

## EN BANC

[ G.R. No. 213821, January 26, 2021 ]

**V. C. PONCE COMPANY, INC. PETITIONER, VS. COMMISSION ON  
AUDIT REPRESENTED BY ITS CHAIRPERSON, HON. MARIA  
GRACIA M. PULIDO TAN, DEPARTMENT OF PUBLIC WORKS AND  
HIGHWAYS REPRESENTED BY ITS SECRETARY, HON. ROGELIO L.  
SINGSON, RESPONDENTS.**

### DECISION

**INTING, J.:**

Before the Court is a Petition<sup>[1]</sup> for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Preliminary Prohibitory Injunction under Rule 64 in relation to Rule 65 of the Rules of Court assailing Decision No. 2012-060<sup>[2]</sup> dated May 10, 2012 of the Commission on Audit (COA). The COA denied the money claim filed by V. C. Ponce Company, Inc. (VCPCI), represented by its President, Vicente C. Ponce (Ponce), for payment on the construction of the Mandaue-Opon Bridge (Mandaue-Opon Bridge project) over Mactan Channel, Cebu, Phase II amounting to P11,543,776,318.36. The COA further ordered VCPCI to refund the overpayment in the amount of P21,511,666.99.

#### *The Antecedents*

On September 16, 1996, VCPCI filed a petition for *mandamus* against the Department of Public Works and Highways (DPWH) represented by its then Secretary Gregorio R. Vigilar. The case, docketed as Civil Case No. Q-96-28795, was raffled to Branch 227, Regional Trial Court (RTC), Quezon City.<sup>[3]</sup>

In the petition, VCPCI asked for a recomputation of its claim for the Mandaue-Opon Bridge project Phase II. It alleged the following:

The Mandaue-Opon Bridge Project for the construction of the main bridge superstructure was fully completed and delivered as early as September 4, 1973 in accordance with the specifications drawn up by the government. However, the Mandaue-Opon Bridge Project was criticized because it could only allow the passage of small boats and not large international vessels. The observation caused the government to renegotiate with VCPCI for a redesign of the project. To expedite the redesign and construction, the government and VCPCI decided not to draw a new contract, but to undertake extra work under the original contract flexible enough to cover alterations and new work that would allow the passage of international vessels. The parties considered the extra work under "Section 9-4 Extra Force Account under Standard Specification for Highways and Bridges" (SSHB) wherein VCPCI was to be compensated for Phase II of the contract with actual cost up to P9,197,194.50, subject to Article II of the original contract; and with the actual cost over and above P9,197,194.50 to be regarded as actual cost plus 15% allowance for

profit margin.<sup>[4]</sup>

The amount of P9,197,194.50, as well as the 11.5% interest thereon, was to be paid from toll collections by the Bureau of Public Highways (BPH). However, in November 1985, then President Ferdinand E. Marcos instructed the Ministry of Public Works and Highways, through its then Secretary Jesus S. Hipolito, to stop toll collections.<sup>[5]</sup> Thus, the amount of P9,197,194.50 plus interest and all other amounts over and above P9,197,194.50 were to be paid out of the appropriations under Republic Act No. (RA) 5187.<sup>[6]</sup>

The parties could not agree on the amount owed by the government to VCPCI under Phase II of the Mandaue-Opon Bridge project. On November 25, 1985, the government and VCPCI signed an agreement to establish a fixed amount due and to be paid for the period 1968 to 1985 covering Phase II of the Mandaue-Opon Bridge project. Three items were left blank in the agreement: (1) the amount that would fix a sum due and to be paid in installments to VCPCI as contractor; (2) the balance that was to be amortized by the government for a period of four years in four equal installments, representing the fixed and liquidated sum due to VCPCI as of November 1985 for Phase II; and (3) the initial payment, thus leaving undetermined the balance that was to be amortized in four equal installments.<sup>[7]</sup>

