It cannot refuse to so provide and appropriate public funds for such services which are very vital to the maintenance of cleanliness of the city and the good health of its inhabitants.

By entering into the two contracts, Mayor Simon did not usurp the city council's power to provide for the proper disposal of garbage and to appropriate funds therefor. The execution of contracts to address such a need is his statutory duty, just as it is the city council's duty to provide for said services. There is no provision in B.P. Blg. 337, however, that prohibits the city mayor from entering into contracts for the public welfare, unless and until there is prior authority from the city council. This requirement was imposed much later by R.A. No. 7160, long after the contracts had already been executed and implemented.

Even the very Charter of Quezon City,[15] more particularly Section 9(f), Section 12(a) and Section 12(m) thereof, simply provide that the mayor shall exercise general powers and duties, such as signing "all warrants drawn on the city treasurer and all bonds, contracts, and obligations of the city,"[16] even as it grants the City Council the power, by ordinance or resolution, "to make all appropriations for the expenses of the government of the city,"[17] as well as "to prohibit the throwing or depositing of offal, garbage, refuse, or other offensive matter in the same, and to provide for its collection and disposition x x x."[18]

While the powers and duties of the Mayor and the City Council are clearly delineated, there is nothing in the cited provisions, nor even in the statute itself, that requires "prior authorization by the city council by proper enactment of an ordinance" before the City Mayor can enter into contracts.

Private respondent Lexber asserts that the subject contract was entered into by Mayor Simon in behalf of the Quezon City government pursuant to specific statutory authority, more particularly the provisions of Executive Order No. 392. In accordance with Article XVIII, Section 8 of the 1987 Constitution, then President Corazon C. Aquino issued E.O. No. 392 constituting the Metropolitan Manila Authority (or MMA) to be composed of the heads of the four (4) cities and thirteen (13) municipalities comprising the Metropolitan Manila area. The said Executive Order empowered the MMA to "have jurisdiction over the delivery of basic urban services requiring coordination" in the Metropolitan area, including "sanitation and waste management." [19]

To fulfill this mandate, the MMA, through Resolution No. 17, Series of 1990, resolved that pursuant to Section 2 of E.O. No. 392, the:

x x x LGUs remitting their contributions to the MMA within the prescribed period shall be entitled to a financial assistance in an amount equivalent to 20% of their remittances provided that the amount is used exclusively to augment the effective delivery of basic urban services requiring coordination.

The Metropolitan Manila Council (or MMC) also issued Resolution No. 15, Series of 1991, authorizing the Chairman of the MMC to enter into a memorandum of agreement or (MOA) with any local chief executive in Metropolitan Manila for the purpose of managing garbage collection and disposal, among other basic urban services. Taking their cue from Executive Order No. 392 and the pertinent resolutions of the MMA and MMC, the then Mayors of Quezon City and the Municipality of Antipolo entered into a tripartite MOA with respondent

Lexber, towards the establishment of the proposed Quezon City Landfill Disposal System.

It is true that the first negotiated contract between Mayor Simon, Jr. and respondent Lexber, which provided for the necessary infrastructure of the dumpsite, was executed without prior authority or appropriation by the city council. Nevertheless, recognizing the necessity, if not the urgency, of the project, petitioner honored the said contract and paid respondent Lexber the contract price of P4,381,069.00.[20]

Respondent Lexber avers that immediately following the completion of the project in December 1991, petitioner in fact availed of the facilities by delivering and dumping garbage at the site in accordance with the stipulations in the second negotiated contract. And yet, after having spent millions of public funds to build the necessary infrastructure, as well as for site development of the sanitary landfill, petitioner, under the newly-installed administration of Mayor Ismael Mathay, Jr., refused to honor the second negotiated contract by: (1) discontinuing the city's use of the sanitary landfill; (2) refusing to pay respondent Lexber for services already rendered from December of 1991 to May of 1992; and (3) denying any liability under the second negotiated contract, on the grounds that the same was without prior authority of the city council, and that it was neither approved nor ratified by the said body. Moreover, Mayor Mathay, Jr. refused to pay its obligation to respondent Lexber since no provision therefor was made in the 1992/1993 annual city budget.

