

Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 113103 June 13, 1997

NATIONAL POWER CORPORATION, THE NATIONAL POWER CORPORATION BOARD OF DIRECTORS, CONRADO D. DEL ROSARIO and MARCELINO ILAO, petitioners,

vs.

THE HON. COURT OF APPEALS, HON. TOMAS V. TADEO, JR., in his capacity as Presiding Judge, Regional Trial Court of Quezon City, Branch 105 and GROWTH LINK, INC., respondents.

GROWTH LINK, INC., petitioner, vs. COURT OF APPEALS and NATIONAL POWER CORPORATION, respondents.

HERMOSISIMA, JR., J.:

Raising the sole issue of the illegality of the award of an exorbitant and unconscionable amount as attorney's fees granted ¹ by the Regional Trial Court ² in a Petition for *Mandamus* with Preliminary Mandatory Injunction and Damages ³ and affirmed by the Court of Appeals ⁴ in its Decisions ⁵ in CA-G.R. SP No. 26898, entitled, "Growth Link, Inc. v. National Power Corporation, et al.," therein respondents-appellants National Power Corporation (NPC), the NPC Board of Directors, Conrado D. del Rosario and Marcelino Ilao, petition this court to reverse said Decision "insofar as the award of attorney's fees is concerned."⁶

Growth Link, Inc. (hereafter, Growth Link), which is the petitioner-appellee in CA-G.R. SP No. 26898, for its part, comes before us with a separate Petition in challenge of the same Decision which we are asked to completely reverse, Growth Link praying ⁷ instead for the affirmance *in toto* of the trial court decision. Growth Link's Petition is docketed as G.R. No. 116000.

In a Resolution ⁸ dated September 28, 1994, we granted the Motion for Consolidation filed by Growth Link and forthwith ordered the consolidation of G.R. Nos. 113103 and 116000.

We proceed from the following premises:

The facts of the case as summarized by the trial court are as follows:

1. [Growth Link] is a duly registered domestic corporation while . . . NPC is a duly organized government corporate entity while the individual [petitioners] are officers and/or members of the NPC Board of Directors, except that [petitioners] Conrado Del Rosario and Crispin T. Ubaldo are no longer connected with . . . NPC;

(ON THE FIRST CAUSE OF ACTION):

2. That on October 23, 1984, [Growth Link] was duly awarded Purchase Order (PO) No. 086653 to supply (*sic*) NPC, subject to certain terms therein expressed, two (2) pieces Pielstick Piston Skirt specified under Code No. 02.005.0171.00, Plate No. 6.02.005.04 at the total price of P230,000.00;

3. That subject Piston Skirts were actually delivered to and received by the NPC Manila (RWSS) Warehouse (*sic*) on January 16, 1985, subjected to actual visual inspection and were found conforming to technical specifications per PO, hence were accepted and approved for payment;

4. That said Piston Skirts were later shipped by NPC to the end-user, the General Santos Diesel Plant (GSDP), which acknowledged delivery thereof as of January 29, 1985;

5. That under date 24 May 1985, four (4) months from delivery, the following findings/observations were allegedly reported found in said Piston Skirts, namely: (a) damage[d]/used O-rings; (b) scratches on mid-span; (c) scratches on top and bottom portion of skirts; (d) carbon residue/deposit on top groove of piston skirts;

6. That the amount of P16,879.50 was deducted by NPC from [Growth Link's] other receivables thru PNB Check No. 102690 per NPC Credit Memo No. 030910;

7. That under date 6 March 1986, [Growth Link] was in receipt of a letter from the then NPC President, Hon. G. Y. Itchon, formally demanding immediate replacements of the Piston Skirts, otherwise, NPC will be constrained (*sic*) to demand the refund of P227,470 as purchase costs of the items and P23,051 as cost of delivery . . . plus applicable interest charges reckoned from date of receipt of NPC payment, meanwhile said amounts are withheld from [Growth Link's] outstanding receivables from NPC, pending replacements with the warning that a repetition of similar delivery or any subsequent infraction shall amount to immediate cancellation of [Growth Link's] accreditation with the NPC and prosecution of appropriate legal action;

8. That as direct consequence of the pressures aforesaid and despite the actual investigation findings on the rejected items by the foreign principal's authorized

representative . . . [Growth Link] was eventually constrained to replace, as [it] actually did replace the questioned piston skirts, and the rejected items shipped back to Japan for evaluation/analysis;

ON THE SECOND CAUSE OF ACTION:

9. That under date 23 February 1984, [NPC] ordered thru [Growth Link], under Indent Order (I.O.) No. 07600, Pielstick Engine Pistol Rings for the Panay Diesel Power Plant (PDPP-Dingle) per Inquiry No. F2C84-3/26-1053TR, PR No. 07381, worth FOB Y1.87 M;

10 That subject piston rings were shipped from Japan direct to consignee, the NPC, and were accepted and received by the end-user, PDPP-Dingle Panay, on May 30, 1985;

11. That under date 3 June 1986, almost a year later, Mr. Romeo A. Perlado, NPC VP-Visayas Region, addressed a Memo to Ms. C.V. Daplas, NPC Manager, Procurement Division, [that the Pielstick Engine Pistol Rings for PDPP-Dingle Panay under] Indent Order No. N-07600 did not reach its normal expected life of 12,000 RH and [that Ms. Daplas is] to . . . check and verify who was the supplier of these materials and . . . request them to replace their materials, if not . . . [to] put on record that . . . this supplier [gave] a bad supply of materials;

12. That upon the intercession of [Growth Link], the foreign supplier of said indented piston rings telexed NPC to send thru [Growth Link] all damaged rings/circumstantial data for manufacturer's analysis/evaluation with further info that other NPC orders supplied by Fuji includes [*sic*] the same items per IO 7395, 7501 and 7694;

13. That acting upon the foreign supplier's telex message aforesaid, Ms. Cecilia V. Daplas, the NPC Manager, Procurement Division, Diliman, Quezon City, in a Memorandum dated 11 July 1986, to the NPC VP Visayas Region, requested [for] two sets of these rings, one of which will be sent to the manufacturer and the other for an analysis by an independent party in the Philippines with the further request that the rings to be sent . . . should bear the markings of the manufacturer in order to avoid any room for doubt or denials that the damaged rings are their manufacture[d] [products];

14. That in his report . . . dated April 6, 1987, Naciano T. Caballero, Manager, CMTS Department, addressed to Mr. J.C. Guaderrama, Manager, Materials Management Department, NPC, re: PDPP-I Pielstick Piston Rings, stated:

1. Our inspections failed to produce the rejected pieces as there are no available damaged piston rings at the plant to be

presented to Procurement per memo of Ms. Cecilia V. Daplas, Manager, Procurement Division dated 11 July 1986 addressed to VP-VRC . . . forwarded to this office for proper action;

2. Operating indicators and maintenance data fail to completely show evidence that will substantiate earlier reports of premature damage.

