

V. C. PONCE CO., INCORPORATED, PETITIONER, VS. HON. COMMISSION ON AUDIT (COA) REPRESENTED BY THE HON. FRANCISCO S. TANTUICO JR., CHAIRMAN; EMMANUEL F. CAPINPIN, LATER SUBSTITUTE...

G.R. No. 58312. June 20, 1988

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.

Petitioner V. C. Ponce Co., Inc., as the winning bidder for the construction of the substructure of the Magat River Bridge (or Pier 3-A) entered into a contract on December 2, 1976 with the National Irrigation Administration (NIA) whereby he agreed to furnish the equipment, materials, and labor for the project. However, when, in the course of the undertaking, it became evident that he could not accomplish the construction of the main footings of the bridge for lack of proper equipment, he requested that part of his contract be deleted. The NIA agreed to do so, upon the recommendation of its Project Manager who made the following report on the contractor's performance: "the contractor has failed to dewater the water area after several attempts, mainly due to the failure of the contractor to put up an adequate cofferdam and there were no sufficient dewatering equipment."

During his inspection trip to the area on November 21 and 22, 1977, respondent Emmanuel F. Capinpin, the auditor of the Commission on Audit (COA), noted that "the construction of the bridge had practically been abandoned as there was no activity seen at the time" (p. 40, Rollo).

In view of the limited construction period left, the project manager recommended that the work of the entire Pier 3-A be taken over by the NIA (p. 40, Rollo.) Accordingly, the NIA took over the work using its own equipment and trained personnel, and made use of some materials — 137,428,667 kgs. of rebars (reinforcing steel bars) — left by the petitioner at the job site.

Subsequently, the petitioner presented to the NIA a claim amounting to P720,126.21 for the cost of its rebars, labor, wastage, overhead cost, contractor's profit, and contractor's tax. The claim was approved by Cesar L. Tech, the NIA Assistant Administrator, Julian B. Losanez supervising Construction Engineer II, Evaristo M. Guiao, Chief Construction Management Division and Leonardo Miranda, the Engineering Director. NIA paid only for the cost of the rebars amounting to P467,257.74, leaving a balance of P252,868.47 on petitioner's claims. The payment was made without prior audit or approval by the NIA and COA auditors.

On January 15, 1979, Tech sent a memorandum to the NIA Administrator, Alfredo L. Juinio, recommending payment to the petitioner of the balance of P252,868.74 for labor cost, overhead, profit and contractor's tax on the rebars. Juinio approved payment of the claim (Annex B, p. 38, Rollo) but COA Auditor Emmanuel F. Capinpin disallowed the claim citing the General Condition 14, par. d of petitioner Ponce's contract (regarding projects taken over by NIA) which provided:

"(d) Payments — If the Contract Work is taken over the NIA under Clause GC-14 NIA's Right to Take Over

Contract Work, the Contractor shall not be entitled to receive any further payment until the Work is completed.

"The NIA shall ascertain and fix the value of the Works already completed by the Contractor but not paid for and all usable materials on the Sites. The cost of completing the Works shall be charged against the contract price of the remaining works and in case of insufficiency thereof, the excess cost shall be chargeable against the defaulting Contractor and his Sureties.

"In the event that the total expenditures of the NIA on completion of the Contract Work are not in excess of the contract price, the difference between said total expenditures and the contract price shall be applied to settle unpaid claims filed under Clause GC-26 Payments by Contractor Unpaid claims and the balance if any, shall be paid to the Contractor; Provided, however, that no amount in excess of the combined value of the unpaid complete Work retained percentages and usable materials at the time of taking over of the Work shall be so paid nor shall any claim for prospective profits for the work done after the NIA shall have taken over be considered or allowed. The Contractor shall not stand to benefit from the portion of the Contract work taken over by the NIA."

On July 20, 1979, Ponce filed a special civil action for mandamus and damages in the Court of First Instance of Manila (Civil Case No. 125289, entitled "V.C. Ponce Co., Inc. vs. Emmanuel F. Capinpin, etc.") to compel COA Auditor Capinpin to approve payment of his claim. In an order dated August 30, 1979 the trial court dismissed the complaint. On appeal to the Court of Appeals (CA-G.R. No. SP-10483) the Appellate Court's Seventh Division (JJ. Onofre A. Villaluz, ponente, Venicio Escolin and Guillermo P. Villasor, concurring) affirmed on December 22, 1980 the lower court's dismissal of the complaint (Sub-Annex "A", pp. 31-37, Rollo).

