

DEPARTMENT OF HEALTH, PETITIONER, VS. HTMC ENGINEERS COMPANY, RESPONDENT.

G.R. NO. 146120. January 27, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Petition for Review on Certiorari under Rule 45 of the Rules of Civil Procedure assailing the Court of Appeals' Decision[1] denying petitioner's petition for review of the Decision[2] of the Construction Industry Arbitration Commission (CIAC) awarding respondent's claim against petitioner in the total amount of P4,430,174.00 with interest, as well as the Resolution dated 20 November 2000 denying petitioner's Motion for Reconsideration.

On various dates in May 1996, petitioner Department of Health (DOH) entered into four Owner–Consultant Agreements with respondent HTMC Engineers Company (HTMC) involving various infrastructure projects for East Avenue Medical Center, Rizal Medical Center, Amang Rodriguez Medical Center, and Tondo Medical Center.

All four consultancy agreements for the above-named hospitals were similarly-worded, indicating therein that said contracts were intended for the preparation of architectural and engineering (A & E) design plans and bid documents/requirements, and for construction supervision (CS). Moreover, Under Article 5.1 of the consultancy contracts, the professional fee of HTMC is 7.5% of the project fund allocation.

Sometime in July and August 1996, respondent was able to complete the A & E services for all four hospitals and the necessary documents were submitted to petitioner in accordance with the consultancy agreements. Thus, on 07 October 1996, DOH Undersecretary Milagros L. Fernandez issued a Memorandum Circular to the Chiefs of Hospital of the four hospitals advising them to facilitate the payment for the Consultancy Service Contract of the 1995 various infrastructure projects of their respective hospitals once the copy of the approved contract has been forwarded to their office. Thereafter, Arch. Ma. Rebecca Penafiel, Director III, Health Infrastructure Services, DOH, on 15 October 1996, wrote to the Chiefs of Hospital advising the latter that respondent had submitted the required contract documents and were therefore requested to facilitate the corresponding payment of 70% of the consultancy fee as stipulated in the contracts.

On 29 November 1996, petitioner requested the following amendments to the consultancy agreements pursuant to the guidelines issued by the National Economic Development Authority (NEDA):

- To divide the scope of works under the original contracts into two (2) separate contracts:
- Preparation of Detailed Architecture and Engineering Plans, Technical Specifications and Detailed Estimates; and
- Full time construction supervision.
- To breakdown the original professional fee of 7.5% based on the project fund allocation into two and to

change the basis of payment, thus:

- 6% based on the project contract cost (PCC) shall be paid to the claimant for the 1st scope of work (A & E service); and
- 1.5% based on the project contract cost shall be paid to the claimant for the 2nd scope of work (CS services).
- To define the project contract cost as to the cost of the winning bid price.

In response to the proposed amendments, on 24 January 1997, HTMC sent the DOH a position paper expressing their opinion on the matter. Among the contents of said position paper are the following:

- In order that the intent of the TOR (Terms of Reference), being the basis of the award will not be disturbed, the 7.5% consultant's fee for the Regular A&E and CS shall be retained, splitting this to 6% for Regular A&E and 1.5% for CS is acceptable, on certain qualifying breakdown and schedules, to wit:

a) The 7.5% shall be based on the a [sic] Project Contract Cost which includes any adjustments (negative or positive variations);

b) The 6% A&E Consultant's fee shall be paid in accordance with the following payment schedule:

10% - of Project Allotment Fund, upon signing of contract

30% - to complete all payments to 40% of the roughly estimated Project Construction Cost, upon 50% completion of design works

45% - to complete all payments to 85% of the detailed estimated Project Construction Cost, upon completion and submission of the contract documents

15% - to complete the payments to 100% of the Project Contact Cost, upon periodic inspection during the construction of the project, further broken to 10% upon 50% completion and 5% upon owner's acceptance of substantial completion

x x x

e) The 1.5% for CS shall be paid in accordance with the following terms of payment as per industry practice:

15% - of the Project Contract Cost; upon signing of the contract.

