

**DR. RUFINO O. ESLAO, IN HIS CAPACITY AS PRESIDENT OF
PANGASINAN STATE UNIVERSITY, PETITIONER, VS. THE
COMMISSION ON AUDIT,RESPONDENT.**

G.R. No. 89745. April 08, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The validity of a public works project and the right of the contractor to compensation therefor are in issue in this petition.

The facts are undisputed.

On December 22, 1986, the Pangasinan State University (PSU), represented by petitioner, Dr. Rufino O. Eslao, as President thereof, and C.T. Serna Consultants (Serna) entered into a conditional contract for the preparation of the perspective and detailed plans, specifications, bill of materials and estimates, programs of work and structural designs of an extension of the PSU Engineering Building at the Urdaneta, Pangasinan campus.[1] Serna was particularly chosen because in 1983, it also designed the existing Engineering Building in the same campus.

The cost estimates for said construction amounted to P1 Million (P1,000,000.00), which was equal to the agency estimate recommended by the Department of Public Works and Highways (DPWH) Regional Office I.

On December 26, 1986, Serna turned over the finished plans and specifications and bill of materials and estimates to the university for submission to the MPWH (now DPWH) Regional Office I. The corresponding submission was prepared by petitioner addressed to Jose P. Solano, Director of Region I, San Fernando, La Union.[2]

For the completion and renovation of the Ceramics Building at PSU Lingayen, the university engineer prepared agency estimates in the amount of P599,763.65 and the project program of work.[3] These documents and their detailed estimates were prepared on December 26, 1986 or before the contract on the extension of the Ceramics Building was entered into between petitioner and SJC Construction. Copies of these engineering plans and estimates were likewise submitted to the DPWH Regional Office for approval. The details and plans of both the Engineering Building and Ceramics Building were actually approved on March 11, 1987 by the DPWH Regional Office.

The Advice of Allotment No. TC2-1132-86-4-02 appropriating funds in the amount of P1.6M for the foregoing projects (Engineering and Ceramics buildings) was released by the Department of Budget and Management (DBM) on December 29, 1986.[4]

Conscious of the time constraint and apprehensive that the university will lose the money when it reverts to the general funds if not obligated before the end of the year, as well as the opportunity to respond to its urgent need for more classrooms for its increasing student population, petitioner, on December 29, 1986 entered into two separate contracts with SJC construction: (1) For the completion, including the furnishing of materials and labor, of the Engineering Building at the PSU Urdaneta campus amounting to P960,000.00; and (2) For the completion,

including the furnishing of materials and labor, of the Ceramics Building at the PSU Lingayen campus amounting to P582,000.00. Both amounts are lower than the appropriated amounts of P1,000,000.00 and P600,000.00, respectively.[5]

On February 16, 1987, the Board of Regents of PSU approved the subject contract under Resolution Nos. 12 and 12-A.[6] On December 2, 1987, the Secretary of Education, Culture and Sports, Lourdes R. Quisumbing, approved the subject contracts.[7]

Meanwhile, copies of the contracts were forwarded to the Office of the Executive Secretary in Malacañang for the approval of the Office of the President. The contractor followed up these papers. As of January 19, 1987, both contracts appear to have been approved by the Office of the Executive Secretary through one Atty. Danilo T. Gardaya of the Presidential Legal Staff.

Upon verification that there was no such person by the name of Danilo T. Gardaya in the Office of the Presidential Legal Staff of the Executive Secretary, the resident auditor of PSU issued on July 27, 1987 CSB No. 0727 disallowing the payments of P552,900.00 for the Ceramics Building and P912,000.00 for the Engineering Building, or a total disallowance of P1,464,900.00 based on the following grounds: (1) That the contracts were entered into in violation of IB2.5.2 (now IB2.4.2) of the Implementing Rules of P.D. No. 1594; (2) That the approval of the Office of the Executive Secretary on the face of the contracts is not genuine; and (3) That the contracts were entered into without the required engineering aspects as required in Section 2 of P.D. No. 1594.[8]

