

EN BANC

COMMISSION ON ELECTIONS, COMELEC CHAIRMAN ALFREDO L. BENIPAYO, COMELEC COMMISSIONERS RESURRECCION Z. BORRA and FLORENTINO A. TUASON, JR., Petitioners, vs. JUDGE MA. LUISA QUIJANO-PADILLA, REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 215 and PHOTOKINA MARKETING CORP., Respondents.

G. R. No. 151992

September 18, 2002

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DECISION

SANDOVAL-GUTIERREZ, J.:

The contracting prerogative of public officers is circumscribed with a heavy burden of responsibility. They must exercise utmost caution and observe the law in order to protect the public from unjust and inequitable government contracts.

The case at bar provides us with another occasion to stress that with respect to government contracts, statutes take precedence over the public officers' freedom to contract. Here, the primordial question to be resolved is -- may a successful bidder compel a government agency to formalize a contract with it notwithstanding that its bid exceeds the amount appropriated by Congress for the project?

Before us is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, alleging that respondent Judge Ma. Luisa Quijano-Padilla of the Regional Trial Court, Branch 215, Quezon City, committed grave abuse of discretion in issuing the (a) Resolution[1] dated December 19, 2001 granting private respondent's application for a writ of preliminary prohibitory injunction in Special Civil Action No. Q-01-45405[2]; and (b) Resolution[3] dated February 7, 2002 denying petitioners' Omnibus Motion to dismiss the petition and their motion for reconsideration of the same Resolution and granting private respondent's application for a writ of preliminary mandatory injunction.

The facts are undisputed.

In 1996, the Philippine Congress passed Republic Act No. 8189, otherwise known as the "Voter's Registration Act of 1996," providing for the modernization and computerization of the voters' registration list and the appropriation of funds therefor "in order to establish a clean, complete, permanent and updated list of voters." [4]

Pursuant thereto, the Commission on Elections (COMELEC) promulgated Resolution No. 00-0315[5] approving in principle the Voters' Registration and Identification System Project (VRIS Project for brevity). The VRIS Project envisions a computerized database system for the May 2004 Elections. The idea is to have a national registration of voters

whereby each registrant's fingerprints will be digitally entered into the system and upon completion of registration, compared and matched with other entries to eliminate double entries. A tamper-proof and counterfeit-resistant voter's identification card will then be issued to each registrant as a visual record of the registration.

On September 9, 1999, the COMELEC issued invitations to pre-qualify and bid for the supply and installation of information technology equipment and ancillary services for its VRIS Project.[6] Private respondent Photokina Marketing Corporation (PHOTOKINA) pre-qualified and was allowed to participate as one of the bidders. After the public bidding was conducted, PHOTOKINA's bid in the amount of P6.588 Billion Pesos garnered the highest total weighted score and was declared the winning bidder. Thus, on September 28, 2000, the COMELEC issued Resolution No. 3252[7] approving the Notice of Award to PHOTOKINA, which, in turn, immediately accepted the same. The parties then proceeded to formalize the contract, with Commissioner Mehol K. Sadain and Atty. Rodrigo D. Sta. Ana, acting as negotiators for the COMELEC and PHOTOKINA, respectively.

However, under Republic Act No. 8760[8] the budget appropriated by Congress for the COMELEC's modernization project was only One (1) Billion Pesos and that the actual available funds under the Certificate of Availability of Funds (CAF) issued by the Chief Accountant of the COMELEC was only P1.2 Billion Pesos.

In December 2000, then COMELEC Chairman Harriet O. Demetriou issued a memorandum to the COMELEC en banc expressing her objections to the contract. Commissioner Sadain, for his part, submitted a draft of the contract[9] providing a price that would not exceed the certified available appropriation but covering only Phase I of the VRIS Project, i.e., issuance of registration cards for 1,000,000 voters in certain areas only.[10] Under the draft, the "subsequent completion of the whole project shall be agreed upon in accordance with the Bid Documents and the annual funds available for it." [11]

On February 2, 2001, the term of former Chairman Demetriou and those of Commissioners Julio F. Desamito and Teresita Dy-Liacco Flores expired. Appointed as their successors were Alfredo L. Benipayo as Chairman and Resurreccion Z. Borra and Florentino A. Tuason, Jr. as Commissioners.

