

EN BANC

[G.R. No. 244443, October 15, 2019]

**STO. NIÑO CONSTRUCTION REPRESENTED BY DEXTER W. TSANG
PETITIONER, VS. COMMISSION ON AUDIT, REPRESENTED BY
HON. MICHAEL G. AGUINALDO, CHAIRPERSON, RESPONDENT.**

RESOLUTION

CARANDANG, J.:

The instant Petition for *Certiorari*^[1] under Rule 64 of the Rules of Court assails the Decision dated December 29, 2016^[2] and Resolution dated November 28, 2018^[3] of the Commission on Audit (COA) in COA CP Case No. 2013-209. The assailed Decision and Resolution denied the Petition for Money Claim^[4] amounting to P11,425,875.67 filed by Sto. Niño Construction, represented by Dexter W. Tsang against Department of Public Works and Highways (DPWH), Ipil Engineering District, Zamboanga, Sibugay with the COA.

Facts of the Case

On April 23, 2009, the Bids and Awards Committee (BAC) of the DPWH conducted a public bidding for the improvement and rehabilitation of Payao Road located in Zamboanga, Sibugay. Petitioner Sto. Niño Construction (STC) was the lowest responsive bidder per BAC Resolution No. 05-059^[5] dated May 8, 2009. However, no award of contract was issued because of the pending fund allocation from the Department of Budget and Management.

Prior to the bidding for the rehabilitation project of Payao Road, former Zamboanga Sibugay Representative, Belma Cabilao (Rep. Cabilao), in a letter^[6] dated July 30, 2008, requested for funding assistance amounting to P12,000,000.00 for the foregoing rehabilitation project. Thereafter, in a letter^[7] dated November 11, 2008, the Undersecretary for Operations of DPWH for the Mindanao Region notified Department Assistant Secretary Maria Catalina E. Cabral of a "marginal note" of former President Gloria Macapagal-Arroyo for the immediate release of P12,000,000.00 to fast track the implementation of the rehabilitation project.

While waiting for the release of funds, STC began the project upon the verbal instruction of Rep. Cabilao in order to minimize the insurgency problem in said area. The company also claims that both Rep. Cabilao and Undersecretary Renato Ebarle (Usec. Ebarle), from the Office of the President, assured STC that funding for the project will be made available and released for payment.^[8]

On November 18, 2009, STC completed the rehabilitation project of Payao Road based on the Certification^[9] issued by the District Engineer of DPWH Ipil Engineering District.^[10] STC claims that the cost of the project amounted to

P11,425,875.67. However, no funding was released as payment for the construction works rendered by STC.^[11] Thus, STC filed a Petition for Money Claim^[12] against DPWH Ipil Engineering District.

The District Engineer of DPWH Ipil Engineering District filed its Answer/Comment^[13] to the petition, affirming STC's claim that high ranking national government officials, specifically Usec. Ebarle, had assured funding for the Payao Road project; that Rep. Cabilao assured the company on the release of funding; that the project was immediately implemented after verbal instruction from Rep. Cabilao in order to minimize and eliminate insurgency in the area; that the project was completed in accordance with the approved plans and program works; and that the project was already turned over to the government.^[14] DPWH also notes the recommendation of the Public Works, Transport and Energy, National Government Sector that STC be paid the amount of P8,238,271.35 representing the work accomplished based on *quantum meruit* and the inspection by COA Regional Technical Information Technology Services.^[15]

In a Decision^[16] dated December 29, 2016, COA denied STC's Petition for Money Claim. COA held that under Sections 85 (1)^[17] and 86^[18] of Presidential Decree No. (P.D.) 1445^[19] fund appropriation and the availability of funds are indispensable requirements for the implementation of government contracts. Section 87 of the same law provides that contracts entered without the appropriation and funds available shall be void. In addition, officers entering into the contract shall be liable to the government or the contracting party for the consequent damage to the same extent as if the transaction had been wholly between private parties. There should be an appropriation to cover any expenditure of public funds before a contract can be entered. In this case, since there is no appropriation, there is no contract to speak of.^[20]

