Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

- versus -

MEGA PACIFIC eSOLUTIONS, INC., WILLY U. YU, BONNIE S. YU, ENRIQUE T. TANSIPEK, ROSITA Y. TANSIPEK, PEDRO O. TAN, JOHNSON W. FONG, BERNARD I. FONG, and *LAURIANO A. BARRIOS,
Respondents.

G.R. No. 184666

Present:

SERENO, *CJ*,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:

JUN 27 2016

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DECISION

SERENO, *CJ*:

The instant case is an offshoot of this Court's Decision dated 13 January 2004 (2004 Decision) in a related case entitled *Information Technology Foundation of the Philippines v. Commission on Elections.*[1]

In the 2004 case, We declared void the automation contract executed by respondent Mega Pacific eSolutions, Inc. (MPEI) and the Commission on Elections (COMELEC) for the supply of automated counting machines (ACMs) for the 2004 national elections.

The present case involves the attempt of petitioner Republic of the Philippines to cause the attachment of the properties owned by respondent MPEI, as well as by its incorporators and stockholders (individual respondents in this case), in order to secure petitioner's interest and to ensure recovery of the payments it made to respondents for the invalidated automation contract.

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* Laureano A. Barrios in some part of the records.

[1] G.R. No. 159139, 464 Phil. 173 (2004) [the 2004 case].

At bench is a Rule 45 Petition assailing the Amended Decision dated 22 September 2008 (Amended Decision) issued by the Court of Appeals (CA) in CA-G.R. SP No. 95988.[2] In said Amended Decision, the CA directed the remand of the case to the Regional Trial Court of Makati City, Branch 59 (RTC Makati) for the reception of evidence in relation to petitioner's application for the issuance of a writ of preliminary attachment. The CA had reconsidered and set aside its previous Decision dated 31 January 2008 (First Decision)[3] entitling petitioner to the issuance of said writ.

Summarized below are the relevant facts of the case, some of which have already been discussed in this Court's 2004 Decision:

THE FACTS

Republic Act No. 8436 authorized the COMELEC to use an automated election system for the May 1998 elections. However, the automated system failed to materialize and votes were canvassed manually during the 1998 and the 2001 elections.

For the 2004 elections, the COMELEC again attempted to implement the automated election system. For this purpose, it invited bidders to apply for the procurement of supplies, equipment, and services. Respondent MPEI, as lead company, purportedly formed a joint venture - known as the Mega Pacific Consortium (MPC) - together with We Solv, SK C & C, ePLDT, Election.com and Oracle. Subsequently, MPEI, on behalf of MPC, submitted its bid proposal to COMELEC.

The COMELEC evaluated various bid offers and subsequently found MPC and another company eligible to participate in the next phase of the bidding process.[4] The two companies were referred to the Department of Science and Technology (DOST) for technical evaluation. After due assessment, the Bids and Awards Committee (BAC) recommended that the project be awarded to MPC. The COMELEC favorably acted on the recommendation and issued Resolution No. 6074, which awarded the automation project to **MPC**.

Despite the award to MPC, the COMELEC and **MPEI** executed on 2 June 2003 the Automated Counting and Canvassing Project Contract (automation contract)[5] for the aggregate amount of ₱1,248,949,088. MPEI agreed to supply and deliver 1,991 units of ACMs and such other equipment and materials necessary for the computerized electoral system in the 2004 elections. Pursuant to the automation contract, MPEI delivered 1,991 ACMs

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[2] *Rollo*, pp. 31-36; In the case entitled *Republic of the Philippines v. Hon. Winlove M. Dumayas* written by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justices Mario L. Guariña III and Sixto C. Marella, Jr.
[3] Id. at 293-302.
[4] Id. at 82.
[5] Id. at 84-106.

to the COMELEC. The latter, for its part, made partial payments to MPEI in the aggregate amount of ₱1.05 billion.

The full implementation of the automation contract was rendered impossible by the fact that, after a painstaking legal battle, this Court in its 2004 Decision declared the contract null and void.[6] We held that the COMELEC committed a clear violation of law and jurisprudence, as well as a reckless disregard of its own bidding rules and procedure. In addition, the COMELEC entered into the contract with inexplicable haste, and without adequately checking and observing mandatory financial, technical, and legal requirements. In a subsequent Resolution, We summarized the COMELEC's grave abuse of discretion as having consisted of the following:[7]

> 1. By a formal Resolution, it *awarded* the project to "Mega Pacific Consortium," an entity that had *not* participated in the bidding. Despite this grant, Comelec entered into the *actual* Contract with "Mega Pacific eSolutions, Inc." (MPEI), a company that joined the bidding process but did *not* meet the eligibility requirements.
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> 2. Comelec accepted and irregularly paid for MPEI's ACMs that had *failed* the accuracy requirement of 99.9995 percent set up by the Comelec bidding rules. Acknowledging that this rating could have been too steep, the Court nonetheless noted that "the essence of public bidding is violated by the practice of requiring very high standards or unrealistic specifications that cannot be met, x x x only to water them down *after* the award is made. **Such scheme, which discourages the entry of *bona fide* bidders, is in fact a sure indication of fraud in the bidding, designed to eliminate fair competition**."
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> 3. The software program of the counting machines likewise *failed* to detect previously downloaded precinct results and to prevent them from being reentered. This failure, which has not been corrected x x x, would have allowed unscrupulous persons to repeatedly feed into the computers the results favorable to a particular candidate, an act that would have translated into massive election fraud by just a few key strokes.
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> 4. Neither were the ACMs able to print audit trails without loss of data - a mandatory requirement under Section 7 of Republic Act No. 8436. Audit trails would enable the Comelec to document the identities of the ACM operators responsible for data entry and downloading, as well as the times when the various data were processed, in order to

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[6] The dispositive portion of this Court's Decision in the 2004 case is stated as follows:

Wherefore, the PETITION is GRANTED. The Court hereby declares NULL and VOID Comelec Resolution No. 6074 awarding the contract for Phase II of the CAES to Mega Pacific Consortium (MPC). Also declared null and void is the subject Contract executed between Comelec and Mega Pacific eSolutions (MPEI). Comelec is further ORDERED to refrain from implementing any other contract or agreement entered into with regard to this project.

Let a copy of this Decision be furnished the Office of the Ombudsman which shall determine the criminal liability, if any, of the public officials (and conspiring private individuals, if any) involved in the subject Resolution and Contract. Let the Office of the Solicitor General also take measures to protect the government and vindicate public interest from the ill effects of the illegal disbursements of public funds made by reason of the void Resolution and Contract.

[7] Resolution dated 22 August 2006; *Rollo* (G.R. No. 159139), Vol. V, pp. 4127-4137.

forestall fraud and to identify the perpetrators. The absence of audit trails would have posed a serious threat to free and credible elections.

5. Comelec failed to explain satisfactorily why it had ignored its own bidding rules and requirements. It admitted that the software program used to test the ACMs was merely a "demo" version, and that the final one to be actually used in the elections was still being developed. By awarding the Contract and irregularly paying for the supply of the ACMs without having seen -- much less, evaluated -- the final product being purchased, Comelec desecrated the law on public bidding. It would have allowed the winner to alter its bid substantially, without any public bidding.

All in all, Comelec subverted the essence of public bidding: to give the public an opportunity for fair competition and a clear basis for a precise comparison of bids.[8] (Emphasis supplied)

As a consequence of the nullification of the automation contract, We directed the Office of the Ombudsman to determine the possible criminal liability of persons responsible for the contract.[9] This Court likewise directed the Office of the Solicitor General to protect the government from the ill effects of the illegal disbursement of public funds in relation to the automation contract.[10]

After the declaration of nullity of the automation contract, the following incidents transpired:

1. Private respondents in the 2004 case moved for reconsideration of the 2004 Decision, but the motion was denied by this Court in a Resolution dated 17 February 2004 (2004 Resolution).[11]

2. The COMELEC filed a "Most Respectful Motion for Leave to Use the Automated Counting Machines in the Custody of the Commission on Elections for use in the 8 August 2005 Elections in the Autonomous Region for Muslim Mindanao" dated 9 December 2004 (Motion for Leave to Use ACMs), which was denied by this Court in its Resolution dated 15 June 2005 (2005 Resolution).

3. Atty. Romulo B. Macalintal (Macalintal) filed an "Omnibus Motion for Leave of Court (1) to Reopen the Case; and (2) to Intervene and Admit the Attached Petition in Intervention," which was denied by this Court in its Resolution dated 22 August 2006 (2006 Resolution); and

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[8] Id.
[9] Supra note 6.
[10] Id.
[11] *Rollo* (G.R. No.159139), Vol. IV, pp. 3324-3339.

4. Respondent MPEI filed a Complaint for Damages[12] (Complaint) with the RTC Makati, from which the instant case arose.

The above-mentioned incidents are discussed in more detail below.

BACKGROUND PROCEEDINGS

Private respondents' Motion for Reconsideration

Private respondents in the 2004 case moved for reconsideration of the 2004 Decision. Aside from reiterating the procedural and substantive arguments they had raised, they also argued that the 2004 Decision had exposed them to possible criminal prosecution.[13]

This Court denied the motion in its 2004 Resolution and ruled that no prejudgment had been made on private respondents' criminal liability. We further ruled that although the 2004 Decision stated that the Ombudsman shall "determine the criminal liability, if any, of the public officials (and conspiring private individuals, if any) involved in the subject Resolution and Contract," We did not make any premature conclusion on any wrongdoing, but precisely directed the Ombudsman to make that determination after conducting appropriate proceedings and observing due process.

Similarly, it appears from the record that several criminal and administrative Complaints had indeed been filed with the Ombudsman in relation to the declaration of nullity of the automation contract.[14] The

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[12] *Rollo,* pp. 153-169; Pertaining to the case entitled *Mega Pacific eSolutions, Inc. v. Republic of the Philippines*, docketed as Civil Case No. 04-346.

[13] Supra note 11.

[14] *Rollo*, pp. 822-825; The four (4) cases are as follows:

(1) "Kilosbayan Foundation and Bantay Katarungan Foundation, represented by Atty. Emilio C. Capulong, Jr. v. Benjamin Santos Abalos, Resurreccion Zante Borra, Florentino Aglipay Tuason, Rufino San Buenaventura Javier, Mehol Kiram Sadain, Luzviminda Gaba Tancangco, Pablo Ralph Cabatian Lantion, Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Pedro O. Tan, Johnson W. Fong and Laureano A. Barrios," docketed as OMB-L-C-04-0922-J, for violation of Sec. 3(e) and (g) of R.A. 3019 and Sec. 2 of R.A. 7080;

(2) "Sen. Aquilino Q. Pimentel, Jr., Field Investigation Office (FIO) Office of the Ombudsman, represented by Atty. Maria Olivia Elena A. Roxas v. Benjamin Santos Abalos, Resurreccion Zante Borra, Florentino Aglipay Tuason, Rufino San Buenaventura Javier, Mehol Kiram Sadain, Luzviminda Gaba Tancangco, Pablo Ralph Cabatian Lantion, Eduardo Dulay Mejos, Gideon Gillego de Guzman, Jose Parel Balbuena, Lamberto Posadas Llamas, Bartolome Javillonar Sinocruz, Jr., Jose Marundan Tolentino, Jr., Jaime Zita Paz, Zita Buena-Castillon, Rolando T. Viloria, Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Pedro O. Tan, Johnson W. Fong and Laureano A. Barrios," docketed as OMB-L-C-04-0983-J, for violation of Sec. 3(e) and (g) of R.A. 3019;

(3) "Sen. Aquilino Q. Pimentel, Jr. v. Luzviminda Gaba Tancangco, Pablo Ralph Cabatian Lantion," docketed as OMB-C-C-04-0011-A for violation of Sec. 3(e) and (g) of R.A. 3019; and

(4) "Sen. Aquilino Q. Pimentel, Jr., Field Investigation Office (FIO) Office of the Ombudsman, represented by Atty. Maria Olivia Elena A. Roxas v. Eduardo Dulay Mejos, Gideon Gillego de Guzman, Jose Parel Balbuena, Lamberto Posadas Llamas, Bartolome Javillonar Sinocruz, Jr., Jose Marundan Tolentino, Jr., Jaime Zita Paz, Zita Buena-Castillon, Rolando T. Viloria," docketed as OMB-L-A-04-0706-J for dishonesty, grave misconduct and conduct prejudicial to the best interest of service.

Complaints were filed against several public officials and the individual respondents in this case.[15]

In a Resolution issued on 28 June 2006,[16] the Ombudsman recommended the filing of informations before the Sandiganbayan against some of the public officials and the individual respondents[17] for violation of Section 3(e) of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act). However, on 27 September 2006,[18] upon reconsideration, the Ombudsman reversed its earlier ruling in a Supplemental Resolution (September Resolution), directing the dismissal of the criminal cases against the public officials, as well as the individual respondents, for lack of probable cause.[19]

With this development, a Petition for Certiorari was filed with this Court on 13 October 2006 and docketed as G.R. No. 174777.[20] In the Petition, several individuals[21] assailed the September Resolution of the Ombudsman finding no probable cause to hold respondents criminally liable. The case remains pending with this Court as of this date.

