

**LEONCIO A. AMADORE, PETITIONER, VS. ALBERTO G. ROMULO,
MANUEL B. GAITE, AND PRESIDENTIAL ANTI-GRAFT COMMISSION,
RESPONDENTS.**

G.R. NO. 161608. August 09, 2005

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 Court, asking for the declaration of nullity of (1) the Resolution[1] of the Court of Appeals dated 19 June 2003 dismissing petitioner Leoncio A. Amadore's petition for review filed under Rule 43 of the Rules of Court for having been filed out of time, and its Resolution[2] dated 12 January 2004 denying his motion for reconsideration; (2) the 12 November 2001 Decision of respondent Executive Secretary Alberto G. Romulo dismissing petitioner from government service; and (3) the Resolution dated 15 April 2003 and Order dated 29 May 2003 of respondent Manuel B. Gaite, Acting Deputy Executive Secretary for Legal Affairs, denying petitioner's motion for reconsideration and second motion for reconsideration, respectively.

The antecedents are as follows:

On 27 December 1996, petitioner Leoncio A. Amadore, Director of the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA), entered into a contract[3] with Inter-Technical Pacific Philippines, Inc. (INTERPAC) for the supply, delivery, installation, testing and commissioning of S-Band Weather Surveillance Radar System and Other Related Equipment for Baguio and Tanay Radar Stations amounting to P72,128,573.30. The contract was approved by William G. Padolina, then Secretary of the Department of Science and Technology (DOST).

On 14 January 1997, PAGASA paid INTERPAC the amount of P7,212,857.33 representing a ten percent (10%) advance payment of the total contract price per Disbursement Voucher No. 9701036 signed by petitioner and Cipriano C. Ferraris, Deputy Director of PAGASA.[4]

On 13 August 1997, PAGASA paid INTERPAC the amount of P13,123,275.93 representing thirty-five percent (35%) of the Baguio Radar System component contract price as evidenced by Disbursement Voucher No. 97074640 signed by petitioner and Lilian G. Angeles, Deputy Director of PAGASA.[5]

On 26 June 1998, the Presidential Commission Against Graft and Corruption (PCAGC) received a copy of a letter-complaint[6] from concerned employees of the DOST dated 15 June 1998 addressed to former President Joseph E. Estrada reporting the rampancy of graft and corruption in the DOST. As a result, three (3) formal charges were filed by Restituto P. Ventura, Director, Investigation Office, PCAGC, against Secretary William G. Padolina, Asst. Secretary Imelda D. Rodriguez, Deputy Director Lilian G. Angeles, of the DOST, petitioner and PAGASA Deputy Director Ferraris.[7] The case was docketed as PCAGC-ADM-98-0494. Of the three charges, only the charge of entering into a contract manifestly and grossly disadvantageous to the government was hurled against petitioner, Deputy Director Ferraris and Deputy Director Angeles.[8] It was alleged that even without the

actual delivery of the equipment to the project site, there were advance payments made to INTERPAC totaling P20,336,133.26 or 28.9% of the total contract price in violation of Section 88 of Presidential Decree (P.D.) No. 1445.[9]

Finding sufficient basis to commence an administrative investigation, Leorando M. Rivera, PCAGC Commissioner, in an order dated 12 March 1999, directed petitioner, Deputy Director Ferraris and Deputy Director Angeles to file their Counter-Affidavits/Verified Answers.[10] On the same day, PCAGC Chairman Eufemio C. Domingo referred the letter-complaint to Ombudsman Aniano A. Desierto for appropriate action.[11]

Petitioner, Deputy Director Ferraris and Deputy Director Angeles filed a Joint Counter-Affidavit on 5 April 1999.[12] After hearing, the PCAGC issued a resolution dated 1 October 1999, finding them guilty and recommended to President Joseph E. Estrada their dismissal from the service.[13] The resolution reads in part:

Sec. 88, P.D. 1445 provides that "except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefore. No payment, partial or final shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

The respondents in their counter-affidavit argue that the contract between PAGASA and INTERPAC is an infrastructure project, hence, it falls within the purview of C14-1 of the Implementing Rules and Regulation of Presidential Decree No. 1594 which allows an advance payment to the contractor in an amount equal to fifteen percent (15%) of the total contract price, thus:

...