15. That six (6) months later herein petitioner was in receipt of a letter dated October 16, 1987 from NPC VP-Administrator, Ms. P. A. Segovia (Ms. Segovia was among those previously furnished the Caballero Report dated April 6, 1987, to the effect that the 4 pieces of the damaged rings are now available for release with the demand that all rejected piston ring[s] be now completely replaced by genuine parts manufactured by S.E.M.T. — licensed manufacturer);

ON [THE] THIRD CAUSE OF ACTION:

16. That under date 14 June 1986, [Growth Link] was awarded Purchase Order (PO) No. 095435 to deliver four (4) pieces of Right Hand Exhaust Valve Body, Part No. 02.015.0226.00; Plate No. 02.015.11 and another four (4) pieces of Left Hand Exhaust Valve Body, Part No. 02.015.0117.00; Plate No. 02.015.12 at the NPC Old Bldg. Port Area, Manila;

17. That upon delivery at the NPC Old Warehouse, Port Area, Manila on October 13, 1986 subject Valve Body were forthwith immediately rejected by the Quality Assurance Group on ground that they are manufactured by Fuji Diesel Co., Ltd., which is not a licensee of S.E.M.T. Pielstick [and] that only Pielstick engine spare parts coming from the manufacturer or its licensees shall be accepted;

18. That the rejected exhaust valve body items still remain at the NPC Warehouse, Port Area, Manila;

ON THE FOURTH CAUSE OF ACTION:

19. The existence of the memo of NPC's General Counsel . . . of January 28, 1987 . . . is admitted;

ON THE FIFTH CAUSE OF ACTION:

20. Under date 12 October 1987 [Growth Link] was in receipt of a letter (*sic*) dated 1 October 1987 from the . . . then NPC President C. D. Del Rosario, that NPC is constrained to refrain transacting business with [Growth Link and] further alleging [that] certain subsequent deliveries by petitioner were either rejected or found with missing items as additional infractions, thus:

- a. the 72 pieces of Screws covered by IO No. M-08354-AA allegedly did not conform with the dimensions of the original part;
- b. the shipment consisting of washer, nut and screw for Pielstick Engine covered by IO No. M-07692 dated April 24, 1984 [had] four (4) missing items out of the eight (8) items ordered;
- c. BBC Turbocharger spares covered by PO No. 096345 dated October 9, 1985 and PO No. 096626 dated November 10, 1985 [were] rejected on March 10, 1987 by the Quality Assurance Dept. on grounds that the items delivered were found to be manufactured by IHI, Japan which although a BBC licensee, was not specified manufacturer on [Growth Link's] bid offer;
- d. Pielstick Engine spares covered by IO No. N-08186 dated July 20, 1985 shipped direct from Japan arrived at Aplaya, reported[ly] short-shipped . . .

21. The existence of the Reply communication and [Growth Link's] motion for reconsideration is admitted;

22. [Growth Link] was pre-qualified as an NPC supplier in 1982.

The following facts have also been shown:

1. Since 1982 when, as admitted, [Growth Link] was pre-qualified as NPC supplier, up to the time in 1987 when . . . NPC refused to do business with petitioner, the latter had numerous sales through public biddings with a total value of over P60 million . . .
2. [Growth Link] was the lowest bidder and the most advantageous bidder in several other biddings . . . but NPC did not issue the awards.
3. As a matter [of] procedure, NPC dealt only with accredited suppliers and NPC recognized [Growth Link] as duly accredited. . .
4. At the start in 1982 [Growth Link] complied with the accreditation requirements of NPC by submitting voluminous documents like the articles of incorporation of GLI, corporate profile, appointment of [Growth Link] as exclusive supplier and distributor of spare parts by foreign manufacturers . . ., suppliers' warranties . . . catalogues, company profile and other information

about foreign suppliers . . . And, more importantly, it did not anymore undergo the same process and (sic) subsequent biddings [that Growth Link] participated in. So that the accreditation was a continuing one and not on a per transaction basis.

5. On February 13, 1987 NPC announced its decision to stop transacting business with [Growth Link] . . . and was blacklisted due to violation of the conditions of the contract. . . .

6. The grounds for the cancellation of [Growth Link's] accreditation . . . are three, namely:

a). that [Growth Link] supplied second hand piston skirts;

b). that piston rings supplied by it did not reach the required running hours;

c). that [Growth Link] supplied exhaust valve bodies manufactured by Fuji Diesel Ltd. which was not licensed by SEMT.

7. [Growth Link] refuted the charges in several letters . . . and was asking for opportunity to be heard at a formal hearing on [the] request for reconsideration but same was not acted upon by NPC.

8. [NPC's] witness Alejandro admitted that he knew of instances of switching cargoes in the Port Area of Manila (tsn, Oct. 16, 1990, p. 23).

9. On October 23, 1984, [Growth Link] was awarded by NPC Purchase Order No. 088653 to supply NPC two (2) pieces of Pielstick Skirt specified under Code No. 02.005.017.00, Plate No. 6.02.005.04 at the total price of P230,000.00 . . . These items were manufactured in Japan by Fuji Diesel Ltd.

10. From Japan these were shipped to the Philippines on board Everett Orient Line vessel . . . and Bureau of Customs tagged the shipment as brand new. . . .

11. Subject piston skirts were actually delivered to and received by NPC Manila (RWSS) Warehouse on January 16, 1985 and subjected to actual visual inspection and were found conforming to technical specifications per PO, hence, were accepted and approved for payment. . . .

12. Having complied with all the terms and conditions in the PO, [Growth Link was] paid by . . . NPC for said piston skirts.