Remaining balance shall be paid on an equal monthly installments [sic] and within the original construction contract schedule

x x x

h) The combined 6% A&E and 1.5% CS or a total of 7.5% of the Project Contract Cost shall be paid in accordance with the following:

10% - of the Project Allotment Fund (temporary basis), upon signing of the contract

60% - to complete all payments to 70% of the detailed estimated Project Construction Cost, upon completion and submission of the contract documents

30% - to complete all payments to 100% of the Project Contract Cost, upon completion of the construction of the project, further broken down to 10% upon 50% completion and 20% upon owner's acceptance of substantial completion

Meanwhile, in compliance with the Memorandum Circular issued by DOH Undersecretary Fernandez, the Amang Rodriguez Medical Center paid HTMC the amount of P1,870,312.00 on 19 December 1996, while the Rizal

Medical Center paid HTMC P498,400.00 on 26 December 1996. Thereafter, the Tondo Medical Center paid respondent the amount of P2,119,687.00 on 10 February 1997, and the East Avenue Medical Center, the amount of P249,131.00 on 18 June 1997.

It would seem, however, that no clear settlement had been reached by the parties in connection with petitioner's proposed amendments to the consultancy agreements, thus, the DOH refused to issue the necessary notices to proceed with the construction supervision in favor of HTMC.

On 22 April 1998, respondent's counsel sent a letter to the DOH stating that:

In the stated Owner-Consultant Agreements, my client had completed the Detailed Architectural and Engineering Plans, Technical Specifications and Detailed Estimates, and was paid 10% and 60% of the "Construction Contract Cost" as downpayment and for the completed documents, respectively.

The above-referred projects had already been awarded to different Contractors and construction works are on-going, but my client is not allowed to undertake the Construction Supervision, inspite [sic] of repeated inquiry and request for the Notice to Proceed from the DOH Infrastructure Service Office and the DOH PEAC.

The Owner-Consultant Agreement, in its Article 5, provides that the Consultant's Fee is based on the "project fund allocation" which should have been the basis of the percentages of payments as partially done.

The documents (plans, specifications, estimates, etc.), which my client had undertaken for the East Avenue Medical Center, include the complete Cold Water Supply Rehabilitation, Standard Fire Protection, New Hot Water Supply and Distribution, and Improvement of Storm Drainage System with a total estimated construction cost in 1996 of P44M. The documents, which my client had undertaken for the Rizal Medical Center, include Phase I and Phase II with a total estimated construction cost in 1996 of P30.68M.

The project fund allocation for the above-referred projects had a total of P91,200,000.00 with a total Consultant's Fee of P6,840,000.00 based on Article 5 of the Owner-Consultant Agreement. However, only the gross amount of P4,737,530.72 had been paid.

In spite of my client's various demands, you did not issue any Notice to Proceed for the Construction Supervision of the above-referred projects, and that you insisted to pay on the percentage basis of the "construction contract cost" in violation of the Owner-Consultant Agreement.

In view of all the above, it is hereby requested that the balance of the Consultant's Fee for the above four (4) referred projects in the amount of P2,102,469.28 be paid in full to my client.

Further, it is requested that the Consultant's Fee in the amount of P4,461,000.00 for the other works undertaken by my client for the East Avenue and the Rizal Medical Centers, which are awaiting project fund allocations, be likewise paid in full to my client.

Should you fail to settle with my client, the above-requested amounts within ten (10) days from receipt hereof, we will be constrained to resort to Arbitration in pursuance to Article 12 of the Owner-Consultant Agreement.[3]

For petitioner's continued refusal to heed respondent's demand for payment and issuance of notices to proceed, on 26 October 1998, HTMC filed a claim against DOH and requested for arbitration with the CIAC.

On 30 March 1999, Arbitrator Custodio Parlade issued the assailed Decision in favor of HTMC, the dispositive portion of which states:

AWARD

In summary, award is hereby made in favor of the claimant ordering the respondent to pay claimant the amount of P3,543,630 due for A&E services, to reimburse claimant for its expenses for salaries to the three engineers who were engaged by HTMC to perform construction supervision work in the amount of P576,000.00, and to pay as damages unrealized profit as a result of the non-performance of the this [sic] work in the amount of P310,544.00 or the total amount of P4,430,174.00 with interest at the rate of 6% per annum from the time of the promulgation of this decision and 12% per annum on the amount due [principal plus accrued interest] from the date this decision becomes final.