Meanwhile, PHOTOKINA, as the winning bidder, wrote several letters to the COMELEC requesting the formal execution of the contract, but to no avail.[12]

Then Chairman Benipayo, through various press releases and public statements, announced that the VRIS Project has been "scrapped, dropped, junked, or set aside." He further announced his plan to "re-engineer" the entire modernization program of the COMELEC, emphasizing his intention to replace the VRIS Project with his own version, the "Triple E Vision".[13]

On October 2, 2001, Senator Edgardo J. Angara directed the creation of a technical working group to "assist the COMELEC in evaluating all programs for the modernization of the COMELEC which will also consider the PHOTOKINA contract as an alternative program and various competing programs for the purpose."

Unsatisfied with the adverse turn of events, PHOTOKINA filed with the Regional Trial Court, Branch 215, Quezon City a petition for mandamus, prohibition and damages (with prayer for temporary restraining order, preliminary prohibitory injunction and preliminary mandatory injunction) against the COMELEC and all its Commissioners,[14] docketed as Special Civil Action No. Q- 01- 45405. PHOTOKINA alleged three causes of action: first, the deliberate refusal of the COMELEC and its Commissioners to formalize the contract rendered nugatory the perfected contract between them; second, in announcing that the VRIS Project has been junked and that he has plans to re-engineer the COMELEC's entire modernization program, Chairman Benipayo committed grave abuse of discretion; and third, the COMELEC's failure to perform its duty under the contract has caused PHOTOKINA to incur damages since it has spent substantial time and resources in the preparation of the bid and the draft contract.

In support of its application for writs of preliminary prohibitory and mandatory injunction, PHOTOKINA adopted the evidence it adduced during the hearing of its application for the issuance of a temporary restraining order.

On December 19, 2001, respondent Judge Ma. Luisa Quijano-Padilla issued the first assailed Resolution granting PHOTOKINA's application for a writ of preliminary prohibitory injunction, thus:

"WHEREFORE, premises considered, the Court resolves to: (1) grant the application for the issuance of a writ of preliminary prohibitory injunction; and (2) deny the application for the issuance of a writ of preliminary mandatory injunction.

Accordingly, let a writ of preliminary prohibitory injunction issue enjoining respondents, their agents, successors and assigns from replacing the VRIS Project upon petitioner's posting of a bond in the amount of P20,000,000.00, which bond shall answer for whatever damages which may be sustained by reason of the issuance of the said writ, if it turns out that the plaintiffs are not entitled thereto.

SO ORDERED."[15]

Both parties filed their respective motions for reconsideration. PHOTOKINA reiterated its plea for a writ of preliminary mandatory injunction.[16] For their part, the COMELEC and its Commissioners, through the Solicitor General, prayed that the writ of preliminary prohibitory injunction be set aside and that the petition for mandamus, prohibition and damages be dismissed.[17]

On February 8, 2002, respondent judge issued the second assailed Resolution denying the COMELEC's Omnibus Motion and, this time, granting PHOTOKINA's application for a writ of preliminary mandatory injunction, thus:

"WHEREFORE, premises considered, this Court resolves to: (1) deny Respondents' Omnibus Motion for the dismissal of this case and for the reconsideration of this Court's Resolution granting the writ of preliminary prohibitory injunction; (2) grant Petitioner's Motion dated January 2, 2002 insofar as it prays for the issuance of a writ of preliminary mandatory injunction; (3) Grant the prayer for the reduction of the preliminary prohibitory injunction bond from P20,000,000.00 to P10,000,000.00; (4) Clarify its Resolution dated December 19, 2001 to the extent that the writ of preliminary prohibitory injunction will also enjoin Respondents, their agents, successors and assigns from disregarding the contract for the VRIS Project between Petitioner and Respondent COMELEC; (5) deny Petitioner's motion to declare Respondents in default.

"Accordingly, let a writ of preliminary mandatory injunction issue directing all respondent Commissioners to immediately resume negotiations to formalize the execution of the contract with Petitioner for the VRIS Project upon petitioner's posting of a bond, separate from the above bond for the writ of preliminary prohibitory injunction, in the amount of P20,000,000.00, which bond shall answer for whatever damages that may be sustained by reason of the issuance of the said writ, if it turns out that Petitioner is not entitled thereto.

