

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. L-17171 **January 30, 1965**

FERNANDO D. GUEVARA, petitioner,

vs.

HON. PEDRO M. GIMENEZ, as Auditor General, respondent.

Ramon C. Fernandez for petitioner.

Office of the Solicitor General for respondent.

BENGZON, J.P., J.:

Sometime in 1954 the District Engineer of Sorsogon prepared a program of work and detailed estimate for the reconstruction of the Sorsogon Central School building at Burabod, Sorsogon. Specifications consisting of five pages were likewise prepared. The cost of painting was left out in the detailed estimate and specifications. The papers were submitted to the Division Engineer in Lucena, Quezon, who returned them duly approved with an authorized appropriation of P40,000.00 "*provided that painting shall be included*". Whereupon, the specification for painting was accordingly made and appended to the specifications as page six.

In August 1954 the District Engineer advertised an invitation to bid for "furnishing of all materials, labor and plant, for the reconstruction" project. Prospective bidders were required to apply for issuance of plans, specifications and/or proposal book on which they could base their price proposals. Among those who applied and were issued the plans and specifications for the project was Fernando Guevara. Sealed bids were subsequently opened on September 25, 1954. Fernando Guevara's bid of P37,500.00 was declared lowest and the contract was awarded to him. On December 17, 1954, Guevara and Casiano T. Ubalde, the latter acting for the Director of Public Works, signed the contract. In its Article I, the complete plans and specifications were expressly made a part of the contract. On January 31, 1955 Guevara was furnished by mail a copy of the contract with all its appendices. Petitioner does not deny that his copy of the contract as well as the file copy of the District Engineer contain the specifications which include painting.

Eighty-five days after the contract was signed the construction was completed. The contract price was paid in eight monthly amortizations during the period of construction, based upon work satisfactorily completed during the preceding month. Guevara collected the final payment thereon.

On May 24, 1955, or eight days after completion of the project, Guevara filed with the Director of Public Works a written claim for the payment of P4,620.00 representing cost of painting not covered by the contract. After hearing, the Secretary of Public Works and Communications denied the claim. Two petitions for reconsideration were denied. On appeal, the Auditor General also denied the claim. Guevara has appealed to this Court pursuant to Commonwealth Act 327.

The issue is whether or not the contract for the reconstruction of the school building included painting.

Guevara contends that the bidders were not aware of the inclusion of painting because the District Engineer did not add painting to the plans and specifications furnished them *prior to the bidding*.

In support of his allegation Guevara presented the affidavits of two other bidders, namely, Francisco V. Nicolas and Amadeo Briones. Affiants stated therein that the bids they submitted did not include painting because the specifications given them had no such provision.¹

At the time of the hearing Amadeo Briones was already dead. The other affiant was not presented. Under the circumstances, We entertain doubt as to the probative value of the affidavits¹ especially because affiants, being contractors themselves, may be inclined to favor petitioner in his claim as against the government. Affidavits are easily concocted to suit desired ends.

We find more convincing the testimonies of Santiago P. Ojeda, Juan S. Lopez and Cesar Gacias, senior carpenter, general foreman and clerk, respectively, in the District Engineer's Office. Santiago P. Ojeda testified that when he prepared the original specifications he did not include painting. Juan S. Lopez, however, declared that when the detailed estimate and specifications were approved by the Division Engineer, he prepared the specification for painting. Cesar Gacias testified that his duty was to distribute the specifications to prospective bidders; that upon receiving from Juan S. Lopez the specifications in question he sorted and checked them; that said specifications contained six pages, with the specification for painting appearing on the sixth page; and that copies of the complete specifications were distributed to prospective bidders Guevara, Nicolas, Jabson and Briones. These government employees testified as to what transpired in the performance of their duties. The presumption is that official duty has been regularly performed (Section 5[m], Rule 131, Rules of Court). No evidence has been adduced to overcome this presumption save the affidavits of Nicolas and Briones, which, is afore-stated, are of doubtful probative value.

Petitioner further alleges that he discovered the inclusion of painting in the specifications only when the painting of the building was almost completed, for pre-occupied with 13 other projects, he had entrusted to his assistant, Leoncio Vasquez, the reconstruction of the school building in question.

On the other hand, Santiago P. Ojeda, building inspector for the project, testified that Guevara submitted to the District Engineer, as required, sample of the paints he (Guevara) purchased. Hence, Guevara knew that painting was part of the specifications. Furthermore, during the period of construction Guevara made several collections under the contract, and the vouchers he presented therefor carried "painting and varnishing" as one of the units of work rated to determine how much should be paid. Guevara's use of the estimate of work to support the vouchers displays his knowledge and awareness during the construction that his contract covered painting of the building.

We noted that subsequent to the filing of petitioner's claim, his assistant, Leoncio Vasquez, while visiting the office of the District Engineer, borrowed from the official custodian, Cesar Gacias, the specifications for the project in question. Alert and careful in the performance of his duty, Gacias lent Vasquez the official file copy of the specifications but only after he had checked the number of pages composing the file. After it was returned, Gacias saw that the file was short of one page, and the one missing was precisely page 6 of the specifications containing the provision for painting. Whereupon, he immediately confronted Vasquez with the discrepancy and grabbed the notebook which the latter tucked under his arm. Gacias found folded and concealed inside the notebook the missing page. Several co-employees witnessed the shameful incident. We express our condemnation of Vasquez's behavior.

Finally, petitioner Guevara, a civil engineer, has twenty years' experience as public works contractor. He must have acquired first-hand knowledge of the mechanics of government contracting as well as skill in administering construction contracts. The other 13 projects he said he had, justify our impression. The practice of contractors, before submitting any bid or proposal, is to verify with the office of the District Engineer the fund available for a project, approval of the plans, specifications and program of work and other relevant and necessary matters in prosecuting a government contract. From his experience and know-how We can be certain that petitioner, prior to submission of his bid, called on the District Engineer of Sorsogon to make his verification. By doing so, he would have noted the first indorsement dated August 9, 1954 approving the detailed estimate and program of work and requiring that painting be included. From that moment, he must have been aware that he would bid for a construction work that included painting. In the event that Guevara dispensed with verification, he alone should bear the consequences of his negligence.

Our finding therefore is that the contract between Fernando Guevara and the Bureau of Public Works provided for the painting of the school building. As petitioner has been fully paid the contract price of P37,500.00, no additional payment is due.

WHEREFORE, We hereby affirm the decision of the Auditor General, with costs against petitioner. It is so ordered.

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal and Zaldivar, JJ., concur.

Footnotes

¹See *People vs. Logrono*, L-5714-15, Feb. 25, 1955; *Libuit vs. Auditor General*, L-10160, June 28, 1957.