They further argued that the payment of thirty-five [percent] (35%) for the Baguio Radar System was made in accordance with Art. VI, Payment Schedule of the contract between PAGASA and INTERPAC.

This Commission believes that the Radar System is an infrastructure project, as defined by Executive Order No. 380 which is quoted, thus: infrastructure projects shall mean construction of roads and bridges, railways, airports, seaports communication facilities, irrigation, flood control and drainage, water supply and sewerage systems, shore protection, power facilities, national building, school buildings, hospital building and other related construction projects that form part of the government capital investment. Consequently, PAGASA is authorized to make an advance payment but only up to fifteen (15%) percent of the total contract price.

However, the record of the case, and as testified by Atty. Lilian Angeles, deputy director, discloses that the Baguio Radar System was delivered only on 5 September 1997, but PAGASA paid the INTERPAC for the Baguio Radar System the amount of P7,212,857.33 and P13,123,275.98 on January 14, 1997 and August 13, 1997, respectively, or equivalent to 28.9% of the total price.

Clearly, the said payments constitute violations of Sec. 88, P.D. 1445 which provides that the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor.

The contention of the respondents that such advance payments were made in accordance with Art. VI of the contract is without merit. The said provision runs counter with Sec. 88, P.D. 1445. Settled is the rule that in case of conflict between a contract and the provision of law, the latter prevails.[14]

In a decision dated 12 November 2001, Executive Secretary Alberto G. Romulo approved the recommendation of the PCAGC[15] and dismissed petitioner, Deputy Director Ferraris and Deputy Director Angeles from government service.[16] The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, and as recommended BY THE Presidential Commission Against Graft and Corruption, now the Presidential Anti-Graft Commission (PAGC), respondent Leoncio A. Amadore, Cipriano C. Ferraris and Lilian G. Angeles, Director and Deputy Directors, respectively, of the Philippine Atmospheric, Geophysical and Astronomical services Administration (PAGASA), Department of Science and Technology are hereby DISMISSED from the government service.

Petitioner, Deputy Director Ferraris and Deputy Director Angeles filed a joint Motion for Reconsideration[17] dated 12 December 2001. In a resolution[18] dated 15 April 2003, respondent Manuel B. Gaite, Acting Deputy Executive Secretary for Legal Affairs, affirmed petitioner's dismissal from government service. The complaint against Deputy Director Ferraris was dismissed, while Deputy Director Angeles was suspended for six (6) months.

An Urgent Motion to Admit Second Motion for Reconsideration[19] was filed by petitioner and Deputy Director Angeles on the ground that they were unable to present documents (i.e., Bills of Lading, Notice of Cargo Arrival dated 24 July 1997, Request for Storage dated 04 August 1997 and Delivery Receipt dated 07 August 1997) which, if admitted, would probably alter the decision of the Office of the President. On the charge that the payments of P7,212,857.33 on 14 January 1997 and P13,123,275.93 on 13 August 1997 with an aggregate amount of P20,336,133.26 equivalent to 28.90% of the total contract price are advance payments which constitute a violation of Section 88 of P.D. No. 1445, petitioner and Deputy Director Angeles, in their second motion for reconsideration[20] dated 24 April 2003, explained that inasmuch as the contract involved is categorized as an infrastructure project, what governs is P.D. No. 1594[21] and not P.D. No. 1445. They said that under P.D. No. 1594, an advance payment of fifteen percent (15%) of the total contract price is allowed. They argued that since there was already a delivery of the radar equipment on 07 August 1997 at the PAGASA-Diliman Office prior to the second payment of P13,123,275.93 on 13 August 1997, there can be no violation of P.D. No. 1594. They added that the advance payment made by PAGASA in the amount of P7,212,857.33 or ten percent (10%) of the total contract price of P72,128,573.30 is lower than the 15% allowed by law. By reason of such delivery, they maintain that the P13,123,275.93 is no longer an advance payment but must be considered as a progress billing.

