Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 95398 August 16, 1991

MARIO R. MELCHOR, petitioner,
vs.
COMMISSION ON AUDIT, respondent.

Polistico Law Office for petitioner

GUTIERREZ, JR., *J.:p*

Is the petitioner personally liable for the amout paid for the construction of a public school building on the ground that the infrastructure contract is null and void for want of one signature?

The facts are uncontroverted.

On July 15, 1983, petitioner Mario R. Melchor, in his capacity as Vocational School Administrator of Alangalang Agro-Industrial School of Alangalang, Leyte, entered into a contract with Cebu Diamond Construction (hereinafter referred to as contractors for the construction of Phase I of the home Technology Building of said school for the price of P488,000. Pablo Narido, (thief accountant of the school, issued a certificate of availability of funds to cover the construction cost. Narido, however, failed to sign as a Witness to the contract, contrarily to the requirement of Section I of Letter of Instruction (LOI) No. 968.

The contract was approved by the then Minister of Education, Culture and Sports Onofre D. Corpuz. The relevant parts of the contract are quoted below:

> That for and in consideration of the sum of FOUR HUNDRED EIGHTY EIGHT THOUSAND PESOS (P488,000.00), Philippine Currency, the CONTRACTOR, at his own proper cost and expense willfully and faithfully perform all works, and unless otherwise provided, furnish all labor, materials, equipment necessary for the construction and completion of Phase I of the Home Technology Building for the Alangalang Agro-Industrial School of Alangalang, Leyte to be completed in accordance with the plans and specifications and all terms, conditions and

> instructions contained in the general and special conditions of contract, as well as those contained in the Notice to Bidders, Tenderers or Advertisement, Instruction to Bidders Tenderers, Supplemental Specifications, Bond Articles, and other essential related documents, which are made and acknowledged as Integral parts of this Agreement, by reference and/or Incorporation, including the permission of Administrative Order No. 81 of the President, dated January 17, 1964, ... (Rollo, p. 25)

While the construction of Phase I was under way, the contractor, in a letter dated November 8, 1983 addressed to Melchor, sought an additional charge of P73,000 equivalent to 15% of the stipulated amount due to an increase in the cost of labor and construction materials.

In a letter dated November 17, 1983, the petitioner referred the contractor's request for additional charge to the Regional Director, Ministry of Education, Culture and Sports (MECS). The petitioner in said letter asked for approval of the contractor's additional charge, pointing out that such additional charge shall be taken from the 1984 non-infrastructure capital outlay and part of the 1984 maintenance and operating expenses. The petitioner, in a second Indorsement dated November 22, 1983, requested the approval by the COA Regional Director in Tacloban City of the contractor's request for adjustment of the cost of the contract.

In an Indorsement dated November 17, 1983, Servillano C. Dela Cruz, Acting Assistant Regional Director ' MECS Regional Office No. VIII, Tacloban City, approved the contractor's request for additional charge subject, however, to the availability of funds and the imprimatur of the Resident Auditor of the School. On its part, the COA Regional Office No. VIII, Tacloban City, through Regional Director, Sopronio Flores, Jr., advanced the view that "the approval of the police escalation rests on the Minister or head of the agency concerned. Our participation in this regard shall be on the post-audit of transactions as emphasized under COA Circular No. 82195."

Meanwhile, the contractor, anticipating that it could not meet the deadline for the project, requested a series of extensions which the petitioner granted. However, on April 10, 1984, the contractor gave up the project mainly to save itself from further losses due to, among other things, increased cost of construction materials and labor.

At the time the contractor ceased working on the project, it had accomplished only 61% of the construction work valued at P344,430.88. However, as of September 13, 1984, the contractor had been paid the total amount of P515,305.60. The excess paid on the value of the 61% accomplishment costing approximately P172,003.26 represented the extra work done by the contractor which was found necessary.

Consequently, the petitioner wrote a letter dated September 19, 1984 to Ms. Gilda Ramos, COA Resident Auditor of the school, requesting the latter to advise the former on whether to pursue condoning the contract or institute a legal action for breach of contract against the contractor. In turn, Ms. Ramos referred the matter to COA Regional Director in Tacloban City, Cesar A.