On June 18, 1987, petitioner wrote to the contractor informing him that upon his verification from the Office of the Deputy Executive Secretary he learned that the signature of Executive Secretary Joker Arroyo on the negotiated contract is not genuine so he advised the contractor to hold in abeyance the construction of the two projects.[9]

The Director of Region I of the Commission on Audit (COA) in a 2nd Indorsement dated September 3, 1987 concurred in the opinion of the PSU resident auditor. The matter was appealed by petitioner to respondent COA. In a 10th Indorsement dated March 30, 1988 to the Chairman of the respondent COA, Regional Director Arturo D. Dadufalza recommended the denial of the appeal.[10]

In COA Decision No. 736 contained in an 11[th] Indorsement dated February 9, 1989 to the Director of COA Regional Office No. 1, the COA denied the appeal and affirmed the subject disallowances.[11]

A motion for reconsideration thereof filed by the petitioner was denied in a resolution of respondent COA dated August 2, 1989.[12]

Hence, this petition, wherein the petitioner questions the decision of the respondent COA in that there was a violation of law in the transaction and affirming the disallowances.

Petitioner alleges that since the advise of allotment of P1.6 Million for the said projects was released by the DBM only on December 29, 1986 or two days before the end of the fiscal year 1986, believing in good faith that the university will lose the appropriation if it is not obligated on or before December 31, 1986, petitioner entered into the disputed contracts with SJC Construction relying on Section 4 of P.D. No. 1594 which provides as follows:

"x x x (P)rojects may be undertaken by administration or force account or by negotiated contract only in exceptional cases where time is of the essence, or where there is a lack of qualified bidders or contractors, or where there is conclusive evidence that greater economy and efficiency would be achieved through this arrangement, and in accordance with provisions of laws and acts on the matter, subject to the approval of the Ministry of Public Works, Transportation and Communications, the Minister of Public Highways, or the Minister of Energy, as the case may be, if the project cost is less than P1 Million and of the President of the

Philippines upon the recommendation of the Minister, if the cost is P1 Million or more x x x." (Emphasis supplied.)

Petitioner submits that the situation was "an exceptional case where time was of the essence," so that the petitioner did not go through the usual process of bidding out the construction work; otherwise, the university would have lost the money and would have failed to address its pressing problem of lack of classrooms for its growing student population. Petitioner admits that IB 242 of the Implementing Rules of P.D. No. 1594 specifies the instances where negotiated contracts may be availed of, as follows:

"a. In times of emergencies arising from natural calamities, where immediate action is necessary to prevent imminent loss of life and/or property.

"b. Failure to award the contract after competitive public bidding for valid cause or causes xxx."

"c. Where the subject project is adjacent or contiguous to an ongoing project and it could be economically prosecuted by the same contractor provided that he has no negative slippage and has demonstrated a satisfactory performance."

He contends, however, that the said provision does not contain the entire list of exceptions to public bidding recognized by P.D. No. 1594; that the rules limit the exceptions only to times of emergencies where lives or properties are endangered and to failure to award the contract after competitive public bidding; and that the rules do not elaborate on the other situations provided for by Section 4 of P.D. No. 1594, namely, where time is of the essence, or where there is a lack of qualified bidders, or where there is conclusive evidence that greater economy and efficiency would be achieved through negotiated contract. Petitioner urges that the yardstick for negotiating contracts is not confined solely to the Implementing Rules and Regulations, but also includes Section 4 of P.D. No. 1594.

Further, he alleges that the detailed engineering plans prepared by a duly certified architect before entering into the said contracts and the other requirements, namely, the site, foundation, and soils investigation survey, were no longer needed because the constructions were merely extensions of existing buildings, as shown by a certification dated August 30, 1989 by the university architect and engineer.[13]

Reference is made to the General Instructions and Guidelines for the Implementation of LOI No. 1461, which provides that "5.d. Construction costing less than P2 Million may be approved by the State Colleges/Universities Board" and that pursuant thereto the approval of the PSU Board of Regents on February 16, 1987 was secured.