In an Order dated 29 May 2003, respondent Gaite denied with finality the second motion for reconsideration.[22]

On 10 June 2003, petitioner appealed to the Court of Appeals via a petition for review.[23]

In a resolution promulgated on 19 June 2003, the Court of Appeals dismissed the petition outright for having been filed out of time.[24] The resolution reads in part:

We invite petitioner's attention to Sec. 4, Rule 43 which provides in part that:

Sec. 4. Period of appeal.- The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial or petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed

...

It is clear from the said proviso that the 15-day period to appeal is reckoned from notice of the denial of motion for reconsideration. Considering that petitioner received a copy of the denial of the motion for reconsideration on April 24, 2003, he had until May 9, 2003 to take an appeal.

Be it marked too that only one (1) motion for reconsideration is allowed under the said Rule and Sec. 7 of AO No. 18, S. 1987, which provides:

Only one motion for reconsideration by any party shall be allowed and entertained, save in exceptionally meritorious cases.

and considering further that a second motion for reconsideration is proscribed under Sec. 2, Rule 52, *idem.*, the filing of the second motion for reconsideration did not toll the running of the period to appeal.

The petitioner wrongly reckoned the period to appeal from the notice of the denial of the second motion for reconsideration. The present petition should have been filed on or before May 9, 2003, the expiry date of the period to appeal. Unfortunately, he filed it on June 10, 2003.

On 02 July 2003, petitioner filed a motion for reconsideration[25] which the Court of Appeals denied on 12 January 2004.[26] Hence, this appeal by certiorari.

Petitioner raises the following issues:

(A) With all due respect, the dismissal of herein petitioner-Director Leoncio A. Amadore from the government service is illegal, pursuant to the requirement of the Implementing Rules and Regulations (I.R.R.) of Presidential Decree (P.D.) No. 1594;

(B) With all due respect, Section 7 of Administrative Order No. 18, Series of 1987, as cited by Manuel B. Gaité in dismissing herein petitioner, was never violated and that the 2nd Motion for Reconsideration should have been allowed as it constitutes meritorious case; and

(C) With all due respect and by virtue thereof, the herein petitioner should be immediately reinstated, as provided under the law and the Philippine Constitution, with all the benefits guaranteed thereunder.

Quite apart from the above, it bears mentioning that on 30 December 2003, Orlando C. Casimiro, Deputy Ombudsman for the Military, under authority of the Ombudsman, approved the recommendation of Francisca A. Maullon-Serfino, Graft Investigator Officer I, Office of the Ombudsman, as to the non-filing of an information for violation of Section 3(g), Republic Act No. 3019, as amended, against petitioner.[27]

On 09 February 2004, this Court required respondents to file comment on the petition.[28] On 25 May 2004, the Solicitor General, representing the respondents, filed his Comment,[29] raising the following issues:

WHETHER RESPONDENTS ERRED IN DENYING PETITIONER'S SECOND MOTION FOR RECONSIDERATION.

WHETHER THE PETITION BEFORE THE COURT OF APPEALS WAS FILED WITHIN THE REGLEMENTARY PERIOD.

WHETHER PETITIONER MAY PROPERLY RAISE FACTUAL ISSUES IN THE PRESENT PETITION.[30]

On 19 August 2004, petitioner filed a reply[31] to the Solicitor General's Comment.

On 08 November 2004, the Court gave due course to the petition and required the parties to submit their respective memoranda.[32]

Synthesized, the issues are narrowed down as follows:

- (1) Was the appeal from the resolution of the Office of the President filed on time with the Court of Appeals?
- (2) Can petitioner raise factual issues before the Court?
- (3) Did petitioner violate P.D. No. 1594?