The trial court ruled that while there may not have been prior authority or appropriation to enter into and implement the second negotiated contract, the project denominated as "Quezon City Landfill Disposal System" was duly supported by a Certificate of Availability of Funds dated April 4, 1991 signed by the Quezon City Auditor, Reynaldo P. Ventura, and Treasurer, Montano L. Diaz, stating as follows:

Pursuant to the provisions of Section 86 of P.D. No. 1445, LOI 968 and Section 46 of P.D. No. 177, I hereby certify that funds have been duly appropriated and allotted under Advice of Allotment No. 1 and 2 dated March 31, 1991 and in the total amount of P2,620,169.00; P11,783,399.00 covering the contract entered into with Lexber, Inc. with business address at 65 Panay Avenue, Quezon City said amount is available for expenditure on account thereof.[21]

The existence of said document led the trial court to conclude thus:

However, a close examination of the Certificate of Availability of Funds dated December 3, 1990 shows that the appropriated amounts of P1,700,000.00, 2,641,922.00, and P40,000.00 totaled P4,381,922.00 and not P4,341,922.00, which amount is, in fact, P853.00 more than the contract price of Negotiated Contract dated September 10, 1990. This only shows that as of April 4, 1991, there was sufficient appropriation to cover at least for a period of three (3) months, in order to comply with the provisions of Section 86 of PD 1445. Moreover, any payment made will comply with the provision of Section 84 of PD 1445 which states that: "Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority."

In any case, the defendant city can easily make available the necessary funds at the beginning of the year in the general appropriation to cover the probable expenses which it would have to incur, considering that pursuant to Resolution No. 72, Series of 1990 of the Metropolitan Manila Authority, the Local Government Units are entitled to a financial assistance in an amount equivalent to 20% of their remittances provided that the amount is used exclusively to augment the effective delivery of basic services requiring coordination. In fact, the amount of FIVE MILLION PESOS (P5,000,000.00) has already been set aside in order to be available to augment garbage collection and disposal in Quezon City.

It must be noted that the Negotiated Contract dated November 8, 1990 is not ipso facto absolutely null and void. The subject thereof is perfectly within the authority of the city government. It is pursuant to the Tripartite Agreement entered into between the plaintiff, the defendant, and the Municipality of Antipolo. The plaintiff

was given the exclusive right to exercise acts stated in the two negotiated contracts, which are entered into to further carry out and implement the provisions of the Tripartite Agreement.[22]

The Court of Appeals affirmed the trial court's findings that the second negotiated contract was executed by virtue of a specific statutory authority, or pursuant to law, holding that:

Executive Order No. 392 (constituting the Metropolitan Manila Authority, providing for its powers and functions and for other purposes) and pertinent Resolution No. 72, Series of 1990 of MMA, and Resolution No. 15, Series of 1991 of MMC, find application and therefore should govern the subject transactions.

Worthy to stress at this point is the fact that pursuant to Sec. 1, E.O. 392, the then Metropolitan Manila Authority was tasked, among others, with the delivery of basic services in the Metropolitan Area, whose services include garbage collection and disposal. To carry out this mandate and effectively deliver other basic urban services requiring coordination of local government units, the Metropolitan Manila Authority through its Resolution No. 72, Series of 1990, granted financial assistance to all local government units (LGUs) comprising Metropolitan Manila in an amount equivalent to 20% of their remittances as provided under E.O. 392. Likewise, the Metropolitan Manila Council, in its Resolution No. 15, Series of 1991, resolved to authorize the Chairman of the MMC to enter into memorandum of Agreement (MOA) with the Local Chief Executives in Metro Manila for the purpose of, among other things, the management of garbage collection and its disposal.

The foregoing authorities therefore fully clothed Mayor Brigido Simon, Jr. with the authority to enter and sign the subject contract for and in behalf of the city government even without express authority from the City Council.[23]

While it is true that the MMA has no legislative power, E.O. No. 392 specifically empowered the MMA to "have jurisdiction over the delivery of basic urban services requiring coordination," such as "sanitation and waste management." [24] Said E.O. did not repeal pertinent provisions of B.P. 337, but specifically exempts the MMA from the application of E.O. 392 [25] (Section 11 of E.O. 392). There is no conflict as well with the provisions of P.D. No. 1445 because Sec. 84 thereof also recognizes appropriation by "other statutory authority."

E.O. 392 and MMA Resolutions Nos. 72 and 15 allowed for direct coordination between the MMA and the covered local government units to expedite the effective delivery of basic services requiring coordination, such as collection and disposal of garbage. To this end, the MMA Resolutions (series of 1990) granted financial assistance to all covered local government units in an amount equivalent to 20% of their remittances to fund the delivery of said services, pursuant to the provisions of Sec. 7 of E.O. No. 392:

"x x x city and municipal treasurers of the local government units comprising Metropolitan Manila shall continue to collect all revenues and receipts accruing to the Metropolitan Manila Commission and remit the same to the Authority; Provided that such income collections as well as the share of the authority from the regular sources of revenue in the General Fund of the city or municipality as local counterpart for the integrated basic services and developmental projects shall be treated as a trust fund in their account. Provided further that the remittance thereof shall be effected within the first thirty (30) days following the end of each month. x x x"

There was, thus, no justifiable reason for petitioner not to allocate or appropriate funds at the start of each fiscal year considering that a trust fund had been established to pay for "the effective delivery of basic urban services requiring coordination," foremost of which is the collection and disposal of garbage.

LOI No. 968, signed by then President Marcos on December 17, 1979, also provides in part that "all contracts for capital projects and for supply of commodities and services, including equipment, maintenance contracts, and other agreements requiring payment which are chargeable to agency current operating on capital expenditure funds, shall be signed by agency heads or other duly authorized official only when there are available funds. The

chief accountant of the contracting agency shall sign such contracts as witness and contracts without such witness shall be considered as null and void."

However, this requirement does not apply to contracts executed by local chief executives since the said LOI No. 968 was directed only to "Ministries and Heads/Chief Accountants of Ministry, Bureau, Office, Agency of the National Government, including State Universities and Colleges, and the Chairman, Commission on Audit." Quezon City, or any urbanized city for that matter, cannot be considered a ministry, bureau, office or agency of the national government; neither is the city mayor a minister or head of a ministry, bureau, office or agency of the national government. Hence, the mayor of Quezon City is not covered by LOI No. 968. The prevailing law in this particular instance is the Local Government Code of 1983 or B.P. Blg. 337.

Therefore, we find no cogent reason to disturb the conclusions of the trial court as affirmed by the Court of Appeals in this regard. It is clear that the second negotiated contract was entered into by Mayor Brigido Simon, Jr. pursuant to law or specific statutory authority as required by P.D. No. 1445.

There is also no merit in petitioner's claim that there was no appropriation therefor, for it is evident that even as early as April 4, 1991, funds which were certified to as available had been allocated for use in the first few months operation of the sanitary landfill. The problem arose only because the new administration unjustifiably refused to abide by the stipulations in the second negotiated contract. Hence, petitioner's arguments on this issue fail to convince this Court that the second negotiated contract was null and void ab initio for lack of prior appropriation or authority on the part of Mayor Brigido Simon, Jr.

It is of no moment that the certificate referred to by the trial court did not state "that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof." [26] The Certificate of Availability of Funds, [27] though dated December 3, 1990, merely showed that funds for the Landfill Disposal System was available. Even if the surplus amount was just sufficient to cover at least three (3) months of operations as of April 4, 1991, said monthly payments were not due yet as the infrastructure was still being completed. The project was completed in December of 1991 and dumping was to commence only thereafter. Thus, the funds to cover the 1992 fiscal year could have been made available and appropriated therefor at the beginning of said year. That the Quezon City government later refused to appropriate and approve payments to respondent Lexber under the contract despite its use of the facilities for several months in 1992, is not respondent's fault, and being the aggrieved party, it cannot be made to suffer the damage wrought by the petitioner's failure or refusal to abide by the contract.

On the issue of subsequent ratification by petitioner, the Court of Appeals held:

Granting but without conceding that Mayor Brigido Simon, Jr. needs to secure prior authorization from the City Council for the enforceability of the contracts entered into in the name of the City government, which he failed to do according to the appellant, We believe that such will not affect the enforceability of the contract because of the subsequent ratification made by the City government. Thus, when appellant City government, after the construction by the appellee of the dumpsite structure in accordance with the contract plans and specifications, started to dump garbage collected in the City and consequently paid the appellee for the services rendered, such acts produce and constitute a ratification and approval of the negotiated contract and necessarily should imply its waiver of the right to assail the contract's enforceability. [28]

We are not dissuaded by petitioner's arguments that there can be no ratification due to the absence of an explicit or tacit approval of the second negotiated contract. At the outset, the issue raised by petitioner that the subject contract is null and void ab initio, and therefore not capable of ratification, has been laid to rest by the inevitable conclusion that the said contract is valid and binding. Consequently, ratification of the subject contract is not necessary.