13. The piston skirts were shipped by NPC to end-user, the General Santos Diesel Plant (GSDP) and the latter rejected the items in view of the findings made on May 24, 1985 of a) damaged/used O-rings; b) scratches on mid-span; c) scratches on top and bottom portion of skirts; d) carbon residue/deposit on top groove of piston skirts

14. On June 18, 1985 [Growth Link] notified foreign supplier (Fuji Diesel) of the findings of the end-user . . . Fuji sent to the Philippines its own investigator to conduct inspection/investigation and on August 6, 1985 said Fuji investigator submitted his findings on the rejected piston skirts as follows:

1. The rejected/inspected items were not the ones supplied by us for [the] following reasons:

a) Identification marks engraved on the rejected items are different from the standard markings of FUJI DIESEL LTD. — the company [that] manufactured the items . . . supplied against [NPC's] subject order.

b) The items supplied by Fuji were part of a production batch made up of 16 items. Each of the 16 items was engraved with the assigned number within the series 65511 to 65526.

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2. On the photographs taken of the rejected items, [the] following were observed:

a) Reamer bolts that were part of the Fuji supplied items were missing.

b) Fuji did not supply nuts that were part of the reject.

c) The presence of rust on the upper portion of the item indicates that the item is not new. . . .

15. Azuma Kako Co., Ltd., a third party surveyor, after careful analysis, found that the rejected items were second hand and not manufactured in Japan. . . .

16. On May 14, 1986 Fuji Diesel Co., Ltd., issued a certification that (a) the two (2) pieces of Pielstick Piston Skirts covered by PO 086653 were brand new parts manufactured by our company; but (b) the two (2) pieces of Piston Skirt recently returned had been identified as products of other than [Fuji] company.

17. NPC's witness Mangosing in his report . . . noted that the defects he found on the piston skirts delivered by [Growth Link] were slight dents and scratches. The items . . . received at Gen. Santos had serious defects . . . and [were] obviously second hand. . . .

18. In his report . . . NPC's Agcaoili stated:

. . . Closer scrutiny on the piston skirt thru the uncovered and wide spaces between the crating materials showed that there were no signs of damages and/or unusual imperfections except for slight dents on the periphery of the piston pin hole. This was considered insignificant and will not in any way affect the soundness of the item.

19. NPC's Mangosing confirmed Agcaoili's findings in a separate report, thus:

. . . The two pieces of piston skirt inspected were packed in a single Palo China crate. The description of the delivery was written on a piece of plywood specifying the corresponding Code No. and Plate No. which is similar to that in the P.O. The piston skirts were covered with plastic material The bolts and nuts which are included in the delivery were similarly wrapped with plastic material and musking [*sic*] tape which is place (*sic*) in one of the piston skirts.

. . . The piston skirt was provided with a wax protective coating. A look through the open and uncovered spaces between the piston skirt and the crating material show[s] that the wax protective coating is thoroughly applied. However, scratches and dents were noted on the pheriphery [*sic*] of the piston pin holes.

20. [Growth Link's] foreign suppliers, Fuji and I & N International, are highly respected and prominent companies . . .

21. NPC's Osilla in his report dated September 10, 1985 . . . stated: further verification revealed that the rejected items by GSDP were not the one[s] supplied by the principal of Growth Link Inc.

22. As to the Pielstick Piston Rings ordered by NPC from petitioner on February 23, 1984 under I.O. 07600 for the Panay Diesel Power Plant (PDPP), same were shipped from Japan direct to consignee [*sic*], the NPC, and were accepted and received by the end-user, PDPP, on May 30, 1985. On June 3, 1986, or almost a year later, Romeo A. Perlado, NPC VP-Visayas Region, addressed a Memo to Ms. C. V. Daplas, NPC Manager, Procurement Division, Diliman, Quezon City, that the purchased piston rings covered by I.O. No. N-07600 did not reach its normal expected life of 12,000 RH

23. [Growth Link's] foreign supplier of the piston rings, upon intercession of [Growth Link], telexed NPC to send thru [it] all damaged rings/circumstantial data for manufacturer's analysis/evaluation

24. Engr. Naciencino T. Caballero, NPC Manager, CMTS Dept. Visayas Regional Office, in a communication dated April 6, 1987 to Mr. Guadarrama, NPC Manager, Materials Management Dept. stated that: our inspection failed to produce the rejected pieces as there are no available damaged piston rings at the plant to be presented to Procurement per Memo of Ms. Daplas and that operating indicators and maintenance data fail to completely show evidence that will substantiate reports of premature damage

25. The alleged piston rings remained with . . . NPC . . . for reason that NPC refuses to issue the authorization to obtain possession of subject item with complete description/identification/markings for manufacturer['s] purposes.

26. As to the exhaust valve bodies, which were delivered to NPC Old Warehouse, Port Area, Manila, on October 13, 1986, these were rejected by NPC Quality Assurance group on ground that they are manufactured by Fuji Diesel Co., Ltd., which is not a licensee of S.E.M.T. Pielstick [and] that only Pielstick engine spare parts coming from the manufacturer or its licensees shall be accepted. But [Growth Link] did not accept the return of the rejected items for reason [that] there was nothing in the PO . . . which excluded Fuji as manufacturer of the particular items. It only required a certificate of compliance from [the] manufacturer upon delivery which was complied with and for reason that the manufacturer was not specified to be S.E.M.T. or any of its licensees.

27. Petitioner submitted to NPC prequalification documents of its supplier Fuji . . . which included a statement of capital-production-sales tie up with Niigata Engineering Co., Ltd. which is a licensee of SEMT for PC type engines . . . These also show that Fuji was a licensee of SEMT for PA type engines.

28. NPC, from 1982 to 1986, had already issued 24 orders to Fuji valued at P28,000,000.00. . . .

[Growth Link] filed [a] petition for *mandamus* with preliminary injunction and damages with the trial court on February 8, 1988. In an order dated February 15, 1988, the trial court required the [NPC] and other respondents [therein] to file their Comment and/or Answer. . . .