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[15] Except Rosita Y. Tansipek and Bernard I. Fong, who have not been impleaded.

[16] *Rollo* (G.R. No. 174777), Vol. I, pp. 88-122; The pertinent portions of the *fallo* are quoted below:

> WHEREFORE, premises considered, it is respectfully recommended that:
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> 1. An Information for Violation of Section 3 (e) of Republic Act No. 3019, be filed before the Sandiganbayan against respondents EDUARDO MEJOS, GIDEON G. DE GUZMAN, JOSE P. BALBUENA, LAMBERTO P. LLAMAS and BARTOLOME J. SINOCRUZ, JR. in conspiracy with private respondents WILLY U. YU, BONNIE YU, ENRIQUE TANSIPEK, ROSITA Y. TANSIPEK, PEDRO O. TAN, JOHNSON W. FONG, BERNARD L. FONG and LAUREANO BARRIOS;
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> x x x x
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> 5. That further fact-finding investigation be conducted by this Office on the following matters:
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> a. Charges involving violation of Section 3 (g) of Republic Act 3019 and other pertinent laws;
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> b. On the criminal liability of all persons who may have conspired with public officials in the subject contract;
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> c. On the culpability of other individuals who were not originally charged in the complaints, but may have participated and benefited in the awarding of the subject Contract; and
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> d. the disbursement of public funds made on account of the void Resolution and Contract.

[17] Including Rosita Y. Tansipek and Bernard I. Fong.

[18] *Rollo*, pp. 825-826.

[19] Id. at 822-876; The dispositive portion states:

> WHEREFORE, the Office recommends the following:
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> 1. That the Resolution dated 28 June 2006 be REVERSED and SET ASIDE.
> 2. That the criminal complaints against public and private respondents be DISMISSED for lack of probable cause.
> 3. That the administrative complaint against public respondents be DISMISSED.
> 4. That the matter of the editorial article appearing in the July 2006 issue of *Kilosbayan* by Former Senator Jovito R. Salonga be REFERRED to the Internal Affairs Board for investigation.

[20] See *rollo* (G.R. No. 174777), Vol. I, p. 3; Entitled *Sen. Aquilino Q. Pimentel, Jr. v. Omb. Ma. Merceditas N. Gutierrez*.

[21] Id.; Including Sen. Aquilino Q. Pimentel, Jr., Sergio L. Osmena III, Pamfilo M. Lacson, Alfredo S. Lim, Jamby A.S. Madrigal, Luisa P. Ejercito-Estrada, Jinggoy E. Estrada, Rodolfo G. Biazon and Richard F. Gordon.

COMELEC's Motion for Leave to Use ACMs in the ARMM Elections

The COMELEC filed a motion with this Court requesting permission to use the 1,991 ACMs previously delivered by respondent MPEI, for the ARMM elections, then slated to be held on 8 August 2005. In its motion, the COMELEC claimed that automation of the ARMM elections was mandated by Republic Act No. 9333, and since the government had no available funds to finance the automation of those elections, the ACMs could be utilized for the 2005 elections.

This Court denied the Motion in Our 2005 Resolution. We ruled that allowing the use of the ACMs would have the effect of illegally reversing and subverting a final decision We had promulgated. We further ruled that the COMELEC was asking for permission to do what it had precisely been prohibited from doing under the 2004 Decision. This Court also ruled that the grant of the motion would bar or jeopardize the recovery of government funds paid to respondents. Considering that the COMELEC did not present any evidence to prove that the defects had been addressed, We held that the use of the ACMs and the software would expose the ARMM elections to the same electoral ills pointed out in the 2004 Decision.

Atty. Macalintal's Omnibus Motion

Atty. Romulo Macalintal sought to reopen the 2004 case in order that he may be allowed to intervene as a taxpayer and citizen. His purpose for intervening was to seek another testing of the ACMs with the ultimate objective of allowing the COMELEC to use them, this time for the 2007 national elections.

This Court denied his motion in Our 2006 Resolution, ruling that Atty. Macalintal failed to demonstrate that certain supervening events and legal circumstances had transpired to justify the reliefs sought. We in fact found that, after Our determination that the ACMs had failed to pass legally mandated technical requirements in 2004, they were simply put in storage. The ACMs had remained idle and unused since the last evaluation, at which they failed to hurdle crucial tests. Consequently, We ruled that if the ACMs were not good enough for the 2004 national elections or the 2005 ARMM elections, then neither would they be good enough for the 2007 national elections, considering that nothing was done to correct the flaws that had been previously underscored in the 2004 Decision. We held that granting the motion would be tantamount to rendering the 2004 Decision totally ineffective and nugatory.

Moreover, because of our categorical ruling that the whole bidding process was void and *fraudulent*, the proposal to use the illegally procured, demonstratively defective, and fraud-prone ACMs was rendered nonsensical. Thus:

> We stress once again that the Contract entered into by the Comelec for the supply of the ACMs was declared VOID by the Court in its Decision, because of clear violations of law and jurisprudence, as well as the reckless disregard by the Commission of its own bidding rules and procedure. In addition, the poll body entered into the Contract with inexplicable haste, without adequately checking and observing mandatory financial, technical and legal requirements. As explained in our Decision, Comelec's gravely abusive acts consisted of the following:
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> x x x x
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> **To muddle the issue, Comelec keeps on saying that the "winning" bidder presented a lower price than the only other bidder. It ignored the fact that the whole bidding process was VOID and FRAUDULENT. How then could there have been a "winning" bid?**[22] (Emphasis supplied)

THE INSTANT CASE

Complaint for Damages filed by respondents with the RTC Makati and petitioner's Answer with Counterclaim, with an application for a writ of preliminary attachment, from which the instant case arose

Upon the finality of the declaration of nullity of the automation contract, respondent MPEI filed a Complaint for Damages before the RTC Makati, arguing that, notwithstanding the nullification of the automation contract, the COMELEC was still bound to pay the amount of ₱200,165,681.89. This amount represented the difference between the value of the ACMs and the support services delivered on one hand, and on the other, the payment previously made by the COMELEC.[23]

Petitioner filed its Answer with Counterclaim[24] and argued that respondent MPEI could no longer recover the unpaid balance from the void automation contract, since the payments made were illegal disbursements of public funds. It contended that a null and void contract vests no rights and creates no obligations, and thus produces no legal effect at all. Petitioner further posited that respondent MPEI could not hinge its claim upon the principles of unjust enrichment and quasi-contract, because such presume that the acts by which the authors thereof become obligated to each other are lawful, which was not the case herein.[25]

By way of a counterclaim, petitioner demanded from respondents the return of the payments made pursuant to the automation contract.[26] It argued

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[22] Supra note 7 at 4132-4134.
[23] *Rollo*, pp. 161-163.
[24] Id. at 170-195.
[25] Id. at 185-187.
[26] Id. at 190-192.

that individual respondents, being the incorporators of MPEI, likewise ought to be impleaded and held accountable for MPEI's liabilities. The creation of MPC was, after all, merely an ingenious scheme to feign eligibility to bid.[27]

Pursuant to Section 1(d) of Rule 57 of the Rules of Court, petitioner prayed for the issuance of a writ of preliminary attachment against the properties of MPEI and individual respondents. The application was grounded upon the fraudulent misrepresentation of respondents as to their eligibility to participate in the bidding for the COMELEC automation project and the failure of the ACMs to comply with mandatory technical requirements.[28]

Subsequently, the trial court denied the prayer for the issuance of a writ of preliminary attachment,[29] ruling that there was an absence of factual allegations as to how the fraud was actually committed.

The allegations of petitioner were found to be unreliable, as the latter merely copied from the declarations of the Supreme Court in *Information Technology Foundation of the Phils. v. COMELEC* the factual allegations of MPEI's lack of qualification and noncompliance with bidding requirements. The trial court further ruled that the allegations of fraud on the part of MPEI were not supported by the COMELEC, the office in charge of conducting the bidding for the election automation contract. It was likewise held that there was no evidence that respondents harbored a preconceived plan not to comply with the obligation; neither was there any evidence that MPEI's corporate fiction was used to perpetrate fraud. Thus, it found no sufficient basis to pierce the veil of corporate fiction or to cause the attachment of the properties owned by individual respondents.

Petitioner moved to set aside the trial court's Order denying the writ of attachment,[30] but its motion was denied.[31]

Appeal before the CA and the First Decision

Aggrieved, petitioner filed an appeal with the CA, arguing that the trial court had acted with grave abuse of discretion in denying the application for a writ of attachment.

As mentioned earlier, the CA in its First Decision[32] reversed and set aside the trial court's Orders and ruled that there was sufficient basis for the issuance of a writ of attachment in favor of petitioner.

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[27] Id. at 191-192 & 196-200.
[28] Id. at 201-211.
[29] Order dated 28 March 2006; id at 213-214.
[30] Id. at 215-226.
[31] Id. at 227.
[32] Id. at 293-302.

The appellate court explained that the averments of petitioner in support of the latter's application actually reflected pertinent conclusions reached by this Court in its 2004 Decision. It held that the trial court erred in disregarding the following findings of fact, which remained unaltered and unreversed: (1) COMELEC bidding rules provided that the eligibility and capacity of a bidder may be proved through financial documents including, among others, audited financial statements for the last three years; (2) MPEI was incorporated only on 27 February 2003, or 11 days prior to the bidding itself; (3) in an attempt to disguise its ineligibility, MPEI participated in the bidding as lead company of MPC, a putative consortium, and submitted the incorporation papers and financial statements of the members of the consortium; and (4) no proof of the joint venture agreement, consortium agreement, memorandum of agreement, or business plan executed among the members of the purported consortium was ever submitted to the COMELEC.[33]

According to the CA, the foregoing were glaring indicia or badges of fraud, which entitled petitioner to the issuance of the writ. It further ruled that there was sufficient reason to pierce the corporate veil of MPEI. Thus, the CA allowed the attachment of the properties belonging to both MPEI and individual respondents.[34] The CA likewise ruled that even if the COMELEC committed grave abuse of discretion in capriciously disregarding the rules on public bidding, this should not preclude or deter petitioner from pursuing its claim against respondents. After all, the State is not estopped by the mistake of its officers and employees.[35]

Respondents moved for reconsideration[36] of the First Decision of the CA.

Motion for Reconsideration before the CA and the Amended Decision

Upon review, the CA reconsidered its First Decision[37] and directed the remand of the case to the RTC Makati for the reception of evidence of allegations of fraud and to determine whether attachment should necessarily issue.[38]

The CA explained in its Amended Decision that respondents could not be considered to have fostered a fraudulent intent to dishonor their obligation, since they had delivered 1,991 units of ACMs.[39] It directed petitioner to present proof of respondents' intent to defraud COMELEC during the execution of the automation contract.[40] The CA likewise

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[33] Id. at 299-300.
[34] Id. at 300.
[35] Id. at 301.
[36] Id. at 303-330 & 331-352.
[37] Id. at 31-36.
[38] Id. at 36.
[39] Id. at 32.
[40] Id. at 33.

emphasized that the Joint Affidavit submitted in support of petitioner's application for the writ contained allegations that needed to be substantiated.[41] It added that proof must likewise be adduced to verify the requisite fraud that would justify the piercing of the corporate veil of respondent MPEI.[42]

The CA further clarified that the 2004 Decision did not make a definite finding as to the identities of the persons responsible for the illegal disbursement or of those who participated in the fraudulent dealings.[43] It instructed the trial court to consider, in its determination of whether the writ of attachment should issue, the illegal, imprudent and hasty acts in awarding the automation contract by the COMELEC. In particular, these acts consisted of: (1) awarding the automation contract to MPC, an entity that did not participate in the bidding; and (2) signing the actual automation contract with respondent MPEI, the company that joined the bidding without meeting the eligibility requirement.[44]

Rule 45 Petition before Us

Consequently, petitioner filed the instant Rule 45 Petition,[45] arguing that the CA erred in ordering the remand of the case to the trial court for the reception of evidence to determine the presence of fraud. Petitioner contends that this Court's 2004 Decision was sufficient proof of the fraud committed by respondents in the execution of the voided automation contract.[46] Respondents allegedly committed fraud by securing the automation contract, although MPEI was not qualified to bid in the first place.[47] Their claim that the members of MPC bound themselves to the automation contract was an indication of bad faith as the contract was executed by MPEI alone.[48] Neither could they deny that the software submitted during the bidding process was not the same one that would be used on election day.[49] They could not dissociate themselves from telltale signs such as purportedly supplying software that later turned out to be non-existent.[50]

In their respective Comments, respondents Willy Yu, Bonnie Yu, Enrique Tansipek, and Rosita Tansipek counter[51] that this Court never ruled that individual respondents were guilty of any fraud or bad faith in connection with the automation contract, and that it was incumbent upon petitioner to present evidence on the allegations of fraud to justify the issuance of the writ.[52] They likewise argue that the 2004 Decision cannot be

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[41] Id.
[42] Id.
[43] Id.
[44] Id. at 34.
[45] Id. at 10-30.
[46] Id. at 19.
[47] Id. at 22.
[48] Id. at 23.
[49] Id. at 24.
[50] Id.
[51] Id. at 793-821.
[52] Id. at 795-796.

invoked against them, since petitioner and MPEI were co-respondents in the 2004 case and not adverse parties therein.[53] Respondents further contend that the allegations of fraud are belied by their actual delivery of 1,991 units of ACMs to the COMELEC, which they claim is proof that they never had any intention to evade performance.[54]

They further allege that this Court, in its 2004 Decision, even recognized that it had not found any wrongdoing on their part, and that the Ombudsman had already made a determination that no probable cause existed with respect to charges of violation of Anti-Graft and Corrupt Practices Act.[55]

Echoing the other respondents' arguments on the lack of particularity in the allegations of fraud,[56] respondents MPEI, Johnson Wong, Bernard Fong, Pedro Tan, and Lauriano Barrios likewise argue that they were not parties to the 2004 case; thus, the 2004 Decision thereon is not binding on them.[57] Individual respondents likewise argue that the findings of fact in the 2004 Decision were not conclusive,[58] considering that eight (8) of the fifteen (15) justices allegedly refused to go along with the factual findings as stated in the majority opinion.[59] Thereafter, petitioner filed its Reply to the Comments.[60]

Based on the submissions of both parties, the following issues are presented to this Court for resolution:

1. Whether petitioner has sufficiently established fraud on the part of respondents to justify the issuance of a writ of preliminary attachment in its favor; and

2. Whether a writ of preliminary attachment may be issued against the properties of individual respondents, considering that they were not parties to the 2004 case.