Damole who in a third Indorsement dated April 8, 1985, directed Ms. Ramos to disallow the payment of P515,305.60 in post-audit on the ground that the contract was null and void for lack of signature of the chief accountant of the school as witness to it, as required under Section 1 of LOI 968, for which reason the petitioner was made personally liable for the amount paid to the contractor.

On May 3, 1985, the petitioner wrote a letter addressed to the Regional Director, COA Regional Office No. VIII, Tacloban City, seeking reconsideration of his directive to the Resident Auditor of the school to disallow the payment of P515,305.60 to the contractor. The petitioner sought reconsideration on the following grounds: a) the Certificate of Availability of Funds signed by the chief accountant of the school, being an integral part, of the contract, substantially complied with the requirement of LOI 968 that the signature of said accountant must be affixed as witness to the contract, b) the petitioner did not exceed his authority because the contract was approved by the head of the agency concerned c) the Resident Auditor of the school who had been furnished a copy of the contract did not object to the contract because of that flaw; and d) the petitioner religiously complied with the provisions of P.D. 1445 (otherwise known as "The Government Auditing Code of the Phils."), specifically, Sections 85 and 86 as to the requirements in the execution of a government contract.

In a first Indorsement dated July 17, 1985, COA Regional Director of Tacloban City, Cesar A. Damole denied the petitioner's motion for reconsideration. Immediately, petitioner Melchor appealed to the COA Head Office which dismissed his appeal for lack of merit. The COA Head Office likewise denied the petitioner's requests for reconsideration.

Hence, this petition.

The sole issue of this Court's consideration is whether or not petitioner Melchor should be held personally liable for the amount of P515,305.60 paid to the contractor. This P515,305.60 may be broken down into:

1) P344,430.80 — representing 6l% of equivalent payment for the work done by the contractor within the contract specifications, and

2) P172,003.206 — representing payment for extra work orders, not included in the contract specifications, which were incurred to make the building structure strong.

The amounts of P344,430.80 and P172,003.26, when added together, do not equal P515,305.60. The records do not explain the reason for the discrepancy. At any rate, the contending parties do not question the correctness of these amounts.

Respondent COA maintains that the contract entered into by the petitioner with Cebu Diamond Construction is null and void since the chief accountant did not affix his signature to the contract, in violate on of the requirements of LOI 968.

Section 1 of LOI 968, dated December 17, 1979, provides:

> 1. All contracts for capital projects and for the supply of commodities and services, including equipment, maintenance contracts., and other agreements requiring payments which are chargeable to agency current operating or capital expenditure funds, shall be signed by agency heads or other duly authorized official only when there are available funds. The Chief Accountant of the contracting agency shall sign such contracts as witness and contracts without such witness hall be considered as null and void.

According to COA, since there was no compliance with the above provision, then the amount of P344,430.80 should be disallowed iii post-audit and the petitioner should be personally able for said amount.

The petitioner reasons that the absence of the accountant's signature as witness to the contract should not militate against its validity. He cites Section 86 of PD 1445, which states:

> Certificate Showing Appropriation to Meet Contract — ... no contract involving the expenditure of public fund by any government agency shall be entered into or authorized unless 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 that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification, modification by the auditor concerned. The certificate, signed by the proper accounting official and the, auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

Petitioner Melchor urges that the issuance by the chief accountant of a "Certificate of Availability of Funds" compensates for the latter's non-signing as a contract witness since under Section 86 of PD 1445, the certificate is attached to and becomes an integral part of the contract. He argues that there was, in effect, substantial compliance with the mandate of LOI 968.

Moreover the petitioner contends that assuming arguendo that the contract is null and void, he should still not be made personally accountable for the amount paid to the contractor. He cites this Court's resolution in *Royal Trust Corporation v. Commission on Audit*, G.R. No. 84202, November 22, 1988. In that case. despite the absence of a specific covering appropriation as required under COA Resolution No. 86-58, the contractor was allowed by the Court to be compensated on a quantum meruit basis.

