Republic of the Philippines
**SUPREME COURT**
Manila

SECOND DIVISION

**G.R. No. L-33022 April 22, 1975**

**CENTRAL BANK OF THE PHILIPPINES,** petitioner,
vs.
**COURT OF APPEALS and ABLAZA CONSTRUCTION & FINANCE CORPORATION,** respondents.

*F.E. Evangelista for petitioner.*

*Cruz, Villarin & Laureta for private respondent.*

**BARREDO, *J.:***

Petition of the Central Bank of the Philippines for review of the decision of the Court of Appeals in CA-G.R. No. 43638-R affirming the judgment of the Court of First Instance of Rizal in Civil Case No. Q-10919 sentenced petitioner to pay respondent Ablaza Construction and Finance Corporation damages for breach contract in that after having formally and officially awarded, pursuant to the results of the usual bidding to Ablaza in December 1965 the "contract" for the construction of its San Fernando, La Union branch building and allowed said contractor to commence the work up to about May, 1966, albeit without any written formal contract having been executed, the Bank failed and refused to proceed with the project, unless the plans were revised and a lower price were agreed to by Ablaza, the Bank claiming that its action was pursuant to the policy of fiscal restraint announced by the then new President of the Philippines on December 30, 1965 and the Memorandum Circular No. 1 dated December 31, 1965 of the same President.

The factual background of this case is related in the following portions of the decision of the trial court, which the Court of Appeals affirmed without modification:

> Sometime in 1965, defendant Central Bank of the Philippines issued Invitations to Bid and Instructions to Bidders for the purpose of receiving sealed proposals for the general construction of its various proposed regional offices, including the Central Bank regional office building in San Fernando, La Union.

In response to the aforesaid Invitations to Bid, the plaintiff Ablaza Construction and Finance Corporation, which was one of the qualified bidders, submitted a bid proposal for the general construction of defendant's proposed regional office building in San Fernando, La Union at the public bidding held on November 3, 1965. The said proposal was, as required by the defendant accompanied by a cash bidder's bond in the sum of P275,000.00.

On December 7, 1965, the Monetary Board of the defendant Central Bank of the Philippines, after evaluating all the bid proposals submitted during the above-mentioned bidding, unanimously voted and approved the award to the plaintiff of the contract for the general construction of defendant's proposed regional office building in San Fernando, La Union, for the sum of P3,749,000.00 under plaintiff's Proposal Item No. 2.

Pursuant thereto, on December 10, 1965, Mr. Rizalino L. Mendoza, Assistant to the Governor and concurrently the Chairman of the Management Building Committee of the defendant Central Bank of the Philippines, set a telegram to the plaintiff, informing the latter that the contract for the general construction of defendant's proposed regional office building in San Fernando, La Union, had been awarded to the plaintiff. The said telegram was followed by a formal letter, also dated December 10, 1965, duly signed by said Mr. Rizalino L. Mendoza, confirming the approval of the award of the above-stated contract under plaintiff's Proposal Item No. 2 in the amount of P3,749,000.00.

Upon receipt of the aforementioned letter, plaintiff immediately accepted the said award by means of a letter dated December 15, 1965, whereby plaintiff also requested permission for its workmen to enter the site of the project, build a temporary shelter and enclosure, and do some clearing job thereat. Accordingly, said permission was granted by the defendant as embodied in its letter dated January 4, 1966, addressed to the plaintiff..

Within five (5) days from receipt by the plaintiff of the said notice of award, and several times thereafter Mr. Nicomedes C. Ablaza, an officer of the plaintiff corporation, went personally to see Mr. Rizalino L. Mendoza at the latter's Central Bank office to follow up the signing of the corresponding contract. A performance bond in the total amount of P962,250.00 (P275,000.00 of which was in cash and P687,250.00 in the form of a surety bond) was subsequently posted by the plaintiff in compliance with the above-stated Instructions to Bidders, which bond was duly accepted by the defendant.

Pursuant to the permission granted by the defendant, as aforesaid, plaintiff commenced actual construction work on the project about the middle of January, 1966. On February 8, 1966, by means of a formal letter, defendant requested the plaintiff to submit a schedule of deliveries of materials which,

according to plaintiff's accepted proposal, shall be furnished by the defendant. In compliance therewith, on February 16, 1966, plaintiff submitted to the defendant the schedule of deliveries requested for.

During the period when the actual construction work on the project was in progress, Mr. Nicomedes G. Ablaza had several meetings with Mr. Rizalino L. Mendoza at the latter's office in the Central Bank. During those meetings, they discussed the progress of the construction work being then undertaken by the plaintiff of the projects of the defendant in San Fernando, La Union, including the progress of the excavation work.

Sometime during the early part of March, 1966, Mr. Rizalino L. Mendoza was at the construction site of the said project. While he was there, he admitted having seen pile of soil in the premises. At that time, the excavation work being undertaken by the plaintiff was about 20% complete. On March 22, 1966, defendant again wrote the plaintiff, requesting the latter to submit the name of its representative authorized to sign the building contract with the defendant. In compliance with the said request, plaintiff submitted to the defendant the name of its duly authorized representative by means of a letter dated March 24, 1966.

A meeting called by the defendant was held at the conference room of the Central Bank on May 20, 1966. At the said meeting, the defendant, thru Finance Secretary Eduardo Romualdez, announced, among other things, the reduction of the appropriations for the construction of the defendant's various proposed regional offices, including that of the proposed San Fernando, La Union regional office building, the construction of which had already been started by the plaintiff. He also stated that the Central Bank Associated Architects would be asked to prepare new plans and designs based on such reduced appropriations. The defendant, during that same meeting, also advised the plaintiff, thru Messrs. Nicomedes G. Ablaza and Alfredo G. Ablaza (who represented the plaintiff corporation at the said meeting), to stop its construction work on the Central Bank Regional office building in San Fernando, La Union. This was immediately complied with by the plaintiff, although its various construction equipment remained in the jobsite. The defendant likewise presented certain offer and proposals to the plaintiff, among which were: (a) the immediate return of plaintiff's cash bidder's bond of P275,000.00; (b) the payment of interest on said bidder's bond at 12% per annum; (c) the reimbursement to the plaintiff of the value of all the work accomplished at the site; (d) the entering into a negotiated contract with the plaintiff on the basis of the reduced appropriation for the project in question; and (e) the reimbursement of the premium on plaintiff's performance bond. Not one of these offers and proposals of the defendant, however, was accepted by the plaintiff during that meeting of May 20, 1966.