THE COURT'S RULING

The Petition is meritorious. A writ of preliminary attachment should issue in favor of petitioner over the properties of respondents MPEI, Willy Yu (Willy) and the remaining individual respondents, namely: Bonnie S. Yu (Bonnie), Enrique T. Tansipek (Enrique), Rosita Y. Tansipek (Rosita), Pedro O. Tan (Pedro), Johnson W. Fong (Johnson), Bernard I. Fong (Bernard), and Lauriano Barrios (Lauriano). The bases for the writ are the following:

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[53] Id. at 801-803.
[54] Id. at 817-819.
[55] Id. at 807-808.
[56] Id. at 884-886
[57] Id. at 906-915.
[58] Id. at 897-903.
[59] Id. at 902.
[60] Id. at 924-934.

1. Fraud on the part of respondent MPEI was sufficiently established by the factual findings of this Court in its 2004 Decision and subsequent pronouncements.

2. A writ of preliminary attachment may issue over the properties of the individual respondents using the doctrine of piercing the corporate veil.

3. The factual findings of this Court that have become final cannot be modified or altered, much less reversed, and are controlling in the instant case.

4. The delivery of 1,991 units of ACMs does not negate fraud on the part of respondents MPEI and Willy.

5. Estoppel does not lie against the state when it acts to rectify mistakes, errors or illegal acts of its officials and agents.

6. The findings of the Ombudsman are not controlling in the instant case.

DISCUSSION

I.
Fraud on the part of respondent MPEI was sufficiently established by the factual findings of this Court in the latter's 2004 Decision and subsequent pronouncements.

Petitioner argues that the findings of this Court in the 2004 Decision serve as sufficient basis to prove that, at the time of the execution of the automation contract, there was fraud on the part of respondents that justified the issuance of a writ of attachment. Respondents, however, argue the contrary. They claim that fraud had not been sufficiently established by petitioner.

We rule in favor of petitioner. Fraud on the part of respondents MPEI and Willy, as well as of the other individual respondents — Bonnie, Enrique, Rosita, Pedro, Johnson, Bernard, and Lauriano — has been established.

A writ of preliminary attachment is a provisional remedy issued upon the order of the court where an action is pending. Through the writ, the property or properties of the defendant may be levied upon and held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured by the attaching creditor against the defendant.[61] The provisional remedy of attachment is available in order that the defendant may not dispose of the property attached, and thus prevent the satisfaction of any judgment that may be secured by the plaintiff from the former.[62]

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[61] *Virata v. Aquino*, 152 Phil. 405 (1973).
[62] *Adlawan v. Tomol*, 262 Phil. 893 (1990).

The purpose and function of an attachment or garnishment is twofold. First, it seizes upon property of an alleged debtor in advance of final judgment and holds it subject to appropriation, thereby preventing the loss or dissipation of the property through fraud or other means. Second, it subjects the property of the debtor to the payment of a creditor's claim, in those cases in which personal service upon the debtor cannot be obtained.[63] This remedy is meant to secure a contingent lien on the defendant's property until the plaintiff can, by appropriate proceedings, obtain a judgment and have the property applied to its satisfaction, or to make some provision for unsecured debts in cases in which the means of satisfaction thereof are liable to be removed beyond the jurisdiction, or improperly disposed of or concealed, or otherwise placed beyond the reach of creditors.[64]

Petitioner relied upon Section 1(d), Rule 57 of the Rules of Court as basis for its application for a writ of preliminary attachment. This provision states:

> Section 1. Grounds upon which attachment may issue. At the commencement of the action or at any time before entry of judgment, a plaintiff or any proper party may have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered in the following cases:
>
> x x x x
>
> (d) In an action against a party who has been guilty of a **fraud in contracting the debt** or incurring the obligation upon which the action is brought, or in the **performance** thereof. (Emphasis supplied)

For a writ of preliminary attachment to issue under the above-quoted rule, the applicant must sufficiently show the factual circumstances of the alleged fraud.[65] In *Metro, Inc. v. Lara's Gift and Decors, Inc.*,[66] We explained:

> To sustain an attachment on this ground, it must be shown that the debtor in contracting the debt or incurring the obligation intended to defraud the creditor. **The fraud must relate to the execution of the agreement and must have been the reason which induced the other party into giving consent which he would not have otherwise given**. To constitute a ground for attachment in Section 1(d), Rule 57 of the Rules of Court, fraud should be committed upon contracting the obligation sued upon. A debt is fraudulently contracted if at the time of contracting it the debtor has a preconceived plan or intention not to pay, as it is in this case. x x x.

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[63] Id.
[64] Id.
[65] *Metro, Inc. v. Lara's Gift and Decors, Inc.*, 621 Phil. 162 (2009).
[66] Id., citing *Liberty Insurance Corporation v. Court of Appeals*, G.R. No. 104405, 13 May 1993, 222 SCRA 37, 45.

> The applicant for a writ of preliminary attachment must sufficiently show the factual circumstances of the alleged fraud because fraudulent intent cannot be inferred from the debtor's mere non-payment of the debt or failure to comply with his obligation. (Emphasis supplied)

An amendment to the Rules of Court added the phrase "in the performance thereof" to include within the scope of the grounds for issuance of a writ of preliminary attachment those instances relating to fraud in the performance of the obligation.[67]

Fraud is a generic term that is used in various senses and assumes so many different degrees and forms that courts are compelled to content themselves with comparatively few general rules for its discovery and defeat. For the same reason, the facts and circumstances peculiar to each case are allowed to bear heavily on the conscience and judgment of the court or jury in determining the presence or absence of fraud. In fact, the fertility of man's invention in devising new schemes of fraud is so great that courts have always declined to define it, thus, reserving for themselves the liberty to deal with it in whatever form it may present itself.[68]

Fraud may be characterized as the voluntary execution of a wrongful act or a wilful omission, while knowing and intending the effects that naturally and necessarily arise from that act or omission.[69] In its general sense, fraud is deemed to comprise anything calculated to deceive—including all acts and omission and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed—resulting in damage to or in undue advantage over another.[70] Fraud is also described as embracing all multifarious means that human ingenuity can device, and is resorted to for the purpose of securing an advantage over another by false suggestions or by suppression of truth; and it includes all surprise, trick, cunning, dissembling, and any other unfair way by which another is cheated.[71]

While fraud cannot be presumed, it need not be proved by direct evidence and can well be inferred from attendant circumstances.[72] Fraud by its nature is not a thing susceptible of ocular observation or readily demonstrable physically; it must of necessity be proved in many cases by

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[67] *Liberty Insurance Corporation v. Court of Appeals*, supra, *citing* old Sec. 1(d), Rule 57 of the Rules of Court:

> "In an action against a party who has been guilty of fraud in contracting the debt or incurring the obligation upon which the action is brought, Section 1 (d) of Rule 57 authorizes the plaintiff or any proper party to have the property of the adverse party attached as security for the satisfaction of any judgment that may be recovered therein. Thus:
>
> 'Rule 57, Sec. 1. Grounds upon which attachment may issue. —
>
> '(d): "In an action against a party who has been guilty of a fraud in contracting the debt or incurring the obligation upon which the action is brought, or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought;"'

[68] 37 AM. JUR. 2D *Fraud and Deceit* § 1 (1968).

[69] *International Corporate Bank v. Gueco*, 404 Phil. 353 (2001).

[70] *Ortega v. People*, 595 Phil. 1103 (2008).

[71] *Republic v. Estate of Alfonso Lim, Sr.*, 611 Phil. 37 (2009).

[72] *Sps. Godinez v. Alano*, 362 Phil. 597 (1999).

inferences from circumstances shown to have been involved in the transaction in question.[73]

In the case at bar, petitioner has sufficiently discharged the burden of demonstrating the commission of fraud by respondent MPEI in the execution of the automation contract in the two ways that were enumerated earlier and discussed below:

A. Respondent MPEI had perpetrated a scheme against petitioner to secure the automation contract by using MPC as supposed bidder and eventually succeeding in signing the automation contract as MPEI alone, an entity which was ineligible to bid in the first place.

To avoid any confusion relevant to the basis of fraud, We quote herein the pertinent portions of this Court's 2004 Decision with regard to the identity, existence, and eligibility of MPC as bidder:[74]

> On the question of the identity and the existence of the real bidder, respondents insist that, contrary to petitioners' allegations, the bidder was not Mega Pacific eSolutions, Inc. (MPEI), **which was incorporated only on February 27, 2003, or 11 days prior to the bidding itself.** Rather, the bidder was Mega Pacific Consortium (MPC), of which MPEI was but a part. As proof thereof, they point to the March 7, 2003 letter of intent to bid, signed by the president of MPEI allegedly for and on behalf of MPC. They also call attention to the official receipt issued to MPC, acknowledging payment for the bidding documents, as proof that it was the "consortium" that participated in the bidding process.
>
> We do not agree. The March 7, 2003 letter, signed by only one signatory — "Willy U. Yu, President, Mega Pacific eSolutions, Inc., (Lead Company/Proponent) For: Mega Pacific Consortium" — and without any further proof, does not by itself prove the existence of the consortium. It does not show that MPEI or its president have been duly pre-authorized by the other members of the putative consortium to represent them, to bid on their collective behalf and, more important, to commit them jointly and severally to the bid undertakings. The letter is purely self-serving and uncorroborated.
>
> Neither does an official receipt issued to MPC, acknowledging payment for the bidding documents, constitute proof that it was the purported consortium that participated in the bidding. Such receipts are issued by cashiers without any legally sufficient inquiry as to the real identity or existence of the supposed payor.
>
> To assure itself properly of the due existence (as well as eligibility and qualification) of the putative consortium, Comelec's BAC

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[73] 37 AM. JUR. 2D *Fraud and Deceit* § 439 (1968).

[74] *Information Technology Foundation of the Philippines v. COMELEC*, 464 Phil. 173, 209-226 (2004).

should have examined the bidding documents submitted on behalf of MPC. They would have easily discovered the following fatal flaws.

x x x x

The Eligibility Envelope was to contain *legal documents* such as articles of incorporation, x x x to establish the bidder's financial capacity.

In the case of a consortium or joint venture desirous of participating in the bidding, it goes without saying that the Eligibility Envelope would necessarily have to include a copy of the joint venture agreement, the consortium agreement or memorandum of agreement -- or a business plan or some other instrument of similar import -- establishing the due existence, composition and scope of such aggrupation. *Otherwise, how would Comelec know who it was dealing with, and whether these parties are qualified and capable of delivering the products and services being offered for bidding?*

In the instant case, no such instrument was submitted to Comelec during the bidding process. x x x

x x x x

However, there is no sign whatsoever of any joint venture agreement, consortium agreement, memorandum of agreement, or business plan executed among the members of the purported consortium.