"SO ORDERED."[18]

Hence, the instant petition for certiorari filed by the Office of the Solicitor General (OSG) in behalf of then COMELEC Chairman Alfredo L. Benipayo and Commissioners Resurreccion Z. Borra and Florentino A. Tuason, Jr..

Petitioners contend that: (1) a petition for mandamus and prohibition does not lie to enforce contractual obligations, hence, PHOTOKINA's proper recourse before the Regional Trial Court should have been an action for specific performance; (2) respondent judge, by issuing the injunctive writs, already assumed that the VRIS Project was lawfully awarded by the COMELEC to PHOTOKINA, and that there is a valid perfected contract between them, thus, manifesting her prejudgment; and (3) injunctive writs should not be issued when an action for damages can adequately compensate for the injuries. Petitioners pray that the two assailed Resolutions be nullified and Special Civil Action No. Q-01-45405 be dismissed outright.[19]

On February 21, 2002, the majority of the COMELEC Commissioners -- Luzviminda G. Tancangco, Rufino S.B. Javier, Ralph C. Lantion and Mehol K. Sadain – filed with this Court a Manifestation[20] that “the Chairman and the two Commissioners who filed the instant Petition acted without authority from the COMELEC en banc to take such action.”

PHOTOKINA filed a Comment with Motion to Dismiss,[21] the present petition, on two procedural grounds. First, the petition violates the doctrine of hierarchy of courts.

And second, the OSG has no authority and/or standing to file the petition considering that the petitioners have not been authorized by the COMELEC en banc to take such action. Without the concurrence of at least a majority of the members of the COMELEC, neither petitioners nor the OSG could file the petition in behalf of the COMELEC.

In refutation of petitioners' arguments, PHOTOKINA contends that mandamus is an appropriate remedy since what is involved in Special Civil Action No. Q-01-45405 is the performance of a ministerial duty. Citing *Isada vs. Bocar*,^[22] PHOTOKINA maintains that mandamus may be availed of by private parties to compel public officers to act on a contract entered into pursuant to law. In its Supplemental Comment,^[23] PHOTOKINA invites the Court's attention to *Metropolitan Manila Development Authority vs. Jancom Environmental Corporation*^[24] whereby the winning bidder was afforded every right to seek enforcement of its perfected contract with the government.

The petition is impressed with merit.

Initially, we must resolve the procedural roadblocks.

PHOTOKINA alleges that the OSG has no standing to file the present petition since its legal position is contrary to that espoused by the majority of the COMELEC Commissioners. This is a leap to a non-sequitur conclusion. The OSG is an independent office. Its hands are not shackled to the cause of its client agency. In the discharge of its task, the primordial concern of the OSG is to see to it that the best interest of the government is upheld.^[25] This is regardless of the fact that what it perceived as the "best interest of the government" runs counter to its client agency's position.^[26] Endowed with a broad perspective that spans the legal interest of virtually the entire government officialdom, the OSG may transcend the parochial concerns of a particular client agency and instead, promote and protect the public weal.^[27] Our ruling in *Orbos vs. Civil Service Commission*,^[28] is relevant, thus:

"x x x It is incumbent upon him (Solicitor General) to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position. x x x.

"In the present case, it appears that after the Solicitor General studied the issues he found merit in the cause of the petitioner based on the applicable law and jurisprudence. Thus, it is his duty to represent the petitioner as he did by filing this petition. He cannot be disqualified from appearing for the petitioner even if in so doing his representation runs against the interests of the CSC.

"This is not the first time that the Office of the Solicitor General has taken a position adverse to his clients like the CSC, the National Labor Relations Commission, among others, and even the People of the Philippines. x x x" (Emphasis supplied)

Hence, while petitioners' stand is contrary to that of the majority of the Commissioners, still, the OSG may represent the COMELEC as long as in its assessment, such would be for the best interest of the government. For, indeed, in the final analysis, the client of the OSG is not the agency but no less than the Republic of the Philippines in whom the plenum of sovereignty resides.[29]

Moreover, it must be emphasized that petitioners are also public officials entitled to be represented by the OSG. Under Executive Order No. 292[30] and Presidential Decree No. 478,[31] the OSG is the lawyer of the government, its agencies and instrumentalities, and its officials or agents. Surely, this mandate includes the three petitioners[32] who have been impleaded as public respondents in Special Civil Action No. Q-01-45405.

