

SECOND DIVISION

[G.R. NO. 161608, August 09, 2005]

**LEONCIO A. AMADORE, PETITIONER, VS. ALBERTO G. ROMULO,
MANUEL B. GAITE, AND PRESIDENTIAL ANTI-GRAFT
COMMISSION, RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

Before Us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, asking for the declaration of nullity of (1) the Resolution^[1] of the Court of Appeals dated 19 June 2003 dismissing petitioner Leoncio A. Amadore's petition for review filed under Rule 43 of the Rules of Court for having been filed out of time, and its Resolution^[2] dated 12 January 2004 denying his motion for reconsideration; (2) the 12 November 2001 Decision of respondent Executive Secretary Alberto G. Romulo dismissing petitioner from government service; and (3) the Resolution dated 15 April 2003 and Order dated 29 May 2003 of respondent Manuel B. Gaite, Acting Deputy Executive Secretary for Legal Affairs, denying petitioner's motion for reconsideration and second motion for reconsideration, respectively.

The antecedents are as follows:

On 27 December 1996, petitioner Leoncio A. Amadore, Director of the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA), entered into a contract^[3] with Inter-Technical Pacific Philippines, Inc. (INTERPAC) for the supply, delivery, installation, testing and commissioning of S-Band Weather Surveillance Radar System and Other Related Equipment for Baguio and Tanay Radar Stations amounting to P72,128,573.30. The contract was approved by William G. Padolina, then Secretary of the Department of Science and Technology (DOST).

On 14 January 1997, PAGASA paid INTERPAC the amount of P7,212,857.33 representing a ten percent (10%) advance payment of the total contract price per Disbursement Voucher No. 9701036 signed by petitioner and Cipriano C. Ferraris, Deputy Director of PAGASA.^[4]

On 13 August 1997, PAGASA paid INTERPAC the amount of P13,123,275.93 representing thirty-five percent (35%) of the Baguio Radar System component contract price as evidenced by Disbursement Voucher No. 97074640 signed by petitioner and Lilian G. Angeles, Deputy Director of PAGASA.^[5]

On 26 June 1998, the Presidential Commission Against Graft and Corruption (PCAGC) received a copy of a letter-complaint^[6] from concerned employees of the DOST dated 15 June 1998 addressed to former President Joseph E. Estrada reporting the rampancy of graft and corruption in the DOST. As a result, three (3)

formal charges were filed by Restituto P. Ventura, Director, Investigation Office, PCAGC, against Secretary William G. Padolina, Asst. Secretary Imelda D. Rodriguez, Deputy Director Lilian G. Angeles, of the DOST, petitioner and PAGASA Deputy Director Ferraris.^[7] The case was docketed as PCAGC-ADM-98-0494. Of the three charges, only the charge of entering into a contract manifestly and grossly disadvantageous to the government was hurled against petitioner, Deputy Director Ferraris and Deputy Director Angeles.^[8] It was alleged that even without the actual delivery of the equipment to the project site, there were advance payments made to INTERPAC totaling P20,336,133.26 or 28.9% of the total contract price in violation of Section 88 of Presidential Decree (P.D.) No. 1445.^[9]

Finding sufficient basis to commence an administrative investigation, Leorando M. Rivera, PCAGC Commissioner, in an order dated 12 March 1999, directed petitioner, Deputy Director Ferraris and Deputy Director Angeles to file their Counter-Affidavits/Verified Answers.^[10] On the same day, PCAGC Chairman Eufemio C. Domingo referred the letter-complaint to Ombudsman Aniano A. Desierto for appropriate action.^[11]

Petitioner, Deputy Director Ferraris and Deputy Director Angeles filed a Joint Counter-Affidavit on 5 April 1999.^[12] After hearing, the PCAGC issued a resolution dated 1 October 1999, finding them guilty and recommended to President Joseph E. Estrada their dismissal from the service.^[13] The resolution reads in part:

Sec. 88, P.D. 1445 provides that "except with the prior approval of the President (Prime Minister) the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefore. No payment, partial or final shall be made on any such contract except upon a certification by the head of the agency concerned to the effect that the services or supplies and materials have been rendered or delivered in accordance with the terms of the contract and have been duly inspected and accepted.