The government proposed a "Recomputation of Cost of Money Phase II November 29, 1968-August 31, 1973" and a "Computation of Contractual Liability 'from July 1, 1973 to November 15, 1985.'" VCPCI rejected both proposals. From January 14, 1986 to December 10, 1991, DPWH paid a total amount of P72,549,006.78 directly to two banks: UCPB and Metrobank. DPWH asserted that P66,350,725.09 represented full payment for Phase II with P5,198,281.69 as overpayment. But for VCPCI, the amount of P72,549,006.78 was only the payment for interest charged by the different banks for loans covered by Certificates of Indebtedness issued by the government as collateral for VCPCI's loans with the banks.<sup>[8]</sup>

On the other hand, DPWH opposed the petition for *mandamus* and alleged that *mandamus* does not lie to compel the performance of a contractual duty especially if the contract is in dispute; the claim or demand had either been paid or extinguished; and the complaint is a claim against the State which it has not given its consent.

In a Decision<sup>[9]</sup> dated January 30, 2004, the RTC ruled in favor of VCPCI and against DPWH as follows:

WHEREFORE, premises considered, respondent DPWH is hereby held liable to petitioner and therefore respondent DPWH is hereby DIRECTED:

- (a) To pay petitioner the sum of PhP34,039,041.82 - as "actual cost" for Phase II, as of July, 1973, date of completion of the Mandaue-Opon Bridge less PhP33,795,346.43 paid direct to petitioner herein from toll collections;
- (b) To pay petitioner the amount of PhP4,411,328.33 for interest fixed at 11 112% per annum of PhP9,197,194.50, from July, 1973 until fully paid in 1979;

- (c) [W]ith respect to interest due on the sum of PhP24,841,847.82, the other part of the PhP34,039,041.82 "actual cost", which is over and above the original contract amount of PhP9,197,194.50, petitioner and respondent are hereby DIRECTED to immediately submit to arbitration, since the banks where the Certificates of Indebtedness were put up as collateral, were not made parties to this law suit, in order to determine (i) the interest due on the sum of PhP24,841,847.82, the other part of the PhP34,039,041.82 "actual cost" which is over and above the original contract amount of PhP9,197,194.50, from September 4, 1973 until fully paid, at varied interest rates as certified to by the Bangko Sentral to be prevailing from time to time to have been charged by banks, where the Certificates of Indebtedness issued by the government were used as collateral - as guaranteed under the express provisions of Certificates of Indebtedness; and deducting the sum of PhP71,549,006.78 amount already paid directly to UCPB and Metrobank as partial payment for interest due to banks on loans covered by the Certificates of Indebtedness as collateral; (ii) the cost of money on the sum of PhP24,841,847.82 in view of the inflation and exchange rate differential from the P[hP]6.78 per dollar on September 4, 1973 to the present PhP55.25 per dollar as of January 30, 2004;
- (d) To pay petitioner the sum of PhP5,108,256.10 which is 15% of PhP34,055,041.51 representing allowance for contractor's profit; and
- (e) To pay petitioner legal interest fixed at 12% per annum from September 4, 1973 until fully paid on the sum of PhP5,108,256.10.

SO ORDERED.<sup>[10]</sup>

The DPWH filed an appeal before the Court of Appeals (CA).

In a Decision<sup>[11]</sup> promulgated on October 29, 2004 in CA-G.R. SP No. 83719, the CA affirmed *in toto* the RTC Decision. The DPWH filed a motion for reconsideration, but the CA denied it in a Resolution dated February 18, 2005.

The DPWH filed a Petition<sup>[12]</sup> for Review under Rule 45 before the Court questioning the Decision dated October 29, 2004 and the Resolution dated February 18, 2005 of the CA. In a Resolution<sup>[13]</sup> dated June 29, 2005, the Court denied the petition for failure of petitioner to sufficiently show that the CA committed a reversible error in the challenged CA Decision and Resolution to warrant the exercise of the Court of its discretionary appellate jurisdiction. DPWH filed a motion for reconsideration, but the Court denied the motion in its Resolution dated October 17, 2005. The Court Resolution became final and executory on November 18, 2005.<sup>[14]</sup>

VCPCI then filed a Motion for Issuance of Writ of Execution<sup>[15]</sup> before the RTC. In an

Order<sup>[16]</sup> dated December 29, 2006, the RTC granted the motion and issued a writ of execution.