All other claims are hereby denied.[4]

On 27 April 2000, petitioner filed a petition for review on certiorari with the Court of Appeals, which petition was subsequently denied for lack of merit by the appellate court on 28 September 2000. According to the Court of Appeals:

The instant petition is without merit.

Anent the issue of jurisdiction, respondent arbitrator correctly assumed jurisdiction over CIAC Case No. 33-98. The owner-consultant agreement provides in paragraphs 12.1 and 12.2:

12.1 Disputes

Any dispute concerning any question arising under this Agreement which is not disposed of by agreement between the parties, shall be decided by the Secretary of Health who shall furnish the CONSULTANT a written copy of his decision.

12.2 Arbitration

The decision of the Secretary of Health shall be final and conclusive unless within thirty (30) days from the date of receipt thereof, the CONSULTANT shall deliver to OWNER a written notice addressed to the Secretary of Health stating its desire to submit the controversy to arbitration. In such event, the dispute shall be decided in accordance with the provisions of the Rules of Procedure in the Construction Industry Arbitration Law under EO 1008.

Thus, when petitioner continued not to act on HTMC's request for the observance of the provisions of the agreement, private respondent HTMC properly submitted the claim with the CIAC for arbitration.

Petitioner's posture that the referral of the case to the CIAC is premature deserves scant consideration. Respondent had demanded that petitioner comply with the agreement. The latter, through the Secretary of Health, failed to act on the request. Later, a demand letter was sent to petitioner. Still, it did not comply. Thus, in order to protect its right, HTMC properly submitted its claim with the CIAC, it being the eventual forum of their agreement as mandated by E.O. No. 1008.

Petitioner's reliance and interpretation of the Supreme Court's ruling in *Jesco Services Incorporated vs. Vera* is misplaced. The same was clarified in a subsequent resolution of the Third Division of the Supreme Court dated September 30, 1996 in G.R. No. 125706 entitled "*China Chang Jiang Energy Corporation (Philippines) versus Rosal Infrastructure Builders*, represented by its General Manager, Alberto S. Surla, Construction Industry Arbitration Commission, Prudencio F. Baranda, and the Court of Appeals." In effect, the owner-consultant agreement entered into by petitioner and private respondents did not divest CIAC of jurisdiction over the case. For even if they elected another forum, their agreement will remain to be within the jurisdiction of CIAC. In so doing, they may not unilaterally divest CIAC of its jurisdiction as provided for by law.

Coming now to the monetary award made by respondent arbitrator. We find the same to be in accord with the tenor of the agreement of the parties. The agreement being the law between them, the Court will leave it as it

is. Absent any abuse in the mathematical computation of the monetary award, the same should be respected. In the present case, the computation is based on the provisions of the agreement entered into by the parties.

Anent the allegation of partiality on the part of respondent arbitrator, there is nothing on record that would show that respondent arbitrator had tilted the scales of justice. The regularity in the conduct of official duties must therefore be continued to be presumed, as no act of irregularity much less partiality has been shown. The insinuations against respondent arbitrator [are] without basis.

In view of the foregoing, this Court finds it unnecessary to have the present case consolidated with CA G.R. SP No. 58994, as this would unnecessarily delay the decision in this case.

WHEREFORE, the instant petition is hereby DENIED due course for lack of merit.[5]

Petitioner's Motion for Reconsideration was also denied in a Resolution issued by the appellate court on 20 November 2000.

Hence, the instant petition containing two issues for consideration of this Court, to wit:

- Whether or not the Court of Appeals erred in stating that the Construction Industry Arbitration Commission (CIAC) had jurisdiction over the claim;
- Whether or not the Court of Appeals erred in stating that the monetary award by the CIAC arbitrator was in accord with the tenor of the consultancy agreements.

We find no merit in the instant petition.

Contrary to the claim of the DOH, CIAC has jurisdiction over the claim of HTMC. As stated in Section 4 of Executive Order No. 1008, also known as the "Construction Industry Arbitration Law":

SECTION 4. Jurisdiction. – The CIAC shall have original and exclusive jurisdiction over disputes arising from, or connected with, contracts entered into by parties involved in construction in the Philippines, whether the disputes arises before or after the completion of the contract, or after the abandonment or breach thereof. These disputes may involve government or private contracts. For the Board to acquire jurisdiction, the parties to a dispute must agree to submit the same to voluntary arbitration.

