

FIRST DIVISION

[G.R. No. 141616, March 15, 2001]

**CITY OF QUEZON, PETITIONER, VS. LEXBER INCORPORATED,
RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us is a petition for review on *certiorari* assailing the October 18, 1999 decision of the Court of Appeals in CA-G.R. CV No. 59541^[1] which affirmed *in toto* the January 26, 1998 decision of the Regional Trial Court of Quezon City in Civil Case No. Q-94-19405.^[2]

Briefly stated, the facts are as follows -

On August 27, 1990, a Tri-Partite Memorandum of Agreement^[3] was drawn between petitioner City of Quezon, represented by its then Mayor Brigido R. Simon, Jr., respondent Lexber, Inc. and the then Municipality of Antipolo, whereby a 26,010 square meter parcel of land located in Antipolo^[4] was to be used as a garbage dumping site by petitioner and other Metro Manila cities or municipalities authorized by the latter, for a 5-year period commencing in January 1991 to December 1995. Part of the agreement was that the landowner, represented by respondent Lexber, shall be hired as the exclusive supplier of manpower, heavy equipment and engineering services for the dumpsite and shall also have the right of first refusal for contracting such services.

This led to the drawing of the first negotiated contract^[5] between petitioner, represented by Mayor Simon, and respondent Lexber on September 10, 1990, whereby the latter was engaged to construct the necessary infrastructure at the dumpsite, designated as the Quezon City Sanitary Landfill, for the contract price of P4,381,069.00. Construction of said infrastructure was completed by respondent Lexber on November 25, 1991, and the contract price agreed upon was accordingly paid to it by petitioner.

Meanwhile, on November 8, 1990, a second negotiated contract^[6] was entered into by respondent Lexber with petitioner, again represented by Mayor Simon, whereby it was agreed that respondent Lexber shall provide maintenance services in the form of manpower, equipment and engineering operations for the dumpsite for the contract price of P1,536,796.00 monthly. It was further agreed that petitioner shall pay respondent Lexber a reduced fee of fifty percent (50%) of the monthly contract price, or P768,493.00, in the event petitioner fails to dump the agreed volume of 54,000 cubic meters of garbage for any given month. On December 11, 1991, respondent was notified by petitioner, through the City Engineer, Alfredo Macapugay, Project Manager, Rene Lazaro and Mayor Simon to commence maintenance and

dumping operations at the site starting on December 15, 1991.^[7]

Respondent Lexber alleged that petitioner immediately commenced dumping garbage on the landfill site continuously from December 1991 until May 1992. Thereafter, petitioner ceased to dump garbage on the said site for reasons not made known to respondent Lexber. Consequently, even while the dumpsite remained unused, respondent Lexber claimed it was entitled to payment for its services as stipulated in the second negotiated contract.

On December 12, 1992, respondent's counsel sent a demand letter to petitioner demanding the payment of at least 50% of its service fee under the said contract, in the total amount of P9,989,174.00. In view of the idle state of the dumpsite for more than a year, respondent also sought a clarification from petitioner regarding its intention on the dumpsite project, considering the waste of equipment and manpower in the meantime, as well as its loss of opportunity for the property.

Petitioner, this time acting through Mayor Ismael A. Mathay, Jr. who succeeded Mayor Simon in the interim, denied any liability under the contract on the ground that the same was invalid and unenforceable. According to Mayor Mathay, the subject contract was signed only by Mayor Simon and had neither the approval nor ratification of the City Council, and it lacked the required budget appropriation.

Thus, a complaint for Breach of Contract, Specific Performance or Rescission of Contract and Damages was filed by respondent Lexber against petitioner on February 21, 1994 before the Regional Trial Court of Quezon City. Respondent Lexber averred that because petitioner stopped dumping garbage on the dumpsite after May 1992, Lexber's equipment and personnel were idle to its damage and prejudice. Respondent prayed that petitioner be ordered to comply with its obligations under the subject contract or, in the alternative, that the said contract be rescinded and petitioner be ordered to pay damages.

On January 26, 1998, after trial on the merits, the lower court rendered judgment in favor of respondent, the dispositive portion of which states:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendant:

1. Ordering the defendant to pay the plaintiff the amount of SEVEN HUNDRED SIXTY EIGHT THOUSAND FOUR HUNDRED NINETY THREE PESOS (P768,493.00) per month starting December 15, 1991 until December 31, 1995 with legal interest starting December 16, 1992, the date defendant received plaintiff's extra-judicial demand, until defendant finally pays the entire amount;
2. Ordering defendant to pay costs of suit.

The claims for attorney's fees and other damages are hereby denied for lack of merit.

SO ORDERED.^[8]

On appeal to the Court of Appeals, the said Judgment was affirmed *in toto*. With the denial of its Motion for Reconsideration on January 26, 2000, petitioner now comes

to this Court with the instant petition arguing that the Court of Appeals gravely erred:

(a) When it refused to hold that the second Negotiated Contract of November 8, 1990 is null and void *ab initio*, notwithstanding that the execution thereof was in violation of Secs. 85, 86 and 87 of the Auditing Code of the Philippines (PD 1445) and LOI 968.

(b) When it refused to categorically hold that the said Negotiated Contract of November 8, 1990 required the prior approval of the City Council, notwithstanding the fact that the said contract would require the expenditure of public funds in the amount of P18,817,920.00 for one-year dumping operation, or the total amount of P94,089,600.00 for five years, and that it is the City Council that is vested by the Local Government Code (BP Blg. 337) with the power to appropriate city funds to cover expenses of the City Government.

(c) When it held that Petitioner started to dump garbage at the dumpsite and paid for such service, despite the fact that Respondent's evidence proved otherwise; furthermore, the Court of Appeals failed to cite any specific evidence to support said conclusions of fact.

(d) When it held that the said Negotiated Contract of November 8, 1990 was ratified by the Petitioner by the aforesaid initial dumping of garbage and payment of services, overlooking the elementary doctrine that a void contract cannot be ratified.

(e) When it wrongly applied an Executive Order and administrative resolution as the applicable law to govern the aforesaid contract, notwithstanding that the Auditing Code of the Philippines (PD 1445) and the Local Government Code (BP 337) then had not been repealed by any legislative enactment, nor could the said executive issuances repeal them.

(f) When it held that the equities of the case should lean in favor of the respondent and thus failed to apply the doctrine that Government is not estopped to question the illegal acts of its officials.

(g) When it wrongly applied the Imus case, not the Osmeña case, to the present case.^[9]

Petitioner's remonstrations can be reduced to two (2) essential arguments:

First. That the second negotiated contract is null and void *ab initio* because its execution was done in violation of existing laws, more particularly Sections 85, 86 and 87 of Presidential Decree No. 1445 (otherwise known as the Auditing Code of the Philippines) and Section 177 (b) of Batas Pambansa Blg. 337 (also known as the Local Government Code of 1983); and

Second. That the facts and evidence do not support the Court of Appeals' conclusion that, notwithstanding the lack of

appropriation, subsequent acts of the petitioner constituted a ratification of the subject negotiated contract.

The issue of whether or not the subject negotiated contract is null and void *ab initio* will be discussed first.

Petitioner insists that the subject contract failed to comply with the mandatory requirements of Presidential Decree No. 1445, otherwise known as the Auditing Code of the Philippines.

Section 85 thereof provides:

Section 85. *Appropriation before entering into contract.* - (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpected balance of which, free of other obligations, is sufficient to cover the proposed expenditure; (2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriation account. (Underscoring ours)

Section 86 of PD 1445 also provides as follows:

Section 86. *Certificate showing appropriation to meet contract.* - Except in a case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official or the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certification signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished. (Underscoring ours)

Petitioner stresses that failure to comply with the requirements underlined in Sections 85 and 86 of PD 1445 rendered the subject contract void, invoking Section 87 of PD 1445 which provides:

Section 87. *Void contract and liability of officer.* - Any contract entered into contrary to the requirements of the two immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

Is a contract entered into by the city mayor involving the expenditure of public funds by the local government without prior appropriation by the city council valid and binding? Petitioner insists that the answer is in the negative, arguing that there is no escaping the stringent and mandatory requirement of a prior appropriation, as well as a certification that funds are available therefor.

If we are to limit our disquisition to the cited provisions of Presidential Decree No. 1445, or the Auditing Code of the Philippines, in conjunction with Section 177 (b) of Batas Pambansa Blg. 337, or the Local Government Code of 1983, which empowered the Sangguniang Panlungsod to "appropriate funds for expenses of the city government, and fix the salaries of its officers and employees according to law," there would be no debate that prior appropriation by the city council and a certification that funds are available therefor is indeed mandatorily required.

There is no denying that Sections 85 and 86 of P.D. 1445 (Auditing Code of the Philippines) provide that contracts involving expenditure of public funds:

- 1) can be entered into only when there is an appropriation therefor; and
- 2) must be certified by the proper accounting official/agency that funds have been duly appropriated for the purpose, which certification shall be attached to and become an integral part of the proposed contract.

However, the very same Presidential Decree No. 1445, which is the cornerstone of petitioner's arguments, does not provide that the absence of an appropriation law *ipso facto* makes a contract entered into by a local government unit null and void. Section 84 of the statute specifically provides:

Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority. (Underscoring ours)

Consequently, public funds may be disbursed not only pursuant to an appropriation law, but also in pursuance of other specific statutory authority, *i.e.*, Section 84 of PD 1445. Thus, when a contract is entered into by a city mayor pursuant to specific statutory authority, the law, *i.e.*, PD 1445 allows the disbursement of funds from any public treasury or depository therefor. It can thus be plainly seen that the law invoked by petitioner Quezon City itself provides that an appropriation law is not the only authority upon which public funds shall be disbursed.

Furthermore, then Mayor Brigido Simon, Jr. did not enter into the subject contract without legal authority. The Local Government Code of 1983, or B.P. Blg. 337, which was then in force, specifically and exclusively empowered the city mayor to "represent the city in its business transactions, and sign all warrants drawn on the city treasury and all bonds, contracts and obligations of the city."^[10] Such power granted to the city mayor by B.P. Blg. 337 was not qualified nor restricted by any prior action or authority of the city council. We note that while the subsequent Local Government Code of 1991,^[11] which took effect after the execution of the subject contracts, provides that the mayor's representation must be "upon authority of the sangguniang panlungsod or pursuant to law or ordinance,"^[12] there was no such qualification under the old code.