

**GREGORIO R. VIGILAR, SECRETARY OF THE DEPARTMENT OF
PUBLIC WORKS AND HIGHWAYS (DPWH), DPWH
UNDERSECRETARIES TEODORO E. ENCARNACION AND EDMUNDO E.
ENCARNACION AND EDMUNDO V. MIR,...**

G.R. No. 180388. January 18, 2011

Ponente: SERENO, J.

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SERENO, J.:

Before the Court is a Petition for Review on Certiorari [1] under Rule 45 of the Rules of Court, assailing the Decision [2] of the Court of Appeals in C.A.-G.R. CV No. 82268, dated 25 September 2006.

The antecedent facts are as follows:

On 19 June 1992, petitioner Angelito M. Twaño, then Officer-in-Charge (OIC)-District Engineer of the Department of Public Works and Highways (DPWH) 2nd Engineering District of Pampanga sent an Invitation to Bid to respondent Arnulfo D. Aquino, the owner of A.D. Aquino Construction and Supplies. The bidding was for the construction of a dike by bulldozing a part of the Porac River at Barangay Ascom-Pulungmasle, Guagua, Pampanga.

Subsequently, on 7 July 1992, the project was awarded to respondent, and a "Contract of Agreement" was thereafter executed between him and concerned petitioners for the amount of PhP1,873,790.69, to cover the project cost.

By 9 July 1992, the project was duly completed by respondent, who was then issued a Certificate of Project Completion dated 16 July 1992. The certificate was signed by Romeo M. Yumul, the Project Engineer; as well as petitioner Romeo N. Supan, Chief of the Construction Section, and by petitioner Twaño.

Respondent Aquino, however, claimed that PhP1,262,696.20 was still due him, but petitioners refused to pay the amount. He thus filed a Complaint [3] for the collection of sum of money with damages before the Regional Trial Court of Guagua, Pampanga. The complaint was docketed as Civil Case No. 3137.

Petitioners, for their part, set up the defense [4] that the Complaint was a suit against the state; that respondent failed to exhaust administrative remedies; and that the "Contract of Agreement" covering the project was void for violating Presidential Decree No. 1445, absent the proper appropriation and the Certificate of Availability of Funds. [5]

On 28 November 2003, the lower court ruled in favor of respondent, to wit:

WHEREFORE, premises considered, defendant Department of Public Works and Highways is hereby ordered to pay the plaintiff Arnulfo D. Aquino the following:

- PhP1,873,790.69, Philippine Currency, representing actual amount for the completion of the project done by the plaintiff;

- PhP50,000.00 as attorney's fee and
- Cost of this suit.

SO ORDERED. [6]

It is to be noted that respondent was only asking for PhP1,262,696.20; the award in paragraph 1 above, however, conforms to the entire contract amount.

On appeal, the Court of Appeals reversed and set aside the Decision of the lower court and disposed as follows:

WHEREFORE, premises considered, the appeal is GRANTED. The "CONTRACT AGREEMENT" entered into between the plaintiff-appellee's construction company, which he represented, and the government, through the Department of Public Works and Highway (DPWH) - Pampanga 2nd Engineering District, is declared null and void ab initio.

The assailed decision of the court a quo is hereby REVERSED AND SET ASIDE.

In line with the pronouncement in Department of Health vs. C.V. Canchela & Associates, Architects,[7] the Commission on Audit (COA) is hereby ordered to determine and ascertain with dispatch, on a quantum meruit basis, the total obligation due to the plaintiff-appellee for his undertaking in implementing the subject contract of public works, and to allow payment thereof, subject to COA Rules and Regulations, upon the completion of the said determination.

No pronouncement as to costs.

SO ORDERED. [8]

Dissatisfied with the Decision of the Court of Appeals, petitioners are now before this Court, seeking a reversal of the appellate court's Decision and a dismissal of the Complaint in Civil Case No. G-3137. The Petition raises the following issues:

- WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE DOCTRINE OF NON-SUABILITY OF THE STATE HAS NO APPLICATION IN THIS CASE.
- WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT DISMISSING THE COMPLAINT FOR FAILURE OF RESPONDENT TO EXHAUST ALL ADMINISTRATIVE REMEDIES.
- WHETHER OR NOT THE COURT OF APPEALS ERRED IN ORDERING THE COA TO ALLOW PAYMENT TO RESPONDENT ON A QUANTUM MERUIT BASIS DESPITE THE LATTER'S FAILURE TO COMPLY WITH THE REQUIREMENTS OF PRESIDENTIAL DECREE NO. 1445.

After a judicious review of the case, the Court finds the Petition to be without merit.