Be that as it may, it cannot be denied that there was constructive ratification on the part of petitioner. The records show that upon completion of the infrastructure and other facilities, petitioner, albeit still under the administration of Mayor Brigido Simon, Jr., started to dump garbage in the premises. In fact, on December 11, 1991, a Notice to Commence Work,[29] implementing the contract for the maintenance of the sanitary landfill starting December 15, 1991 to December 31, 1995, was issued by said Mayor, as recommended by Project Manager Rene R. Lazaro and City Engineer Alfredo Macapugay.

The records also reveal that petitioner issued Disbursement Vouchers[30] of various amounts covering the period between March 1, 1992 to April 30, 1992 for the services rendered by the Mud Regal Group, Incorporated to haul garbage to the sanitary landfill. The said disbursement vouchers were passed in audit and duly approved and paid by petitioner. These are facts and circumstances on record which led the trial court, the appellate court, and this Court to affirm the conclusion that petitioner had actually ratified the subject contract.[31]

Also part of the evidence on record are receipts of various amounts paid by respondent Lexber to Mud Regal Group, Inc. for the supply of earth moving equipment used by Lexber to maintain the sanitary landfill covering the period from December 1991 to August 1992.[32] There is also a collection letter from Mud Regal Group, Inc. addressed to respondent Lexber for unpaid bills covering the period from September to December 1992.[33] While corresponding vouchers were prepared by petitioner to pay respondent Lexber for work accomplished by the latter in the maintenance of the sanitary landfill for the period spanning December 1991 to June 1992,[34] these were never processed and approved for payment since action thereon was overtaken by the change in leadership of the city government. By then, the new dispensation had already discontinued using the sanitary landfill for reasons it did not make known to respondent Lexber.

It is evident that petitioner dealt unfairly with respondent Lexber. By the mere pretext that the subject contract was not approved nor ratified by the city council, petitioner refused to perform its obligations under the subject contract. Verily, the same was entered into pursuant to law or specific statutory authority, funds therefor were initially available and allocated, and petitioner used the sanitary landfill for several months. The present leadership cannot unilaterally decide to disregard the subject contract to the detriment of respondent Lexber.

The mere fact that petitioner later refused to continue dumping garbage on the sanitary landfill does not necessarily prove that it did not benefit at the expense of respondent Lexber. Whether or not garbage was actually dumped is of no moment, for respondent Lexber's undertaking was to make available to petitioner the landfill site and to provide the manpower and machinery to maintain the facility. Petitioner, by refusing to abide by its obligations as stipulated in the subject negotiated contract, should be held liable to respondent Lexber in accordance with the terms of the subject contract.

Petitioner's refusal to abide by its commitments gave rise to an untenable situation wherein petitioner effectively denied the existence and validity of the subject contract even while respondent Lexber was still bound by it. This situation is inconsistent with the principle that obligations arising from contracts have the force of law between the contracting parties and each party is bound to fulfill what has been expressly stipulated therein.[35] Only respondent Lexber was bound by the contract while petitioner acted as if it were free therefrom.[36] The Court of Appeals held that:

Moreover, the contention of appellant, if sustained, will undeniably result in grave injustice and inequity to appellee Lexber, Inc. The records will reveal that appellee never solicited upon the City government to utilize its properties for a landfill site, as appellee originally conceived of devoting its property to a more viable undertaking, bamboo plantation in partnership with foreign firm. On the other hand, it was the City government, then beset with serious garbage problem that enticed and convinced Lexber, Inc. to offer its properties as a landfill site, with the assurance of the opportunities contained in the tri-partite agreement. When

appellee acceded to their request, three contracts unilaterally prepared by the City government was presented to him, the terms and conditions of which were all established and prescribed by appellant, and appellee's mere participation in the contract's perfection was simply the affixing of his signature therein.