Anent the alleged breach of the doctrine of hierarchy of courts, suffice it to say that it is not an iron-clad dictum. On several instances where this Court was confronted with cases of national interest and of serious implications, it never hesitated to set aside the rule and proceed with the judicial determination of the case.[33] The case at bar is of similar import. It is in the interest of the State that questions relating to government contracts be settled without delay. This is more so when the contract, as in this case, involves the disbursement of public funds and the modernization of our country's election process, a project that has long been overdue.

We now resolve the following substantive issues:

1) Is a petition for mandamus the appropriate remedy to enforce contractual obligations? and 2) May a successful bidder compel a government agency to formalize a contract with it notwithstanding that its bid exceeds the amount appropriated by Congress for the project?

I

No rule of law is better settled than that mandamus does not lie to enforce the performance of contractual obligations.[34] As early as 1924, Justice Street, in *Quiogue vs. Romualdez*,[35] already set forth the justification of this rule, thus:

"Upon the facts above stated we are of the opinion that the writ of mandamus is not the appropriate, or even an admissible remedy. It is manifest that whatever rights the petitioner may have, upon the facts stated, are derived from her contract with the city; and no rule of law is better settled than that mandamus never lies to enforce the performance of private contracts. x x x The petitioner's remedy, if any she has, is by an original action in the Court of First Instance to compel the city to pay the agreed price or to pay damages for the breach of contract.

"x x x. As said in *Lowe vs. Phelps* (14 Bush, 642):

'It must, therefore, appear upon every application for a mandamus that it is the legal duty of the respondent to do that which it is sought to

compel him to do, and that he has upon proper application refused to perform that duty.' (Citing numerous authorities).

"It was not intended to aid a plaintiff in the enforcement of a mere contract right, or to take the place of the other remedies provided by law for the adjudication of disputed claims. Looking at the case from the standpoint of appellant, it involves nothing more than an ordinary breach of contract. If, as contended, the appellant had a valid contract with the school board, it also had an adequate remedy at law to recover damages for its breach; and to permit the writ of mandamus to be used for the purpose of enforcing a mere contract right would be a wide departure from the settled practice in respect to the character of cases in which relief by mandamus may be obtained.

"In *Parrott vs. City of Bridgeport* (44 Conn., 180), the writ was refused where the petitioner sought to compel a city to construct a public street in a certain manner agreeably to the terms of a special agreement between the petitioner and the city. In the course of the opinion the court said:

"* * * The duty, therefore, if any, which rests upon the city in this regard, is one which it owes to the petitioner as an individual, not to the public, and the special contract is the foundation upon which it rests. But the writ of mandamus has never been considered as an appropriate remedy for the enforcement of contract rights of a private and personal nature and obligations which rest wholly upon contract and which involve no questions of public trusts or official duty. Indeed, strictly speaking, it never lies where the party aggrieved has adequate remedy at law, and its aid is only to be invoked to prevent an absolute failure of justice in cases where ordinary legal processes furnish no relief." (Emphasis supplied)

The passage of time has not eroded the wisdom of the foregoing rule. Its invocation by this Court in *Province of Pangasinan vs. Reparation Commission*,^[36] *Aprueba vs. Ganzon*,^[37] *City of Manila vs. Posadas*,^[38] *Jacinto vs. Director of Lands*,^[39] *National Marketing Corporation vs. Cloribel*,^[40] *Astudillo vs. The Board of Directors of People's Homesite and Housing Corporation*,^[41] and *Sharp International Marketing vs. Court of Appeals*,^[42] virtually reinforces the rule.

The present case is our latest addition to the above catena of jurisprudence. We carefully read the pleadings filed in Special Civil Action No. Q-01-45405 and we are convinced that what PHOTOKINA sought to enforce therein are its rights under the accepted bid proposal. Its petition alleged that notwithstanding the COMELEC's issuance of a Notice of Award and its (PHOTOKINA's) subsequent acceptance thereof, the COMELEC still refused to formalize the contract. As a relief, PHOTOKINA prayed that after trial, petitioners be directed "to review and finalize the formal contract" and to "implement the VRIS Project."^[43] Petitioners, on their part, specifically denied the existence of a perfected contract and asserted that even if there was one, the same is null and void for lack of proper appropriation. Petitioners labeled the contract as illegal and against public policy.

Akin to our rulings cited above, we hold that mandamus is not the proper recourse to enforce the COMELEC's alleged contractual obligations with PHOTOKINA. It has other adequate remedy in law. Moreover, worth stressing is the judicial caution that mandamus applies as a remedy only where petitioner's right is founded clearly in law and not when it is doubtful.[44] In varying language, the principle echoed and reechoed is that legal rights may be enforced by mandamus only if those rights are well-defined, clear and certain.[45] Here, the alleged contract, relied upon by PHOTOKINA as source of its rights which it seeks to be protected, is being disputed, not only on the ground that it was not perfected but also because it is illegal and against public policy.

Of course, there are cases in which the writ of mandamus has been used to compel public officers to perform certain acts, but it will be generally observed that in such cases, the contracts have been completely performed by the petitioner, and nothing remained to be done except for the government to make compensation. These exceptional cases are cited in *Isada vs. Bocar*[46] where the act of the respondent public officer has the effect of setting aside contracts already in the process of consummation. In contrast with *Isada*, the alleged contract here has not yet been fully performed by PHOTOKINA; and though it avers readiness to perform, petitioners raised serious questions as to its validity. Their posture is tenable.

II

To spare PHOTOKINA the drudgery of a fruitless pursuit, we deem it appropriate to lay down the principles governing government contracts and to apply them to the instant case. Meanwhile, as PHOTOKINA will later on deduce from the discussion, the contract subject of this controversy is one that can be slain in sight for being patently void and unenforceable.

Enshrined in the 1987 Philippine Constitution is the mandate that "no money shall be paid out of the Treasury except in pursuance of an appropriation made by law." [47] Thus, in the execution of government contracts, the precise import of this constitutional restriction is to require the various agencies to limit their expenditures within the appropriations made by law for each fiscal year.

Complementary to the foregoing constitutional injunction are pertinent provisions of law and administrative issuances that are designed to effectuate the above mandate in a detailed manner.[48] Sections 46 and 47, Chapter 8, Subtitle B, Title I, Book V of Executive Order No. 292, otherwise known as "Administrative Code of 1987," provide:

"SEC. 46. 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 unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and
x x x

"SEC. 47. Certificate Showing Appropriation to Meet Contract. – Except in the 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 (3) 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 of 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 calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate 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.

It is quite evident from the tenor of the language of the law that the existence of appropriations and the availability of funds are indispensable pre-requisites to or conditions sine qua non for the execution of government contracts. The obvious intent is to impose such conditions as a priori requisites to the validity of the proposed contract.[49] Using this as our premise, we cannot accede to PHOTOKINA's contention that there is already a perfected contract. While we held in Metropolitan Manila Development Authority vs. Jancom Environmental Corporation[50] that "the effect of an unqualified acceptance of the offer or proposal of the bidder is to perfect a contract, upon notice of the award to the bidder," however, such statement would be inconsequential in a government where the acceptance referred to is yet to meet certain conditions. To hold otherwise is to allow a public officer to execute a binding contract that would obligate the government in an amount in excess of the appropriations for the purpose for which the contract was attempted to be made.[51] This is a dangerous precedent.

In the case at bar, there seems to be an oversight of the legal requirements as early as the bidding stage. The first step of a Bids and Awards Committee (BAC) is to determine whether the bids comply with the requirements. The BAC shall rate a bid "passed" only if it complies with all the requirements and the submitted price does not exceed the approved budget for the contract."[52]

Extant on the record is the fact that the VRIS Project was awarded to PHOTOKINA on account of its bid in the amount of P6.588 Billion Pesos. However, under Republic Act No. 8760,[53] the only fund appropriated for the project was P1 Billion Pesos and under the Certification of Available Funds[54] (CAF) only P1.2 Billion Pesos was available. Clearly, the amount appropriated is insufficient to cover the cost of the entire VRIS Project. There is no way that the COMELEC could enter into a contract with PHOTOKINA whose accepted bid was way beyond the amount appropriated by law for the project. This being the case, the BAC should have rejected the bid for being excessive[55] or should have withdrawn the Notice of Award on the ground that in the eyes of the law, the same is null and void.[56]

The objections of then Chairman Demetriou to the implementation of the VRIS Project, ardently carried on by her successor Chairman Benipayo, are therefore in order.