On the first issue, petitioner appealed to the Court of Appeals after the Office of the President, through respondent Gaité, denied his second motion for reconsideration. He received the denial of his 2nd motion for reconsideration on 04 June 2003 and filed a petition for review with the Court of Appeals on 10 June 2003. The

latter dismissed the petition for having been filed out of time. It reasoned out that under Section 4, Rule 43 and Section 2, Rule 52 of the Rules of Court, and Section 7 of Administrative Order No. 18, Series of 1987, only one motion for reconsideration is allowed. Thus, the filing of the second motion for reconsideration did not toll the running of the period to appeal. The Court of Appeals explained that since only one motion for reconsideration was allowed, and that petitioner received a copy of the denial of his motion for reconsideration on 24 April 2003, he had until 9 May 2003 to file his appeal.

We find that petitioner filed his appeal with the Court of Appeals within the reglementary period.

Administrative Order No. 18, Series of 1987, prescribes the rules and regulations governing appeals to the Office of the President of the Philippines. Sections 7 and 9 read as follows:

SEC. 7. Decisions/resolutions/orders of the Office of the President shall, except as otherwise provided for by special laws, become final after the lapse of fifteen (15) days from receipt of a copy thereof by the parties, unless a motion for reconsideration thereof is filed within such period.

Only one motion for reconsideration by any one party shall be allowed and entertained, save in exceptionally meritorious cases.

SEC. 9. The Rules of Court shall apply in a suppletory character whenever practicable.

It is clear from Section 7 of Administrative Order No. 18 that only one motion for reconsideration is allowed to be filed from a decision, resolution or order of the Office of the President. A second motion for reconsideration is allowed only in exceptionally meritorious cases. In the case of petitioner, he, together with a co-respondent, filed a second motion for reconsideration claiming he will be presenting evidence that he was not able to present during the hearings, which, if admitted, will alter the decision.

The Court of Appeals relied heavily on Section 4, Rule 43 of the Rules of Court mandating that only one motion for reconsideration shall be allowed. Under Administrative Order No. 18, a second motion for reconsideration can be permitted in exceptionally meritorious cases. It does not absolutely prohibit the filing of a second motion for reconsideration. In the case at bar, petitioner filed a second motion for reconsideration believing that he will be exonerated if the evidence he will be presenting will be accepted. He was of the opinion that his case is exceptionally meritorious and is worthy of a second look via a second motion for reconsideration.

It is the rules of the Office of the President (Administrative Order No. 18) which shall govern as to how many motions for reconsideration of its decision/ resolution/order shall be allowed. In this case, a second motion for reconsideration is allowed in exceptionally meritorious cases. More importantly, Section 9 of its rules provides only for the suppletory application of the Rules of Court. Inasmuch as Administrative Order No. 18 provides for the rule on motions for reconsideration, Section 4, Rule 43 of the Rules of Court should find no application.

The Court of Appeals thus erred in dismissing outright the petition because it counted the period to appeal from petitioner's notice of denial of the first motion for reconsideration. It should have reckoned the period to appeal from petitioner's notice of denial of the second motion for reconsideration.

Anent the second issue, petitioner asks the Court to consider certain newly discovered pieces of evidence that are materially vital to the proper appreciation of the merit of the charge against him. He asserts that the admission of these pieces of documentary evidence will show his innocence of the charge.

These pieces of evidence as gathered from the record are: (1) Handwritten acknowledgment[33] by the guard on duty on 07 August 1997 that two (2) container vans with trucks from INTERPAC were received at PAGASA, Diliman, Quezon City, at 6:45 p.m.; (2) Notice[34] of Cargo Arrival dated 24 July 1997 addressed to INTERPAC

showing that two (2) containers were to arrive in Manila on 26 July 1997; (3) Bill of Lading No. LAXMNL-801493[35] dated 07 July 1997 showing a weather tracking system complete with accessories and parts were loaded in Los Angeles on board Hongkong Express V.9W with PAGASA as consignee and with notice to INTERPAC; (4) Letter[36] dated 04 August 1997 from INTERPAC addressed to petitioner requesting for temporary storage of radar equipment in PAGASA, Diliman, Quezon City, before shipping the same to Sto. Tomas, Baguio City, in two to three weeks; and (5) Delivery Receipt No. 2264[37] dated 07 August 1997 showing two containers containing Meteorological Weather Tracking Equipment Complete with Accessories and Parts were delivered in PAGASA, Diliman at 6:45 p.m. Same were submitted only with the filing of petitioner's second motion for reconsideration before the Office of the President. Said exhibits were no longer considered by respondent Gaité in denying the second motion for reconsideration.