Clearly, the equities of the case are with appellee Lexber, Inc. Even fair dealing alone would have required the appellant to abide by its representations, which it did in the inception, but was later dishonored by the new administration of Mayor Mathay, Jr. Appellee faithfully performed its undertakings set forth in the contract, upon the appellant's assurance that sufficient funds shall come from the city's statutory contribution to the MMA. Had it not (sic) for the said assurance, Lexber, Inc. for sure, would not have ventured into such costly business undertaking. No one in his right frame of mind would have entered into such kind of contract and invest his fortune unless assured of the availability of funds to compensate its financial investment.

As correctly pointed out by the court a quo, appellant having taken advantage of and benefited from the appellee through the assailed negotiated contract shall not be permitted to attack it on the ground that the contract did not bear the necessary approval.[37]

Finally, we come to the issue raised by petitioner that the Court of Appeals gravely erred in holding that the Imus case, not the Osmeña case, is applicable to the instant controversy. We note that the Court of Appeals did not discuss either case but merely adopted the exhaustive discussion of the trial court on the matter. Before the court a quo, herein respondent Lexber relied on the ruling of this Court in the case of *Imus Electric Company v. Municipality of Imus*,[38] wherein this Court ruled:

The defendants contend that the contract in question is null and void on the ground that the former municipal council of Imus approved it without having the necessary funds to pay for the value of the service to be rendered by the plaintiff for a period of ten (10) years, which amounted to P24,300, and without the provincial treasurer's previous certificate to the effect that said funds have been appropriated and were available, in violation of the provisions of sections 606, 607 and 608 of the Regional Administrative Code of 1917. The above-cited legal provisions read as follows:

SEC. 606. Appropriation antecedent to making of contract. - No contract involving the expenditure of public funds shall be made until there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure. This provision shall not, however, be construed to prevent the purchasing and carrying of supplies in stock, under the regulations of the Bureau of Audits, provided that when issued such supplies shall be charged to the proper appropriation account.

SEC. 607. Certificate showing appropriation to meet contract. - Except in the case of a contract for personal service or for supplies to be carried in stock, no contract involving an expenditure by the Insular Government of three thousand pesos or more shall be entered into or authorized until the Insular Auditor shall have certified to the officer entering into such obligation that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. When application is made to the Insular Auditor for the certificate herein required, a copy of the proposed contract or agreement shall be submitted to him accompanied by a statement in writing from the officer making the application showing all obligations not yet presented for audit which have been incurred against the appropriation to which the contract in question would be chargeable; and such certificate, when signed by the Auditor, shall be attached to and become a part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the Government is discharged from the contract in question.

Except in the case of a contract for supplies to be carried in stock, no contract involving the expenditure by any province, municipality, township, or settlement of two thousand pesos or more shall be entered into or authorized until the treasurer of the political division concerned shall have certified to the officer entering into such contract that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. Such certificate, when signed by the said

treasurer, shall be attached to and become a part of the proposed contract and the sum so certified shall not thereafter be available for expenditure for any other purpose until the contract in question is lawfully abrogated or discharged.

For the purpose of making the certificate hereinabove required ninety per centum of the estimated revenues and receipts which should accrue during the current fiscal year, but which are yet uncollected, shall be deemed to be in the treasury of the particular branch of the Government against which the obligation in question would create a charge.

SEC. 608. Void contract; Liability of officer. - A purported contract entered into contrary to the requirements of the next preceding section hereof shall be wholly void, and the officer assuming to make such 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. (Underscoring ours)

The defendants contend that the additional appropriation made by the then municipal council was inadequate on the ground that it was the duty of the latter to appropriate funds for the whole terms of the contract and that the contract in question falls within the prohibition of section 608 because in reality there was no appropriation for the sum of P24,300, nor did the provincial treasurer certify that such appropriation was made and that the funds for the same were available. (Underscoring ours)

The inconsistency of the defendants' claim becomes obvious merely by taking into consideration that the contract entered into by the parties was for the sale of electric current at the rate of P4.50 monthly for every lamp or light of 50 watts, or the sum of P202.50 every month. Under this agreement, the municipality of Imus was not bound, nor is it bound, to pay the price of the electric current until the same has been furnished, and inasmuch as the period of one month was made the basis thereof, there is no doubt but that neither is the said municipality obliged to pay for the current except at the end of every month. It is true that the duration of the contract was fixed at ten (10) years, a period which was accepted by the municipality on the ground that only under the terms of the contract and the law, the municipality was not bound to make advanced payments and, consequently, there was no reason for it to appropriate funds for the said public service except for a period of one month or one year, at most, if it had sufficient funds, in order to comply with the provisions of section 2296 of the Revised Administrative Code, which requires that municipalities should, at the beginning of every year, make a general appropriation containing the probable expenses which, they would have to incur. (Emphasis supplied)

Petitioner, on the other hand, argued that the above-quoted ruling is no longer applicable, citing this Court's ruling in the more recent case of *Osmeña v. Commission on Audit*,^[39] to wit:

The Auditing Code of the Philippines (P.D. 1445) further provides that no contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor and 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 the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof. Any contract entered into contrary to the foregoing requirements shall be VOID.