> On June 3, 1966, plaintiff, thru counsel, wrote the defendant, demanding for the formal execution of the corresponding contract, without prejudice to its claim for damages. The defendant, thru its Deputy Governor, Mr. Amado R. Brinas, on June 15, 1966, replied to the said letter of the plaintiff, whereby the defendant claimed that an agreement was reached between the plaintiff and the defendant during the meeting held on May 20, 1966. On the following day, however, in its letter dated June 16, 1966, the plaintiff, thru counsel, vehemently denied that said parties concluded any agreement during the meeting in question.
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> On July 5, 1966, defendant again offered to return plaintiff's cash bidder's bond in the amount of P275,000.00. The plaintiff, thru counsel, on July 6, 1966, agreed to accept the return of the said cash bond, without prejudice, however, to its claims as contained in its letters to the defendant dated June 3, June 10, and June 16, 1966, and with further reservation regarding payment of the corresponding interest thereon. On July 7, 1966, the said sum of P275,000.00 was returned by the defendant to the plaintiff.
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> On January 30, 1967, in accordance with the letter of the plaintiff, thru counsel, dated January 26, 1967, the construction equipment of the plaintiff were pulled out from the construction site, for which the plaintiff incurred hauling expenses.
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> The negotiations of the parties for the settlement of plaintiff's claims out of court proved to be futile; hence, the present action was instituted by plaintiff against the defendant." (Pp. 249-256, Rec. on Appeal).

It may be added that the Instructions to Bidders on the basis of which the bid and award in question were submitted and made contained, among others, the following provisions:

> IB 113.4 The acceptance of the Proposal shall be communicated in writing by the Owner and no other act of the Owner shall constitute the acceptance of the Proposal. The acceptance of a Proposal shall bind the successful bidder to execute the Contract and to be responsible for liquidated damages as herein provided. The rights and obligations provided for in the Contract shall become effective and binding upon the parties only with its formal execution.
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> IB 114.1 The bidder whose proposal is accepted will be required to appear at the Office of the Owner in person, or, if a firm or corporation, a duly authorized representative shall so appear, and to execute that contract within five (5) days after notice that the contract has been awarded to him. Failure or neglect to do so shall constitute a breach of agreement effected by the acceptance of the Proposal.

xxx xxx xxx

IB 118.1 The Contractor shall commence the work within ten (10) calendar days from the date he receives a copy of the fully executed Contract, and he shall complete the work within the time specified." (Pp. 18-19 & 58-59, Petitioner-Appellant's Brief.)

In the light of these facts, petitioner has made the following assignment of errors:

I. THE COURT OF APPEALS ERRED IN HOLDING THAT THERE WAS A PERFECTED CONTRACT BETWEEN PETITIONER CENTRAL BANK OF THE PHILIPPINES AND RESPONDENT ABLAZA CONSTRUCTION & FINANCE CORPORATION FOR THE GENERAL CONSTRUCTION WORK OF PETITIONER'S REGIONAL OFFICE BUILDING AT SAN FERNANDO, LA UNION.

II. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAS COMMITTED A BREACH OF CONTRACT.

III. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAD GIVEN ITS APPROVAL TO THE WORK DONE BY RESPONDENT ABLAZA CONSTRUCTION & FINANCE CORPORATION.

IV. THE COURT OF APPEALS ERRED IN HOLDING THAT THE AWARD OF ACTUAL AND COMPENSATORY DAMAGES, ATTORNEY'S FEES AND RETAINING FEE IS FAIR AND REASONABLE, AND IN HOLDING THAT PETITIONER IS LIABLE FOR COSTS." (Pp. A & B, Petitioner-Appellant's Brief.)

Under the first assigned error, petitioner denotes the major part of its effort to the discussion of its proposition that there could be no perfected contract in this case, (contrary to the conclusion of the courts below) because there is no showing of compliance, and in fact, there has been no compliance with the requirement that there must be a certification of the availability of funds by the Auditor General pursuant to Section 607 of the Revised Administrative Code which provides thus:

Section 607. Certificate showing appropriation to meet contract. — Except in the case of a contract for personal service or for supplies to be carried in stock, no contract involving an expenditure by the National Government of three thousand pesos or more shall be entered into or authorized until the Auditor General shall have certified to the officer entering into such obligation that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. When application is made to the Auditor General for the certificate herein required, a copy of the proposed contract or agreement shall be submitted to him accompanied by a statement in writing from the officer making the

> application showing all obligations not yet presented for audit which have been incurred against the appropriation to which the contract in question would be chargeable; and such certificate, when signed by the Auditor, shall be attached to and become a part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purposes until the Government is discharged from the contract in question.
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> Except in the case of a contract for supplies to be carried in stock, no contract involving the expenditure by any province, municipality, chartered city, or municipal district of two thousand pesos or more shall be entered into or authorized until the treasurer of the political division concerned shall have certified to the officer entering into such contract that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. Such certificate, when signed by the said treasurer, shall be attached to and become part of the proposed contract and the sum so certified shall not thereafter be available for expenditure for any other purpose until the contract in question is lawfully abrogated or discharged.
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> For the purpose of making the certificate hereinabove required ninety per centum of the estimated revenues and receipts which should accrue during the current fiscal year but which are yet uncollected, shall be deemed to be in the treasury of the particular branch of the Government against which the obligation in question would create a charge." (Pp. 23-25, Petitioner-Appellant's Brief.)