It is also pointed out that COA Circular No. 83-101-J provides that the Heads of Ministries (now Departments) of non-infrastructure agencies can approve contracts up to P1 Million. In this case, the Secretary of Education, Culture and Sports approved the contracts.[14]

Petitioner disclaims responsibility for the spurious signatures on the approval of the contracts, and that as a matter of fact, said approval was not necessary for the validity of said contract as afore-discussed because all that was needed was the approval of the Secretary of Education, Culture and Sports.

As the questioned contracts are valid for having complied with the requirements of negotiated contracts, petitioner contends that payments thereof should not have been disallowed by the respondent. Further granting for the sake of argument that the contracts were invalid, it is asserted that the payment should have been allowed based on the principle of "quantum meruit" because the said buildings are now in existence and are being used by the university for its classes so that the government in effect benefited thereby.

On the other hand, respondent alleges the said Advice of Allotment was officially released by the DBM in

January, 1987,[15] so there was no reason for petitioner to be apprehensive that the university will lose the money; and that the allotment, being for capital outlay, could not have been reverted to the unappropriated surplus of the general fund even if it were not obligated during the budget year 1986. Attention is called to P.D. No. 1177, otherwise known as the Budget Reform Decree of 1977, which provides:

"Sec. 33. Reversion of Unexpended Balances of Appropriations: Continuing Appropriation.— Unexpended balances of appropriations authorized in the General Appropriations Act shall revert to the unappropriated surplus of the General Fund at the end of the fiscal year and shall not thereafter be available for expenditure except by subsequent legislative enactment: provided, that appropriations for capital outlays shall remain valid until fully spent or reverted: provided, further, that continuing appropriations for current operating expenditures may be specifically recommended and approved as such in support of projects whose effective implementation calls for multi-year expenditure commitments; provided, finally, that the President may authorize the use of savings realized by an agency during a given year, to meet non-recurring expenditures in a subsequent year." (Emphasis supplied.)[16]

Respondent points out violations of mandatory requirements of law as the construction contracts were not entered into in accordance with Section 4 of P.D. No. 1594 and its implementing rules and regulations.

Respondent avers that (1) time is not of the essence as the fear that the allotment will revert to the unappropriated surplus of the general fund of the government is unfounded; (2) that petitioner did not comply with the requirements of negotiated contracts mandated by the rules; (3) that petitioner did not procure the negotiated contracts "through sealed canvass of at least three qualified contractors as required under the rules; (4) the petitioner did not secure the prior approval of the heads of the agency to negotiate the contracts; (5) that the procurement of the contracts was tainted by irregularities and bad faith as spurious documents were submitted for allowance in audit of the same; (6) that as the contracts were invalid and did not comply with the mandatory requirements of the rules, respondent did not abuse its discretion in disregarding the said contracts; and (7) that the principle of quantum meruit cannot be applied in the present case when there is a clear violation of law, rules regulations as well as the use of spurious documents.

After a careful review of the records, the Court finds that the ruling of the respondent Commission is not without cogent basis. It is not denied that petitioner failed to undertake a public bidding as required by the rules and regulations of contracts of this nature. The reason petitioner adduced thereby is that time constraints due to fear of losing the allocation which may revert to general fund compelled him to enter into the negotiated contracts with the contractor in order to complete the projects to respond to the increasing enrollment of the university. The only exception contemplated that would justify a negotiated contract under Section 4 of P.D. No. 1594 and the Implementing Rules and Regulations thereof (IB 10.4.2) is as above enumerated.

The situation invoked by petitioner does not fall under any of the said conditions. And even assuming that it may be considered, that the situation falls within the exception, the rule still requires a bidding through sealed canvass of at least three (3) qualified contractors. Petitioner did not comply therewith.

Spurious documents were introduced consisting of the falsified approval of the contracts by then Executive Secretary Joker P. Arroyo. Nevertheless, as the same was admittedly secured by the contractor, the petitioner cannot be imputed bad faith under these circumstances.