The only logical conclusion is that no such agreement was ever submitted to the Comelec for its consideration, *as part of the bidding process.*

It thus follows that, prior the award of the Contract, there was no documentary or other basis for Comelec to conclude that a consortium had actually been formed amongst MPEI, SK C&C and WeSolv, along with Election.com and ePLDT. Neither was there anything to indicate the exact relationships between and among these firms; their diverse roles, undertakings and prestations, if any, relative to the prosecution of the project, the extent of their respective investments (if any) in the supposed consortium or in the project; and the precise nature and extent of their respective liabilities with respect to the contract being offered for bidding. And apart from the self-serving letter of March 7, 2003, there was not even any indication that MPEI was the lead company duly authorized to act on behalf of the others.

x x x x

Hence, had the proponent MPEI been evaluated based solely on its own experience, financial and operational track record or lack thereof, it would surely not have qualified and would have been immediately considered ineligible to bid, as respondents readily admit.

x x x x

At this juncture, one might ask: What, then, if there are four MOAs instead of one or none at all? Isn't it enough that there are these corporations coming together to carry out the automation project? Isn't it

true, as respondent aver, that nowhere in the RFP issued by Comelec is it required that the members of the joint venture execute a single written agreement to prove the existence of a joint venture. x x x

x x x x

The problem is not that there are four agreements instead of only one. The problem is that *Comelec never bothered to check.* It never based its decision on documents or other proof that would concretely establish the existence of the claimed consortium or joint venture or agglomeration.

x x x x

True, copies of financial statements and incorporation papers of the alleged "consortium" members were submitted. But these papers did not establish the existence of a consortium, as they could have been provided by the companies concerned for purposes other than to prove that they were part of a consortium or joint venture.

x x x x

In brief, despite the *absence* of competent proof as to the existence and eligibility of the alleged consortium (MPC), its capacity to deliver on the Contract, and the members' joint and several liability therefor, Comelec nevertheless assumed that such consortium existed and was eligible. It then went ahead and considered the bid of MPC, to which the Contract was eventually awarded, in gross violation of the former's own bidding rules and procedures contained in its RFP. Therein lies Comelec's grave abuse of discretion.

Sufficiency of the Four Agreements

Instead of one multilateral agreement executed by, and effective and binding on, all the five "consortium members" -- as earlier claimed by Commissioner Tuason in open court -- it turns out that what was actually executed were four (4) *separate and distinct bilateral Agreements.* **Obviously, Comelec was furnished copies of these Agreements only *after* the bidding process had been terminated, as these were not included in the Eligibility Documents. x x x**

x x x x

At this point, **it must be stressed most vigorously that the submission of the four bilateral Agreements to Comelec *after the end of the bidding process* did nothing to eliminate the grave abuse of discretion it had *already committed* on April 15, 2003.**

Deficiencies Have Not Been "Cured"

In any event, it is also claimed that the automation Contract awarded by Comelec incorporates all documents executed by the "consortium" members, even if these documents are not referred to therein. x x x

x x x x

Thus, it is argued that whatever perceived deficiencies there were in the supplementary contracts -- those entered into by MPEI and the other members of the "consortium" as regards their joint and several undertakings -- have been cured. Better still, such deficiencies have supposedly been prevented from arising as a result of the above-quoted provisions, from which it can be immediately established that each of the members of MPC assumes the same joint and several liability as the other members.

The foregoing argument is unpersuasive. ***First,*** **the contract being referred to, entitled "The Automated Counting and Canvassing Project Contract," is between Comelec and MPEI, not the alleged consortium, MPC. To repeat, it is *MPEI* -- not MPC -- that is a party to the Contract. *Nowhere in that Contract is there any mention of a consortium or joint venture, of members thereof, much less of joint and several liability.* Supposedly executed sometime in May 2003, the Contract bears a notarization date of June 30, 2003, and contains the signature of Willy U. Yu signing as president of MPEI (not for and on behalf of MPC), along with that of the Comelec chair. It provides in Section 3.2 that MPEI (not MPC) is to supply the Equipment and perform the Services under the Contract, in accordance with the appendices thereof; nothing whatsoever is said about any consortium or joint venture or partnership.**

x x x x

Eligibility of a Consortium Based on the Collective Qualifications of Its Members

Respondents declare that, for purposes of assessing the eligibility of the bidder, the members of MPC should be evaluated on a collective basis. **Therefore, they contend, the failure of MPEI to submit financial statements (on account of its recent incorporation) should not by itself disqualify MPC, since the other members of the "consortium" could meet the criteria set out in the RFP.**

x x x x

Unfortunately, this argument seems to assume that the "collective" nature of the undertaking of the members of MPC, their contribution of assets and sharing of risks, and the "community" of their interest in the performance of the Contract entitle MPC to be treated as a joint venture or consortium; and to be evaluated accordingly on the basis of the members' collective qualifications when, in fact, the evidence before the Court suggest otherwise.

x x x x

Going back to the instant case, it should be recalled that the automation Contract with Comelec was not executed by the "consortium" MPC -- or by MPEI for and on behalf of MPC -- but by MPEI, *period.* The said Contract contains *no mention whatsoever* of any consortium or members thereof. This fact alone seems to contradict all the suppositions about a joint undertaking that would normally apply to a joint venture or consortium: that it is a commercial enterprise involving a community of interest, a sharing of risks, profits and losses, and so on.

x x x x

> To the Court, this strange and beguiling arrangement of MPEI with the other companies does not qualify them to be treated as a consortium or joint venture, at least of the type that government agencies like the Comelec should be dealing with. With more reason is it unable to agree to the proposal to evaluate the members of MPC on a collective basis. (Emphases supplied)

These findings found their way into petitioner's application for a writ of preliminary attachment,[75] in which it claimed the following as bases for fraud: (1) respondents committed fraud by securing the election automation contract and, in order to perpetrate the fraud, by misrepresenting the actual bidder as MPC and MPEI as merely acting on MPC's behalf; (2) while knowing that MPEI was not qualified to bid for the automation contract, respondents still signed and executed the contract; and (3) respondents acted in bad faith when they claimed that they had bound themselves to the automation contract, because it was not executed by MPC—or by MPEI on MPC's behalf — but by MPEI alone.[76]

We agree with petitioner that respondent MPEI committed fraud by securing the election automation contract; and, in order to perpetrate the fraud, by misrepresenting that the actual bidder was MPC and not MPEI, which was only acting on behalf of MPC. We likewise rule that respondent MPEI has defrauded petitioner, since the former still executed the automation contract despite knowing that it was not qualified to bid for the same.

The established facts surrounding the eligibility, qualification and existence of MPC — and of MPEI for that matter — and the subsequent execution of the automation contract with the latter, when all taken together, constitute badges of fraud that We simply cannot ignore. MPC was

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[75] *Rollo*, pp. 201-211.

[76] Id. at 203-205, 211; Petitioner's allegations in its application for the issuance of a writ of preliminary attachment are as follows:

> 4. Indeed, plaintiff and defendants-in-counterclaim committed fraud by securing the election automation contract even if MPEI (plaintiff) was not qualified to bid for the said contract. To perpetrate the said fraud, plaintiff and defendants-in-counterclaim misrepresented that the actual bidder was Mega Pacific Consortium, and that MPEI (plaintiff) was only acting on behalf of MPC. x x x. Anent plaintiff's claim that the MPC members bound themselves under the election automation contract, suffice it to say that the Supreme Court held that *"the automation Contract with Comelec was not executed by the 'consortium' MPC—or by MPEI (plaintiff) for and in behalf of MPC—but by MPEI (plaintiff), period. The said Contract contains no mention whatsoever of any consortium or members thereof."*
>
> 5. **Both plaintiff and defendants-in-counterclaim knew that plaintiff was not qualified to bid for the election automation contract.** In fact, the Supreme Court clearly declared that *"had the proponent MPEI (plaintiff) been evaluated based solely on its own experience, financial and operational track record or lack thereof, it would surely not have qualified and would have been immediately considered ineligible to bid, as respondents readily admit.* **This notwithstanding, plaintiff still bidded for the election automation contract; signed the same; and implemented, albeit partially, the provisions thereof.**
>
> x x x x
>
> 4. Plaintiff Mega Pacific eSolutions, Inc. and defendants-in-counterclaim Willy Yu, et al. **committed fraud in securing the automation contract even if the bid for the same was not awarded to them, but to an ineligible consortium Mega Pacific Consortium; and that said plaintiff, while it was the one which signed the voided automation contract, was ineligible to bid for the same.** (Emphases supplied)

considered an illegitimate entity, because its existence as a joint venture had not been established. Notably, the essential document/s that would have shown its eligibility as a joint venture/consortium were not presented to the COMELEC at the most opportune time, that is, during the qualification stage of the bidding process. The concealment by respondent MPEI of the essential documents showing its eligibility to bid as part a joint venture is too obvious to be missed. How could it not have known that the very document showing MPC as a joint venture should have been included in their eligibility envelope?

Likewise notable is the fact that these supposed agreements, allegedly among the supposed consortium members, were *belatedly* provided to the COMELEC *after* the bidding process had been terminated; these were not included in the Eligibility Documents earlier submitted by MPC. Similarly, as found by this Court, these documents did not prove any joint venture agreement among the parties in the first place, but were actually individual agreements executed by each member of the supposed consortium with respondent MPEI.

More startling to the dispassionate mind is the incongruence between the supposed actual bidder MPC, on one hand, and, on the other, respondent MPEI, which executed the automation contract. Significantly, respondent MPEI was not even eligible and qualified to bid in the first place; and yet, the automation contract itself was executed and signed *singly* by respondent MPEI, not on behalf of the purported bidder MPC, without any mention whatsoever of the members of the supposed consortium.

From these established facts, We can surmise that in order to secure the automation contract, respondent MPEI perpetrated a scheme against petitioner by using MPC as supposed bidder and eventually succeeding in signing the automation contract as MPEI alone. Worse, it was respondent MPEI alone, an entity that was ineligible to bid in the first place, that eventually executed the automation contract.

To a reasonable mind, the entire situation reeks of fraud, what with the misrepresentation of identity and misrepresentation as to creditworthiness. It is in these kinds of fraudulent instances, when the ability to abscond is greatest, to which a writ of attachment is precisely responsive.

Further, the failure to attach the eligibility documents is tantamount to failure on the part of respondent MPEI to disclose material facts. That omission constitutes fraud.

Pursuant to Article 1339 of the Civil Code,[77] silence or concealment does not, by itself, constitute fraud, unless there is a special duty to disclose

[77]Art. 1339. Failure to disclose facts, when there is a duty to reveal them, as when the parties are bound by confidential relations, constitutes fraud. (NEW CIVIL CODE, Art. 1339)

certain facts, or unless the communication should be made according to good faith and the usages of commerce.[78]

Fraud has been defined to include an inducement through insidious machination. Insidious machination refers to a deceitful scheme or plot with an evil or devious purpose. Deceit exists where the party, with intent to deceive**, conceals or omits to state material facts** and, by reason of such omission or concealment, the other party was induced to give consent that would not otherwise have been given.[79]

One form of inducement is covered within the scope of the crime of estafa under Article 315, paragraph 2, of the Revised Penal Code, in which, any person who defrauds another by using fictitious name, or falsely pretends to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of similar deceits executed prior to or simultaneously with the commission of fraud is held criminally liable. In *Joson v. People*,[80] this Court explained the element of defraudation by means of deceit, by giving a definition of fraud and deceit, in this wise:

> What needs to be determined therefore is whether or not the element of defraudation by means of deceit has been established beyond reasonable doubt.
>
> In the case of *People v. Menil, Jr.*, the Court has **defined fraud and deceit** in this wise:
>
> > Fraud, in its general sense, is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. **On the other hand, deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.** (Emphases supplied)

For example, in *People v. Comila*,[81] both accused-appellants therein represented themselves to the complaining witnesses to have the capacity to send them to Italy for employment, even as they did not have the authority

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[78] *Rural Bank of Sta. Maria, Pangasinan v. Court of Appeals*, 373 Phil. 27 (1999).
[79] *Cathay Pacific Airways Ltd. v. Spouses Vasquez*, 447 Phil. 306 (2003).
[80] 581 Phil. 612 (2008).
[81] 545 Phil. 755 (2007).

or license for the purpose. It was such misrepresentation that induced the complainants to part with their hard-earned money for placement and medical fees. Both accused-appellants were criminally held liable for estafa.

In American jurisprudence, fraud may be predicated on a false introduction or identification.[82] In *Union Co. v. Cobb,*[83] the defendant therein procured the merchandise by misrepresenting that she was Mrs. Taylor Ray and at another time she was Mrs. Ben W. Chiles, and she forged their name on charge slips as revealed by the exhibits of the plaintiff. The sale of the merchandise was induced by these representations, resulting in injury to the plaintiff.