It is contended that in view of such omission and considering the provisions of Section 608 of the same code to the effect that "a purported contract entered into contrary to the requirements of the next preceding section hereof shall be wholly void", "no contract between the petitioner and respondent Ablaza Construction and Finance Corporation for the general construction of the proposed regional office building of the Central Bank in San Fernando, La Union, was ever perfected because only the first stage, that is the award of the contract to the lowest responsible bidder, respondent Ablaza Construction and Finance Corporation, was completed." (p. 29, Petitioner-Appellant's Brief.) And in support of this pose, petitioner relies heavily on *Tan C. Tee & Co. vs. Wright*thus:

> The aforesaid requirements of the Revised Administrative Code for the perfection of government contracts have been upheld by this Honorable Court in the case of *Tan C. Tee Co. vs. Wright*, 53 Phil. 172, in which case it was held that the award of the contract to the lowest bidder does not amount to entering into the contract because of the requirement of Section 607 of the Revised Administrative Code that a copy of the proposed contract shall be submitted to the Auditor General together with a request for the availability of funds to cover the proposed contract. Thus, this Honorable Court held:

> 'To award the contract to the lowest responsible bidder is not the equivalent of entering into the contract. Section 607 of the Administrative Code requires that a copy of the proposed contract shall be submitted along with the request for the certificate of availability of funds, but there could be no proposed contract to be submitted until after the award was made.'

And to guide government authorities in the letting of government contracts, this Honorable Court, in said case of Tan C. Tee vs. Wright, supra, laid down the procedure which should be followed, as follows:

> `PROCEDURE WHICH SHOULD BE FOLLOWED IN THE LETTING OF CONTRACTS FOR INSULAR WORKS. — The procedure which should be followed in the letting of contracts for Insular works is the following: First, there is an award of the contract by the Director of Public Works to the lowest responsible bidder. Second, there is a certificate of availability of funds to be obtained from the Insular Auditor, and in some cases from the Insular Treasurer, to cover the proposed contract. And third, there is a contract to be executed on behalf of the Government by the Director of Public Works with the approval of the department head.'" (Pp. 27-28, Petitioner-Appellant's Brief.)

The contention is without merit. To start with, the record reveals that it is more of an afterthought. Respondent never raised this question whether in its pleadings or at the hearings in the trial court. We have also read its brief in the appellate court and no mention is made therein of this point. Not even in its memorandum submitted to that court in lieu of oral argument is there any discussion thereof, even as it appears that emphasis was given therein to various portions of the Revised Manual of Instructions to Treasurers regarding the perfection and constitution of public contracts. In fact, reference was made therein to Administrative Order No. 290 of the President of the Philippines, dated February 5, 1959, requiring "all contracts of whatever nature involving P10,000 or more to be entered into by all bureaus and offices, ... including the ... Central Bank ... shall be submitted to the Auditor General for examination and review before the same are perfected and/or consummated, etc.", without mentioning, however, that said administrative order was no longer in force, the same having been revoked on January 17, 1964 by President Macapagal under Administrative Order No. 81, s. 1964.

Hence, if only for the reason that it is a familiar rule in procedure that defenses not pleaded in the answer may not be raised for the first time on appeal, petitioner's position cannot be sustained. Indeed, in the Court of Appeals, petitioner could only bring up such questions as are related to the issues made by the parties in their pleadings, particularly where factual matters may be involved, because to permit a party to change his theory on appeal "would be unfair to the adverse party." (II, Moran, Rules of Court, p. 505, 1970 ed.) Furthermore, under Section 7 of

Rule 51, the appellate court cannot consider any error of the lower court "unless stated in the assignment of errors and properly argued in the brief."

Even prescinding from this consideration of belatedness, however, it is Our considered view that contracts entered into by petitioner Central Bank are not within the contemplation of Sections 607 and 608 cited by it. Immediately to be noted, Section 607 specifically refers to "expenditure(s) of the National Government" and that the term "National Government" may not be deemed to include the Central Bank. Under the Administrative Code itself, the term "National Government" refers only to the central government, consisting of the legislative, executive and judicial departments of the government, as distinguished from local governments and other governmental entities and is not synonymous, therefore, with the terms "The Government of the Republic of the Philippines" or "Philippine Government", which are the expressions broad enough to include not only the central government but also the provincial and municipal governments, chartered cities and other government-controlled corporations or agencies, like the Central Bank. (I, Martin, Administrative Code, p. 15.)

To be sure the Central Bank is a government instrumentality. But it was created as an autonomous body corporate to be governed by the provisions of its charter, Republic Act 265, "to administer the monetary and banking system of the Republic." (Sec. 1) As such, it is authorized "to adopt, alter and use a corporate seal which shall be judicially noticed; to make contracts; to lease or own real and personal property, and to sell or otherwise dispose of the same; to sue and be sued; and otherwise to do and perform any and all things that may be necessary or proper to carry out the purposes of this Act. The Central Bank may acquire and hold such assets and incur such liabilities as result directly from operations authorized by the provisions of this Act, or as are essential to the proper conduct of such operations." (Sec. 4) It has capital of its own and operates under a budget prepared by its own Monetary Board and otherwise appropriates money for its operations and other expenditures independently of the national budget. It does not depend on the National Government for the financing of its operations; it is the National Government that occasionally resorts to it for needed budgetary accommodations. Under Section 14 of the Bank's charter, the Monetary Board may authorize such expenditures by the Central Bank as are in the interest of the effective administration and operation of the Bank." Its prerogative to incur such liabilities and expenditures is not subject to any prerequisite found in any statute or regulation not expressly applicable to it. Relevantly to the issues in this case, it is not subject, like the Social Security Commission, to Section 1901 and related provisions of the Revised Administrative Code which require national government constructions to be done by or under the supervision of the Bureau of Public Works. (Op. of the Sec. of Justice No. 92, Series of 1960) For these reasons, the provisions of the Revised Administrative Code invoked by the Bank do not apply to it. To Our knowledge, in no other instance has the Bank ever considered itself subject thereto.