Furthermore, Article III, Section 1 of the CIAC Rules of Procedure Governing Construction Arbitration provides:

SECTION 1. Submission to CIAC Jurisdiction – An arbitration clause in a construction contract or a submission to arbitration of a construction dispute shall be deemed an agreement to submit an existing or future controversy to CIAC jurisdiction, notwithstanding the reference to a different arbitration institution or arbitral body in such contract or submission. When a contract contains a clause for the submission of a future controversy to arbitration, it is not necessary for the parties to enter into a submission agreement before the claimant may invoke the jurisdiction of CIAC.

It is undisputed that Article 12 of the four similarly-worded consultancy agreements provides for submission to arbitration of any dispute arising from said agreements. Said Article states:

ARTICLE 12. DISPUTES, ARBITRATION, AND TERMINATION

12.1 Disputes

Any dispute concerning any question arising under this Agreement which is not disposed of by agreement between the parties, shall be decided by the Secretary of Health who shall furnish the CONSULTANT a written copy of his decision.

12.2 Arbitration

The decision of the Secretary of Health shall be final and conclusive unless within thirty (30) days from the date of receipt thereof, the CONSULTANT shall deliver to OWNER a written notice addressed to the Secretary of Health stating its desire to submit the controversy to arbitration. In such event, the dispute shall be decided in accordance with the provisions of the Rules of Procedure in the Construction Industry Arbitration Law under EO 1008.

Therefore, upon the signing of said agreements in May 1996 by DOH and HTMC, both parties have explicitly agreed that after a dispute arising from said agreements has been passed upon by the Health Secretary, said controversy involving the consultancy agreements shall be submitted to voluntary arbitration, jurisdiction over which is granted by law to the CIAC.

From the facts of the case, it is clear that prior to the filing of the controversy for arbitration before the CIAC, HTMC, through counsel, had repeatedly appealed the matter before the DOH, through the Department Secretary, but the latter failed to act upon HTMC's request. In the letter sent to the DOH by HTMC dated 22 April 1998, it was even made clear that should the DOH fail to address HTMC's requests, the latter shall resort to arbitration in pursuance to the provisions of the consultancy agreements.[6] Thus, We agree in the conclusion of the appellate court that when petitioner continued not to act on HTMC's request for the observance of the provisions of the agreement, respondent HTMC properly submitted the claim with the CIAC for arbitration. As correctly stated by the Court of Appeals, petitioner's posture that the referral of the case to the CIAC is premature deserves scant consideration. Respondent had demanded that petitioner comply with the agreement. The latter, through the Secretary of Health, failed to act on the request. Later, a demand letter was sent to petitioner. Still, it did not comply. Thus, in order to protect its right, HTMC properly submitted its claim with the CIAC, it being the eventual forum of their agreement as mandated by E.O. No. 1008.[7]

From the argument espoused by the DOH in its petition that there was no basis for the continuation of the agreement as respondent failed to signify its intention to agree with the amended contract,[8] it seems that petitioner is belaboring under the mistaken notion that HTMC's refusal to accede to the former's request for amendment of the consultancy contracts resulted in the rescission of the original agreements, and that such rescission gave the DOH and its personnel the right to take over the construction supervision of the projects and to refuse the payment of any amount due HTMC under the agreements.

It must be stressed at this point that HTMC's failure to accept the amendment proposed by the DOH did not, in any way, affect the validity and the subsistence of the four consultancy contracts which bound both parties upon its perfection as early as May 1996. A contract properly executed between parties continue to be the law between said parties and should be complied with in good faith.[9] There being a perfected contract, DOH cannot revoke or renounce the same without the consent of the other party. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other.[10] It is a general principle of law that no one may be permitted to change his mind or disavow and go back upon his own acts, or to proceed contrary thereto, to the prejudice of the other party.[11] As no revision to the original agreement was ever arrived at, the terms of the original contract shall continue to govern over both the HTMC and the DOH with respect to the infrastructure projects as if no amendments were ever initiated. In the absence of a new perfected contract between HTMC and DOH, both parties shall continue to be bound by the stipulations of the original contract and all its natural effects.[12]

Based on the preceding discussion, We have established that the perfected consultancy agreements between DOH and HTMC are valid, and therefore, under the stipulations contained therein, DOH is under obligation to pay HTMC the unpaid sum of its consultancy fees which according to the findings of the CIAC, as affirmed by the appellate court, amounts to P3, 543, 630.00.