Under the circumstances of this case, the Court finds that the contract executed by the petitioner and Cebu Diamond Construction is enforceable and, therefore, the petitioner should not be made to personally pay for the building already constructed.

LOI 968 and Sections 85 and 86 of PD 1445 implement and reinforce the constitutional mandate that "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law" (Constitution, Article VI, Section 29 [1]).

Under Sections 85 and 86 of PD 1445, before a government agency can enter into a contract involving expenditure of government funds there must be an appropriation for such expenditure and the proper accounting official must certify that funds have been appropriated for the purpose. Under LOI 968, the chief accountant of the government agency, as the verifier of the availability of funds, must sign such contracts as witness. The uniform intent of these provisions is to ensure that government contracts are signed only when supported by available funds.

In the case before us, the chief accountant issued a certificate of availability of funds but failed to sign the contract as witness. But since Section 86 states that the certificate shall be attached to and become an integral part of the proposed contract, then the failure of the chief accountant to affix his signature to the contract was somehow made up by his own certification which is the basic and more important validating document. The contract moreover provided that "other essential related documents xxx are made and acknowledged as integral parts of this agreement, by reference and/or incorporation." This is not to say that the heads of government offices or institutions should not read carefully the fine print of official regulations governing contracts. However, under the peculiar circumstances of this case, we agree with the petitioner's view that there was substantial compliance with the requirements of LOI 968 in the execution of the contract. He has not been charged under some regulations governing negligence in not going over auditing and accounting rules more carefully. But even assuming some kind of administrative responsibility for not being more careful, he should not be made to pay for a school building already constructed and serving an urgent need in his province.

It is a rule of statutory construction that the court may consider the spirit and reason of a statute where a literal meaning would lead to absurdity, contradiction, injustice or would defeat the clear purpose of the lawmakers. (People v. Manantan 5 SCRA 684 [1962]) For this Court to draw a narrow and stringent application of LOI 968 would be to lose sight of the purpose behind its enactment. The rationale for LOI 968, which is to ensure that there are available funds to finance a proposed project, was already served by the chief accountant's issuance of a certificate of fund availability.

Additionally, Section 2 of LOI 968 provides:

> 2. It shall be the responsibility of the Chief Accountant to verify the availability of funds, as duly evidenced by programmed appropriations released by the Ministry of Budget and received by the agency, from which such contract shall

be ultimately payable. *His signature shall be considered as constituting a certification to that effect*. (Emphasis Supplied)

Since, under the above proviso, the accountant's signature shall have the effect of a certification, then it may be inferred that the accountant's certification, not his signature as a contract witness, is the more reliable indicium of fund availability.

What further bolsters the contract's validity is the fact that the original contract for P488,000 and the 15% price escalation of P73,000 bore the approval of the Minister of Education, Culture and Sports as required by COA Circular No. 83-101-J (dated June 8, 1983) and the Implementing Rules of PD 1594. Under COA Circular 83-101-J, the Minister of Education, Culture and Sports has the authority to approve infrastructure projects not exceeding P2 Million. Under Section III, CIII of the Implementing Rules of PD 1594, the Minister is empowered to approve contract price escalation not exceeding 18% of the original contract price.

Moreover, under COA Circular No. 76-34 dated July 15,1976, within 5 days from receipt of a copy of the contract, the COA is required to call the attention of management regarding defects or deficiencies of the contract and suggest such corrective measures as are appropriate and warranted to facilitate the process of the claim upon presentation. In this case, respondent COA does not deny the petitioner's claim that it was furnished copies of the contract, together with supporting documents, a few days after approval thereof by the Minister of Education, Culture and Sports. If the respondent had complied with this requirement, then the absence of the accountant's signature as a witness to the contract could have been remedied. COA was also negligent.