In *Zobel vs. City of Manila*, 47 Phil. 169, this Court adopted a restrictive construction of Section 607 of the Administrative Code thus:

The second question to be considered has reference to the applicability of section 607 of the Administrative Code to contracts made by the City of Manila. In the second paragraph of said section it is declared that no contract involving the expenditure by any province, municipality, township, or settlement of two thousand pesos or more shall be entered into or authorized until the treasurer of the political division concerned shall have certified to the officer entering into such contract that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. It is admitted that no such certificate was made by the treasurer of Manila at the time the contract now in question was made. We are of the opinion that the provision cited has no application to contracts of a chartered city, such as the City of Manila. Upon examining said provision (sec. 607) it will be found that the term chartered city, or other similar expression, such as would include the City of Manila, is not used; and it is quite manifest from the careful use of terms in said section that chartered cities were intended to be excluded. In this connection the definitions of "province," "municipality," and "chartered city," given in section 2 of the Administrative Code are instructive. The circumstance that for certain purposes the City of Manila has the status both of a province and a municipality (as is true in the distribution of revenue) is not inconsistent with this conclusion." [1]

We perceive no valid reason why the Court should not follow the same view now in respect to the first paragraph of the section by confirming its application only to the offices comprised within the term National Government as above defined, particularly insofar as government-owned or created corporations or entities having powers to make expenditures and to incur liabilities by virtue of their own corporate authority independently of the national or local legislative bodies, as in the case of the petitioner herein, are concerned. Whenever necessary, the Monetary Board, like any other corporate board, makes all required appropriations directly from the funds of the Bank and does not need any official statement of availability from its treasurer or auditor and without submitting any papers to, much less securing the approval of the Auditor General or any outside authority before doing so. Indeed, this is readily to be inferred from the repeal already mentioned earlier of Administrative Order No. 290, s. 1959, which petitioner tried to invoke, overlooking perhaps such repeal. In other words, by that repeal, the requirement that the Central Bank should submit to the Auditor General for examination and review before contracts involving P10,000 or more to be entered into by it "before the same are perfected and/or consummated" had already been eliminated at the time the transaction herein involved took place. Consequently, the point of invalidity pressed, belatedly at that, by petitioner has no leg to stand on.

The other main contention of petitioner is that the purported or alleged contract being relied upon by respondent never reached the stage of perfection which would make it binding upon the parties and entitle either of them to sue for specific performance in case of breach thereof. In this connection, since the transaction herein involved arose from the award of a construction contract [2] by a government corporation and the attempt on its part to discontinue with the construction several months after such award had been accepted by the contractor and after the latter had already commenced the work without any objection on the part of the corporation, so much so that entry into the site for the purpose was upon express permission

from it, but before any written contract has been executed, it is preferable that certain pertinent points be clarified for the proper resolution of the issue between the parties here and the general guidance of all who might be similarly situated.

Petitioner buttresses its position in regard to this issue on the provisions earlier quoted in this opinion of the Instruction to Bidders:

> IB 113.4 The acceptance of the Proposal shall be communicated in writing by the Owner and no other act of the Owner shall constitute the acceptance of the Proposal. The acceptance of a Proposal shall bind the successful bidder to execute the Contract and to be responsible for liquidated damages as herein provided. The rights and obligations provided for in the Contract shall become effective and binding upon the parties only with its formal execution.
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> IB 118.1 The Contractor shall commence the work within ten (10) calendar days from the date he receives a copy of the fully executed Contract, and he shall complete the work within the time specified." (Pp. 18-19, Petitioner-Appellant's Brief.)

Petitioner insists that under these provisions, the rights and obligations of the Bank and Ablaza could become effective and binding only upon the execution of the formal contract, and since admittedly no formal contract has yet been signed by the parties herein, there is yet no perfected contract to speak of and respondent has, therefore, no cause of action against the Bank. And in refutation of respondent's argument that it had already started the work with some clearing job and foundation excavations, which has never been stopped by petitioner who had previously given express permission to respondent to enter the jobsite, build a temporary shelter and enclosures thereon, petitioner counters that under the above instructions, respondent is supposed to commence the work "within ten (10) calendar days from the date he receives a copy of the fully executed Contract," and for said respondent to have started actual construction work before any contract has been signed was unauthorized and was consequently undertaken at his own risk, all the above circumstances indicative of estoppel notwithstanding.

We are not persuaded that petitioner's posture conforms with law and equity. According to Paragraph IB 114.1 of the Instructions to Bidders, Ablaza was "required to appear in the office of the Owner (the Bank) in person, or, if a firm or corporation, a duly authorized representative (thereof), and to execute the contract within five (5) days after notice that the contract has been awarded to him. *Failure or neglect to do so shall constitute a breach of agreement effected by the acceptance of the Proposal*." There can be no other meaning of this provision than that the Bank's acceptance of the bid of respondent Ablaza effected an actionable agreement between them. We cannot read it in the unilateral sense suggested by petitioner that it bound only the contractor, without any corresponding responsibility or obligation at all

on the part of the Bank. An agreement presupposes a meeting of minds and when that point is reached in the negotiations between two parties intending to enter into a contract, the purported contract is deemed perfected and none of them may thereafter disengage himself therefrom without being liable to the other in an action for specific performance.

The rather ambiguous terms of Paragraph IB 113.4 of the Instructions to Bidders relied upon by petitioner have to be reconciled with the other paragraphs thereof to avoid lack of mutuality in the relation between the parties. This invoked paragraph stipulates that "the acceptance of (respondent's) Proposal shall bind said respondent to execute the Contract and to be responsible for liquidated damages as herein provided." And yet, even if the contractor is ready and willing to execute the formal contract within the five (5) day period given to him, petitioner now claims that under the invoked provision, it could refuse to execute such contract and still be absolutely free from any liability to the contractor who, in the meantime, has to make necessary arrangements and incur expenditures in order to be able to commence work "within ten (10) days from the date he receives a copy of the fully executed Contract," or be responsible for damages for delay. The unfairness of such a view is too evident to be justified by the invocation of the principle that every party to a contract who is *sui juris* and who has entered into it voluntarily and with full knowledge of its unfavorable provisions may not subsequently complain about them when they are being enforced, if only because there are other portions of the Instruction to Bidders which indicate the contrary. Certainly, We cannot sanction that in the absence of unavoidable just reasons, the Bank could simply refuse to execute the contract and thereby avoid it entirely. Even a government owned corporation may not under the guise of protecting the public interest unceremoniously disregard contractual commitments to the prejudice of the other party. Otherwise, the door would be wide open to abuses and anomalies more detrimental to public interest. If there could be instances wherein a government corporation may justifiably withdraw from a commitment as a consequence of more paramount considerations, the case at bar is not, for the reasons already given, one of them.