Even the draft contract submitted by Commissioner Sadain, that provides for a contract price in the amount of P1.2 Billion Pesos is unacceptable. Indeed, we share the observation of former Chairman Demetriou that it circumvents the statutory requirements on government contracts. While the contract price under the draft contract[57] is only P1.2 Billion and, thus, within the certified available funds, the same covers only Phase I of the VRIS Project, i.e., the issuance of identification cards for only 1,000,000 voters in specified areas.[58] In effect, the implementation of the VRIS Project will be “segmented” or “chopped” into several phases. Not only is such arrangement disallowed by our budgetary laws and practices, it is also disadvantageous to the COMELEC because of the uncertainty that will loom over its modernization project for an indefinite period of time. Should

Congress fail to appropriate the amount necessary for the completion of the entire project, what good will the accomplished Phase I serve? As expected, the project failed “to sell” with the Department of Budget and Management. Thus, Secretary Benjamin Diokno, per his letter of December 1, 2000, declined the COMELEC’s request for the issuance of the Notice of Cash Availability (NCA) and a multi-year obligational authority to assume payment of the total VRIS Project for lack of legal basis.[59] Corollarily, under Section 33 of R.A. No. 8760, no agency shall enter into a multi-year contract without a multi-year obligational authority, thus:

“SECTION 33. Contracting Multi-Year Projects. – In the implementation of multi-year projects, no agency shall enter into a multi-year contract without a multi-year Obligational Authority issued by the Department of Budget and Management for the purpose. Notwithstanding the issuance of the multi-year Obligational Authority, the obligation to be incurred in any given calendar year, shall in no case exceed the amount programmed for implementation during said calendar year.”

Petitioners are justified in refusing to formalize the contract with PHOTOKINA. Prudence dictated them not to enter into a contract not backed up by sufficient appropriation and available funds. Definitely, to act otherwise would be a futile exercise for the contract would inevitably suffer the vice of nullity. In *Osmeña vs. Commission on Audit*,[60] this Court held:

“The Auditing Code of the Philippines (P.D. 1445) further provides that no contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor and the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and the amount necessary to cover the proposed contract for the current fiscal year is available for expenditure on account thereof. Any contract entered into contrary to the foregoing requirements shall be VOID.

"Clearly then, the contract entered into by the former Mayor Duterte was void from the very beginning since the agreed cost for the project (P8,368,920.00) was way beyond the appropriated amount (P5,419,180.00) as certified by the City Treasurer. Hence, the contract was properly declared void and unenforceable in COA's 2nd Indorsement, dated September 4, 1986. The COA declared and we agree, that:

'The prohibition contained in Sec. 85 of PD 1445 (Government Auditing Code) is explicit and mandatory. Fund availability is, as it has always been, an indispensable prerequisite to the execution of any government contract involving the expenditure of public funds by all government agencies at all levels. Such contracts are not to be considered as final or binding unless such a certification as to funds availability is issued (Letter of Instruction No. 767, s. 1978). Antecedent of advance appropriation is thus essential to government liability on contracts (Zobel vs. City of Manila, 47 Phil. 169). This contract being violative of the legal requirements aforequoted, the same contravenes Sec. 85 of PD 1445 and is null and void by virtue of Sec.87.'"

Verily, the contract, as expressly declared by law, is inexistent and void ab initio.[61] This is to say that the proposed contract is without force and effect from the very beginning or from its incipiency, as if it had never been entered into, and hence, cannot be validated either by lapse of time or ratification.[62]

Of course, we are not saying that the party who contracts with the government has no other recourse in law. The law itself affords him the remedy. Section 48 of E.O. No. 292 explicitly provides that any contract entered into contrary to the above-mentioned requirements shall be void, and "the officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same as if the transaction had been wholly between private parties." So when the contracting officer transcends his lawful and legitimate powers by acting in excess of or beyond the limits of his contracting authority, the Government is not bound under the contract. It would be as if the contract in such case were a private one, whereupon, he binds only himself, and thus, assumes personal liability thereunder.[63] Otherwise stated, the proposed contract is unenforceable as to the Government.