No less compelling than the foregoing reasons is the undisputed fact that the construction of the Home Technology Building had long been completed and that the building is now being utilized as part of the Alangalang Industrial School. In People v. Purisima 86 SCRA 542 (1978), we held that there exists a valid presumption that undesirable consequences were never intended by a legislative measure, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil and injurious consequences. In the present case we consider it highly inequitable to compel the petitioner, who had substantially complied With the mandate of LOI 968, to shoulder the construction cost of the building when it is not he, but the government, which is reaping benefits from it.

The Court therefore rules that respondent COA erred in disallowing in audit the amount of P344,430.88.

With respect to the remaining P12,003.26 paid by the petitioner to the contractor for extra work done, the COA reasons that the extra work done. being more than 25% of the escalated original contract price, was null and void because no supplemental agreement was executed. The respondent cites the implementing rules and regulations of PD 1594 which provide:

> 5. A separate supplemental agreement may be entered into for all change orders or extra work orders if the aggregate amount exceeds 25% of the escalated original contract price. (III CI paragraphs 5;) (Emphasis supplied).

Under the facts of this case, we adjudge that respondent COA is not without legal basis in disallowing the P172,003.26 payment for the extra work orders. However, since the word "may" was used in the Decree then the requirement of a supplemental agreement under all circumstances may not always be mandatory. There is no need to go into any possible exceptions because we find the rule applicable in this case.

Under COA Circular 83-101-J, *supra*, the Minister of Education, Culture and Sports has the authority to approve extra work orders or other variation orders not exceeding 50% of the original contract price or P1 Million whichever is less. In this case, there is no showing that the extra work order was approved by the Minister.

Moreover, a variation order (which may take the form of a change order, extra work or supplemental agreement) is a contract by itself and involves the expenditure of public funds to cover the cost of the work called for thereunder. (Fernandez, A Treatise on Government Contracts under Philippine Law, 115-116 [1985]) As such, it is subject to the restrictions imposed by Sections 85 and 86 of PD 1445 and LOI 968-COA Circular No. 80-122, dated January 15, 1980, likewise ensures that an extra work order is approved only when supported by available funds. Again, the petitioner has not presented proof of an appropriation to cover the extra work order.

For a failure to show the approval by the proper authority and to submit the corresponding appropriation, We declare the contract for extra works null and void. Section 87 of PD 1445 states:

> Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the *officer or offices entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties*. (Emphasis supplied)

This does not mean, however, that the petitioner should be held personally liable and automatically ordered to return to the government the full amount of P172,003.26.

As previously discussed, it would be unjust to Order the petitioner to shoulder the expenditure when the government had already received and accepted benefits from the utilization of the building.

In *Royal Trust Construction v. Commission on Audit*, *supra*, cited by the petitioner, the Court, in the interest of substantial justice and equity, allowed payment to the contractor on a *quantum meruit* basis despite the absence of a written contract and a covering appropriation.

In a more recent case, *Dr. Rufino O. Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, the Court directed payment to the contractor on a quantum meruit basis despite the petitioner's failure to undertake a public bidding. In that case, the Court held that "to deny 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.

Where payment is based on quantum meruit the amount of recovery would only be the reasonable value of the thing or services rendered regardless of any agreement as to value. (Tantuico, State Audit Code of the Philippines Annotated, 471 [1982])

Although the two cases mentioned above contemplated a situation where it is the contractor who is seeking recovery, we find that the principle of payment by quantum meruit likewise applies to this case where the contractor had already been paid and the government is seeking reimbursement from the public official who heads the school. If, after COA determines the value of the extra works computed on the basis of *quantum meruit* it finds that the petitioner made an excess or improper payment for these extra works, then petitioner Melchor shall be liable only for such excess payment.

WHEREFORE, the petition is GRANTED. The decision of the respondent COA denominated as 11th Indorsement dated November 11, 1988 and its resolution dated July 31, 1990 are hereby REVERSED and SET ASIDE. Respondent COA is directed to allow in post-audit the payment of P344,430.80. Respondent COA is likewise directed to determine on a *quantum meruit* basis the value of the extra works done, and after such determination, to disallow in post-audit the excess payment, if any, made by the petitioner to the contractor. The petitioner shall be personally liable for any such excess payment.

SO ORDERED.

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