In *Raser v. Moomaw,*[84] it was ruled that the essential elements necessary to constitute actionable fraud and deceit were present in the complaint. It was alleged that, to induce plaintiff to procure a loan, defendant introduced him to a woman who was falsely represented to be Annie L. Knowles of Seattle, Washington, the owner of the property, and that plaintiff had no means of ascertaining her true identity. On the other hand, defendant knew, or in the exercise of reasonable caution should have known, that she was an impostor, and that plaintiff relied on the representations, induced his client to make the loan, and had since been compelled to repay it. In the same case, the Court ruled that false representations as to the identity of a person are actionable, if made to induce another to act thereon, and such other does so act thereon to his prejudice.[85]

In this case, analogous to the fraud and deceit exhibited in the above-mentioned circumstances, respondent MPEI had no excuse not to be forthright with the documents showing MPC's eligibility to bid as a joint venture. The Invitation to Bid, as quoted in our 2004 Decision, could not have been any clearer when it stated that only bids from qualified entities, such as a joint venture, would be entertained:

> INVITATION TO APPLY FOR ELIGIBILITY AND TO BID
>
> The Commission on Elections (COMELEC), pursuant to the mandate of Republic Act Nos. 8189 and 8436, invites interested offerors, vendors, suppliers or lessors to apply for eligibility and to bid for the procurement by purchase, lease, lease with option to purchase, or otherwise, supplies, equipment, materials and services needed for a comprehensive Automated Election System, consisting of three (3) phases: (a) registration/verification of voters, (b) automated counting and consolidation of votes, and (c) electronic transmission of election results, with an approved budget of TWO BILLION FIVE HUNDRED MILLION (Php2,500,000,000) Pesos.

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[82] 37 Am Jur 2d Fraud and Deceit § 50 citing *Union Co. v. Cobb,* 73 Ohio L. Abs. 155, 136 N.E. 2d 429 (Ct. App. 10th Dist. Franklin County 1955) and *Raser v. Moomaw,* 78 Wash. 653, 139 P. 622 (1914).
[83] 73 Ohio L. Abs. 155, 136 N.E. 2d 429 (Ct. App. 10th Dist. Franklin County 1955).
[84] 78 Wash. 653; 139 P. 622 (1914).
[85] Id.

> **Only bids from the following entities shall be entertained:**
>
> x x x x
>
> d. **Manufacturers, suppliers and/or distributors forming themselves into a joint venture, *i.e.*, a group of two (2) or more manufacturers, suppliers and/or distributors that intend to be jointly and severally responsible or liable for a particular contract, provided that Filipino ownership thereof shall be at least sixty percent (60%)**; and
>
> e. Cooperatives duly registered with the Cooperatives Development Authority.[86] (Emphases supplied)

No reasonable mind would argue that documents showing the very existence of a joint venture need not be included in the bidding envelope showing its existence, qualification, and eligibility to undertake the project, considering that the purpose of prequalification in any public bidding is to determine, at the earliest opportunity, the ability of the bidder to undertake the project.[87]

As found by this Court in its 2004 Decision, it appears that the documents that were submitted after the bidding, which respondents claimed would prove the existence of the relationship among the members of the consortium, were actually separate agreements individually executed by the supposed members with MPEI. We had ruled that these documents were highly irregular, considering that each of the four different and separate bilateral Agreements was valid and binding only between MPEI and the other contracting party, leaving the other "consortium" members total strangers thereto. Consequently, the other consortium members had nothing to do with one another, as each one dealt only with MPEI.[88]

Considering that they merely showed MPEI's individual agreements with the other supposed members, these agreements confirm to our mind the fraudulent intent on the part of respondent MPEI to deceive the relevant officials about MPC. The intent was to cure the deficiency of the winning bid, which intent miserably failed. Said this Court:[89]

> We are unconvinced, PBAC was guided by the rules, regulations or guidelines existing before the bid proposals were opened on November 10, 1989. **The basic rule in public bidding is that bids should be evaluated based on the required documents submitted *before* and not after the opening of bids. Otherwise, the foundation of a fair and competitive public bidding would be defeated. Strict observance of the rules, regulations, and guidelines of the bidding process is the only safeguard to a fair, honest and competitive public bidding.**

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[86] *Information Technology Foundation of the Philippines v. COMELEC*, 464 Phil. 173, 193-194 (2004).
[87] *Agan, Jr. v. PIATCO, Inc.*, 450 Phil. 744 (2003).
[88] *Information Technology Foundation of the Philippines v. COMELEC, supra,* at 215-216.
[89] *Republic of the Philippines v. Judge Capulong*, 276 Phil. 136, 152-153 (1991).

> In underscoring the Court's strict application of the pertinent rules, regulations and guidelines of the public bidding process, We have ruled in *C & C Commercial vs. Menor* (L-28360, January 27, 1983, 120 SCRA 112), that Nawasa properly rejected a bid of C & C Commercial to supply asbestos cement pressure which bid did not include a tax clearance certificate as required by Administrative Order No. 66 dated June 26, 1967. In *Caltex (Phil.) Inc., et. al. vs. Delgado Brothers, Inc. et. al., (96 Phil. 368, 375)*, We stressed that public biddings are held for the protection of the public and the public should be given the best possible advantages by means of open competition among the bidders.
>
> x x x x
>
> **INTER TECHNICAL's failure to comply with what is perceived to be an elementary and customary practice in a public bidding process, that is, to enclose the Form of Bid in the original and eight separate copies of the bidding documents submitted to the bidding committee is fatal to its cause.** All the four pre-qualified bidders which include INTER TECHNICAL were subject to Rule IB 2.1 of the Implementing Rules and Regulations of P.D. 1594 in the preparation of bids, bid bonds, and pre-qualification statement and Rule IB 2.8 which states that the Form of Bid, among others, shall form part of the contract. INTER TECHNICAL's explanation that its bid form was inadvertently left in the office (p. 6, Memorandum for Private Respondent, p. 355, Rollo) will not excuse compliance with such a simple and basic requirement in the public bidding process involving a multi-million project of the Government. **There should be strict application of the pertinent public bidding rules, otherwise the essential requisites of fairness, good faith, and competitiveness in the public bidding process would be rendered meaningless.** (Emphases supplied)

All these circumstances, taken together, reveal a scheme on the part of respondent MPEI to perpetrate fraud against the government. The purpose of the scheme was to ensure that MPEI, an entity that was ineligible to bid in the first place, would eventually be awarded the contract. While respondent argues that it was merely a passive participant in the bidding process, We cannot ignore its cavalier disregard of its participation in the now voided automation contract.

B. Fraud on the part of respondent MPEI was further shown by the fact that despite the failure of its ACMs to pass the tests conducted by the DOST, respondent still acceded to being awarded the automation contract.

Another token of fraud is established by Our findings in relation to the failure of the ACMs to pass the tests of the DOST. We quote herein the pertinent portions of this Court's 2004 Decision in relation thereto:

> After respondent "consortium" and the other bidder, TIM, had submitted their respective bids on March 10, 2003, the Comelec's BAC —

through its Technical Working Group (TWG) and the DOST — evaluated their technical proposals.

x x x x

According to respondents, it was only after the TWG and the DOST had conducted their separate tests and submitted their respective reports that the BAC, on the basis of these reports formulated its comments/recommendations on the bids of the consortium and TIM.

The BAC, in its Report dated April 21, 2003, recommended that the Phase II project involving the acquisition of automated counting machines be awarded to MPEI. x x x

x x x x

The BAC, however, also stated on page 4 of its Report: *"Based on the 14 April 2003 report (Table 6) of the DOST, it appears that both Mega-Pacific and TIM (Total Information Management Corporation) failed to meet some of the requirements.* x x x

x x x x

Failure to Meet the Required Accuracy Rating

The first of the key requirements was that the counting machines were to have an accuracy rating of at least 99.9995 percent. **The BAC Report indicates that both Mega Pacific and TIM failed to meet this standard.**

The key requirement of accuracy rating happens to be part and parcel of the Comelec's Request for Proposal (RFP). x x x

x x x x

x x x *Whichever accuracy rating is the right standard — whether 99.995 or 99.9995 percent — the fact remains that the machines of the so-called "consortium" failed to even reach the lesser of the two.* On this basis alone, it ought to have been disqualified and its bid rejected outright.

At this point, the Court stresses that the essence of public bidding is violated by the practice of requiring very high standards or unrealistic specifications that cannot be met — like the 99.9995 percent accuracy rating in this case — only to water them down *after* the bid has been award.[sic] **Such scheme, which discourages the entry of prospective *bona fide* bidders, is in fact a sure indication of fraud in the bidding, designed to eliminate fair competition. Certainly, if no bidder meets the mandatory requirements, standards or specifications, then no award should be made and a failed bidding declared.**

x x x x

Failure of Software to Detect Previously Downloaded Data

Furthermore, on page 6 of the BAC Report, it appears that the "consortium" as well as TIM failed to meet another key requirement — for the counting machine's software program to be *able to detect previously downloaded precinct results and to prevent these from being*

entered again into the counting machine. This same deficiency on the part of both bidders reappears on page 7 of the BAC Report, as a result of the recurrence of their failure to meet the said key requirement.

That the ability to detect previously downloaded data at different canvassing or consolidation levels is deemed of utmost importance can be seen from the fact that it is repeated three times in the RFP. x x x.

Once again, though, Comelec chose to ignore this crucial deficiency, which should have been a cause for the gravest concern. x x x.

x x x x

Inability to Print the Audit Trail

But that grim prospect is not all. The BAC Report, on pages 6 and 7, indicate that the ACMs of both bidders were unable to print the audit trail without any loss of data. In the case of MPC, the audit trail system was "not yet incorporated" into its ACMs.

x x x x

Thus, the RFP on page 27 states that the *ballot counting machines and ballot counting software* **must print an audit trail of all machine operations for documentation and verification purposes.** Furthermore, the audit trail must be stored on the internal storage device and be available on demand for future printing and verifying. On pages 30–31, the RFP also requires that the *city/municipal* canvassing system software **be able to print an audit trail of the canvassing operations**, including therein such data as the date and time the canvassing program was started, the log-in of the authorized users (the identity of the machine operators), the date and time the canvass data were downloaded into the canvassing system, and so on and so forth. On page 33 of the RFP, we find the same **audit trail requirement** with respect to the *provincial/district* canvassing system software; and again on pages 35–36 thereof, the same audit trail requirement with respect to the *national* canvassing system *software*.

x x x x

The said provision which respondents have quoted several times, provides that ACMs are to possess certain features divided into two classes: those that the statute itself considers *mandatory* and other features or capabilities that the law deems optional. **Among those considered mandatory are "provisions for audit trails"!** x x x.

In brief, respondents cannot deny that the provision requiring audit trails is indeed mandatory, considering the wording of Section 7 of RA 8436. Neither can Respondent Comelec deny that it has relied on the BAC Report, which indicates that the machines or the software was deficient in that respect. And yet, the Commission simply disregarded this shortcoming and awarded the Contract to private respondent, thereby violating the very law it was supposed to implement.[90] (Emphases supplied)

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[90] *Information Technology Foundation of the Philippines, Inc. v. COMELEC, supra* note 90 at 227, 232-238.

The above-mentioned findings were further echoed by this Court in its 2006 Resolution with a categorical conclusion that the bidding process was void and fraudulent.[91]

Again, these factual findings found their way into the application of petitioner for a writ of preliminary attachment,[92] as it claimed that respondents could not dissociate themselves from their telltale acts of supplying defective machines and nonexistent software.[93] The latter offered no defense in relation to these claims.

We see no reason to deviate from our finding of fraud on the part of respondent MPEI in the 2004 Decision and 2006 Resolution. Despite its failure to meet the mandatory requirements set forth in the bidding procedure, respondent still acceded to being awarded the contract. These circumstances reveal its ploy to gain undue advantage over the other bidders in general, even to the extent of cheating the government.

The word "bidding" in its comprehensive sense means making an offer or an invitation to prospective contractors, whereby the government manifests its intention to make proposals for the purpose of securing supplies, materials, and equipment for official business or public use, or for public works or repair.[94] Three principles involved in public bidding are as follows: (1) the offer to the public; (2) an opportunity for competition, and (3) a basis for an exact comparison of bids. A regulation of the matter, which excludes any of these factors, destroys the distinctive character of the system and thwarts the purpose of its adoption.[95]

In the instant case, We infer from the circumstances that respondent MPEI welcomed and allowed the award of the automation contract, as it executed the contract despite the full knowledge that it had not met the mandatory requirements set forth in the RFP. Respondent acceded to and benefitted from the watering down of these mandatory requirements, resulting in undue advantage in its favor. The fact that there were numerous mandatory requirements that were simply set aside to pave the way for the award of the automation contract does not escape the attention of this Court. Respondent MPEI, through respondent Willy, signed and executed the automation contract with COMELEC. It is therefore preposterous for respondent argue that it was a "passive participant" in the whole bidding process.

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[91] We stress once again that the Contract entered into by the Comelec for the supply of the ACMs was declared VOID by the Court in its Decision because of clear violations of law and jurisprudence, as well as the reckless disregard by the Commission of its own bidding rules and procedure:

"To muddle the issue, Comelec keeps on saying that the 'winning' bidder presented a lower price than the only other bidder. It ignored the fact that the whole bidding process was VOID and FRAUDULENT. How then could there have been a "winning" bid? x x x" (Supra note 7 at 4132-4134.)

[92] *Rollo*, pp. 201-211.

[93] Id. at 208.

[94] *JG Summit Holdings, Inc. v. Court of Appeals*, 458 Phil. 581 (2003).

[95] *Malaga v. Penachos, Jr.*, G.R. No. 86695, 3 September 1992, 213 SCRA 516.

We reject the CA's denial of petitioner's plea for the ancillary remedy of preliminary attachment, considering that the cumulative effect of the factual findings of this Court establishes a sufficient basis to conclude that fraud had attended the execution of the automation contract. Such fraud is deducible from the 2004 Decision and further upheld in the 2006 Resolution. It was incongruous, therefore, for the CA to have denied the application for a writ of preliminary attachment, when the evidence on record was the same that was used to demonstrate the propriety of the issuance of the writ of preliminary attachment. This was the same evidence that We had already considered and passed upon, and on which We based Our 2004 Decision to nullify the automation contract. It would not be right for this Court to ignore these illegal transactions, as to do so would be tantamount to abandoning its constitutional duty of safeguarding public interest.

II.
Application of the piercing doctrine justifies the issuance of a writ of preliminary attachment over the properties of the individual respondents.

Individual respondents argue that since they were not parties to the 2004 case, any factual findings or conclusions therein should not be binding upon them.[96] Since they were strangers to that case, they are not bound by the judgment rendered by this Court.[97] They claim that their fundamental right to due process would be violated if their properties were to be attached for a purported corporate debt on the basis of a court ruling in a case in which they were not given the right or opportunity to be heard.[98]

We cannot subscribe to this argument. In the first place, it could not be reasonably expected that individual respondents would be impleaded in the 2004 case. As admitted by respondents, the issues resolved in the 2004 Decision were limited to the following: (1) whether to declare Resolution No. 6074 of the COMELEC null and void; (2) whether to enjoin the implementation of any further contract that may have been entered into by COMELEC with MPC or MPEI; and (3) whether to compel COMELEC to conduct a rebidding of the project. To implead individual respondents then was improper, considering that the automation contract was entered into by respondent MPEI. This Court even acknowledged this fact by directing that the liabilities of persons responsible for the nullity of the contract be determined in another appropriate proceeding and by directing the OSG to undertake measures to protect the interests of the government.

At any rate, individual respondents have been fully afforded the right to due process by being impleaded and heard in the subsequent proceedings before the courts *a quo*. Finally, they cannot argue violation of due process, as respondent MPEI, of which they are incorporators/stockholders, remains vulnerable to the piercing of its corporate veil.

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[96] Id. at 797-801 & 906-915.
[97] Id. at 798.
[98] Id. at 800.

A. There are red flags indicating that MPEI was used to perpetrate the fraud against petitioner, thus allowing the piercing of its corporate veil.

Petitioner seeks the issuance of a writ of preliminary attachment over the personal assets of the individual respondents, notwithstanding the doctrine of separate juridical personality.[99] It invokes the use of the doctrine of piercing the corporate veil, to which the canon of separate juridical personality is vulnerable, as a way to reach the personal properties of the individual respondents. Petitioner paints a picture of a sham corporation set up by all the individual respondents for the purpose of securing the automation contract.

We agree with petitioner.

Veil-piercing in fraud cases requires that the legal fiction of separate juridical personality is used for fraudulent or wrongful ends.[100] For reasons discussed below, We see red flags of fraudulent schemes in public procurement, all of which were established in the 2004 Decision, the totality of which strongly indicate that MPEI was a sham corporation formed *merely for the purpose of perpetrating a fraudulent scheme.*

The red flags are as follows: (1) overly narrow specifications; (2) unjustified recommendations and unjustified winning bidders; (3) failure to meet the terms of the contract; and (4) shell or fictitious company. We shall discuss each in detail.

Overly Narrow Specifications

The World Bank's *Fraud and Corruption Awareness Handbook: A Handbook for Civil Servants Involved in Public Procurement,* (Handbook) identifies an assortment of fraud and corruption indicators and relevant schemes in public procurement.[101] One of the schemes recognized by the Handbook is rigged specifications:

> **Scheme: Rigged specifications**. In a competitive market for goods and services, any specifications that seem to be drafted in a way **that favors a**

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[99] The general rule is that a corporation has a separate juridical personality distinct from the persons composing it. *Remo, Jr. v. Intermediate Appellate Court,* 254 Phil. 409, 411 (1989).One implication of the doctrine is that corporate creditors may not reach the personal assets of the shareholders, who are liable only to the extent of their subscription under the related doctrine of limited liability. *(Philippine National Bank v. Hydro Resources Contractors Corp.,* G.R. Nos. 167530, 167561, 167603, 13 March 2013, 693 SCRA 294)

[100] See *Black's Law Dictionary,* 1147-1148 (6th ed. 2008). See also *Kukan International Corp. v. Reyes,* 646 Phil. 210 (2010) and Cesar Lapuz Villanueva and Teresa S. Villanueva-Tiansay, *Philippine Corporate Law,* p. 105 (2013).

[101] International Bank for Reconstruction and Development/ The World Bank, 2013, Fraud and Corruption Awareness Handbook: A Handbook for Civil Servants Involved in Public Procurement, 1 (last visited 15 November 2015) <http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/04/25/000456286_20140425150639/Rendered/PDF/877290PUB0Frau00Box382147B00PUBLIC0.pdf> (Fraud and Corruption Awareness Handbook).

> **particular company deserve closer scrutiny.** For example, **specifications that are too narrow** can be used to exclude other qualified bidders or justify improper sole source awards. **Unduly vague or broad specifications** can allow an unqualified bidder to compete or justify fraudulent change orders after the contract is awarded. Sometimes, project officials will go so far as to allow the favored bidder to draft the specifications.[102]

In Our 2004 Decision, We identified a red flag of rigged bidding in the form of *overly narrow specifications.* As already discussed, the accuracy requirement of 99.9995 percent was set up by COMELEC bidding rules. This Court recognized that this rating was "**too high and was a sure indication of fraud in the bidding, designed to eliminate fair competition.**"[103] Indeed, "the essence of public bidding is violated by the practice of requiring very high standards or unrealistic specifications that cannot be met...only to water them down *after* the bid has been award(ed)."[104]

Unjustified Recommendations and Unjustified Winning Bidders

Questionable evaluation in a Bid Evaluation Report (BER) is an indicator of bid rigging. The Handbook expounds:

> **Questionable evaluation and unusual bid patterns may emerge in the BER. After the completion of the evaluation process, the Bid Evaluation Committee should present to the implementing agency its BER, which describes the results and the process by which the BEC has evaluated the bids received. The BER may include a number of indicators of bid rigging, e.g., questionable disqualifications, and unusual bid patterns.**[105]

The Handbook lists unjustified recommendations and unjustified winning bidders as red flags of a rigged bidding.[106]

The red flags of questionable recommendation and unjustified awards are raised in this case. As earlier discussed, the project was awarded to MPC, which proved to be a nonentity. It was MPEI that actually participated in the bidding process, but it was not qualified to be a bidder in the first place. Moreover, its ACMs failed the accuracy requirement set by COMELEC. Yet, MPC — the nonentity — obtained a favorable recommendation from the BAC, and the automation contract was awarded to the former.

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[102] Id. at 17-18.
[103] Supra note 7.
[104] Supra note 1.
[105] Supra note 101 at 30.
[106] Id.

Failure to Meet Contract Terms

Failure to meet the terms of a contract is regarded as a fraud by the Handbook:

> **Scheme**: Failure to meet contract terms. Firms may deliberately fail to comply with contract requirements. The contractor will attempt to conceal such actions often by falsifying or forging supporting documentation and bill for the work as if it were done in accordance with specifications. In many cases, the contractors must bribe inspection or project personnel to accept the substandard goods or works, or supervision agents are coerced to approve substandard work. x x x[107]

As mentioned earlier, this Court already found the ACMs to be below the standards set by the COMELEC. We reiterated their noncompliant status in Our 2005 and 2006 Resolutions.

As early as 2005, when the COMELEC sought permission from this Court to utilize the ACMs in the then scheduled ARMM elections, We declared that the proposed use of the machines would expose the ARMM elections to the same dangers of massive electoral fraud that would have been inflicted by the projected automation of the 2004 national elections. We based this pronouncement on the fact that the **COMELEC failed to show that the deficiencies had been cured.**[108] Yet again, this Court in 2006 blocked another attempt to use the ACMs, this time for the 2007 elections. We reiterated that because the ACMs had merely remained idle and unused since their last evaluation, in which they failed to hurdle the crucial tests, then their defects and deficiencies could not have been cured by then.[109]

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[107] Supra note 101 at 39.

[108] This Court in its 2005 Resolution in 2004 case ruled as follows:

> The Motion has not at all demonstrated that these technical requirements have been addressed from the time our Decision was issued up to now. In fact, Comelec is merely asking for leave to use the machines, without mentioning any specific manner in which the foregoing requirements have been satisfactorily met.
>
> Equally important, we stressed in our Decision that "[n]othing was said or done about the software — the deficiencies as to detection and prevention of downloading and entering previously downloaded data, as well as the capability to print an audit trail. No matter how many times the machines were tested and retested, if nothing was done about the programming defects and deficiencies, the same danger of massive electoral fraud remains."
>
> Other than vaguely claiming that its four so-called "experts" have "unanimously confirmed that the software development which the Comelec undertook, [was] in line with the internationally accepted standards (ISO/IEC 12207) [for] software life cycle processes," the present Motion has not shown that the alleged "software development" was indeed extant and capable of addressing the "programming defects and deficiencies" pointed out by this Court.
>
> At bottom, the proposed use of the ACMs would subject the ARMM elections to the same dangers of massive electoral fraud that would have been inflicted by the projected automation of the 2004 national elections.

[109] This Court in its 2006 Resolution in 2004 case ruled thus:

> Like the earlier Comelec Motion, however, the present one of Atty. Macalintal utterly fails to demonstrate - nay, even slightly indicate -- what "certain supervening and legal circumstances [have] transpired" to justify the reliefs it seeks. **In fact, after the Court had ruled, among others, that the ACMs had failed to pass legally mandated technical requirements, they have admittedly been simply *stored.***
>
> **In other words, they have merely remained *idle and unused* since their last evaluation in which they failed to hurdle the crucial tests. Thus, again we say, the ACMs were not good enough for either the 2004 national elections or for the 2005 ARMM polls; why should they be good enough for the 2007 elections, considering that *nothing has been done to correct the legal, jurisprudential and***

Based on the foregoing, the ACMs delivered were plagued with defects that made them fail the requirements set for the automation project.

Shell or fictitious company

The Handbook regards a **shell or fictitious company** as a "serious red flag," a concept that it elaborates upon:

> Fictitious companies are by definition **fraudulent** and may also serve as fronts for government officials. The typical scheme involves corrupt government officials creating a fictitious company that will serve as a "vehicle" to secure contract awards. Often, the fictitious—or ghost—company will subcontract work to lower cost and sometimes unqualified firms. The fictitious company may also utilize designated losers as subcontractors to deliver the work, thus indicating collusion.
>
> Shell companies have no significant assets, staff or operational capacity. They pose a **serious red flag** as a bidder on public contracts, because they often hide the interests of project or government officials, concealing a conflict of interest and opportunities for money laundering. **Also, by definition, they have no experience.**[110]

MPEI qualifies as a shell or fictitious company. It was nonexistent at the time of the invitation to bid; to be precise, it was incorporated only 11 days before the bidding. It was a newly formed corporation and, as such, had no track record to speak of.

Further, MPEI misrepresented itself in the bidding process as "lead company" of the supposed joint venture. The misrepresentation appears to have been an attempt to justify its lack of experience. As a new company, it was not eligible to participate as a bidder. It could do so only by pretending that it was acting as an agent of the putative consortium.

The timing of the incorporation of MPEI is particularly noteworthy. Its close nexus to the date of the invitation to bid and the date of the bidding (11 days) provides a strong indicium of the intent to use the corporate vehicle for fraudulent purposes. This proximity unmistakably indicates that the automation contract served as motivation for the formation of MPEI: a corporation had to be organized so it could participate in the bidding by claiming to be an agent of a pretended joint venture.

The timing of the formation of MPEI did not escape the scrutiny of Justice Angelina Sandoval-Gutierrez, who made this observation in her Concurring Opinion in the 2004 Decision:

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cont.
***technical flaws* underscored in our final and executory Decision?** Likewise, we repeat that no matter how many times the machines were retested, if nothing was done about the programming defects and deficiencies, the same danger of massive electoral fraud remains. (Emphases supplied)

[110] Fraud and Corruption Awareness Handbook, p. 40.