Clearly then, the contract entered into by the former Mayor Duterte was void from the very beginning since the agreed cost for the project (P8,368,920.00) was way beyond the appropriated amount (P5,419,180.00) as certified by the City Treasurer. Hence, the contract was properly declared void and unenforceable in COA's 2nd Indorsement, dated September 4, 1986. The COA declared and we agree, that:

The prohibition contained in Sec. 85 of PD 1445 (Government Auditing Code) is explicit and mandatory. Fund availability is, as it has always been, an indispensable prerequisite to the execution of any government contract involving the expenditure of public funds by all government agencies at all levels. Such contracts are not to be as final and binding unless a certification as to the funds availability is issued (Letter of Instruction No. 767, s.

1978). Antecedent advance appropriation is thus essential to government liability on contracts. This contract being violative of the legal requirement aforementioned, the same contravenes Sec. 85 of PD 1445 and is null and void by virtue of Sec. 87.

The trial court, which was affirmed by the Court of Appeals, concluded that:

The contention of defendant that the Imus case is no longer applicable in view of the explicit provisions of PD 1445 is without merit. The prohibitions expressed in Sections 85, 86, and 87 of PD 1445 are already embodied in the provision of Revised Administrative Code, specifically Sections 606, 607 and 608, yet, the Supreme Court treated the contract therein as valid and required the defendant municipality to comply with its obligation despite the absence of prior approved appropriation at the time of the execution of the contract. The reason is that the obligation is not payable until the performance of the services contracted. That is the difference between the "Imus case" and the "Osmeña case."

In the former, the obligation to be rendered is the furnishing or sale of electric current which the defendant municipality is not bound to pay until the same has been furnished.

While in the latter, the contract is for the construction of a modern abattoir. The amount payable is already fixed at the time the contract was executed. Moreover, what made the Supreme Court declare the contract entered therein as invalid is the attainment of the finality of the findings of the Commission on Audit, which the petitioner mayor previously invoked.

Thus, the Highest Tribunal said, and this Court quotes:

As a matter of fact, the City of Cebu relied on the above pronouncement and interposed the same as its affirmative defense, so much so that petitioner cannot now assert that it was void having been issued in excess of COA's jurisdiction. A party cannot invoke the jurisdiction of a court or an administrative body to secure affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction. It is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny the same jurisdiction to escape a penalty.

Besides, neither the petitioner nor HFCCI questioned the ruling of COA declaring the invalidity of the abattoir contract, thereby resulting in its finality even before the civil case was instituted. Petitioner could have brought the case to the Supreme Court on a petition for certiorari within thirty days from receipt of a copy of the COA decision in the manner provided by law and the Rules of Court. A decision of the Commission or any of its Auditor not appealed within the period provided by law, shall be final and executory.[40]

Contrary to petitioner's arguments, the facts in the Osmeña case are not parallel to the facts in the instant case. While in the former the construction of an abattoir entailed the payment in full of a fixed amount, the case at bar involved a contract for services still to be rendered which was payable on a monthly basis, just as in the Imus case. In the latter case, the Supreme Court did not declare the contract null and void ab initio for the reason that appropriation for the project can be made subsequent to the execution of the contract. Consequently, the ruling in the Imus case is germane to the instant case. Furthermore, the trial court noted that while herein petitioner would attack the subject contract for being fatally defective, the Commission on Audit did not declare the said contract as null and void, unlike in the Osmeña case where the questioned contract was declared invalid by the COA. Hence, the ruling in the Osmeña case finds no application in the instant controversy.

While the contracts were admittedly negotiated contracts, this fact was never raised by the petitioner before the trial court, Court of Appeals, and in the instant petition. The question of the validity of the said contracts never hinged on the fact that there was no public bidding. What is on record is that it was Mayor Simon who initiated the negotiations to convince respondent to allow the use of its property as a dumpsite.