As We see it then, contrary to the contention of the Bank, the provision it is citing may not be considered as determinative of the perfection of the contract here in question. Said provision only means that as regards the violation of any particular term or condition to be contained in the formal contract, the corresponding action therefor cannot arise until after the writing has been fully executed. Thus, after the Proposal of respondent was accepted by the Bank thru its telegram and letter both dated December 10, 1965 and respondent in turn accepted the award by its letter of December 15, 1965, both parties became bound to proceed with the subsequent steps needed to formalize and consummate their agreement. Failure on the part of either of them to do so, entities the other to compensation for the resulting damages. To such effect was the ruling of this Court in Valencia vs. RFC 103 Phil. 444. We held therein that the award of a contract to a bidder constitutes an acceptance of said bidder's proposal and that "the effect of said acceptance was to perfect a contract, upon notice of the award to (the bidder)". (at p. 450) We further held therein that the bidder's "failure to (sign the corresponding contract) do not relieve him of the obligation arising from the unqualified acceptance of his offer. Much less did it affect the existence of a contract between him and respondent". (at p. 452)

It is neither just nor equitable that Valencia should be construed to have sanctioned a one-sided view of the perfection of contracts in the sense that the acceptance of a bid by a duly authorized official of a government-owned corporation, financially and otherwise autonomous both from the National Government and the Bureau of Public Works, insofar as its construction contracts are concerned, binds only the bidder and not the corporation until the formal execution of the corresponding written contract.

Such unfairness and inequity would even be more evident in the case at bar, if We were to uphold petitioner's pose. Pertinently to the point under consideration, the trial court found as follows:

To determine the amount of damages recoverable from the defendant, plaintiff's claim for actual damages in the sum of P298,433.35, as hereinabove stated, and the recommendation of Messrs. Ambrosio R. Flores and Ricardo Y. Mayuga, as contained in their separate reports (Exhs. "13" and "15"), in the amounts of P154,075.00 and P147,500.00, respectively, should be taken into account.

There is evidence on record showing that plaintiff incurred the sum of P48,770.30 for the preparation of the jobsite, construction of bodegas, fences field offices, working sheds, and workmen's quarters; that the value of the excavation work accomplished by the plaintiff at the site was P113,800.00; that the rental of the various construction equipment of the plaintiff from the stoppage of work until the removal thereof from the jobsite would amount to P78,540.00 (Exhs. "K" - "K-l"); that the interest on the cash bond of P275,000.00 from November 3, 1965 to July 7, 1966 at 12% per annum would be P22,000.00; that for removing said construction equipment from the jobsite to Manila, plaintiff paid a hauling fee of P700.00 (Exhs. "L" - "L-1" ); that for the performance bond that the plaintiff posted as required under its contract with the defendant, the former was obliged to pay a premium of P2,216.55; and that the plaintiff was likewise made to incur the sum of P32,406.50, representing the 3% contractor's tax (Exhs. "AA" - "A-l"). The itemized list of all these expenditures, totalling P298,433.35 is attached to the records of this case (Annex "B", Complaint) and forms part of the evidence of the plaintiff. Mr. Nicomedes G. Ablaza, the witness for the plaintiff, properly identified said document and affirmed the contents thereof when he testified during the hearing. The same witness likewise explained in detail the various figures contained therein, and identified the corresponding supporting papers.

It is noteworthy, in this connection, that there is nothing in the records that would show that the defendant assailed the accuracy and/or reasonableness of the figures presented by the plaintiff; neither does it appear that the defendant offered any evidence to refute said figures.

While it is claimed by the defendant that the plaintiff incurred a total expense of only P154,075.00 according to the report of Mr. Ambrosio R. Flores, or P147,500.00, according to the report of Mr. Ricardo Y. Mayuga, the Court finds said estimates to be inaccurate. To cite only an instance, in estimating, the value of the excavation work, the defendant merely measured the depth, length and width of the excavated, area which was submerged in water,

without ascertaining the volume of rock and the volume of earth actually excavated as was done by the plaintiff who prepared a detailed plan showing the profile of the excavation work performed in the site (Exh. "B"). Likewise, the unit measure adopted by the defendant was in cubic meter while it should be in cubic yard. Also the unit price used by the defendant was only P8.75 for rock excavation while it should be P10.00 per cubic yard; and only P4.95 for earth excavation while it should be P5.50 per cubic yard as clearly indicated in plaintiff's proposal (Annex "A", Complaint; same as Annex "1", Answer). The Court, therefore, can not give credence to defendant's, aforementioned estimates in view of their evident inaccuracies.

The Court finds from the evidence adduced that Plaintiff claim for actual damages in the sum of P298,433.35 is meritorious.

The Bulk of plaintiffs claims consists of expected profit which it failed to realize due to the breach of the contract in question by the defendant. As previously stated, the plaintiff seeks to recover the amount of P814,190.00 by way of unrealized expected profit. This figure represents 18% of P4,523,275.00 which is the estimated direct cost of the subject project.

As it has been established by the evidence that the defendant in fact was guilty of breach of contract and, therefore, liable for damages (Art. 1170, New Civil Code), the Court finds that the plaintiff is entitled to recover from the defendant unrealized expected profit as part of the actual or compensatory damages. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain (Art. 2200, New Civil Code).

Where a party is guilty of breach of contract, the other party is entitled to recover the profit which the latter would have been able to make had the contract been performed (*Paz P. Arrieta, et al., plaintiffs-appellees, vs. National Rice Corporation defendant-appellant, G.R. No. L-15645, promulgated on January 31, 1964; Vivencio Cerrano, plaintiff-appellee, vs. Tan Chuco, defendant-appellant*, 38 Phil. 392).

Regarding the expected profit, a number of questions will have to be answered: Is the 18% unrealized expected profit being claimed by the plaintiff reasonable? Would the plaintiff be entitled to the whole amount of said expected profit although there was only partial performance of the contract? Would the 18% expected profit be based on the estimated direct cost of the subject in the amount of P4,523,275.00, or on plaintiff's bid proposal of P3,749,000.00?