Should these newly discovered pieces of evidence be considered notwithstanding the fact that they were submitted only during the filing of petitioner's second motion for reconsideration?

The requisites for newly discovered evidence are: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) that it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[38]

In the case at bar, the documentary exhibits cannot be considered as newly discovered evidence inasmuch as the same could have been discovered and produced at the trial/hearing held before the PCAGC in 1999. Petitioner cannot claim that he could not have discovered such evidence, especially so when one of the documents (letter dated 4 August 1997) is addressed to him. Nonetheless, in the interest of justice, we set aside technicalities in order to receive all evidence from, and hear the side of, petitioner.

It is settled that rules of procedure are, as a matter of course, construed liberally in proceedings before administrative bodies.[39] Administrative bodies are not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law.[40] Rules of procedure are not to be applied in a very rigid and technical manner, as rules of procedure are used only to help secure and not to override substantial justice.[41]

We now go to the last issue. Did petitioner violate P.D. No. 1594 when he approved the payments of P7,212,857.33 on 14 January 1997 and P13,123,275.93 on 13 August 1997 to INTERPAC?

At the outset, it must be stated that per inquiry of petitioner to the Department of Transportation and Communications (DOTC), the contract for the supply, delivery, installation, testing and commissioning of S-Band Weather Surveillance Radar System and Other Related Equipment for Baguio and Tanay Radar Stations was categorized by Primitivo C. Cal, Undersecretary of the DOTC, as an infrastructure project. As such, the law that governs the same is P.D. No. 1594.[42] The Implementing Rules and Regulations thereof, more specifically CI 4 1, allows an advance payment in an amount equal to fifteen percent (15%) of the total contract price. It reads:

1. The Government shall, upon a written request of the contractor which shall be submitted as a contract document, make an advance payment to the contractor in an amount equal to fifteen percent (15%) of the total contract price, to be made in lump sum or at the most two installments according to a schedule specified in the Instructions to Bidders and other relevant Tender Documents. (Underscoring supplied)

Petitioner contends that the second payment he approved in the amount of P13,123,275.93 on 13 August 1997 to INTERPAC is the subject matter of the administrative case filed against him. He explained that since there was already a "delivery" of the Baguio Radar System made on 7 August 1997 at PAGASA, Diliman, Quezon City, prior to the second payment made on 13 August 1997, then the only advance payment made in the amount of P7,212,857.33 which is equivalent to ten percent (10%) of the total contract price is well within the limit set by

P.D. No. 1594 (15%). He claims that the second payment should be treated as a progress billing.

Before we could determine if the advance payment made by PAGASA exceeded fifteen percent (15%) in violation of P.D. No. 1594, we must ascertain if there was, indeed, a "delivery" of the Baguio Radar Sytem prior to the second payment. If there was no delivery, then the advance payment made to INTERPAC will total P20,336,133.26 (P7,212,857.33 on 14 January 1997 plus P13,123,275.93 on 13 August 1997) or 28.9% of the total contract price of P72,128,573.30, in violation of P.D. No. 1594. On the other hand, if there was delivery prior to the second payment, then only the amount of P7,212,857.33 or ten percent (10%) of the contract price paid on 14 January 1997 can be considered as an advance payment. The second payment of P13,123,275.93 on 13 August 1997 will thus be considered a progress payment.

Was there a delivery made by INTERPAC on 7 August 1997 at PAGASA, Diliman, Quezon City?

Petitioner maintains there was delivery as shown by the documentary exhibits[43] he submitted when he filed his 2nd motion for reconsideration before the Office of the President. He said that two container vans with Meteorological Weather Tracking Equipment Complete with Accessories and Parts were left at PAGASA, Diliman, Quezon City.