At the hearing on February 24, 1988, the [NPC and other] respondents [therein] and/or counsel failed to appear but upon motion of . . . Growth Link's counsel, the latter was allowed to present its evidence *ex parte* insofar as the issuance of the writ is concerned. Thereafter, or on March 4, 1988, the court granted the issuance of the writ, subject to the filing by petitioner of a surety bond in the amount of P2,245,821.53 . . . However, said order of March 4, 1988 was set aside in an order dated April 18, 1988 for the reason that [the] . . . one who received the summons . . . [was] not authorized to receive summons for the corporation nor the individual defendants [therein] . . . [T]he trial court acquired jurisdiction over [them] only upon their voluntary appearance in court on March 18, 1988. . . . When [Growth Link] filed the bond . . . the same was approved by the Court and the writ of preliminary mandatory injunction was issued:

. . . directing the . . . NPC or its duly authorized representatives to honor, comply and/or abide with the said Purchase Orders and/or Indent Orders mentioned in the petition as well as to refrain, cease and desist from cancelling the standing accreditation of [Growth Link] with [NPC] and allow the former to participate in any bidding or award like any other accredited suppliers . . .

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The trial court resolved Growth Link's application for preliminary mandatory injunction in an order dated June 3, 1988 declaring, among others, that:

[T]here is pending [a] motion for reconsideration dated October 20, 1987 filed by [Growth Link] with [NPC] . . . [which denied Growth Link's] request for reconsideration without even investigating . . . The [NPC] condemned [Growth Link] as a blacklisted bidder and supplier without hearing and thus deprived [it] of its rights without due process. . . .

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and ordering that:

. . . [NPC], during the pendency of said motion for reconsideration and while the same is unresolved finally by the Court, to temporarily LIFT the suspension of petitioner as duly accredited NPC supplier, CANCEL its name from [NPC's] blacklist, and ALLOW [Growth Link] to participate and/or submit its bid proposals at NPC biddings, upon the same bond of P2,245,821.53 previously filed by [Growth Link]

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Napocor's motion for reconsideration of the aforementioned order was denied on September 27, 1988.

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After trial on the merits, the court *a quo* rendered the decision dated September 10, 1991 in favor of petitioner Growth Link, Inc.⁹

The trial court found the NPC guilty of gross evident bad faith in its dealings with Growth Link as its duly accredited supplier. Consequently, it ordered the NPC and its officers and members of the Board of Directors, to jointly and severally pay Growth Link the following amounts:

- a) P230,000.00 representing the cost of the replaced piston skirts under P.O. No. 086653 plus 12% interest thereto [*sic*] *per annum* from April 9, 1986 until fully paid;
- b) P16,870.00 [which was] the amount deducted by [NPC] from [Growth Link]'s outstanding collectibles, plus 12% interest thereto [*sic*] *per annum* from November 18, 1985 until fully paid;
- c) P144,000.00 for payment of items delivered under P.O. No. 095435 plus 12% interest thereto [*sic*] *per annum* from November 13, 1986 until fully paid;
- d) P27,650.00 for payment of items delivered under P.O. No. 096345 plus 12% interest thereto [*sic*] *per annum* from April 4, 1987 until fully paid;
- e) P182,070.00 for payment of items delivered under P.O. No. 096626 plus 12% interest thereto [*sic*] *per annum* from April 4, 1987 until fully paid;
- f) P176,356.00 representing unrealized commission on the cancelled Indent Order No. 08114 dated May 24, 1985 plus 12% interest thereto [*sic*] *per annum* from November, 1985 until fully paid;

g) P1,249,745.00 representing unrealized commission on the Foreign Inquiry Nos. F2c84-3/5-1027 and 1028Tr for Pielstick Engine Spares, plus 12% interest thereto [*sic*] *per annum* from September, 1986 until fully paid;

h) P6,216,583.00 representing unrealized commissions on various items bid where [Growth Link] was the lowest bidder but which was not awarded by NPC to it, plus 12% interest thereto [*sic*] *per annum* from July, 1986 until fully paid;

i) P1,419,853.00 representing unpaid commission from the disregarded lowest bid of [Growth Link's] principal on NPC Foreign Inquiry Nos. FPS85-11/26-12AA, FPS85-11/26-121AA and FPS85-11/6-005AA, plus 12% interest thereto [*sic*] *per annum* from October, 1987 until fully paid;

j) P2,000,000.00 for compensatory damage[s] suffered by petitioner due to loss of business relationship and standing here and abroad;

k) P1,500,000.00 for moral and exemplary damages suffered by [Growth Link];

l) P30,000.00 plus 30% of the principal amount recoverable, as and for attorney's fees;

m) P40,000.00 as litigation expenses (premiums paid on the injunction bond, etc.); and

n) Costs of suit. ¹⁰

Refusing to concede its solidary liability for the foregoing amounts, the NPC, and its officers and members of its Board of Directors appealed the trial court's decision to the Court of Appeals and sought its reversal on the basis of the following assignment of errors:

I

THE LOWER COURT GRAVELY ERRED IN FINDING NAPOCOR GUILTY OF GROSS EVIDENT BAD FAITH;

II

THE LOWER COURT ERRED IN APPLYING ART. 1571 OF THE CIVIL CODE;

III

THE LOWER COURT ERRED IN FINDING THAT NAPOCOR BREACHED ITS WRIT OF PRELIMINARY INJUNCTION;

IV

THE LOWER COURT ERRED IN AWARDING THE ENTIRE AMOUNT OF DAMAGES, MORE OR LESS, PESOS P13.2 MILLION, AS PRAYED FOR BY GROWTH LINK;

V

THE LOWER COURT ERRED IN HOLDING NAPOCOR JOINTLY AND SEVERALLY LIABLE WITH ITS OFFICERS. ¹¹

The respondent Court of Appeals rejected the first three assigned errors and in effect affirmed the trial court's findings of gross evident bad faith on the part of NPC. The Court of Appeals reasoned:

. . . We find that the trial court based its conclusions of gross evident bad faith in Napocor's dealings with [Growth Link] on the following:

1. The writ of preliminary mandatory injunction dated September 28, 1988 which directed NPC, among other things, to refrain, cease or desist from cancelling the standing accreditation of [Growth Link] with the [NPC] and allow the former to participate in any bidding or award like any other accredited suppliers, was honored by NPC more in its breach than in its compliance. NPC continued to disallow [Growth Link] to participate in any bidding.