On the question of reasonableness of the 18% expected profit, the Court noted that according to defendant's own expert witness, Mr. Ambrosio R. Flores, 25% contractor's profit for a project similar in magnitude as the one involved in the present case would be ample and reasonable. Plaintiff's witness, Mr. Nicomedes G. Ablaza, an experienced civil engineer who has been actively engaged in the construction business, testified that 15% to 20% contractor's profit would be in accordance with the standard engineering practice. Considering the type of the project involved in this case, he stated, the contractor's profit was placed at 18%. Taking into

consideration the fact that this percentage of profit is even lower than what defendant's witness considered to be ample and reasonable, the Court believes that the reasonable percentage should be 18% inasmuch as the actual work was not done completely and the plaintiff has not invested the whole amount of money called for by the project." (Pp. 263-268, Record on Appeal.)

These findings have not been shown to Us to be erroneous. And additional and clarificatory details, which We find to be adequately supported by the record, are stated in Respondents' brief thus:

> 23. In a letter dated January 4, 1966, petitioner Central Bank, through the same Mr. Mendoza, to this request of respondent Ablaza. (Annex "D-1" to the *Partial Stipulation of Facts*, R.A., p. 146).
>
> 24. Acting upon this written permission, respondent Ablaza immediately brought its men and equipment from Manila to the construction site in San Fernando, La Union, and promptly commenced construction work thereat. This work, consisted of the setting up of an enclosure around the site, the building of temporary shelter for its workmen, and the making of the necessary excavation works. (Commissioner's Report, R.A., p. 181).
>
> 25. Following the commencement of such construction work, petitioner Central Bank, through a letter dated February 8, 1966, *formally requested respondent Ablaza to submit to petitioner* the following:
>
> > (a) A schedule of deliveries of material which, under the terms of respondent Ablaza's approved proposal, were to be furnished by petitioner.
> >
> > (b) A time-table for the accomplishment of the construction work.
> >
> > *In short, as early as February 8, 1966, or more than three months prior to petitioner's repudiation of the contract in question the latter (petitioner) already took the above positive steps it compliance with its own obligations under the contract.*
>
> 26. Acting upon petitioner's above letter of February 8, 1966, on February 16, 1966, respondent Ablaza submitted the schedule of deliveries requested by petitioner. (Commissioner's Report, R.A., p. 182; Decision id., 252; also Exhs. "D" to "D-7", inclusive.)
>
> 27. During the period of actual construction, respondent Ablaza, on several occasions, actually discussed the progress of the work with Mr. Mendoza. In addition, in March 1966, the latter (Mr. Mendoza) personally visited the

construction site. There he saw the work which respondent had by that time already accomplished which consisted of the completion of approximately 20% of the necessary excavation works. (*Commissioner's Report*, R.A., p. 182; *Decision, id.*, p. 252).

28. Following Mr. Mendoza's visit at the construction site, or more specifically on March 22, 1966, the latter (Mendoza) wrote to respondent Ablaza, instructing the latter to formally designate the person to represent the corporation at the signing of the formal construction contract. (Exh. "H"; also t.s.n., pp. 119-121, December 18, 1967).

29. By a letter dated March 24, 1966, respondent Ablaza promptly complied with the above request. (Exh. "I"; also t.s.n., pp 121-123, December 18, 1967).

30. Subsequently, respondent Ablaza posted the required performance guaranty bond in the total amount of P962,250.00, consisting of (a) a cash bond in the amount of P275,000.00, and (b) a surety bond, PSIC Bond No. B-252-ML, dated May 19, 1966, in the amount of P687,250.00. In this connection, it is important to note that *the specific purpose of this bond was to guarantee "the faithful Performance of the Contract" by respondent Ablaza. (Partial Stipulation of Facts*, par. 6, R.A., p. 141). *This performance guaranty bond was duly accepted by petitioner*.(Id.)

31. However, on May 20, 1966, petitioner Central Bank called for a meeting with representatives of respondent Ablaza and another contractor. This meeting was held at the Conference Room of the Central Bank Building. At this meeting, then Finance Secretary Eduardo Romualdez, who acted as the representative of petitioner, announced that the Monetary Board had decided to reduce the appropriations for the various proposed Central Bank regional office buildings, *including the one for San Fernando, La Union*.

32. In view of this decision, Secretary Romualdez informed respondent Ablaza that new plans and designs for the proposed regional office building in San Fernando would have to be drawn up to take account of the reduction in appropriation. Secretary Romualdez then advised respondent to *suspend*work at the construction site in San Fernando in the meanwhile. (Decision, R.A., pp. 253-254).

33. After making the above announcements, Secretary Romualdez proposed that all existing contracts previously entered into between petitioner Central Bank and the several winning contractors (among them being respondent Ablaza) be considered set aside.

34. Obviously to induce acceptance of the above proposal, Secretary Romualdez offered the following concessions to respondent Ablaza:

> (a) That its cash bond in the amount of P275,000.00 be released immediately, and that interest be paid thereon at the rate of 12% per annum.
>
> (b) That respondent Ablaza be reimbursed for expenses incurred for the premiums on the performance bond which it posted, and which petitioner had already accepted. (Decision, R.A., pp. 253-254).

35. In addition, Secretary Romualdez also proposed the conclusion of a new contract with respondent Ablaza for the construction of a more modest regional office building at San Fernando, La Union, on a*negotiated* basis. However, the sincerity and feasibility of this proposal was rendered dubious by a caveat attached to it, as follows:

> '4. *Where auditing regulations would permit*, the Central Bank would enter into a negotiated contract with the said corporation (Ablaza) for the construction work on the building on the basis of the revised estimates.' (*Annex "8" to Answer*, R.A., p. 95).

36. The revised cost fixed for this proposed alternative regional office building was fixed at a maximum of P3,000,000.00 (compared to P3,749,000.00 under the contract originally awarded to respondent). (*Annex "6-A" to Answer*, R.A., p. 87).

37. Needless perhaps to state, respondent Ablaza rejected the above proposals (pars. 34 and 35, supra.), and on June 3, 1966, through counsel, wrote to petitioner demanding the formal execution of the contract previously awarded to it, or in the alternative, to pay "all damages and expenses suffered by (it) in the total amount of P1,181,950.00 ... "(*Annex "7" to Answer*, R.A., pp. 89-91; *Decision, id.*, p. 254).