While this is not the proceeding to determine where the culpability lies, however, the constitutional mandate cited above constrains us to remind all public officers that public office is a public trust and all public officers must at all times be accountable to the people. The authority of public officers to enter into government contracts is circumscribed with a heavy burden of responsibility. In the exercise of their contracting prerogative, they should be the first judges of the legality, propriety and wisdom of the contract they entered into. They must exercise a high degree of caution so that the Government may not be the victim of ill-advised or improvident action.[64]

In fine, we rule that PHOTOKINA, though the winning bidder, cannot compel the COMELEC to formalize the contract. Since PHOTOKINA's bid is beyond the amount

appropriated by Congress for the VRIS Project, the proposed contract is not binding upon the COMELEC and is considered void; and that in issuing the questioned preliminary writs of mandatory and prohibitory injunction and in not dismissing Special Civil Action No. Q-01-45405, respondent judge acted with grave abuse of discretion. Petitioners cannot be compelled by a writ of mandamus to discharge a duty that involves the exercise of judgment and discretion, especially where disbursement of public funds is concerned.

WHEREFORE, the petition is GRANTED. The Resolutions dated December 19, 2001 and February 7, 2002 issued by respondent Judge Padilla are SET ASIDE. Special Civil Action No. Q-01-45405 is hereby ordered DISMISSED.

SO ORDERED.

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- [1] Petition, Annex "A", Rollo, pp. 43-49.
- [2] Entitled "Photokina Marketing Corp. vs. The Commission on Elections ("COMELEC"), et al."
- [3] Petition, Annex "B", Rollo, pp. 50-57.
- [4] Article 2 of R.A. No. 8189.
- [5] Rollo, pp. 90-112.
- [6] Ibid., p. 113.
- [7] Rollo, pp. 117-118. On October 3, 2000, the COMELEC issued Resolution No. 3261 clarifying that the Notice of Award which was approved in Resolution No. 3252 was "clearly meant for PHOTOKINA MARKETING CORPORATION." (Rollo, pp. 121-122) See also Letter dated October 3, 2000. (Rollo, p. 119)
- [8] General Appropriations Act FY 2000, p. 1018.
- [9] Rollo, pp. 378-427.
- [10] Ibid., p. 382.
- [11] Ibid.
- [12] Ibid., pp. 123-126.
- [13] Ibid., pp. 131-140.
- [14] Petition, Annex "F", Rollo, pp. 64-87
- [15] Ibid, Annex "A", p. 48.
- [16] Ibid, Annex "T," Rollo, pp. 481-492.
- [17] Ibid, Omnibus Motion, Annex "V," Rollo, pp. 500-523.
- [18] Ibid., Annex "B," Rollo, pp. 56-57.
- [19] Rollo, pp. 2-41.
- [20] Ibid., pp. 618-625.
- [21] Ibid., pp. 648-675.
- [22] 62 SCRA 37 (1975).
- [23] Rollo, pp. 774-782.
- [24] G.R. No. 147465, January 30, 2002.
- [25] Orbos vs. Civil Service Commission, 189 SCRA 459 (1990).
- [26] Rubio, Jr., vs. Sto. Tomas, 183 SCRA 571 (1990); See also Tan vs. Gallardo, 73 SCRA 306 (1976).

- [27] Gonzales vs. Chavez, 205 SCRA 816 (1992).
- [28] Orbos vs. Civil Service Commission, supra.
- [29] Gonzales vs. Chavez, supra.
- [30] Otherwise known as the “Administrative Code of 1987.” Section 35, Chapter 12, Title III, Book IV thereof reads: SEC. 35. Powers and Functions. – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. x x x
- [31] “Defining the Powers and Functions of the Office of the Solicitor General” SEC. 1. Functions and Organizations. (1) The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.
- [32] Rollo, pp. 774-782.
- [33] See Buklod ng Kawaning EIB vs. Zamora, G.R. No. 142801-802, July 10, 2001; Fortich vs. Corona, 289 SCRA 624 (1998); Dario vs. Mison, 176 SCRA 84 (1989).
- [34] Quiogue vs. Romualdez, 46 Phil. 337 (1924) citing Florida Central & Peninsular R. Co. vs. State ex rel Tavares, 20 L.R. A., 419; Tabigue vs. Duvall, 16 Phil. 324 (1910).
- [35] Ibid., pp. 339-341.
- [36] 80 SCRA 376 (1977).
- [37] 18 SCRA 8 (1966).
- [38] 48 Phil. 309 (1925).
- [39] 49 Phil. 853 (1926).
- [40] 23 SCRA398 (1968).
- [41] 73 SCRA 15 (1976).
- [42] 201 SCRA 299 (1991).
- [43] Petition, Annex “F”, rollo, pp. 64-86.
- [44] Garces vs. Court of Appeals, 259 SCRA 99 (1996) citing University of San Agustin, Inc. vs. Court of Appeals, 230 SCRA 761 (1994); Tamano vs. Manglapus, 214 SCRA 567 (1992); Marcelo vs. Tantuico, Jr., 142 SCRA 439 (1986); and Sanson vs. Barrios, 63 Phil 199 (1936).
- [45] JRS Business Corporation vs. Montesa, 23 SCRA 190 (1968); Isada vs. Bocar, supra.; Sharp International Marketing vs. Court of Appeals, supra.
- [46] Supra.
- [47] Sec. 29 (1), Article VI of the 1987 Constitution.
- [48] See Sections 85, 86 and 87 of Presidential Decree No. 1445, otherwise known as the “Government Auditing Code of the Philippines”; Sections 526 and 527 of the Government Accounting and Auditing Manual; Presidential Decree No. 1177, otherwise known as “The Budget Reform Decree”, 73 O.G. No. 41, p. 9548; Letter of Instruction 767, s. 1978 (November 16, 1978), 74 O. G. No. 49, p. 10670; Letter of Instructions 968, s. 1979 (December 17, 1979), 76 O. G. No. 3, p. 395; Section 3.1.1 of the Implementing Rules and Regulations (IRR) for Executive Order No. 262, s. 2000.
- [49] Fernandez, A Treatise on Government Contracts Under Philippine Law, 2001, pp. 40-41.
- [50] Supra.
- [51] 64 Am Jur 2d §11.
- [52] Implementing Rules and Regulations (IRR) for Executive Order No. 262, supra.
- [53] General Appropriations Act, FY 2000, p. 1018, supra.
- [54] Petition, Annex “FF,” Rollo, p. 613.

[55] Notwithstanding the fact that the bid of one responsible bidder complies with all the specifications and conditions of the proposal and is the lowest obtained in the bidding, the PBAC may nevertheless reject the same if it appears that the price offered is EXCESSIVE. Manual on Public Bidding (A Research Project Funded by the Canadian International Development Agency and the Commission on Audit), March 1997, p. 28.

[56] There is authority that in the absence of any reservation in the contract of a right to rescind it, public authorities cannot, without incurring liability for breach of contract, after a bid has been accepted and the contract awarded, rescind such award and contract, EXCEPT for some cause which, in the eye of the law, renders it void or voidable, 64 Am Jur 2d §79 citing United States vs. Corliss Steam Engine Co., 91 US 321, 23 L Ed 397; State ex rel. Robert Mitchell Furniture Co. vs. Toole, 26 Mont 22, 66 P 496.

[57] Rollo, pp. 378-427.

[58] Ibid., p. 382.

[59] Secretary Diokno wrote: "On the request for the issuance of NCA for major government projects is done in phases or trenches subject to actual obligations incurred by the agency and delivery of goods and/or services. For this purpose, may we request the submission of the Schedule of Payments, mentioned in part E of the draft VRIS Project Contract, and the corresponding cash program (by month or by quarter) to enable us to include your NCA requirements in the cash program of the national government next year and for DBM to issue timely releases for the project.

On the issuance of the multi-year obligational authority, we regret that we cannot issue the same for the lack of legal basis. Multi-year forward obligational authority applies only to foreign assisted projects covered with loan agreements that require the funding commitment of the national government in terms of both peso counterpart and loan proceeds over the life of the project."

[60] 230 SCRA 585, 589-590 (1994).

[61] Article 1409 of the Civil Code of the Philippines.

[62] Manila Lodge vs. Court of Appeals, 73 SCRA 162 (1976); See also Tongoy vs. Court of Appeals, 123 SCRA 99 (1983).

[63] Fernandez, A Treatise on Government Contracts Under Philippine Law, 2001, supra., pp. 22-23.

[64] Rivera vs. Maclang, 7 SCRA 57 (1963).