However, as the amounts of the projects are less than P1 million each, only the approval of the Secretary of Education, Culture and Sports is required under COA Circular No. 83-101-J.[17] Said approval was secured in this case. Likewise, petitioner was able to get the approval of the Board of Regents of said contracts on February 16, 1987 by virtue of its authority under Section 3(i) of P.D. No. 1437. The contract cost of both projects were below the agency estimates.

What clearly demonstrates the good faith of petitioner is that when he learned of the irregularity in securing the approval of the contracts by the Office of the President, he promptly suspended work on the project until further advise.

The Court finds and so holds that petitioner entered into the two contracts in good faith for the good and interest of the university and the government. As it is, the two projects are now 95% complete. The buildings are now being used by the university. On the basis of quantum meruit the contractor should be allowed to recover for the work accomplished.

In *Royal Trust Construction vs. COA*,^[18] a case involving the widening and deepening of the Betis River in Pampanga at the urgent request of the local officials and with the knowledge and consent of the Ministry of Public Works, even without a written contract and the covering appropriation, the project was undertaken to prevent the overflowing of the neighboring areas and to irrigate the adjacent farmlands. The contractor sought compensation for the completed portion in the sum of over P1 million. While the payment was favorably recommended by the Ministry of Public Works, it was denied by the respondent COA on the ground of violation of mandatory legal provisions as the existence of corresponding appropriations covering the contract cost. Under COA Res. No. 36-58 dated November 15, 1986 its existing policy is to allow recovery from covering contracts on the basis of quantum meruit if there is delay in the accomplishment of the required certificate of availability of funds to support a contract.

In said case, the Solicitor General agreed with the respondent COA but in the present case he agrees with petitioner.

Thus, this Court held therein —

"The work done by it was impliedly authorized and later expressly acknowledged by the Ministry of Public Works, which has twice recommended favorable action on the petitioner's request for payment. Despite the admitted absence of a specific covering appropriation as required under COA Resolution No. 36-58, the petitioner may nevertheless be compensated for the services rendered by it, concededly for the public benefit, from the general fund allotted by law to the Betis River project. Substantial compliance with the said resolution, in view of the circumstances of this case, should suffice. The Court also feels that the remedy suggested by the respondent, to wit, the filing of a complaint in court for recovery of the compensation claimed, would entail additional expense, inconvenience and delay which in fairness should not be imposed on the petitioner.

Accordingly, in the interest of substantial justice and equity, the respondent Commission on Audit is DIRECTED to determine on a quantum meruit basis the total compensation due to the petitioner for the services rendered by it in the channel improvement of the Betis River in Pampanga and to allow the payment thereof immediately upon completion of the said determination."

In the present case, 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.

WHEREFORE, the petition is GRANTED. The questioned decision of the respondent COA dated February 16, 1989 and its resolution dated August 2, 1989 are hereby REVERSED AND SET ASIDE. The respondent COA is directed to determine on a quantum meruit basis the total compensation due to the contractor for the completed portion of these two projects and to allow the payment thereof immediately upon the completion of said determination. No costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

- [1] Annex C to the Petition.
- [2] Annex D to the Petition.
- [3] Annexes F and F-1 to the Petition.
- [4] Annex G to the Petition.
- [5] Annexes H and I to the Petition.
- [6] Annex J to the Petition.
- [7] Annex K to the Petition.
- [8] Annexes 9 and 10 to the Comment of Respondent.
- [9] Annex 7 to the Comment of Respondent.
- [10] Annex 11 to the Comment of Respondent.
- [11] Annex A to the Petition.
- [12] Annex B to the Petition.
- [13] Annex L to the Petition.
- [14] Annex K to the Petition.
- [15] Annex I to the Petition.
- [16] Page 94, Rollo.
- [17] Exhibit K to the Petition.
- [18] G.R. No. 84202, November 23, 1988 (Resolution of the Court en banc.

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