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**Republic of the Philippines**  
**Supreme Court**  
**Manila**

**EN BANC**

**STO. NIÑO CONSTRUCTION**  
represented by **DEXTER W.**  
**TSANG**

Petitioner,

**G.R. No. 244443**

Present:

**BERSAMIN, C.J.,**  
**CARPIO,**  
**PERALTA,**  
**PERLAS-BERNABE,**  
**LEONEN,**  
**CAGUIOA,**  
**A. REYES, JR.,**  
**GESMUNDO,**  
**J. REYES, JR.,\***  
**HERNANDO,**  
**CARANDANG,**  
**LAZARO-JAVIER,**  
**INTING, and**  
**ZALAMEDA, JJ.**

- versus -

**COMMISSION ON AUDIT,**  
represented by **HON. MICHAEL G.**  
**AGUINALDO, Chairperson,**  
Respondent.

Promulgated:

October 15, 2019

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**RESOLUTION**

**CARANDANG, J.:**

The instant Petition for *Certiorari*<sup>1</sup> under Rule 64 of the Rules of Court assails the Decision dated December 29, 2016<sup>2</sup> and Resolution dated November 28, 2018<sup>3</sup> of the Commission on Audit (COA) in COA CP Case No. 2013-209. The assailed Decision and Resolution denied the Petition for Money

\* On leave.  
1 *Rollo*, pp. 4-7.  
2 Id. at 20-26.  
3 Id. at 8-13.

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Claim<sup>4</sup> amounting to ₱11,425,875.67 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<sup>5</sup> 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<sup>6</sup> dated July 30, 2008, requested for funding assistance amounting to ₱12,000,000.00 for the foregoing rehabilitation project. Thereafter, in a letter<sup>7</sup> 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 ₱12,000,000.00 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.<sup>8</sup>

On November 18, 2009, STC completed the rehabilitation project of Payao Road based on the Certification<sup>9</sup> issued by the District Engineer of DPWH Ipil Engineering District.<sup>10</sup> STC claims that the cost of the project amounted to ₱11,425,875.67. However, no funding was released as payment for the construction works rendered by STC.<sup>11</sup> Thus, STC filed a Petition for Money Claim<sup>12</sup> against DPWH Ipil Engineering District.

The District Engineer of DPWH Ipil Engineering District filed its Answer/Comment<sup>13</sup> to the petition, affirming STC's claim that high ranking

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<sup>4</sup> Id. at 16-19.

<sup>5</sup> Id. at 20.

<sup>6</sup> Id. at 14.

<sup>7</sup> Id. at 15.

<sup>8</sup> Id. at 5.

<sup>9</sup> Not attached to the *rollo*.

<sup>10</sup> *Rollo*, p. 21.

<sup>11</sup> Id. at 20-21.

<sup>12</sup> Id. at 16-19.

<sup>13</sup> Not attached to the *rollo*.

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.<sup>14</sup> DPWH also notes the recommendation of the Public Works, Transport and Energy, National Government Sector that STC be paid the amount of ₱8,238,271.35 representing the work accomplished based on *quantum meruit* and the inspection by COA Regional Technical Information Technology Services.<sup>15</sup>

In a Decision<sup>16</sup> dated December 29, 2016, COA denied STC's Petition for Money Claim. COA held that under Sections 85 (1)<sup>17</sup> and 86<sup>18</sup> of Presidential Decree No. (P.D.) 1445<sup>19</sup> 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.<sup>20</sup>

COA denied the application of the principle of *quantum meruit*. Although the cases *Soler v. Court of Appeals*,<sup>21</sup> and *EPG Construction Co v. Vigilant*<sup>22</sup> 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

<sup>14</sup> *Rollo*, p. 21.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 20-26.

<sup>17</sup> Sec. 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 unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure.

x x x x

<sup>18</sup> Sec. 86. *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 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 fiscal 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.

<sup>19</sup> Presidential Decree No. 1445 entitled, "Ordaining and Instituting a Government Auditing Code of the Philippines," otherwise known as the "Government Auditing Code of the Philippines," approved on June 11, 1978.

<sup>20</sup> *Rollo*, p. 22.

<sup>21</sup> 410 Phil. 264 (2001).

<sup>22</sup> 407 Phil. 53 (2001).

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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.<sup>23</sup>

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<sup>24</sup> was issued.<sup>25</sup> On August 14, 2017, STC belatedly filed its Motion for Reconsideration.<sup>26</sup>

In a Resolution<sup>27</sup> 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*.”<sup>28</sup>

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*,<sup>29</sup> *EPG Construction v.*

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<sup>23</sup> Rollo, pp. 22-24.

<sup>24</sup> Not attached to the rollo.

<sup>25</sup> Rollo, pp. 8-9.

<sup>26</sup> Id. at 27-28.

<sup>27</sup> Id. at 8-13.

<sup>28</sup> Id. at 11.

<sup>29</sup> Supra note 21.

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*Vigilar*,<sup>30</sup> and *Royal Trust Construction v. Commission on Audit*,<sup>31</sup> 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*,<sup>32</sup> 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.<sup>33</sup> 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 other exceptions.<sup>34</sup>

We find that the instant case falls under the exception of the doctrine of immutability because COA committed grave abuse of discretion when it overlooked relevant facts. COA denied STC's claim of payment for work rendered due to lack of fund appropriation and written contract from DPWH and without the two requirements, payment would constitute illegal expenditure. However, COA failed to consider the implied authorization and subsequent acts done by DPWH, which cured the cited defects.