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2. The question of warranty for hidden defects or implied warranty on the quality or fitness of the items delivered by petitioner and received by NPC could have been avoided had NPC complied with the requirement of law

NPC never filed any action against [Growth Link] within the six months period from the delivery of the piston skirts, piston rings, and others despite the fact that it was in possession, control, and disposition of the items . . . and [Growth Link] could not do anything to prevent switching, damaging, and/or pilferage as the items are in the full possession and control of NPC. Thus [Growth Link] was left at the mercy of NPC who [*sic*] arbitrarily withheld payment or deducted payment from other items unless the items which NPC concluded as defective be replaced by [Growth Link].

3. Due process was denied by NPC to [Growth Link]. NPC just received with deaf ears and closed eyes, the several letters of explanation of [Growth Link], and the latter's request for reconsideration and/or investigation was simply wastebasketed. And yet there was strong ground [for Growth Link's] request considering that the items alleged to be defective were not the same items

delivered or shipped by [Growth Link's] foreign supplier direct to NPC or NPC's end-user. But NPC condemned [Growth Link] as a blacklisted bidder and supplier without hearing and deprived [Growth Link] of its rights without due process.

Additionally, We find the action of Napocor in requiring [Growth Link] to replace the two (2) pielstick piston skirts . . . unjustified. . . . [T]he pielstick skirts when delivered on January 16, 1985 were inspected by the Quality Assurance Group of Napocor itself composed of Engrs. A.C. Mangosing, Jr. and Roberto Agcaoili whose report stated that said piston skirts were subjected to "actual visual inspection and were found conforming to technical specifications per P.O." On the basis of such findings, the piston skirts were accepted and approved for payment and on February 25, 1985, Napocor paid Growth Link the net amount of P227,470.00

In the fact-finding report and verification of the delivery of the pielstick piston skirts, We note with significance the findings of R. E. Agcaoili, Chief Engineer, Inspection/Test of Napocor as approved by L. F. Osilla, Manager of Napocor Assurance Group Utility Operations, that the delivered items are definitely piston skirts intended for Pielstick Diesel engine for Gen. Santos Plant; both items (in one crate) appeared new; they were adequately provided with protective wax coating and further preserved with pellucid plastic sheet wrappers; closer scrutiny on the piston skirt . . . showed that there were no signs of damages and/or unusual imperfection except for slight dents on the periphery [*sic*] of the piston pin hole which was considered insignificant and will not in any way affect the soundness of the item. . . . When these pielstick piston skirts arrived at the Gen. Santos Diesel Plant and re-inspected . . . the inspection report of Mr. Padilla stated that the delivered items were second hand and with damages, hence, they were rejected by the end-user and reshipped to Manila

During the negotiations with Napocor, Mr. Teodoro Miguel of Growth Link committed to replace the rejected items . . . otherwise, Growth Link would be required to refund the amount of P227,470.00. On top of that, Napocor deducted the sum of P16,870.50 from [Growth Link's] outstanding collectibles as evidenced by PNB Check No. 102690 per NPC Credit Memo No. 030910.

. . . [Growth Link] was [also] made to answer for an alleged discrepancy in the Pielstick Engine Piston Rings for the Panay Diesel Power Plant (PDPP-Dingle) which . . . was shipped from Japan direct to Napocor and accepted and received by the end-user on May 30, 1985 but was questioned after a year later on June 3, 1986 by Mr. Romeo Perlado, NPC VP-Visayas Region claiming that said piston rings "did not reach its normal expected life of 12,000 RH" and requested that they be replaced, otherwise, they will put on record that its supplier has a bad supply of materials. [Growth Link] was treated similarly by Napocor with regard to . . .

(4) pieces of Right Hand Exhaust Valve Body which, upon delivery to NPC's old warehouse at Port Area, Manila on October 13, 1986, were immediately rejected by the Quality Assurance Group on the ground that they were manufactured by Fuji Diesel Co., Ltd., which is not a licensee of S.E.M.T.

The above instances are in addition to the grounds mentioned by the trial court as constitutive of the pressure imposed by Napocor upon [Growth Link]. Because of the admission of Napocor's witness, A.C. Mangosing, Jr. that he knew of instances of switching cargoes in the Port of Manila . . . We cannot fault [Growth Link] for entertaining the idea that there was a switching of the brand new piston sticks with old ones considering the lapse of time between the delivery and the rejection . . . coupled with the fact that when they were originally landed and inspected, the same were found by Napocor's own engineers to be brand new We, therefore, agree and affirm the lower court's findings that Napocor's gross evident bad faith was reflected in the aforesaid actions taken against [Growth Link].

Moreover, We find no merit in Napocor's contention that the trial court erred in applying Art. 1571 of the Civil Code. We cannot accept this argument especially considering that the facts clearly show that the piston sticks in question when delivered to Napocor were inspected, accepted and certified to by Napocor's representatives as brand new and in accordance with its P.O. No. 086653. As a matter of fact, that shipment was recommended for payment and was actually paid for by Napocor. Moreover, the manufacturer's certificate of authenticity and warranty cited by Napocor that allows a rejected item to be returned for repair and replacement provides that the "claims (of defect) must be reported within a reasonable period from the date of delivery" precisely to prevent a substitution of the thing delivered

On the question of the lower court's findings that the Napocor breached its writ of preliminary injunction, another factor upon which the lower court based its finding that Napocor committed gross evident bad faith, We only have to cite by reference that portion of the decision appealed from Additionally, on the basis of the facts established, it can readily be seen that Napocor virtually dragged its feet to thwart the effectivity of the writ of preliminary mandatory injunction issued by the lower court.

But while the respondent appellate court affirmed the trial court's finding of gross evident bad faith on the part of NPC, it reversed the trial court insofar as it found NPC liable for amounts claimed by Growth Link to be unrealized commissions properly accruing to them had the NPC recognized them as the lowest and most advantageous bidder under several foreign inquiries. The Court of Appeals ruled:

An invitation to bid is *not* an offer which, if accepted, matures into a contract. In the language of Article 1326 of the Civil Code, "advertisements for bidders are simply invitations to make proposals, and the advertiser is not bound to accept the highest or lowest bidder, unless the contrary appears." The reservation in the Invitation to Bid, of the advertiser's right "to reject any and all bids" is one of the terms and conditions therein which the bidder has accepted (*Surigao Mineral Reservation Board vs. Cloribel*, 24 SCRA 491) and such reservation does not make it obligatory for a government agency to award its contract to the lowest bidder (*C & C Commercial Corp. vs. Menor*, 120 SCRA 112).