38. In a letter dated June 15, 1966, petitioner Central Bank, through Deputy Governor Amado R. Brinas, replied to respondent Ablaza's demand denying any liability on the basis of the following claim:

> `(That, allegedly) in line with the agreement ... reached between the Central Bank and Ablaza Construction and Finance Corporation at a meeting held ... on May 20, 1966,' "whatever agreements might have been previously agreed upon between (petitioner and respondent) would be considered set aside." (*Decision*, R.A., p. 255; Annex "8" to Answer, id., pp. 93-96.)

> 39. The above claim was, however, promptly and peremptorily denied by respondent Ablaza, through counsel, in a letter dated June 16, 1966. (*Partial Stipulation of Facts*, par. 9, R.A., p. 142, also Annex "G" thereof; *Commissioner's Report*, R.A., p. 185; *Decision, id*., p. 255.)" (Appellee's Brief, pars. 23 to 39, pp. 14-19.)

None of these facts is seriously or in any event sufficiently denied in petitioner's reply brief.

Considering all these facts, it is quite obvious that the Bank's insistence now regarding the need for the execution of the formal contract comes a little too late to be believable. Even assuming *arguendo* that the Revised Manual of Instructions to Treasurers were applicable to the Central Bank, which is doubtful, considering that under the provisions of its charter already referred to earlier, disbursements and expenditures of the Bank are supposed to be governed by rules and regulations promulgated by the Monetary Board, in this particular case, the attitude and actuations then of the Bank in relation to the work being done by Ablaza prior to May 20, 1966 clearly indicate that both parties assumed that the actual execution of the written contract is a mere formality which could not materially affect their respective contractual rights and obligations. In legal effect, therefore, the Bank must be considered as having waived such requirement.

To be more concrete, from December 15, 1965, when Ablaza accepted the award of the contract in question, both parties were supposed to have seen to it that the formal contract were duly signed. Under the Instructions to Bidders, Ablaza was under obligation to sign the same within five (5) days from notice of the award, and so, he called on the Bank at various times for that purpose. The Bank never indicated until May, 1966 that it would not comply. On the contrary, on February 8, 1966, Ablaza was requested to submit a "schedule of deliveries of materials" which under the terms of the bid were to be furnished by the Bank. On March 22, 1966, Ablaza received a letter from the Bank inquiring as to who would be Ablaza's representative to sign the formal contract. In the meanwhile, no less than Mr. Rizalino Mendoza, the Chairman of the Management Building Committee of the Central Bank who had been signing for the Bank all the communications regarding the project at issue, had visited the construction site in March, 1966, just before he wrote the request abovementioned of the 22nd of that month for the nomination of the representative to sign the formal contract, and actually saw the progress of the work and that it was being continued, but he never protested or had it stopped. All these despite the fact that the Memorandum Circular being invoked by the Bank was issued way back on December 31, 1965 yet. And when finally on May 20, 1966 the Bank met with the representatives of Ablaza regarding the idea of changing the plans to more economical ones, there was no mention of the non-execution of the contract as entitling the Bank to back out of it unconditionally. Rather, the talk, according to the findings of the lower courts, was about the possibility of setting aside whatever agreement there was already. Under these circumstances, it appears that respondent has been made to believe up to the time the Bank decided definitely not to honor any agreement at all that its execution was not indispensable to a contract to be considered as already operating and respondent could therefore proceed with the work, while the contract could be formalized later.

Petitioner contends next that its withdrawal from the contract is justified by the policy of economic restraint ordained by Memorandum Circular No. 1. We do not see it that way. Inasmuch as the contract here in question was perfected before the issuance of said Memorandum Circular, it is elementary that the same may not be enforced in such a manner as to result in the impairment of the obligations of the contract, for that is not constitutionally permissible. Not even by means of a statute, which is much more weighty than a mere declaration of policy, may the government issue any regulation relieving itself or any person from the binding effects of a contract. (Section 1 (10), Article III, Philippine Constitution of 1953 and Section 11, Article IV, 1973 Constitution of the Philippines.) Specially in the case of the Central Bank, perhaps, it might not have been really imperative that it should have revised its plans, considering that it has its own resources independent of those of the national government and that the funds of the Central Bank are derived from its own operations, not from taxes. In any event, if the memorandum circular had to be implemented, the corresponding action in that direction should have been taken without loss of time and before the contract in question had taken deeper roots. It is thus clear that in unjustifiably failing to honor its contract with respondent, petitioner has to suffer the consequences of its action.

The last issue submitted for Our resolution refers to the amount of damages awarded to Ablaza by the trial court and found by the Court of Appeals to be "fair and reasonable." Again, after a review of the record, We do not find sufficient ground to disturb the appealed judgment even in this respect, except as to attorney's fees.

There are three principal items of damages awarded by the courts below, namely: (1) compensation for actual work done in the amount of P298,433.35, (2) unrealized profits equivalent to 18% of the contract price of P3,749,000 or P674,820.00 and (3) 15% of the total recovery as attorney's fees in addition to the P5,000 already paid as retaining fee. All of these items were the subject of evidence presented by the parties. According to the Court of Appeals:

> As regard the accuracy and reasonableness of the award for damages, both actual and compensatory, it is to be noted that the trial court subjected the Commissioner's report and the evidence adduced therein to a careful scrutiny. Thus, when the appellant called the trial court's attention to the fact that the P814,190.00 unrealized expected profit being claimed by appellee represented 18% of P4,523,275.00 which was the estimated cost of the project, while the contract awarded to appellee was only in the amount of P3,749,000.00 as per its bid proposal, the Court made the necessary modification. It is further to be noted that the amount of 18% of the estimated cost considered in the said award is much less than that given by appellant's own expert witness, Ambrosio R. Flores. He testified that 25% as contractor's profit "would be fair, ample and reasonable." (T.s.n, p. 557, Batalla.)" (p. 17 A, Appellant's brief.)

Basically, these are factual conclusions which We are not generally at liberty to disregard. And We have not been shown that they are devoid of reasonable basis.

There can be no dispute as to the legal obligation of petitioner to pay respondent the actual expenses it has incurred in performing its part of the contract.