DPWH conducted the public bidding for the project and under BAC Resolution No. 05-059<sup>35</sup> dated May 8, 2009, STC was declared to have submitted the lowest responsive bid for the project. Thereafter, a certification was issued by the District Engineer of DPWH attesting to the completion of

<sup>30</sup> Supra note 22.

<sup>31</sup> G.R. No. 84202 (Resolution), November 22, 1988.

<sup>32</sup> 667 Phil. 32 (2011).

<sup>33</sup> *Spouses Navarra v. Liongson*, 784 Phil. 942, 953-954 (2016).

<sup>34</sup> *Orlina v. Ventura*, G.R. No. 227033, December 3, 2018.

<sup>35</sup> *Rollo*, p. 20.

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the works rendered by said company.<sup>36</sup> In fact, during the pendency of proceedings for the Petition of Money Claim before the COA, the DPWH, through its District Engineer in Ipil, Zamboanga, Sibugay, admits that construction works for the project commenced even without funding; that the same had to be completed in order to eliminate insurgency problems in the area; that the project was completed, turned over to and accepted by the government and has been accessible and passable to the public.<sup>37</sup> Finally, the Audit Team Leader of DPWH recommended payment to STC for the cost of actual services rendered amounting to ₱8,238,271.35 based on the technical inspection and verification made by COA Regional Technical Information Technology Services. If, as COA held, that there was no authorization from DPWH to implement the rehabilitation/ construction of Payao Road, then DPWH could have refused liability by claiming the nullity of the works done by STC, but such is not the case.

With the acknowledgment by DPWH of works rendered by STC, its recommendation to pay after the completion of the project, and the urgency to finish the project because of the insurgency problem in the area, there is no legal impediment to pay what is due to STC. The actions done by DPWH were curative in nature “intended to enable persons to carry into effect that which they have designed and planned, but has failed of the expected legal consequence by reason of some statutory disability”<sup>38</sup> or lack of legal requisites to validate the action, as in this case.

The government and the people of Zamboanga Sibugay clearly benefited from the construction works. To deny the company of compensation for the construction and rehabilitation of the Payao Road is unjustified and would constitute unjust enrichment on the part of the government and the people, who derived benefits thereof at the expense of STC.

**WHEREFORE**, the petition is **GRANTED**. The Decision dated December 29, 2016 and Resolution dated November 28, 2018 of the Commission on Audit in COA CP Case No. 2013-209 are hereby **REVERSED** and **SET ASIDE**. The Department of Public Works and Highways is hereby **ORDERED** to pay Sto. Niño Construction the amount of ₱8,238,271.35 as determined by the Commission on Audit Regional Technical Information Technology Services for actual services rendered by the company.

**SO ORDERED.**

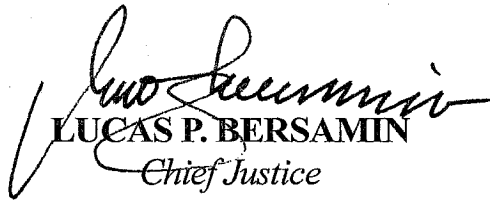
  
**ROSMARI D. CARANDANG**  
*Associate Justice*

<sup>36</sup> Id. at 21.

<sup>37</sup> Id.

<sup>38</sup> *Batong Buhay Gold Mines, Inc. v. Dela Serna*, 370 Phil. 872 (1999).

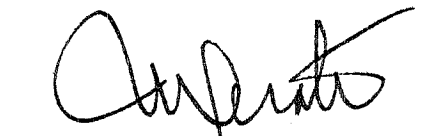
**WE CONCUR:**



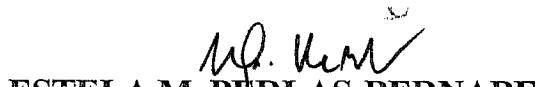
**LUCAS P. BERSAMIN**  
*Chief Justice*




**ANTONIO T. CARPIO**  
*Associate Justice*



**DIOSDADO M. PERALTA**  
*Associate Justice*



**ESTELA M. PERLAS-BERNABE**  
*Associate Justice*



**MARVIC MARIO VICTOR F. LEONEN**  
*Associate Justice*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*




**ANDRES B. REYES, JR.**  
*Associate Justice*



**ALEXANDER G. GESMUNDO**  
*Associate Justice*

(on leave)  
**JOSE C. REYES, JR.**  
*Associate Justice*



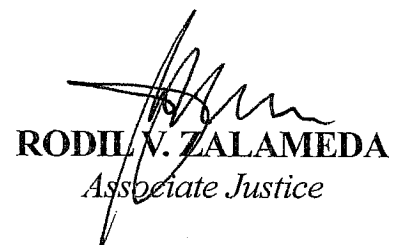
**RAMON PAUL L. HERNANDO**  
*Associate Justice*



**AMY C. LAZARO-JAVIER**  
*Associate Justice*



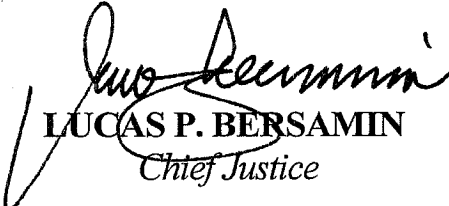
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*



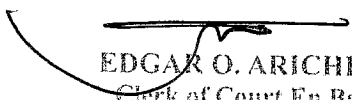
**RODIL V. ZALAMEDA**  
*Associate Justice*

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

  
**LUCAS P. BERSAMIN**  
*Chief Justice*

CERTIFIED TRUE COPY

  
**EDGAR O. ARICHETA**  
Clerk of Court En Banc  
Supreme Court