Under the guidance of the aforementioned authorities, We find no justification for the award given by the trial court to [Growth Link] in paragraphs "g", "h", and "i" of the decision appealed from, which supposedly represent commissions unrealized by [Growth Link] on the basis of mere Foreign Inquiries for the reason that unlike Purchase or Indent Orders which are the result of approved bids and, therefore, give the winning bidder a vested right to its earnings and commissions arising therefrom, [Foreign Inquiries] as mere invitations to make offers or proposals, do not, by itself, produce a contract that would ensure earnings and/or commissions for the bidder. Hence, the amounts awarded by the trial court merely on the basis of [Growth Link's] various *unapproved* bids are too speculative and uncertain to justify the awards.¹²

As to the awards for compensatory, moral and exemplary damages, the respondent Court of Appeals found valid basis therefor under the circumstances of these consolidated cases, but respondent appellate court was no less struck by the enormity of the amounts awarded by the trial court as damages. Thus it reduced the same in this wise:

. . . [W]hile we affirm the findings and conclusion of the trial court as valid basis of the award for damages, We find the awards of P2,000,000.00 and P1,500,000.00 for compensatory damages and for moral and exemplary damages, respectively, to be too huge, under the circumstances of this case that calls for this court's duty to tone down petitioner's fantastic claims (*Baluyot vs. Lopez*, 51 O.G. #2, p. 784). They are, therefore, hereby reduced to P1,000,000.00 for compensatory damages and to P500,000.00 for moral and exemplary damages.

Likewise finding NPC's objection to the trial court's finding of solidary liability to be justified, considering that the officers and members of the Board of Directors of NPC were sued in their official capacities, the respondent Court of Appeals held:

Finally, We find that the lower court erred in holding the individual respondents "jointly and severally" liable with Napocor. It is significant to point out that both the original Petition and Amended Petition for *Mandamus* filed by [Growth Link],

contain identical allegations in identifying the individual respondents in this case, thus:

2. Respondent, NATIONAL POWER CORPORATION . . . ; Respondents-Members of the NPC Board of Directors; HON. EDGARDO B. ESPIRITU . . . is being sued in his official capacity as Chairman of the NPC Board of Directors; HON. ERNESTO M. ABOITIZ . . . is being sued in his official capacity as the Vice-Chairman of the NPC Board of Directors and President of the Respondent firm; HON. JUANITO N. FERRER, HON. NESTOR M. NOGUERRA, HON. CRISPIN T. UBALDO and HON. DOMINGO R. VIDANES . . . are being sued in their official capacities as Members of the NPC Board of Directors . . . ; Respondent, HON. CONRADO D. DEL ROSARIO . . . is being sued in his former official capacities as Vice-Chairman of the NPC Board and President of Respondent firm . . . ; and Respondent, MARCELINO ILAO . . . is being sued in his official capacity as NPC vice-President-General Counsel . . .

xxx xxx xxx

While the Amended Petition added the words "or respondents" to its prayer that the trial court order respondent corporation to pay the amounts claimed therein, there is no allegation whatsoever that would justify the imposition of a "joint and several" liability with (Napocor) of the individual respondents who, as officers of Napocor, were being sued in their respective official capacities. Neither did petitioner show, much less claim, any circumstance which would necessitate the piercing of Napocor's corporate veil so as to make the individual respondents personally liable for Napocor's obligations.¹³

From the Decision of the Court of Appeals, both Growth Link and the NPC and its officers and members of the Board of Directors invoke this court's review powers: Growth Link prays for the restoration of the amounts awarded by the trial court as unrealized commissions in bids where it was the lowest and most advantageous bidder but which were disregarded in the face of NPC's unilateral and arbitrary blacklisting of Growth Link, for the upgrading of the amounts granted as compensatory, moral and exemplary damages to their original amounts as awarded by the trial court and for the reinstatement of the finding of solidary liability among NPC and its officers and members of the Board of Directors; while NPC prays only for the reduction of the amount granted as and by way of attorney's fees, which prayer, we should point out, is significantly premised on the acceptance of all the other findings and conclusions of the Court of Appeals, including its affirmance of the trial court's finding of gross evident bad faith on the part of NPC.

We find the instant consolidated petitions to be both wanting in merit.

G.R. No. 113103

A cursory review of the above errors raised by the NPC before the Court of Appeals, shows that the NPC never assigned the issue of the exorbitant amount awarded to Growth Link as and by way of attorney's fees, as an error on appeal. Thus, insofar as the amount of the attorney's fees granted by the trial court is concerned, the same must be deemed no longer open to modification, much less, reduction, the person supposedly aggrieved thereby having resonantly been silent on this issue in its appeal before the respondent court.

At any rate, this court, in at least two (2) occasions, has allowed an award of 20%¹⁴ to 25%¹⁵ of the total indebtedness involved in the litigation. In fact, the NPC cites these cases in its Petition.

In this case, Growth Link prayed for and was awarded by the trial court, the amount of P30,000.00 and 30% of the amount recoverable, as and by way of attorney's fees. While said amount may itself be huge by ordinary standards, we believe that the same is warranted when tested against the criteria that serve as reglementary guide for the courts to determine the proper amount of attorney's fees due the winning party.

Thus, we agree with Growth Link when it pleads that:

We take the citations as an implied admission by [the NPC] that an award of 25% of the obligation, is not in itself gargantuan, exorbitant and unconscionable. The matter of 5% differential will not make it so, if we consider the complexities of the instant case, the determination, now conclusive, that [the NPC] acted with gross and evident bad faith, in blacklisting private respondent

The determination of amount of attorney's fees largely depends on the court's discretion. So long as it has sound basis, it will not be interfered with. . . .

Here the lower court was further guided by the complex nature of this case, involving as it did several causes of action each of which proved difficult to establish, and made more so by petitioner's sustained albeit unjustified, resistance. . . .

Thus this suit was a compelled recourse against arbitrary and capricious conduct and the denial of the rudimentary requirements of due process.¹⁶

Anent the claim of NPC that the decision of the trial court does not contain any discussion of the basis for the award of attorney's fees, suffice it to say that the trial court undisputedly awarded exemplary damages, which award is itself a legal justification, under Article 2208¹⁷ of the Civil Code, for the award of attorney's fees.