> At this juncture, it bears stressing that MPEI was incorporated only on *February 27, 2003* as evidenced by its Certificate of Incorporation. This goes to show that from the time the COMELEC issued its Invitation to Bid (*January 28, 2003*) and Request for Proposal (*February 17, 2003*) up to the time it convened the Pre-bid Conference (*February 18, 2003*), MPEI was literally a non-existent entity. It came into being only on February 27, 2003 or eleven (11) days prior to the submission of its bid, *i.e. March 10, 2003*. **This poses a legal obstacle to its eligibility as a bidder.** The Request for Proposal requires the bidder to submit financial documents that will establish to the BAC's satisfaction its financial capability which include:
>
> > (1) *audited financial statements of the Bidder's firm for the last three (3) calendar years, stamped "RECEIVED" by the appropriate government agency, to show its capacity to finance the manufacture and supply of Goods called for and a statement or record of volumes of sales*;
> >
> > (2) Balance Sheet;
> >
> > (3) Income Statement; and
> >
> > (4) Statement of Cash Flow.
>
> As correctly pointed out by petitioners, how could MPEI comply with the above requirement of audited financial statements for the last three (3) calendar years if it came into existence only eleven (11) days prior to the bidding?
>
> To do away with such complication, MPEI asserts that it was MP CONSORTIUM who submitted the bid on March 10, 2003. It pretends compliance with the requirements by invoking the financial capabilities and long time existence of the alleged members of the MP CONSORTIUM, namely, Election.Com, WeSolv, SK *CeC*, ePLDT and Oracle. It wants this Court to believe that it is MP CONSORTIUM who was actually dealing with the COMELEC and that its (MPEI) participation is merely that of a "lead company and proponent" of the joint venture. This is hardly convincing. For one, the contract for the supply and delivery of ACM was between COMELEC and MPEI, not MP CONSORTIUM. *As a matter of fact, there cannot be found in the contract any reference to the MP CONSORTIUM or any member thereof for that matter.* For another, the agreements among the alleged members of MP CONSORTIUM do not show the existence of a joint-venture agreement. Worse, MPEI cannot produce the agreement as to the "joint and several liability" of the alleged members of the MP CONSORTIUM as required by this Court in its Resolution dated October 7, 2003.[111]

Respondent MPEI was formed to perpetrate the fraud against petitioner.

The totality of the red flags found in this case leads Us to the inevitable conclusion that MPEI was nothing but a sham corporation formed for the purpose of defrauding petitioner. Its ultimate objective was to secure the ₱1,248,949,088 automation contract. The scheme was to put up a

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[111] Supra note 1 at 277-278.

corporation that would participate in the bid and enter into a contract with the COMELEC, even if the former was not qualified or authorized to do so.

Without the incorporation of MPEI, the defraudation of the government would not have been possible. The formation of MPEI paved the way for its participation in the bid, through its claim that it was an agent of a supposed joint venture, its misrepresentations to secure the automation contract, its misrepresentation at the time of the execution of the contract, its delivery of the defective ACMs, and ultimately its acceptance of the benefits under the automation contract.

The foregoing considered, veil-piercing is justified in this case.

We shall next consider the question of whose assets shall be reached by the application of the piercing doctrine.

B. Because all the individual respondents actively participated in the perpetration of the fraud against petitioner, their personal assets may be subject to a writ of preliminary attachment by piercing the corporate veil.

A corporation's privilege of being treated as an entity distinct and separate from the stockholders is confined to legitimate uses, and is subject to equitable limitations to prevent its being exercised for fraudulent, unfair, or illegal purposes.[112] As early as the 19th century, it has been held that:

> The general proposition that a corporation is to be regarded as a legal entity, existing separate and apart from the natural persons composing it, is not disputed; but that the statement is a mere fiction, existing only in idea, is well understood, and not controverted by any one who pretends to accurate knowledge on the subject. It has been introduced for the convenience of the company in making contracts, in acquiring property for corporate purposes, in suing and being sued, and to preserve the limited liability of the stockholder by distinguishing between the corporate debts and property of the company and of the stockholders in their capacity as individuals. **All fictions of law have been introduced for the purpose of convenience, and to subserve the ends of justice.** It is in this sense that the maxim *in fictione juris subsistit aequitas* is used, and the doctrine of fictions applied. **But when they are urged to an intent and purpose not within the reason and policy of the fiction, they have always been disregarded by the courts.** Broom's, Legal Maxims 130. "It is a certain rule," says Lord Mansfield, C.J., "that a fiction of law never be contradicted so as to defeat the end for which it was invented, but for every other purpose it may be contradicted." *Johnson v. Smith, 2 Burr., 962.*[113]

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[112] Jose C. Campos Jr., and Maria Clara Lopez-Campos, *The Corporation Code* ,Volume I, p. 149 (1990).

[113] *State ex rel. Attorney General v. Standard Oil Co.,* Supreme Court of Ohio, 49 Ohio St., 137, N.E. 279 (1892), *cited* in Campos, Note 112, at 154. (Emphases supplied)

The main effect of disregarding the corporate fiction is that stockholders will be held personally liable for the acts and contracts of the corporation, whose existence, at least for the purpose of the particular situation involved, is ignored.[114]

We have consistently held that when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an *association of persons.*[115] Thus, considering that We find it justified to pierce the corporate veil in the case before Us, MPEI must, perforce, be treated as a mere association of persons whose assets are unshielded by corporate fiction. Such persons' individual liability shall now be determined with respect to the matter at hand.

Contrary to respondent Willy's claims, his participation in the fraud is clearly established by his unequivocal agreement to the execution of the automation contract with the COMELEC, and his signature that appears on the voided contract. As far back as in the 2004 Decision, his participation as a signatory to the automation contract was already established:

> The foregoing argument is unpersuasive. *First,* the contract being referred to, entitled "The Automated Counting and Canvassing Project Contract," is between Comelec and MPEI, not the alleged consortium, MPC. To repeat, it is *MPEI* -- not MPC -- that is a party to the Contract. *Nowhere in that Contract is there any mention of a consortium or joint venture, of members thereof, much less of joint and several liability.* Supposedly executed sometime in May 2003, the Contract bears a notarization date of June 30, 2003, **and contains the signature of Willy U. Yu signing as president of MPEI (not for and on behalf of MPC), along with that of the Comelec chair.** It provides in Section 3.2 that MPEI (not MPC) is to supply the Equipment and perform the Services under the Contract, in accordance with the appendices thereof; nothing whatsoever is said about any consortium or joint venture or partnership. x x x (Emphasis supplied)

That his signature appears on the automation contract means that he agreed and acceded to its terms.[116] His participation in the fraud involves his signing and executing the voided contract.

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[114] Supra Note 111.

[115] *Koppel Philippines, Inc. v. Yatco*, 77 Phil. 496 (1946); *Laguna Transportation Co., Inc. v. Social Security System*, 107 Phil. 833 (1960), *Francisco v. Mejia*. G.R. No. 141617 (14 August 2001); *Yao, Sr. v. People*, 552 Phil. 195 (2007).

[116] *See Traders Royal Bank v. Cuison Lumber Co., Inc.,* 606 Phil. 700 citing *People's Industrial and Commercial Corp. v. Court of Appeals*, 346 Phil. 189:

> "The clear and neat principle is that the offer must be certain and definite with respect to the cause or consideration and object of the proposed contract, while the acceptance of this offer — express or implied — must be unmistakable, unqualified, and identical in all respects to the offer. **The required concurrence, however, may not always be immediately clear and may have to be read from the attendant circumstances; in fact, a binding contract may exist between the parties whose minds have met, although they did not affix their signatures to any written document.**" (Emphasis supplied)

The execution of the automation contract with a non-eligible entity and the subsequent award of the contract despite the failure to meet the mandatory requirements were "badges of fraud" in the procurement process that should have been recognized by the CA to justify the issuance of the writ of preliminary attachment against the properties of respondent Willy.

With respect to the other individual respondents, petitioner, in its Answer with Counterclaim, alleged:

> 30. Also, inasmuch as MPEI is in truth a mere shell corporation with no real assets in its name, incorporated merely to feign eligibility for the bidding of the automated contract when it in fact had none, to the great prejudice of the Republic, ***plaintiff's individual incorporators should likewise be made liable together with MPEI*** *for the automated contract amount paid to and received by the latter.* The following circumstances altogether manifest that the individual incorporators merely cloaked themselves with the veil of corporate fiction to perpetrate a fraud and to eschew liability therefor, thus:
>
> x x x x
>
> f. From the time it was incorporated until today, MPEI has not complied with the reportorial requirements of the Securities and Exchange Commission;
> g. **Individual incorporators, acting fraudulently through MPEI, and in violation of the bidding rules, then subcontracted the automation contract to four (4) other corporations,** namely: WeSolve Corporation, SK C&C, ePLDT and election.com, to comply with the capital requirements, requisite five (5)-year corporate standing and the technical qualifications of the Request for Proposal;
>
> x x x x[117]

In response to petitioner's allegations, respondents Willy and Bonnie stated in their Reply and Answer (Re: Answer with Counterclaim dated 28 June 2004):[118]

> 3.3 As far as plaintiff MPEI **and defendants-in-counterclaim are concerned, they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the ACMs and their peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, neither plaintiff MPEI nor any of its directors, stockholders, officers or employees had any participation in the evaluation of the bids and eventual choice of the winning bidder.[119]

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[117] *Rollo*, pp. 181-182.
[118] Records, Vol. 2, pp. 866-884.
[119] Id. at 877.

Respondents Johnson's and Bernard's denials were made in paragraphs 2.17 and 3.3 of their Answer with Counterclaim to the Republic's Counterclaim, to wit:[120]

> 2.17 The erroneous conclusion of fact and law in paragraph 30 (f) and (g) of the Republic's answer is denied, having been pleaded in violation of the requirement, that only ultimate facts are to be stated in the pleadings and they are falsehoods. The truth of the matter is that there could not have been fraud, as these agreements were submitted to the COMELEC for its evaluation and assessment, as to the qualification of the Consortium as a bidder, a showing of transparency in plaintiff's dealings with the Republic.[121]
>
> 3.3 As far as plaintiff MPEI **and defendants-in-counterclaim are concerned, they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the automated counting machines and its peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, the plaintiff or any of its directors, stockholders, officers or employees had no participation in the evaluation of the bids and eventual choice of the winning bidder.[122]

As regards Enrique and Rosita, the relevant paragraphs in the Answer with Counterclaim to the Republic's Counterclaim[123] are quoted below:

> 2.17. The erroneous conclusion of fact and law in paragraph 30 (F) and (G) of the Republic's answer is denied, having been pleaded in violation of the requirement, that only ultimate facts are to be stated in the pleadings and they are falsehoods. The truth of the matter is that there could not have been fraud, as these agreements were submitted to the COMELEC for its evaluation and assessment, as to the qualification of the Consortium as a bidder, a showing of transparency in plaintiff's dealings with the Republic.[124]
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> 3.3. **As far as the plaintiff and herein answering defendants-in-counterclaim are concerned, they dealt with the Commission on Elections with full transparency and in utmost good faith.** All documents in support of its eligibility to bid for the supply of the automated counting machines and its peripheral services were submitted to the Commission on Elections for its evaluation in full transparency. Pertinently, the plaintiff or any of its directors, stockholders, officers or employees had no participation in the evaluation of the bids and eventual choice of the winning bidder.[125]

Pedro and Laureano offer a similar defense in paragraph 3.3 of their Reply and Answer with Counterclaim to the Republic's Counterclaim[126] dated 28 June 2004, which reads:

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[120] Id. at 853-865.
[121] Id. at 889.
[122] Id. at 877.
[123] Id. at 885-897.
[124] Id. at 889.
[125] Id. at 892.
[126] Id. at 900-918.

> 3.3. As far as plaintiff MPEI and defendants-in-counterclaim are concerned, **they dealt with the COMELEC with full transparency and in utmost good faith.** All documents support its eligibility to bid for the supply of the ACMs and their peripheral services, were submitted to the COMELEC for its evaluation in full transparency. Pertinently, neither plaintiff MPEI nor any of its directors, stockholders, officers or employees had any participation in the evaluation of the bids and eventual choice of the winning bidder.[127]

It can be seen from the above-quoted paragraphs that the individual respondents never denied their participation in the questioned transactions of MPEI, merely raising the defense of good faith and shifting the blame to the COMELEC. The individual respondents have, in effect, admitted that they had knowledge of and participation in the fraudulent subcontracting of the automation contract to the four corporations.

It bears stressing that the remaining individual respondents, together with respondent Willy, incorporated MPEI. As incorporators, they are expected to be involved in the management of the corporation and they are charged with the duty of care. This is one of the reasons for the requirement of ownership of at least one share of stock by an incorporator:

> The reason for this, as explained by the lawmakers, is to avoid the confusion and/or ambiguities arising in a situation under the old corporation law where there exists one set of incorporators **who are not even shareholders and another set of directors/incorporators who must all be shareholders of the corporation.** The people who deal with said corporation at such an early stage are confused as to who are the persons or group really authorized to act in behalf of the corporation. (Proceedings of the Batasan Pambansa on the Proposed Corporation Code). **Another reason may be anchored on the presumption that when an incorporator has pecuniary interest in the corporation, no matter how minimal, he will be more involved in the management of corporate affairs and to a greater degree, be concerned with the welfare of the corporation.**[128]

As incorporators and businessmen about to embark on a new business venture involving a sizeable capital (₱300 million), the remaining individual respondents should have known of Willy's scheme to perpetrate the fraud against petitioner, especially because the objective was a billion peso automation contract. Still, they proceeded with the illicit business venture.