The respondents in their counter-affidavit argue that the contract between PAGASA and INTERPAC is an infrastructure project, hence, it falls within the purview of C14-1 of the Implementing Rules and Regulation of Presidential Decree No. 1594 which allows an advance payment to the contractor in an amount equal to fifteen percent (15%) of the total contract price, thus:

. . .

They further argued that the payment of thirty-five [percent] (35%) for the Baguio Radar System was made in accordance with Art. VI, Payment Schedule of the contract between PAGASA and INTERPAC.

This Commission believes that the Radar System is an infrastructure project, as defined by Executive Order No. 380 which is quoted, thus: infrastructure projects shall mean construction of roads and bridges, railways, airports, seaports communication facilities, irrigation, flood control and drainage, water supply and sewerage systems, shore

protection, power facilities, national building, school buildings, hospital building and other related construction projects that form part of the government capital investment. Consequently, PAGASA is authorized to make an advance payment but only up to fifteen (15%) percent of the total contract price.

However, the record of the case, and as testified by Atty. Lilian Angeles, deputy director, discloses that the Baguio Radar System was delivered only on 5 September 1997, but PAGASA paid the INTERPAC for the Baguio Radar System the amount of P7,212,857.33 and P13,123,275.98 on January 14, 1997 and August 13, 1997, respectively, or equivalent to 28.9% of the total price.

Clearly, the said payments constitute violations of Sec. 88, P.D. 1445 which provides that the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor.

The contention of the respondents that such advance payments were made in accordance with Art. VI of the contract is without merit. The said provision runs counter with Sec. 88, P.D. 1445. Settled is the rule that in case of conflict between a contract and the provision of law, the latter prevails.^[14]

In a decision dated 12 November 2001, Executive Secretary Alberto G. Romulo approved the recommendation of the PCAGC^[15] and dismissed petitioner, Deputy Director Ferraris and Deputy Director Angeles from government service.^[16] The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, and as recommended BY THE Presidential Commission Against Graft and Corruption, now the Presidential Anti-Graft Commission (PAGC), respondent Leoncio A. Amadore, Cipriano C. Ferraris and Lilian G. Angeles, Director and Deputy Directors, respectively, of the Philippine Atmospheric, Geophysical and Astronomical services Administration (PAGASA), Department of Science and Technology are hereby DISMISSED from the government service.

Petitioner, Deputy Director Ferraris and Deputy Director Angeles filed a joint Motion for Reconsideration^[17] dated 12 December 2001. In a resolution^[18] dated 15 April 2003, respondent Manuel B. Gaite, Acting Deputy Executive Secretary for Legal Affairs, affirmed petitioner's dismissal from government service. The complaint against Deputy Director Ferraris was dismissed, while Deputy Director Angeles was suspended for six (6) months.

An Urgent Motion to Admit Second Motion for Reconsideration^[19] was filed by petitioner and Deputy Director Angeles on the ground that they were unable to present documents (i.e., Bills of Lading, Notice of Cargo Arrival dated 24 July 1997, Request for Storage dated 04 August 1997 and Delivery Receipt dated 07 August 1997) which, if admitted, would probably alter the decision of the Office of the President. On the charge that the payments of P7,212,857.33 on 14 January 1997 and P13,123,275.93 on 13 August 1997 with an aggregate amount of P20,336,133.26 equivalent to 28.90% of the total contract price are advance payments

which constitute a violation of Section 88 of P.D. No. 1445, petitioner and Deputy Director Angeles, in their second motion for reconsideration^[20] dated 24 April 2003, explained that inasmuch as the contract involved is categorized as an infrastructure project, what governs is P.D. No. 1594^[21] and not P.D. No. 1445. They said that under P.D. No. 1594, an advance payment of fifteen percent (15%) of the total contract price is allowed. They argued that since there was already a delivery of the radar equipment on 07 August 1997 at the PAGASA-Diliman Office prior to the second payment of P13,123,275.93 on 13 August 1997, there can be no violation of P.D. No. 1594. They added that the advance payment made by PAGASA in the amount of P7,212,857.33 or ten percent (10%) of the total contract price of P72,128,573.30 is lower than the 15% allowed by law. By reason of such delivery, they maintain that the P13,123,275.93 is no longer an advance payment but must be considered as a progress billing.