First. Growth Link insists that the decision of the trial court should be deemed final and executory insofar as NPC's officers and members of the Board of Directors are concerned, because they did not appeal the trial court's decision. Growth Link specifically cites the Notice of Appeal filed by the NPC to be personal only to the NPC.

This submission, however, is, in the first place, belied by the caption of the Notice of Appeal in question, which states, "NATIONAL POWER CORPORATION, ET AL., Respondents." This same caption can be found in NPC's Motion for Reconsideration. Significantly, Growth Link's Opposition to the Motion for Reconsideration made reference to the NPC officers and members of the Board of Directors, in its arguments. At any rate, technicalities that defeat substantial justice are, by this court's policy, an unpreferred basis to deprive parties of their statutory right to appeal a decision that is fatally flawed in certain respects.

In the second place, the finding of solidary liability among the NPC and its officers and members of the Board of Directors, is patently baseless. The decision of the trial court contains no such allegation, finding or conclusion regarding particular acts committed by said officers and members of the Board of Directors that show them to have been individually guilty of unmistakable malice, bad faith, or ill-motive in their personal dealings with Growth Link. In fact, it was only in the dispositive portion of the decision of the court *a quo* that solidary liability as such was first mentioned.

NPC's officers and members of the Board of Directors were sued merely as nominal parties in their official capacities as such. They were impleaded by Growth Link not in their personal capacities as individuals but in their official capacities as officers and members of the Board of Directors through whom the NPC conducts business and undertakes its operations pursuant to its avowed corporate purposes. Therefore, as a bonafide government corporation, NPC should alone be liable for its corporate acts as duly authorized by its officers and directors.¹⁸

This is so, because a corporation "is invested by law with a separate personality, separate and distinct from that of the persons composing it as well as from any other legal entity to which it may be related." (Tan Boon Bee & Co., Inc. v. Jarencio, 163 SCRA 205 [1988] citing Yutivo and Sons Hardware Company v. Court of Tax Appeals, 1 SCRA 160 [1961]; Emilio Cano Enterprises, Inc. v. Court of Industrial Relations, 13 SCRA 290 [1965]). A corporation is an artificial person and can transact its business only through its officers and agents. Necessarily, somebody has to act for it. The separate personality of the corporation may be disregarded, or the veil of corporate fiction pierced and the individual stockholders may be personally liable to obligations of the corporation only when the corporation is used "as a cloak or cover for fraud or illegality, or to work an injustice, or where necessary to achieve equity or when necessary for

the protection of creditors." (*Sulo ng Bayan, Inc. v. Araneta, Inc.*, 72 SCRA 347 [1976] . . .).¹⁹

We repeat, there was nothing in Growth Link's petition nor in the mass of evidence proffered, before the court *a quo* that established the factual or legal basis to hold the officers and members of the Board of Directors of the NPC jointly and severally liable with the NPC for the damages suffered by Growth Link because of acts of gross evident bad faith on the part of the NPC as a corporate entity acting through its officers and directors. The records even bear out that every single offense taken by the NPC against Growth Link arose from a corporate decision and was executed as a corporate act. Thus, the trial court gravely erred in holding said officers and directors to be jointly and severally liable with the NPC for the damages suffered by Growth Link but caused by the NPC alone as a corporate entity.

Second. Growth Link takes exception to the reduction made by the respondent Court of Appeals of the award for compensatory, moral and exemplary damages. It submits that "the damages awarded by the lower court are not even adequate compensation for the injuries visited upon petitioner by the precipitate and irresponsible conduct of private respondent" and that the amounts as determined by the trial court were "even conservative in view of the demonstrated income-potential of petitioner."

We empathize with Growth Link, especially with its owner-president, Teodoro Miguel, whose sincere testimony as to the irreparable damage wrought on his business and personal reputation by NPC's act of blacklisting his company, does call for some reparation in the form of substantial damages.

However, substantial damages do not translate into excessive damages. It is well-settled that the award of damages as well as attorney's fees lies upon the discretion of the court in the context of the facts and circumstances of each case,²⁰ and this judicial discretion is largely addressed towards tempering any tendency to award excessive damages so much so that it stands vulnerable to and actually magnetizes, attacks as to its being a result of passion, prejudice or corruption.

Two million pesos (P2,000,000.00) as compensatory damages and one and a half million pesos (P1,500,000.00) as moral and exemplary damages, are too much. While NPC may be accountable for lost profits that Growth Link may have gained from its dealings with the NPC itself, NPC cannot be made to bear the burden of answering for what other profits that Growth Link may have earned from other contracts with other companies. NPC may have accredited Growth Link as a supplier, but it did not thereby become Growth Link's insurer for all and any profitable contracts that Growth Link may obtain. Thus, we find the reduction of the awards of damages by the respondent Court of Appeals, to be warranted under the facts and circumstances of the instant case.

Third. Growth Link contests the deletion by the respondent Court of Appeals of the awards made by the trial court for unrealized commissions from bids disregarded by the NPC albeit

Growth Link was the lowest and most advantageous bidder, on the ground that the said amounts were "too speculative and uncertain". Growth Link cites two (2) reasons: first, that the NPC admitted its liability for such unrealized commissions in its Answer; and second, that the basis for the unrealized commissions was not necessarily contract but *quasi-delict*.

We disagree.

Growth Link insists that because the NPC allegedly, in its Answer, failed to deny the claims for unrealized commissions as laid out in Growth Link's petition, it had, in effect, admitted the existence and merit of such claims. Growth Link apparently relied on the general rule that non-denial of allegations in the complaint results in admissions thereof. This rule, however, is, just like any other rule, not absolute and correspondingly admits of exceptions.

. . . [I]n spite of the presence of judicial admissions in a party's pleading, the trial court is still given leeway to consider other evidence presented. This rule should apply with more reason when the parties had agreed to submit an issue for resolution of the trial court on the basis of the evidence presented. ²¹

Statements made in an Answer are merely statements of fact which the party filing it expects to prove, but they are not evidence. With more reason, statements made in the complaint, or in this case, in the Petition for *Mandamus* with Preliminary Mandatory Injunction and Damages, which are not directly refuted in the Answer, are deemed admissions but neither are they evidence that will prevail over documentary proofs.