At first glance, it would appear that petitioner has a meritorious case. However, after a thorough review of the record, we find that there was NO delivery made by INTERPAC on 7 August 1997. The letter of Ghader Khazeni of INTERPAC which was addressed to petitioner requested only for the temporary storage of radar equipment at PAGASA, Diliman, Quezon City. Nowhere in said letter does it say that the same was already the delivery as agreed upon in the contract. Article VII of the contract for the supply, delivery, installation, testing and commissioning of S-Band Weather Surveillance Radar System and Other Related Equipment for Baguio and Tanay Radar Stations provides for the delivery terms and conditions.[44] Said article reads:

ARTICLE VII

DELIVERY TERMS AND CONDITIONS

Delivery stated herein is based upon the following:

- That name plates will bear manufacturer's/suppliers standard information;
- That all systems & sub-systems will be supported with technical manuals sufficient to operate, maintain and repair the equipment furnished.
- Installation, testing and commissioning of the equipment/system at the project site shall be done in the presence of PAGASA technical personnel.
- That all items furnished under this contract are CIF, Manila, Philippines. INTERPAC will undertake the transportation of systems/equipment to the project sites and all risks in this transport shall be assumed by INTERPAC.
- That all infrastructure site preparations incidental to the installation of the weather radar system such as access road, radar building repair and other related civil works shall be funded and performed by PAGASA.
- That all site preparations incidental to the installation such as antenna/radome base footing preparation, cable trenches/trays and other related installations works shall be funded and performed by INTERPAC.
- That INTERPAC/EEC shall provide 4 copies of the Technical Manual of Operation for each Doppler Weather Surveillance Radar System supplied. Specification sheets of manufacturer (EEC) and vendor-supplier components shall also be provided.

It can be concluded from the article that delivery should be at the project sites -- Baguio and Tanay. The office of

PAGASA in Diliman, Quezon City, cannot be considered as a project site since it served only as a temporary storage area for the radar equipment prior to its shipment to the project site in Baguio City. In fact, the temporary storing of the radar equipment at PAGASA, Diliman, Quezon City, was not even considered by Atty. Lilian Angeles, petitioner's co-respondent in the administrative case, as an actual delivery because the latter testified that the Baguio Radar System was delivered only on 5 September 1997 at Mt. Sto. Tomas Radar Station in Baguio.[45] She even admitted that the second payment (on 13 August 1997) was made ahead of the actual delivery (on 05 September 1997).[46]

Petitioner's claim that there was a delivery made on 07 August 1997 at PAGASA, Diliman, Quezon City, is clearly an afterthought in order to save his neck. There was literally a delivery of radar equipment on 07 August 1997, but such delivery is not the one contemplated in the contract entered into by PAGASA and INTERPAC.

There being no actual delivery on 07 August 1997, the payments made by PAGASA in the amounts of P7,212,857.33 on 14 January 1997 and P13,123,275.93 on 13 August 1997 totaling P20,336,133.26 are considered advance payments. The P20,336,133.26 is 28.9% of the total contract price of P72,128,573.30. As P.D. No. 1594 allows only an advance payment in an amount equal to fifteen percent (15%) of the total contract price, petitioner obviously violated said law because he approved an advance payment of P20,336,133.26 which is way beyond the limit set by the law.

Petitioner likewise contends that he did not violate Section 88 of P.D. No. 1445.[47] Said section reads:

SECTION 88. Prohibition against payment on government contracts.-(1) Except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefore. No payment, partial or final, shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

We find such contention to be untenable. Section 88 of P.D. No. 1445 is clear that no advance payment shall be made for services not yet rendered or for supplies and materials not yet delivered except with the approval of the President. In the case before us, there is no dispute that petitioner approved on 14 January 1997, per Disbursement Voucher No. 9701036, an advance payment in favor of INTERPAC in the amount of P7,212,857.33 representing ten percent (10%) of the total contract price. There being no approval from the President to make such advance payment, such approval by petitioner is a clear violation of P.D. No. 1445. Thus, regardless of which law should govern the contract involved, whether it is P.D. No. 1594 or P.D. No. 1445, petitioner acted in contravention thereof.

Finally, petitioner argues that he will be placed in double jeopardy if the administrative case against him will not be dismissed because of the decision of the Ombudsman finding no probable cause to indict him before the Sandiganbayan for violation of Section 3(g) of Rep. Act No. 3019, as amended.

We are not convinced. As a general rule, the following requisites must be present for double jeopardy to attach: (1) a valid indictment, (2) before a court of competent jurisdiction, (3) the arraignment of the accused, (4) a valid plea entered by him, and (5) the acquittal or conviction of the accused, or the dismissal or termination of the case against him without his express consent.[48]

In the case before us, all the elements necessary to invoke double jeopardy are absent. Moreover, the fact that the administrative case and the case filed before the Ombudsman are based on the same subject matter is of no moment. It is a fundamental principle of administrative law that the administrative case may generally proceed against a respondent independently of a criminal action for the same act or omission and requires only a

preponderance of evidence to establish administrative guilt as against proof beyond reasonable doubt of the criminal charge.[49]

WHEREFORE, the petition for review is hereby DENIED for lack of merit.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] CA Rollo, pp. 73-75; Penned by Associate Justice Roberto A. Barrios with Associate Justices Josefina Guevara-Salonga and Lucas P. Bersamin, concurring.

[2] Id. at 121.

[3] Records, pp. 145-170.

[4] Id. at 141.

[5] Id. at 90.

[6] Id. at 16.

[7] Id. at 212-214.

[8] Id. at 215-216.

[9] Government Auditing Code of the Philippines.

[10] Records, pp. 218-220.

[11] Id. at 221.

[12] Id. at 349-354.

[13] Id. at 489-497.

[14] Records, pp. 491-492.

[15] Renamed Presidential Anti-Graft Commission (PAGC).

[16] Rollo, pp. 29-32.

[17] Id. at 33-38.

[18] Id. at 39-43.

[19] Id. at 44.

[20] Id. at 45-50.

[21] Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts.

[22] Rollo, pp. 58-59.

[23] CA Rollo, pp. 2-71.

[24] Id. at 74-75.

- [25] Id. at 76-88.
- [26] Id. at 121.
- [27] Id. at 111-118.
- [28] Id. at 130.
- [29] Id. at 138-145.
- [30] Id. at 140.
- [31] Id. at 148-155.
- [32] Id. at 185.
- [33] Annex J; Rollo, p. 76.
- [34] Annex J-1; Rollo, p. 77.
- [35] Annex J-2; Rollo, p. 78.
- [36] Annex J-3; Rollo, p. 79.
- [37] Annex J-4; Rollo, p. 80.
- [38] *Amarillo v. Sandiganbayan*, G.R. Nos. 145007-08, 28 January 2003, 396 SCRA 434, 441.
- [39] *Realty Exchange Venture Corporation v. Sendino*, G.R. No. 109703, 05 July 1994, 233 SCRA 665, 671; *Police Commission v. Lood*, G.R. No. L-34637, 24 February 1984, 127 SCRA 757, 761.
- [40] *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, G.R. No. 153660, 10 June 2003, 403 SCRA 699, 704.
- [41] *Department of Environment and Natural Resources v. DENR Region 12 Employees*, G.R. No. 149724, 19 August 2003, 409 SCRA 359, 365.
- [42] Prescribing Policies, Guidelines, Rules and Regulations for Government Infrastructure Contracts.
- [43] Annexes J to J-4.
- [44] Records, pp. 162-163.
- [45] Id. at 491 and 501.
- [46] Id. at 467.
- [47] Government Auditing Code of the Philippines.
- [48] *Condrada v. People*, G.R. No. 141646, 28 February 2003, 398 SCRA 482, 486.
- [49] *The Police Commission v. Lood*, G.R. No. L-34230, 31 March 1980, 96 SCRA 819, 825; *Larin v. Executive Secretary*, G.R. No. 112745, 16 October 1997, 280 SCRA 713; *People v. Toledano*, G.R. No. 110220, 18 May 2000, 332 SCRA 210.

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