Firstly, petitioners claim that the Complaint filed by respondent before the Regional Trial Court was done without exhausting administrative remedies. Petitioners aver that respondent should have first filed a claim before the Commission on Audit (COA) before going to the courts. However, it has been established that the doctrine of exhaustion of administrative remedies and the doctrine of primary jurisdiction are not ironclad rules. In *Republic of the Philippines v. Lacap*, [9] this Court enumerated the numerous exceptions to these rules, namely: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine

may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in quo warranto proceedings. In the present case, conditions (c) and (e) are present.

The government project contracted out to respondent was completed almost two decades ago. To delay the proceedings by remanding the case to the relevant government office or agency will definitely prejudice respondent. More importantly, the issues in the present case involve the validity and the enforceability of the "Contract of Agreement" entered into by the parties. These are questions purely of law and clearly beyond the expertise of the Commission on Audit or the DPWH. In *Lacap*, this Court said:

... It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. Said question at best could be resolved only tentatively by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The issue does not require technical knowledge and experience but one that would involve the interpretation and application of law. (Emphasis supplied.)

Secondly, in ordering the payment of the obligation due respondent on a quantum meruit basis, the Court of Appeals correctly relied on *Royal Trust Corporation v. COA*,^[10] *Eslao v. COA*,^[11] *Melchor v. COA*,^[12] *EPG Construction Company v. Vigilar*,^[13] and *Department of Health v. C.V. Canchela & Associates, Architects*.^[14] All these cases involved government projects undertaken in violation of the relevant laws, rules and regulations covering public bidding, budget appropriations, and release of funds for the projects. Consistently in these cases, this Court has held that the contracts were void for failing to meet the requirements mandated by law; public interest and equity, however, dictate that the contractor should be compensated for services rendered and work done.

Specifically, *C.V. Canchela & Associates* is similar to the case at bar, in that the contracts involved in both cases failed to comply with the relevant provisions of Presidential Decree No. 1445 and the Revised Administrative Code of 1987. Nevertheless, "(t)he illegality of the subject Agreements proceeds, it bears emphasis, from an express declaration or prohibition by law, not from any intrinsic illegality. As such, the Agreements are not illegal per se, and the party claiming thereunder may recover what had been paid or delivered." ^[15]

The government project involved in this case, the construction of a dike, was completed way back on 9 July 1992. For almost two decades, the public and the government benefitted from the work done by respondent. Thus, the Court of Appeals was correct in applying *Eslao* to the present case. In *Eslao*, this Court stated:

...the Court finds that the contractor should be duly compensated for services rendered, which were for the benefit of the general public. To deny the payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another. Justice and equity demand compensation on the basis of quantum meruit. (Emphasis supplied.)

Neither can petitioners escape the obligation to compensate respondent for services rendered and work done by invoking the state's immunity from suit. This Court has long established in *Ministerio v. CFI of Cebu*,^[16] and recently reiterated in *Heirs of Pidacan v. ATO*,^[17] that the doctrine of governmental immunity from suit cannot serve as an instrument for perpetrating an injustice to a citizen. As this Court enunciated in *EPG Construction*:^[18]

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

... ..

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

... ..

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

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

WHEREFORE, in view of the foregoing, the Petition is DENIED for lack of merit. The assailed Decision of the Court of Appeals in CA-G.R. No. 82268 dated 25 September 2006 is AFFIRMED.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and Mendoza, JJ., concur.

[1] Rollo at 10-32.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Portia Aliño-Hormachuelos and Arcangelita Romilla-Lontok concurring, rollo at 33-48.

[3] Rollo at 51-55.

[4] Petitioners' Answer, rollo at 56-59.

[5] Sections 85-87, *Ordaining and Instituting a Government Auditing Code of the Philippines* (1978).

[6] Rollo at 60-64.

[7] G.R. Nos. 151373-74, November 17, 2005, 475 SCRA 218.

[8] Rollo at 47.

[9] G.R. No. 158253, March 2, 2007, 517 SCRA 255.

[10] Supreme Court Resolution En Banc, G.R. No. 84202, November 22, 1988, cited in *Eslao v. COA*, 195 SCRA 730.

[11] G.R. No. 89745, April 8, 1991, 195 SCRA 730.

[12] G.R. No. 95938, August 16, 1991, 200 SCRA 705.

[13] G.R. 131544, March 16, 2001, 354 SCRA 566.

[14] Supra at note 7.

[15] DOH v. C.V. Canchela Associates, Architects, G.R. Nos. 151373-74, November 17, 2005, 475 SCRA 218.

[16] G.R. No. L-31635, August 31, 1971, 40 SCRA 464.

[17] G.R. No. 186192, August 25, 2010.

[18] G.R. No. 131544, March 16, 2001, 354 SCRA 566.

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