DPWH filed a Petition for *Certiorari* before the CA questioning the Order dated December 29, 2006 of the RTC issuing the writ of execution. The case was docketed as CA-G.R. SP No. 97970.

In a Decision<sup>[17]</sup> dated May 29, 2007, the CA ruled that the RTC gravely abused its discretion in issuing the writ of execution. It ruled that judgments in money claims should first be filed with the COA; and that VCPCI should have waited for COA's *imprimatur* of its claim instead of moving for the execution of the RTC Decision. The dispositive portion of the CA Decision reads:

*WHEREFORE*, the Order dated 29 December 2006 granting a *Writ of Execution* in favor of private respondent VC Ponce Company, Inc. and the corresponding Writ of Execution and *Notice of Garnishment* are *NULLIFIED*, and the temporary restraining order issued by this Court is made *PERMANENT*.

The Commission on Audit is DIRECTED to determine and ascertain with dispatch the total compensation due to VC Ponce Company, Inc. for the construction of the Mandaue-Opon Bridge in accordance with the decision in Civil Case No. Q-96-28795, and to allow payment thereof upon the completion of such determination.

SO ORDERED.<sup>[18]</sup>

The Decision of the CA in CA-G.R. SP No. 97970 dated May 29, 2007 became final and executory on June 22, 2007.<sup>[19]</sup> Following the ruling, VCPCI filed a money claim before the COA.

*The Decision of the COA*

VCPCI's money claim before the COA amounted to P11,543,776,318.36 broken down by COA as follows:

Particulars	Amount
(A) Difference between P34,039,041.82, the "actual cost" for Phase II, and P33,795,346.43 revenue from toll collections.	P 243,695.39
	3,173,927.09
(A.1) Interest on the difference (P243,695.39) computed by VCPCI at 12% compounded annually from November 16, 1985 to February 28, 2009	4,411,328.33
	101,158,432.22

(B) Interest at 11 ½% per annum of P9,197,194.50, the original contract amount, from July 1973 until fully paid in 1979	11,148,708,894.12
	5,108,256.10
(B.1) Interest computed by VCPCI at the rate of. 11.5% on the interest of P4,411,328.33 from January 1980 up to February 28, 2009	<u>280,971,785.11</u>
	P <u>P11,543,776,318.36</u> <sup>[20]</sup>
(C) Interest due on the sum of P24,841,847.82, the other part of the P34,039,041.82 "actual cost," which is over and above the original contract amount of P9,197,194.50	
(D) Contractor's profit - 15% of P34,055,041.51	
(E) Legal interest fixed at 12% per annum from September 4, 1973 until fully paid on the sum of	
Total	

In its assailed Decision<sup>[21]</sup> dated May 10, 2012, the COA denied VCPCI's claim and required Ponce to pay an overpayment amounting to P21,511,666.99.

The COA did not allow the payment of interest on the amount of P24,841,847.82 (Item C of the claim) which is over and above the original contract amount of P9,197,194.50. The COA also ruled that the amount of P24,841,847.82 cannot earn interest as it has already been paid by way of the Certificates of Indebtedness amounting to P31,274,946.81 issued by the government as collateral for VCPCI's loans with the banks; that the government already expended P71,549,006.78 in payment of VCPCI's loan of P31,274,946.81; and that because P34,039,041.82 was already paid from toll collections, there was an overpayment of P33,795,346.43.

In conclusion, the COA held that on one hand, VCPCI constructed the Mandaue-Opon Bridge project in the total amount of P34,039,041.82, inclusive of cost of money during construction amounting to P9,913,870.31 and profit; on the other hand, the government, through the DPWH, already paid VCPCI P105,344,353.21 for the project: P33,795,346.43 from toll collections and P71,549,006.78 from appropriations.

The dispositive portion of the COA Decision reads:

WHEREFORE, premises considered, the instant petition for money claim of Mr. Vicente C. Ponce relative to the Construction of the Mandaue-Opon