Following the Appellate Court's suggestion that he should exhaust his administrative remedies by appealing the auditor's decision to the Commission on Audit in accordance with the provision of Section 48 of P.D. No. 1445, otherwise known as the "Government Auditing Code of the Philippines," Ponce appealed Capinpin's ruling to the COA Annex "A" (p. 19, Rollo). However, the latter also denied his claim on June 5, 1981 (Annex "F", p. 53, Rollo) in accordance with the recommendation of respondent NIA auditor Argñani O. Saldua (p. 54, Rollo). Petitioner's motion for reconsideration of the COA ruling (Annex "G", p. 55, Rollo) was denied by Acting COA Chairman Francisco

S. Tantuico, Jr. on August 17, 1981 (Annex "H", p. 60, Rollo). Hence, this petition for review on certiorari.

After a careful consideration of the pleadings and the documents annexed thereto, We are persuaded that the petition is devoid of merit.

We disagree with the petitioner's allegation that the COA erred in sustaining Capinpin's and Saldua's opinion that the deletion of the Pier 3-A project from the petitioner's contract was in fact a "taking-over" of the project by NIA, calling for the application of the provisions of General Condition 14 par. d of the contract to the contractor's claim. The petitioner's contention that the deletion of Pier 3-A was a bilateral act of the parties which the COA and NIA auditors had no right to disallow because the NIA administrator is not subordinate to the auditor, is not correct. While the NIA Administrator is vested with the power to manage and direct the affairs and business of the NIA (Sec. 8, R.A. 3601), his financial transactions are subject to audit by the corporate auditor (Sec. 11, Ibid.) in representation of the COA, which is an independent constitutional body charged with the duty and function of protecting government funds and property from irregular, unnecessary, excessive, or extravagant expenditure or uses (par. 2, PD No. 111). The COA and the NIA Auditors are tasked to determine whether expenditures of NIA funds to pay contractors' claims, among others, are in accordance with the terms of the contracts between the claimants and the NIA.

The petitioner's argument that General Condition 14 par. d of his contract is inapplicable to his claim because he

desires to recover only the cost of the rebars, but not the value of partial works completed by him, is misleading for he has already received payment of P467,257.74 for the cost of those rebars. If he did not claim payment for "partial works completed," it was because he was unable to complete any part of the work on the excuse that there was "constant overflowing of the area, caused by nature" (p. 3, Petitioner's Memorandum) although according to the NIA project manager, the real reason was "his failure to put up an adequate cofferdam and his lack of sufficient dewatering equipment." "Deletion" of the Pier 3-A project was a euphemism for the abandonment of the project on account of the contractor's inability to accomplish it.

The fact that the Pier 3-A project was finished by NIA itself does not render moot and academic the auditors' objection to the payment of petitioner's claim. The contract required NIA, upon taking over the project, to determine the value of the work already done by the contractor and of the usable materials on the site, for the cost of completing the project should be charged against the contract price. If the contract price is insufficient to cover the actual cost of completing the project, the excess cost shall be "chargeable against the defaulting contractor and his sureties." Even if NIA made a saving or profit by taking over the project of the defaulting contractor (although the records are bereft of evidence on this matter) the benefit would accrue to NIA, not to the contractor, for the contract explicitly provided that "the contractor shall not stand to benefit from the portion of the contract work taken over by the NIA" "nor shall any claim for prospective profits for the work done after the NIA shall have taken over be considered or allowed." Clearly, the petitioner's claim for contractor's profit, tax, and overhead cost in the sum of P252,868.74 has no legal basis. The COA did not err in disallowing it.

WHEREFORE, finding no reversible error in the disallowance of the petitioner's claim by the Commission on Audit, the petition for review is dismissed with costs against the petitioner.

SO ORDERED.

Yap, C.J., Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Bidin, Sarmiento, Cortes, and Medialdea, JJ., concur.

Padilla, J., took no part he was formerly a member of law firm which handles some cases against petitioner.

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