In an Order dated 29 May 2003, respondent Gaithe denied with finality the second motion for reconsideration.^[22]

On 10 June 2003, petitioner appealed to the Court of Appeals via a petition for review.^[23]

In a resolution promulgated on 19 June 2003, the Court of Appeals dismissed the petition outright for having been filed out of time.^[24] The resolution reads in part:

We invite petitioner's attention to Sec. 4, Rule 43 which provides in part that:

Sec. 4. *Period of appeal*.- The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial or petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. Only one (1) motion for reconsideration shall be allowed ...

It is clear from the said proviso that the 15-day period to appeal is reckoned from notice of the denial of motion for reconsideration. Considering that petitioner received a copy of the denial of the motion for reconsideration on April 24, 2003, he had until May 9, 2003 to take an appeal.

Be it marked too that only one (1) motion for reconsideration is allowed under the said Rule and Sec. 7 of AO No. 18, S. 1987, which provides:

Only one motion for reconsideration by any party shall be allowed and entertained, save in exceptionally meritorious cases.

and considering further that a second motion for reconsideration is proscribed under Sec. 2, Rule 52, *idem.*, the filing of the second motion for reconsideration did not toll the running of the period to appeal.

The petitioner wrongly reckoned the period to appeal from the notice of the denial of the second motion for reconsideration. The present petition should have been filed on or before May 9, 2003, the expiry date of the period to appeal. Unfortunately, he filed it on June 10, 2003.

On 02 July 2003, petitioner filed a motion for reconsideration^[25] which the Court of Appeals denied on 12 January 2004.^[26] Hence, this appeal by *certiorari*.

Petitioner raises the following issues:

(A) With all due respect, the dismissal of herein petitioner-Director Leoncio A. Amadore from the government service is illegal, pursuant to the requirement of the Implementing Rules and Regulations (I.R.R.) of Presidential Decree (P.D.) No. 1594;

(B) With all due respect, Section 7 of Administrative Order No. 18, Series of 1987, as cited by Manuel B. Gaite in dismissing herein petitioner, was never violated and that the 2nd Motion for Reconsideration should have been allowed as it constitutes meritorious case; and

(C) With all due respect and by virtue thereof, the herein petitioner should be immediately reinstated, as provided under the law and the Philippine Constitution, with all the benefits guaranteed thereunder.

Quite apart from the above, it bears mentioning that on 30 December 2003, Orlando C. Casimiro, Deputy Ombudsman for the Military, under authority of the Ombudsman, approved the recommendation of Francisca A. Maullon-Serfino, Graft Investigator Officer I, Office of the Ombudsman, as to the non-filing of an information for violation of Section 3(g), Republic Act No. 3019, as amended, against petitioner.^[27]

On 09 February 2004, this Court required respondents to file comment on the petition.^[28] On 25 May 2004, the Solicitor General, representing the respondents, filed his Comment,^[29] raising the following issues:

WHETHER RESPONDENTS ERRED IN DENYING PETITIONER'S SECOND MOTION FOR RECONSIDERATION.

WHETHER THE PETITION BEFORE THE COURT OF APPEALS WAS FILED WITHIN THE REGLEMENTARY PERIOD.

WHETHER PETITIONER MAY PROPERLY RAISE FACTUAL ISSUES IN THE PRESENT PETITION.^[30]

On 19 August 2004, petitioner filed a reply^[31] to the Solicitor General's Comment.

On 08 November 2004, the Court gave due course to the petition and required the parties to submit their respective memoranda.^[32]

Synthesized, the issues are narrowed down as follows: