

**HON. TOMAS R. OSMEÑA, PETITIONER, VS. COMMISSION ON AUDIT
AND HONORABLE EUFEMIO C. DOMINGO, RESPONDENTS.***G.R. No. 98355. March 02, 1994*

Ponente: NOCON, J.

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Sometime in 1985 the City of Cebu decided to construct a modern abattoir. For this project, the City Treasurer, Ricardo Pestaño, issued a certificate of availability of funds dated April 30, 1985, in the amount of FIVE MILLION FOUR HUNDRED NINETEEN THOUSAND AND ONE HUNDRED EIGHTY (P5,419,180.00) PESOS, specifically "for the construction of Cebu City Abattoir (sic)."[1] After a public bidding, H. Franco Construction Company, Inc. (HFCCI) was awarded to do the construction of the abattoir. Thus, the City of Cebu, through its Mayor, Ronald R. Duterte, entered into a contract with HFCCI, the terms of which are as follows:

"WHEREAS, the contract cost for this project is EIGHT MILLION THREE HUNDRED SIXTY-EIGHT THOUSAND NINE HUNDRED TWENTY (P8,368,920.00) PESOS;

X X X

"WHEREAS, the City treasurer of Cebu City certified the availability of funds for the first installment due to the CONTRACTOR in the amount of TWO MILLION NINETY TWO THOUSAND TWO HUNDRED THIRTY (P2,092,230.00) PESOS, which is to be due and payable upon certification of the City Engineer, concurred in by the Project Management Staff that the project substantially completed;

"WHEREAS, the CITY OF CEBU shall include the Budget for calendar year 1986, the amount of SIX MILLION TWO HUNDRED SEVENTY SIX THOUSAND SIX HUNDRED NINETY (P6,276,690.00) PESOS which represents the second, third and final installment payments due to the CONTRACTOR."[2]

On March 13, 1986, Sen. John H. Osmeña, then Officer-In-Charge of the City of Cebu, ordered the suspension of the project and review of the contract by the COA. He also wrote HFCCI asking them to account for the value of their progress. On April 24, 1986, HFCCI claimed the amount of TWO MILLION ONE HUNDRED FORTY TWO THOUSAND NINE HUNDRED SIXTY FOUR AND 29/100 (P2,142,964.29) PESOS as the value of the work accomplished.

Unable to collect the said amount after so many demands HFCCI instituted a civil action,[3] dated May 21, 1987 against the City of Cebu, for recovery of investment and damages.

In its answer dated June 5, 1987, the City of Cebu, while admitting having entered into a contract with HFCCI, alleged that the contract it entered into was null and void as declared by the Commission on Audit in its 2nd Indorsement dated September 4, 1986. Therefore whatever amount is due to HFCCI is to the sole liability of the officer or officers who entered into the said contract.[4]

Nevertheless, on December 15, 1988, the City of Cebu, through its Mayor, Tomas R. Osmeña, entered into a compromise agreement, approved by the court, to the effect that as a full and final settlement to the claim of

HFCCI, the City of Cebu shall pay the amount of ONE MILLION FIVE HUNDRED THOUSAND (P1,500,000.00) PESOS.

On the strength of the Court's Order dated March 3, 1989 the Provincial Deputy Sheriff, RTC, Branch 5, Cebu City was ordered on March 8, 1989, to serve a writ of execution against the City of Cebu through its Mayor, Tomas R. Osmeña. Thus, the amount of P1,500,000.00 and P15,052.00, as lawful fees, were garnished from the City's funds deposited in the Philippine National Bank.[5]

The trial court's judgment based on the compromise agreement was referred to the COA's Regional Director, who in turn indorsed the same to the Chairman of the COA. In its 3rd Indorsement dated May 2, 1989, the COA ruled that:

"It may not be disputed that the contract for the construction of the Cebu City Abattoir was declared void in a 2nd Indorsement dated September 4, 1986, of this Commission. And since no appeal appears to have been taken thereon, said decision became final.

"Consequently, 'if a compromise is based upon an antecedent claim which is undisputedly and undoubtedly illegal, the compromise may be considered invalid on the ground of illegality as well as lack of consideration.' (Sec. 29, 15 Am. Jur 2d) Besides the compromise agreement entered into by the City of Cebu with H. Franco Construction Co., Inc., after the contract by and between them had been declared void by this Commission, is a circumvention of the constitutional provision that the party aggrieved by any decision, order or ruling of the Commission may within thirty (30) days from receipt of a copy thereof appeal on certiorari to the Supreme Court (Sec. 2-2, Art. XII-D, 1973 Constitution; Sec. 7, Art. IX-A, 1987 Constitution).

"Under the circumstances, this Commission concurs in the view expressed by that Office that the expenditure involved would be the personal liability of the officer directly responsible for its incurrence (Sec. 103, P.D. No. 1445)."[6]

Petitioner's request for reconsideration of the above ruling was denied in COA's 5th Indorsement dated January 23, 1991,[7] hence this petition, with the following arguments:

"1) the decision of the Public Respondent as contained in the 2nd Indorsement dated September 4, 1986 is null and void for having been made without, in excess of jurisdiction or with grave abuse of discretion;

"2) that Public Respondent's decision has never become final because it was made without, in excess of jurisdiction, or with grave abuse of discretion."[8]

Petitioner argues that the decision of COA invalidating the contract between the City of Cebu and HFCCI was void since it was already executed and fulfilled. Petitioner further stresses that COA has no authority to declare a contract already executed void. And since the 2nd Indorsement is a nullity, it never attained finality.

The petition is devoid of merit.

The Commission on Audit has the power, authority and duty to examine, audit and settle all accounts pertaining to revenue and receipts of and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies or instrumentalities.[9]

The Auditing Code of the Philippines (P.D. 1445) further provides that no contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor[10] and the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof.[11] (Emphasis added) Any contract entered into contrary to the foregoing requirements shall be VOID.[12]

Clearly then, the contract entered into by the former Mayor Duterte was void from the very beginning since the agreed cost for the project (P8,368,920.00) was way beyond the appropriated amount (P5,419,180.00) as certified by the City Treasurer. Hence, the contract was properly declared void and unenforceable in COA's 2nd Indorsement, dated September 4, 1986. The COA declared and we agree, that:

"The prohibition contained in Sec. 85 of PD 1445 (Government Auditing Code) is explicit and mandatory. Fund availability is, as it has always been, an indispensable prerequisite to the execution of any government contract involving the expenditure of public funds by all government agencies at all levels. Such contracts are not to be considered as final or binding unless such a certification as to funds availability is issued (Letter of Instruction No. 767, s. 1978). Antecedent of advance appropriation is thus essential to government liability on contracts (Zobel v. City of Manila, 47 Phil. 169). This contract being violative of the legal requirements aforequoted, the same contravenes Sec. 85 of PD 1445 and is null and void by virtue of Sec. 87." [13]

As a matter of fact, the City of Cebu relied on the above pronouncement and interposed the same as its affirmative defense, [14] so much so that petitioner cannot now assert that it was void having been issued in excess of COA's jurisdiction. A party cannot invoke the jurisdiction of a court or an administrative body to secure affirmative relief against his opponent and after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction. It is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny the same jurisdiction to escape a penalty. [15]

Besides, neither the petitioner nor HFCCI questioned the ruling of COA declaring the invalidity of the abattoir contract, thereby resulting in its finality even before the civil case was instituted. Petitioner could have brought the case to the Supreme Court on a petition for certiorari within thirty days from receipt of a copy of the COA decision in the manner provided by law and the Rules of Court. [16] A decision of the Commission or of any of its Auditor not appealed within the period provided by law, shall be final and executory. [17]

Petitioner cannot hide behind the argument that the payment was made in compliance with the trial court's judgment. As correctly stated by the Solicitor General:

"Since petitioner and HFCCI knew of the absolute invalidity of said Abattoir Contract, the Compromise Agreement relative to the petitioner's obligation resulting from said Abattoir contract is also void and inexistent and the decision based on said Compromise Agreement is unenforceable against the City of Cebu. (Art. 1422, Civil Code of the Philippines)." [18]

The trial court's decision based on the compromise agreement could not have ratified a contract which is void ab initio. Consequently the settlement of the supposed obligation of the City of Cebu arising out of a void contract becomes a personal liability of petitioner who is directly responsible therefor. [19]

Neither can petitioner rely on the principle of Quantum Meruit. Quantum Meruit is based on justice and equity, to compensate a property or benefit received if restitution is equitable and if such action involves no violation, frustration or opposition to public policy. In the present case, however, the payment made to HFCCI was due to the compromise agreement which in turn was made in pursuance to a supposed abattoir contract, which is a void contract. Furthermore, there was no evidence presented as to the extent of work accomplished by HFCCI as to substantiate the amount stipulated in the compromise agreement. Finally, as observed by the Solicitor General:

"In any event, it is respectfully submitted that since petitioner's act in entering into said Compromise Agreement x x x came after public respondent had voided petitioner's abattoir contract (he) may not be allowed to evade the legal sanctions resulting from his failure to comply with the law's safeguards against undue expenditures of public funds." [20]

Premises considered, the Compromise Agreement entered into between the City of Cebu, through its Mayor,

Tomas Osmeña is void being merely a derivative of a previously void Abattoir Contract, and thus becomes a personal liability of the officer who entered into it pursuant to Sec. 87 & 103 of P.D. 1445.

WHEREFORE, petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, Regalado, and Puno, JJ., concur.

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- [1] Annex "A" of the Complaint, Original Record, p. 6.
- [2] Annex "B" of the Complaint, Original Record, p. 18-19.
- [3] H. Franco Construction Company, Inc. v. City of Cebu, Civil Case No. CEB-5966, Celso M. Gimenez, presiding Judge, Branch V, RTC of Cebu.
- [4] Annex "E" of the Petition, Rollo, pp. 27-29.
- [5] Original Record, pp. 177, 181-185.
- [6] Annex "B" of the Petition, Rollo, pp. 19-20.
- [7] Annex "C" of the Petition, Rollo, p. 21
- [8] Petition, p. 6; Rollo, p. 8.
- [9] Sec. 2, Art. IX, 1987 Constitution
- [10] Sec. 85, Chap. 3, Title II of P.D. 1445.
- [11] Sec. 86, Chap. 3, Title II, P.D. 1445.
- [12] Sec. 87, Chap. 3, Title II, P.D. 1445.
- [13] Annex "A" of the Petition, Rollo, p. 40.
- [14] Annex "E" of the Petition, Rollo, p. 28.
- [15] Marquez v. Secretary of Labor, G.R. No. 80685, 171 SCRA 337, quoting from Dean v. Dean, 136 Or. 694, 86 A.L.R. 79 and Littleton v. Burges, 16 Wyo. 58.
- [16] Sec. 50, Chap. 3, Title I, P.D. 1445; Sec. 35, Chap. 5, Administrative Code of 1987.
- [17] Sec. 51, Chap. 3, P.D. 1445; Sec. 36, Chap. 5, Administrative Code of 1987.
- [18] Respondent's Memorandum, p. 5.
- [19] Sec. 87 and Sec. 103 of P.D. 1445.
- [20] Respondent's Memorandum, p. 9.

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