COA denied the application of the principle of *quantum meruit*. Although the cases *Soler v. Court of Appeals*,^[21] and *EPG Construction Co v. Vigilar*^[22] applied said principle despite the absence of appropriation and contract before the implementation of the projects, COA emphasized that construction in said cases was authorized by the agency. In the instant case, COA held that the DPWH Ipil Engineering District did not issue a Notice of Award to STC. Consequently, no contract was executed between STC and DPWH Ipil Engineering District because the procuring entity was fully aware that there was no fund available for the project at the time the BAC conducted the public bidding. Therefore, there was no consent or authorization from DPWH to proceed with the implementation of the project.^[23]

COA reiterated that STC still has another recourse provided in Section 87 of P.D. 1445. The provision states that while contracts entered into without the appropriation and funds shall be void, the officers entering into the contract shall be liable to the government or the contracting party for the consequent damage to the same extent as if the transaction had been wholly between private parties.

STC received the foregoing COA decision on February 9, 2017. On June 28, 2017, a Notice of Finality of Decision^[24] was issued.^[25] On August 14, 2017, STC belatedly filed its Motion for Reconsideration.^[26]

In a Resolution^[27] dated November 28, 2018, COA denied the motion for reconsideration for having been filed out of time. COA stressed that a Notice of Finality of Decision had been issued. It also held that the principle of *quantum meruit* may not be applied in the instant case because the services rendered by STC was in violation of applicable laws, rules and regulations. COA reiterated that there was absence of a written contract and covering appropriation for the construction of Payao Road. In addition, DPWH did not give its consent and authority for STC to proceed with the implementation of the project. While the District Engineer and the Audit Team Leader of DPWH may have recommended payment to STC, the same does not constitute authority to said company to implement the project. It was only Rep. Cabilao who intervened and gave her verbal instruction for STC to proceed. In doing so, it is as if Rep. Cabilao entered into a private contract with STC. The COA held that to apply *quantum meruit* in this scenario, "would only render the power of this Commission to disallow irregular or illegal transactions useless and ineffective as those guilty of violating the laws in entering illegal and/or irregular government contracts would be able to escape liability and recover the proceeds of their unlawful activity by the mere expediency or under the guise of *quantum meruit*."^[28]

Aggrieved by the assailed Decision and Resolution, STC instituted the instant petition reiterating its arguments raised before COA. STC insists on the application of principle of *quantum meruit* and should be compensated for work performed for the rehabilitation of a public road. Said principle was applied in the cases of *Soler v. Court of Appeals*,^[29] *EPG Construction v. Vigilar*,^[30] and *Royal Trust Construction v. Commission on Audit*,^[31] whose factual and legal antecedents, as claimed by STC, are in all fours with its case.

COA, through the Office of the Solicitor General, argues otherwise. In citing *Philippine Realty and Holdings Corporation v. Ley Constructions and Development Corporation*,^[32] COA explains that the claim for remuneration under the principle of unjust enrichment shall only prosper when it is proven that STC constructed the project by mistake, fraud, coercion or request. Here, STC voluntarily undertook the construction project knowing fully well that there was no fund available for the project, and without prior consent of the DPWH. STC also failed to prove that COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Decision and Resolution. In fact, COA followed the provisions of law on the requirements for a valid government contract. Further, the COA Decision had attained finality for failure of STC to timely file a motion for reconsideration rendering the Decision immutable, which can no longer be amended or modified.

Under the doctrine of finality of judgments, when a judgment becomes final the same is immutable and unalterable and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law and whether it be made by the court that rendered it or by the Highest Court of the land. Nevertheless, this doctrine may be relaxed in order to serve substantial justice in case compelling circumstances that clearly warrant the exercise of the Court's equity jurisdiction are extant.^[33] Similarly, under Rule 64/65 of the Rules of Court, the Court has allowed resort to a petition for *certiorari* despite finality of assailed decisions, where the same were issued either in excess of or without jurisdiction or for certain special considerations, such as public welfare or public policy, among