Upon the other hand, the legal question of whether or not the Bank is liable for unrealized profits presents no difficulty. In Arrieta vs. Naric G.R. No. L-15645, Jan. 31, 1964, 10 SCRA 79, this Court sustained as a matter of law the award of damages n the amount of U.S. $286,000, payable in Philippine Currency, measured in the rate of exchange prevailing at the time the obligation was incurred (August, 1952), comprising of unrealized profits of the plaintiff, Mrs. Paz Arrieta, in a case where a government-owned corporation, the Naric failed to proceed with the purchase of imported rice after having accepted and approved the bid of Arrieta and after she had already closed her contract with her foreign sellers.

Actually, the law on the matter is unequivocally expressed in Articles 2200 and 2201 of the Civil Code thus:

> ART. 2200. Identification for damages shall comprehend not only the value of the loss suffered, but also that of the profits, which the obligee failed to obtain..
>
> ART. 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have forseen or could have reasonably foreseen at the time the obligation was constituted.
>
> In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

Construing these provisions, the following is what this Court held in *Cerrano vs. Tan Chuco*, 38 Phil. 392:

> .... Article 1106 (now 2200) of the Civil Code establishes the rule that prospective profits may be recovered as damages, while article 1107 (now 2201) of the same Code provides that the damages recoverable for the breach of obligations not originating in fraud (dolo) are those which were or might have been foreseen at the time the contract was entered into. Applying these principles to the facts in this case, we think that it is unquestionable that defendant must be deemed to have foreseen at the time he made the contract that in the event of his failure to perform it, the plaintiff would be damaged by the loss of the profit he might reasonably have expected to derive from its use.
>
> When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of

> speculation, but the injured party is not to be denied all remedy for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover. As stated in Sedgwick on Damages (Ninth Ed., par. 177):
>
> The general rule is, then, that a plaintiff may recover compensation for any gain which he can make it appear with reasonable certainty the defendant's wrongful act prevented him from acquiring, ...'. (See also Algarra vs. Sandejas, 27 Phil. Rep., 284, 289; Hicks vs. Manila Hotel Co., 28 Phil. Rep., 325.) (At pp. 398-399.)

Later, in *General Enterprises, Inc. vs. Lianga Bay Logging Co. Inc.*, 11 SCRA 733, Article 2200 of the Civil Code was again applied as follows:

> Regarding the actual damages awarded to appellee, appellant contends that they are unwarranted inasmuch as appellee has failed to adduce any evidence to substantiate them even assuming arguendo that appellant has failed to supply the additional monthly 2,000,000 board feet for the remainder of the period agreed upon in the contract Exhibit A. Appellant maintains that for appellee to be entitled to demand payment of sales that were not effected it should have proved (1) that there are actual sales made of appellee's logs which were not fulfilled, (2) that it had obtained the best price for such sales, (3) that there are buyers ready to buy at such price stating the volume they are ready to buy, and (4) appellee could not cover the sales from the logs of other suppliers. Since these facts were not proven, appellee's right to unearned commissions must fail.
>
> This argument must be overruled in the light of the law and evidence on the matter. Under Article 2200 of the Civil Code, indemnification for damages comprehends not only the value of the loss suffered but also that of the profits which the creditor fails to obtain. In other words, *lucrum cessans* is also a basis for indemnification. The question then that arises is: Has appellee failed to make profits because of appellant's breach of contract, and in the affirmative, is there here basis for determining with reasonable certainty such unearned profits?
>
> Appellant's memorandum (p. 9) shows that appellee has sold to Korea under the contract in question the following board feet of logs, Breareton Scale:
>
> Months Board Feet
>
> From June to August 1959 3,007,435
> September, 1959 none
> October, 1959 2,299,805
> November, 1959 801,021

December, 1959 1,297,510

Total 7,405,861

The above figures tally with those of Exhibit N. In its brief (p. 141) appellant claims that in less than six months' time appellee received by way of commission the amount of P117,859.54, while in its memorandum, appellant makes the following statement:

`11. The invoice F.O.B. price of the sale through plaintiff General is P767,798.82 but the agreed F.O.B. price was P799,319.00, the commission at 13% (F.O.B.) is P117,859.54. But, as there were always two prices — Invoice F.O.B price and F.O.B. price as per contract, because of the sales difference amounting to P31,920.18, and the same was deducted from the commission, actually paid to plaintiff General is only P79,580.82.' " It appears, therefore, that during the period of June to December, 1959, in spite of the short delivery incurred by appellant, appellee had been earning its commission whenever logs were delivered to it. But from January, 1960, appellee had ceased to earn any commission because appellant failed to deliver any log in violation of their agreement. Had appellant continued to deliver the logs as it was bound to pursuant to the agreement it is reasonable to expect that it would have continued earning its commission in much the same manner as it used to in connection with the previous shipments of logs, which clearly indicates that it failed to earn the commissions it should earn during this period of time. And this commission is not difficult to estimate. Thus, during the seventeen remaining months of the contract, at the rate of at least 2,000,000 board feet, appellant should have delivered thirty-four million board feet. If we take the number of board feet delivered during the months prior to the interruption, namely, 7,405,861 board feet, and the commission received by appellee thereon, which amounts to P79,580.82, we would have that appellee received a commission of P.0107456 per board feet. Multiplying 34 million board feet by P.0107456, the product is P365,350.40, which represents the *lucrum cessans* that should accrue to appellee. The award therefore, made by the court a quo of the amount of P400,000.00 as compensatory damages is not speculative, but based on reasonable estimate.

In the light of these considerations, We cannot say that the Court of Appeals erred in making the aforementioned award of damages for unrealized profits to respondent Ablaza.

With respect to the award for attorney's fees, We believe that in line with the amount fixed in Lianga, supra., an award of ten per centum (10%) of the amount of the total recovery should be enough.

PREMISES CONSIDERED, the decision of the Court of Appeals in this case is affirmed, with the modification that the award for attorney's fees made therein is hereby reduced to ten per centum (10%) of the total recovery of respondent Ablaza.

Costs against petitioner.

*Fernando (Chairman), Antonio, Aquino and Concepcion, JJ., concur.1äwphï1.ñët*

**Footnotes**

1 This was before Section 607 was amended by Act 3441 by including chartered cities in the provision.

2 According to the stipulation of facts of the parties, "the contract for the general construction work for the Central Bank Regional Office Building in San Fernando, La Union was awarded to plaintiff." (Par. 4 thereof.)