Furthermore, as has been stressed earlier, from the moment of perfection, the parties are bound not only to the fulfillment of what has been expressly stipulated, but also to all the consequences which, according to their nature may be in keeping with good faith, usage, and law,[13] thus, for the refusal of the DOH to issue the necessary notices to proceed, effectively preventing HTMC from performing the construction supervision on the infrastructure projects, DOH must be held liable for any damages or expense incurred by HTMC as a natural result of any breach of the consultancy contract. Therefore, we agree in the findings of both the CIAC and the appellate court in awarding damages in the form of unrealized profit as a result of the non-performance of the construction supervision and in granting reimbursement for the expenses for salaries of the three engineers engaged by HTMC for the supposed construction supervision.

Lastly, in its Memorandum, petitioner assails, for the first time, the validity of the consultancy agreements for the alleged failure of respondent to include in the contracts a certification of availability of funds as required under existing laws. However, at this late a stage in the proceedings, said issue not having been raised before the CIAC nor the Court of Appeals, fair play, justice and due process dictate that this Court cannot now, for the first time on appeal, pass upon this question.[14] They must be raised seasonably in the proceedings before the lower court.[15] Questions raised on appeal must be within the issues framed by the parties; consequently, issues not raised before the trial court cannot be raised for the first time on appeal.[16]

WHEREFORE, premises considered, the petition is hereby DENIED. The Decision of the Court of Appeals in CA-G.R. SP No. 52539 affirming the decision of the Construction Industry Arbitration Commission in CIAC Case No. 33-98 awarding respondent HTMC its claim for payment of A & E services in the amount of P3,543,630.00, reimbursement for the salaries of the three engineers engaged by HTMC to perform construction supervision in the amount of P576,000.00, and damages in the form of unrealized profit in the amount of P310,544.00, or the total amount of P4,430,174.00 with interest, is hereby AFFIRMED. No Costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), No part Former partner of the Arbitrator.
Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[*] No part.

[1] CA-G.R. SP No. 52539 dated 28 September 2000 penned by Justice Eubulo G. Verzola with Justices Marina L. Buzon and Edgardo P. Cruz concurring, rollo, pp. 40-47.

[2] CIAC Case No. 33-98 dated 30 March 1999 penned by Arbitrator Custodio O. Parlade, rollo, pp. 64–82.

[3] CIAC records, pp. 457-458.

[4] CIAC decision, p.17; Rollo, p. 80.

[5] CA decision, pp. 6-7; Rollo, pp. 45-46.

[6] Supra note 3.

[7] CA decision, p. 6; Rollo, p. 45.

[8] Petition, p. 25.

[9] Intestate Estate of the late Ricardo P. Presbitero, Sr. v. Court of Appeals, G.R. No. 102432, 21 January 1993, 217 SCRA 372.

[10] GSIS v. Province of Tarlac, G.R. No. 157860, 01 December 2003, 417 SCRA 60.

[11] Id., citing Metropolitan Manila Development Corporation v. Jancom Environmental Corporation, 425 Phil. 961 (2002).

[12] Civil Code, Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which according to their nature, may be in keeping with good faith, usage, and law.

[13] Supra note 10.

[14] Ayson v. Enriquez Vda. De Carpio, G.R. No. 152438, 17 June 2004, 432 SCRA 449.

[15] Id.

[16] Id., citing Sanchez v. Court of Appeals, 345 Phil. 155 (1997); Reburiano v. Court of Appeals, 361 Phil. 294 (1999); Sañado v. Court of Appeals, G.R. No. 108338, 17 April 2001, 356 SCRA 546; Casolita, Sr. v. Court of Appeals, 341 Phil. 251 (1997); Manalili v. Court of Appeals, 345 Phil. 632 (1997).

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