Public bidding may have been dispensed with, not only because "time is of the essence" but in recognition of the

reality that offering property to be used as a dumpsite is not an attractive nor lucrative option for property owners. This reality is all the more glaring in the current situation where Metro Manila local government units are seemingly unable to cope with the disastrous lack of garbage dumping sites. A major part of the problem is that no one wants to be the dumping ground of someone else's garbage. This problem is compounded by recent events where tragedy has befallen scavengers and residents in a Quezon City dumpsite that should have been closed years ago. It would no longer be prophetic to say that had Quezon City used the subject dumpsite and discontinued the use of the Payatas dumpsite way back in 1991, tragedy therein would have been averted.

Finally, petitioner's refusal to honor the contract is not only contrary to law, but also grossly unfair to respondent Lexber. It was petitioner that first offered and later persuaded respondent Lexber to convert the latter's property into a sanitary landfill for petitioner's exclusive use. While the property could have been used for other more lucrative and pleasant purposes, petitioner convinced respondent Lexber by its assurances and stipulations in the contract. In turn, respondent Lexber relied on petitioner to abide by their contract, only to be rebuffed after petitioner had already taken initial advantage of the facilities. By virtue of the infrastructure intended for the sanitary landfill that was erected thereon, respondent Lexber could not divert its use to other purposes. It is but fair that respondent Lexber be compensated for the financial losses it has incurred in accordance with the obligation of petitioner as stipulated in the second negotiated contract.

WHEREFORE, in view of all the foregoing, the Decision of the Court of Appeals in CA-G.R. CV No. 59541 affirming the judgment of the Regional Trial Court of Quezon City, Branch 220 in Civil Case No. Q-94-19405 is hereby **AFFIRMED** in toto. The instant petition for review is **DENIED** for lack of merit.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, and Kapunan, JJ., concur.

Pardo, J., dissent. See attached.

[1] Penned by Associate Justice Omar U. Amin and concurred in by Associate Justices Hector L. Hofileña and Jose L. Sabio, Jr.; Petition, Annex "A"; Rollo, pp. 51-59.

[2] Penned by Judge Prudencio Altre Castillo, Jr.; Records, pp. 321-333.

[3] Exhibit "D"; Records, pp. 11-13.

[4] Covered by Transfer Certificate of Title No. 225924 of the Register of Deeds for Marikina, Metro Manila in the name of respondent; Exhibit "A", Records, p. 127.

[5] Exhibit "E"; Records, pp. 14-18.

[6] Exhibit "I"; Records, pp. 20-26.

[7] See Exhibit "J"; Records, p. 133.

[8] Judgment, Civil Case No. Q-94-19405, p. 13; Records, p. 333.

[9] Petition, pp. 18-19; Rollo, pp. 19-20.

[10] Section 171 (2)(g), B.P. Blg. 337.

[11] Republic Act No. 7160.

- [12] Section 455 (vi), R.A. No. 7160.
- [13] B.P. Blg. 337, Section 177(j).
- [14] B.P. Blg. 337, Section 177(b).
- [15] Commonwealth Act No. 502.
- [16] Section 9(f).
- [17] Section 12(a).
- [18] Section 12(m).
- [19] Section 1, Executive Order 392.
- [20] Exhs. "H" and "H-1"; Records, pp. 131-132.
- [21] Exhs. "Z" and "3"; Records, p. 261.
- [22] RTC Decision, Rollo, p. 114.
- [23] CA Decision, Rollo, p. 58.
- [24] Section 1, E.O. 392.
- [25] Section 11, E.O. 392.
- [26] Section 86, P.D. 1445.
- [27] Exhs. "Z" and "3", Records, p. 261.
- [28] CA Decision, Rollo, p. 56.
- [29] Exhibit "J"; Records, p. 133.
- [30] Exhibits "K", "K-1", "K-2" and "K-3"; Records, pp. 134-137.
- [31] Bisaya Land Transportation Co., Inc. v. Sanchez, 153 SCRA 532, 541 (1987).
- [32] Exhibits "L" to "L-17" (Inclusive); Records, pp. 138-146.
- [33] Exhibit "M"; Record, p. 147.
- [34] Exhibits "N", "N-1-A", "N-1-B", "N-2", "N-2-A", "N-2-B", "N-3", "N-3-A", "N-3-B", "N-4", "N-4-A", "N-5", "N-5-A", "N-6", and "N-6-A"; Records, pp. 150-163.
- [35] Barons Marketing Corp. v. CA, 28 SCRA 96, 106 (1998).
- [36] Cf.: Allied Banking Corp. v. CA, 284 SCRA 357, 364 (1998).
- [37] Court of Appeals Decision, Rollo, pp. 56-57.
- [38] 59 Phil. 823 (1934).
- [39] 230 SCRA 585 (1994).**
- [40] RTC Decision, Rollo, pp. 111-112.
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DISSENTING OPINION