Assuming arguendo that the NPC did not deny the claims for unrealized commissions as alleged by Growth Link in its *mandamus* petition with damages, and that consequently these claims have been transmuted into judicial admissions, these admissions cannot still prevail over the rules and regulations governing the bidding for NPC contracts, which necessarily and inherently include the reservation by the NPC of its right to reject any or all bids. By its own assertion, Growth Link has been a regular bidder for NPC contracts. It cannot deny, much less pretend ignorance of, the reserved discretion of the NPC to accept or reject any bid. Neither could Growth Link have forgotten the well-settled rule that this discretion is of such wide latitude that the courts will not generally interfere with the exercise thereof by the government, unless it is apparent that it is used as a shield to a fraudulent award ²² or an unfairness or injustice is clearly shown. ²³

We thus quote, with approval, the following postulations of the Solicitor General, in behalf of the NPC:

Clearly, it is not NAPOCOR's ministerial duty to make an automatic award to [Growth Link] even if it was the lowest bidder. As aforesaid, NAPOCOR reserved the "right to reject the bid of any bidder." Thus, [Growth Link] has no cause of action *Mandamus* will not lie to compel the acceptance of the bid of an unsuccessful bidder (Borromeo vs. City of Manila, et al., 62 Phil. 512 [1935]).

By participating in the public bidding, after NAPOCOR was ordered to cease from cancelling [Growth Link's] accreditation and to allow the latter to participate in any bidding, [Growth Link] submitted itself to the conditions laid down by NAPOCOR, among which is the reservation of its right to reject any and all bids to be made therein. . . .

Furthermore, Sec. 393 of the National Accounting and Auditing Manual provides:

Sec. 393. Reservation of rights to reject any or all bids. — The contract will be awarded to the contractor whose proposal appears to be the most advantageous to the Government, but the right shall be reserved to reject any or all bids, to waive any informality in the bids received, and to accept or reject any items of any bid unless such bid is qualified by specific limitations; also to disregard the bid of any failing bidder, known as such to the agency head or director, or any bid which is obviously unbalanced or below what the work can be done for. The right shall also be reserved to reject the bid of a bidder who has previously failed to perform properly or complete on time contracts of a similar nature, or a bid of a bidder who is not in a position to perform the contract. . . .

In fine, NAPOCOR has the right to reject any and all bids, not only of [Growth Link] but of all other bidders, as well, if warranted.²⁴

And then there is Growth Link's submission that its claims for unrealized commissions are made proceeding not from facts founded on contract but from facts establishing NPC's culpability under *quasi-delict*.

We, however, find no allegation in Growth Link's petition, no factual finding in the decision of the trial court and no error assigned before the Court of Appeals, as to anything about NPC's liability for unrealized commissions based on *quasi-delict*. We are hardly surprised, however, by this change of theory at this belated stage of the proceedings, because Growth Link indeed has no perfected contract whatsoever to show in order to prove that its claims for unrealized commissions are anything more than an attempt to collect on mere proposal-bids that may have been the lowest and most advantageous in their class but nonetheless remain subject to the explicit reservation by the NPC of its prerogative to reject any or all bids.

All told, we find the Decision of the Court of Appeals in CA-G.R SP No. 26898 to have been rendered in accordance with the applicable law and jurisprudence.

WHEREFORE, the instant consolidated petitions are HEREBY DISMISSED for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Bellosillo, Vitug and Kapunan, JJ., concur.

Padilla, J., is on leave.

Footnotes

1 Decision of the Regional Trial Court dated September 10, 1991; *Rollo* in G.R. No. 113103. pp. 73-82.

2 Branch CV (105), Quezon City, with Judge Tomas V. Tadeo, Jr., presiding.

3 Docketed as Civil Case No. Q-52855.

4 Sixth Division.

5 Promulgated on December 17, 1993, penned by Associate Justice Arturo B. Buena with Associate Justices Artemon D. Luna and Alfredo J. Lagamon, concurring; *Rollo* in G.R. No. 113103, pp. 37-66.

6 Petition filed by the Solicitor General on behalf of the National Power Corporation (NPC), the NPC Board of Directors, Conrado D. del Rosario and Marcelino Ilao, dated July 22, 1994, p. 15; *Rollo* in G.R. No. 113103, p. 33.

7 Petition filed by Growth Link, Inc. dated July 22, 1994, p. 35; *Rollo* in G.R. No. 116000, p. 41.

8 *Rollo* in G.R. No. 16000, p. 89.

9 Decision of the Court of Appeals dated December 17, 1993, pp. 4-20; *Rollo* in G.R. No. 116000, pp. 46-62.

10 Decision of the Regional Trial Court dated September 10, 1991, pp. 9-10; *Rollo* in G.R. No. 113103, pp. 81-82.

11 Decision of the Court of Appeals dated December 17, 1993, p. 20; *Rollo* in G.R. No. 116000, p. 62.

12 *Id.*, pp. 25-26; *Rollo* in G.R. No. 116000, pp. 67-68.

13 Decision of the Court of Appeals dated December 17, 1993, pp. 26-28; *Rollo* in G.R. No. 116000, pp. 68-70.

14 Santiago v. Dimayuga, 3 SCRA 919.

15 Polytrade Corp. v. Blanco, 30 SCRA 187.

16 Comment of Growth Link dated September 23, 1994. pp. 5-6; *Rollo* in G.R. No. 113103, pp. 91-92.

17 Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

xxx xxx xxx

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

xxx xxx xxx

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

18 Caram, Jr. v. Court of Appeals, 151 SCRA 372 [1987]; Western Agro-Industrial Corporation, et al. v. Rodriguez, 188 SCRA 709 [1990].

19 Western Agro-Industrial Corporation, et al. v. Rodriguez, *supra*, pp. 717-718.

20 Magbanua v. Intermediate Appellate Court, 137 SCRA 328.

21 Florentino Atillo III v. Court of Appeals, Amancor, Inc. and Michell Lhuillier, G.R. No. 119053, January 23, 1997.

22 Jalandoni v. NARRA, et. al., 108 Phil. 486.

23 Bureau Veritas v. Office of the President, 205 SCRA 705, *citing* A.C. Esguerra and Sons v. Aytona, et al., 4 SCRA 1245.

24 Comment of the Solicitor General dated December 6, 1994, pp. 39-40; *Rollo* in G.R. No. 116000, pp. 136-137.