PARDO, J.:

I am constrained to dissent. We consider the following essential points that denounce the contracts in question as void.

First. The power of the city mayor of Quezon City under its charter to enter into contracts for basic services is hinged on an enabling ordinance. This is particularly true of contracts involving the expenditure of public funds. Under the charter of Quezon City, the power of the city mayor to enter into contracts is subject to the prior authorization of the city council by proper enactment of an ordinance.[1]

Second. Under Batas Pambansa Blg. 337, the Local Government Code applicable at the time of the contracts in question, the city mayor has no power to appropriate funds to support the contracts. The mayor may sign contracts but not appropriate funds.[2] The power to provide for "depositing, leaving or throwing of garbage" is vested in the city council (sangguniang panlungsod) and the power to appropriate funds for expenses of the city government is likewise vested in the city council.[3] In addition to the funds appropriated for the expenditure of public funds, the contracts must be supported by a certificate of the city treasurer that funds had been duly appropriated for the purpose and that the amount necessary to cover the proposed contracts for the current year was available. The certification must be duly verified by the city auditor and attached to the proposed contracts.[4] This is similar to the provisions of Sections 607 et seq. of the Revised Administrative Code of 1917. In *Jalandoni Vda. de Serra vs. Salas*,[5] we held that: "[W]here the contract in question was executed without the certificate of the Auditor General that funds have been duly appropriated and are available for expenditure on account thereof, which certificate is required by Section 607 of the Revised Administrative Code to be attached to and become a part of the contract, such contract is not merely incomplete, the certificate being a part thereof, but, by the very terms of Section 608 of said Code, it is wholly void."(syllabus)

Third. In this case, there was no certificate of availability of funds attached to and forming part of the contracts.[6] The certificate referred to by the trial court stated that there was "sufficient appropriation to cover at least for a period of three months". This is short of the required certification under P.D. No. 1445, Section 86. Neither may the alleged resolution of the Metro Manila Authority (MMC) authorizing the chairman of the MMC to enter into a memorandum of agreement with the local chief executives in Metro Manila, for the purpose of, among others things, the management of garbage collection and its disposal be considered statutory authority for the mayor to enter into such contracts. The Metro Manila Authority has no legislative power.

Fourth. Even as to form, the law requires such contracts to be signed and witnessed by the city treasurer.[7] Neither the first nor the second negotiated contract in question was witnessed by the City Treasurer of Quezon City, as required.[8] Indeed, we notice the blank spaces in the contracts referred to "approved" appropriations but there were none.

Fifth. The contracts were admittedly negotiated ones. The law requires of such contracts a public bidding.[9] Public bidding was dispensed with on the justification that "time is of the essence." This is a hackneyed excuse resorted to for convenience. It has no legal basis. Nevertheless, it is a serious flaw affecting the intrinsic validity of the contracts in question. This vice or defect cannot be overlooked. It renders the contracts null and void.

IN VIEW WHEREOF, I vote to GRANT the petition and SET ASIDE the decision of the Court of Appeals and the trial court.

[1] Com. Act No. 502, Section 9 [f], in relation to section 12 [m].

- [2] B.P. Blg. 337, Article one, Section 171 [g]).
- [3] B.P. Blg. 337, Article three, Section 177 [j] in relation to [b].
- [4] P.D. No. 1445, Section 86.
- [5] 141 Phil. 211 [1969].
- [6] See Petition, Annexes "D" and "E", Rollo, pp. 87-99.
- [7] LOI No. 968.
- [8] See Petition, Annexes "D" and "E", supra, Note 6.
- [9] See Executive Order No. 301, dated July 26, 1987.

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