It is clear to this Court that inequity would result if We do not attach personal liability to all the individual respondents. With a definite finding that MPEI was used to perpetrate the fraud against the government, it would be a great injustice if the remaining individual respondents would enjoy the benefits of incorporation despite a clear finding of abuse of the corporate vehicle. Indeed, to allow the corporate fiction to remain intact would not subserve, but instead subvert, the ends of justice.

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[127] Id. at 911.

[128] Lopez, Rosario N., The Corporation Code of the Philippines (Annotated), Volume I (1994), p. 170.

III.
The factual findings of this Court that have become final cannot be modified or altered, much less reversed, and are controlling in the instant case.

Respondents argue that the 2004 Decision did not resolve and could not have resolved the factual issue of whether they had committed any fraud, as the Supreme Court is not a trier of facts; and the 2004 case, being a certiorari case, did not deal with questions of fact.[129]

Further, respondents argue that the findings of this Court ought to be confined only to those issues actually raised and resolved in the 2004 case, in accordance with the principle of conclusiveness of judgment.[130] They explain that the issues resolved in the 2004 Decision were only limited to the following: (1) whether to declare COMELEC Resolution No. 6074 null and void; (2) whether to enjoin the implementation of any further contract that may have been entered into by COMELEC with MPC or MPEI; and (3) whether to compel COMELEC to conduct a rebidding of the project.[131]

It is obvious that respondents are merely trying to escape the implications or effects of the nullity of the automation contract that they had executed. Section 1, Rule 65 of the Rules of Court, clearly sets forth the instances when a petition for certiorari can be used as a proper remedy:

> Section 1. Petition for certiorari. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered to have been committed with grave abuse of discretion when the act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction."[132] The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility."[133] Furthermore, the use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body

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[129] *Rollo*, pp. 892-897.
[130] Id. at 804.
[131] Id. at 803-804.
[132] *Ganaden v. Court of Appeals*, 665 Phil. 261 (2011).
[133] *Yu v. Reyes-Carpio*, 667 Phil.. 474 (2011). *citing* 2 JOSE Y. FERIA & MARIA CONCEPCION S. NOCHE, CIVIL PROCEDURE ANNOTATED 463 (2001).

is wholly void."[134] From the foregoing definition, it is clear that the special civil action of certiorari under Rule 65 can only strike down an act for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.[135]

We had to ascertain from the evidence whether the COMELEC committed grave abuse of discretion, and in the process, were justified in making some factual findings. The conclusions derived from the factual findings are inextricably intertwined with this Court's determination of grave abuse of discretion. They have a direct bearing and are in fact necessary to illustrate that the award of the automation contract was done hastily and in direct violation of law. This Court has indeed made factual findings based on the evidence presented before it; in turn, these factual findings constitute the controlling legal rule between the parties that cannot be modified or amended by any of them. This Court is bound to consider the factual findings made in the 2004 Decision in order to declare that there is fraud for the purpose of issuing the writ of preliminary attachment.

Respondents appear to have misunderstood the implications of the principle of conclusiveness of judgment on their cause. Contrary to their claims, the factual findings are *conclusive* and have been established as the controlling legal rule in the instant case, on the basis of the principle of *res judicata*—more particularly, the principle of conclusiveness of judgment.

This doctrine of *res judicata* which is set forth in Section 47 of Rule 39 of the Rules of Court[136] lays down two main rules, namely: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same.[137]

These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as

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[134] *J.L. Bernardo Construction v. Court of Appeals,* 381 Phil. 25 (2000).

[135] *Yu v. Reyes-Carpio,* supra.

[136] Sec. 47.Effect of judgments or final orders. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
x x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which actually and necessarily included therein or necessary thereto.

[137] *Reforzado v. Sps. Lopez*, 627 Phil. 294 (2010).

evidence.[138] The first general rule stated above and corresponding to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."[139]

In *Calalang v. Register of Deeds of Quezon City*,[140] We discussed the concept of conclusiveness of judgment as pertaining even to those matters *essentially connected* with the subject of litigation in the first action. This Court explained therein that the bar on re-litigation extends to those questions *necessarily implied* in the final judgment, although no specific finding may have been made in reference thereto, and although those matters were directly referred to in the pleadings and were not actually or formally presented. If the record of the former trial shows that the judgment could not have been rendered without deciding a particular matter, it will be considered as having settled that matter as to all future actions between the parties; and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself:

> **The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority.** It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. **If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit** (*Nabus v. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.
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> Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. v. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez v. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.
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> **The general rule precluding the re-litigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to**

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[138] *Alamayri v. Pabale*, 576 Phil. 146 (2008).
[139] *Sps. Noceda v. Arbizo-Directo*, 639 Phil. 483 (2010).
[140] G.R. Nos. 76265 and 83280, 11 March 1994, 231 SCRA 88.

> **all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.**[141] (Emphases supplied)

The foregoing disquisition finds application to the case at bar.

Undeniably, the present case is merely an adjunct of the 2004 case, in which the automation contract was declared to be a nullity. Needless to say, the 2004 Decision has since become final. As earlier explained, this Court arrived at several factual findings showing the illegality of the automation contract; in turn, these findings were used as basis to justify the declaration of nullity.

A closer scrutiny of the 2004 Decision would reveal that the judgment could not have been rendered without deciding particular factual matters in relation to the following: (1) identity, existence and eligibility of MPC as a bidder; (2) failure of the ACMs to pass DOST technical tests; and (3) remedial measures undertaken by the COMELEC after the award of the automation contract. Under the principle of conclusiveness of judgment, We are precluded from re-litigating these facts, as these were essential to the question of nullity. Otherwise stated, the judgment could not have been rendered without necessarily deciding on the above-enumerated factual matters.

Thus, under the principle of conclusiveness of judgment, those material facts became binding and conclusive on the parties, in this case MPEI and, ultimately, the persons that comprised it. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for that trial has been given, the judgment of the court—as long as it remains unreversed—**should be conclusive upon the parties and those in privity with them.**[142] Thus, the CA should not have required petitioner to present further evidence of fraud on the part of respondent Willy and MPEI, as it was already necessarily adjudged in the 2004 case.

To allow respondents to argue otherwise would be violative of the principle of immutability of judgment. When a final judgment becomes

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[141] Id. at 99-100.

[142] *Malayang Samahan ng Manggagawa sa Balanced Food v. Pinakamasarap Corporation*, 464 Phil. 998 (2004).

executory, it becomes immutable and unalterable and may no longer undergo any modification, much less any reversal.[143] In *Navarro v. Metropolitan Bank & Trust Company*[144] this Court explained that the underlying reason behind this principle is to avoid delay in the administration of justice and to avoid allowing judicial controversies to drag on indefinitely, *viz.*:

> **No other procedural law principle is indeed more settled than that once a judgment becomes final, it is no longer subject to change, revision, amendment or reversal, except only for correction of clerical errors, or the making of *nunc pro tunc* entries which cause no prejudice to any party, or where the judgment itself is void.** The underlying reason for the rule is two-fold: (1) to avoid delay in the administration of justice and thus make orderly the discharge of judicial business, and (2) to put judicial controversies to an end, at the risk of occasional errors, inasmuch as controversies cannot be allowed to drag on indefinitely and the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As the Court declared in *Yau v. Silverio*,
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> > Litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be, not through a mere subterfuge, deprived of the fruits of the verdict. Courts must therefore guard against any scheme calculated to bring about that result. Constituted as they are to put an end to controversies, courts should frown upon any attempt to prolong them.
>
> Indeed, just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his case by the execution and satisfaction of the judgment. Any attempt to thwart this rigid rule and deny the prevailing litigant his right to savor the fruit of his victory must immediately be struck down. x x x. (Emphasis supplied)[145]

In the instant case, adherence to respondents' position would mean a complete disregard of the factual findings We made in the 2004 Decision, and would certainly be tantamount to reversing the same. This would invariably cause further delay in the efforts to recover the amounts of government money illegally disbursed to respondents back in 2004.

Next, respondents argue that the findings of fact in the 2004 Decision are not conclusive[146] considering that eight (8) of the fifteen (15) justices of this Court refused to go along with the factual findings as stated in the majority opinion.[147] This argument fails to convince.

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[143] *AGG Trucking v. Yuag*, 675 Phil. 108 (2011).
[144] 612 Phil. 462, 471 (2009).
[145] Id. at 471.
[146] *Rollo*, pp. 897-903.
[147] Id. at p. 902.

Fourteen (14) Justices participated in the promulgation of the 2004 Decision. Out of the fourteen (14) Justices, three (3) Justices registered their dissent,[148] and two (2) Justices wrote their Separate Opinions, each recommending the dismissal of the Petition.[149] Of the nine (9) Justices who voted to grant the Petition, four (4) joined the *ponente* in his disposition of the case,[150] and two (2) Justices wrote Separate Concurring Opinions.[151] As to the remaining two (2) Justices, one (1) Justice[152] merely concurred in the result, while the other joined another Justice in her Separate Opinion.[153]

Contrary to the allegations of respondents, an examination of the voting shows that nine (9) Justices voted in favor of the majority opinion, without any qualification regarding the factual findings made therein. In fact, the two (2) Justices who wrote their own Concurring Opinions echoed the lack of eligibility of MPC and the failure of the ACMs to pass the mandatory requirements.

Finally, respondents cannot argue that, from the line of questioning of then Justice Leonardo A. Quisumbing during the oral arguments in the 2004 case, he did not agree with the factual findings of this Court. Oral arguments before this Court are held precisely to test the soundness of each proponent's contentions. The questions and statements propounded by Justices during such an exercise are not to be construed as their definitive opinions. Neither are they indicative of how a Justice shall vote on a particular issue; indeed, Justice Quisumbing clearly states in the 2004 Decision that he concurs in the results. At any rate, statements made by Our Members during oral arguments are not *stare decisis*; what is conclusive are the decisions reached by the majority of the Court.

IV.
The delivery of 1,991 units of ACMs does not negate fraud on the part of respondents Willy and MPEI.

The CA in its Amended Decision explained that respondents could not be considered to have fostered a fraudulent intent to not honor their obligation, since they delivered 1,991 units of ACMs.[154] In turn, respondents argue that respondent MPEI had every intention of fulfilling its obligation, because it in fact delivered the ACMs as required by the automation contract.[155]

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[148] Justices Renato C. Corona, Adolfo S. Azcuna and Dante O. Tinga registered their dissent. Justice Dante O. Tinga wrote a dissenting opinion.
[149] Justices Hilario G. Davide, Jr. and Jose C. Vitug wrote their separate opinions voting for dismissal of the Petition.
[150] The 2004 Decision was penned by Justice Artemio V. Panganiban, with Justices Antonio T. Carpio, Ma. Alicia Austria-Martinez, Conchita Carpio-Morales and Romeo J. Callejo, Sr. concurring therein.
[151] Justices Consuelo Ynares-Santiago and Justice Angelina Sandoval-Gutierrez.
[152] Justice Leonardo A. Quisumbing.
[153] Justice Reynato S. Puno joins in opinion of Justice Consuelo Ynares-Santiago.
[154] *Rollo*, p. 32.
[155] Id. at 306-307.

We disagree with the CA and respondents. The fact that the ACMs were delivered cannot induce this Court to disregard the fraud respondent MPEI had employed in securing the award of the automation contract, as established above. Furthermore, they cannot cite the fact of delivery in their favor, considering that the ACMs delivered were substandard and noncompliant with the requirements initially set for the automation project.

In Our 2004 Decision, We already found the ACMs to be below the standards set by the COMELEC. The noncompliant status of these ACMs was reiterated by this Court in its 2005 and 2006 Resolutions. The CA therefore gravely erred in considering the delivery of 1,991 ACMs as evidence of respondents' willingness to perform the obligation (and thus, their lack of fraud) considering that, as exhaustively discussed earlier, the ACMs delivered were plagued with defects and failed to meet the requirements set for the automation project.

Under Article 1233 of the New Civil Code, a debt shall not be understood to have been paid, unless the thing or service in which the obligation consists has been completely delivered or rendered. In this case, respondents cannot be considered to have *performed* their obligation, because the ACMs were defective.

V.
Estoppel does not lie against the State when it acts to rectify the mistakes, errors or illegal acts of its officials and agents.

Respondents claim that the 2004 Decision may not be invoked against them, since the petitioner and the respondents were co-respondents and not adverse parties in the 2004 case. Respondents further explain that since petitioner and respondents were on the same side at the time, had the same interest, and took the same position on the validity and regularity of the automation contract, petitioner cannot now invoke the 2004 Decision against them.[156]

Contrary to respondents' contention, estoppel generally finds no application against the State when it acts to rectify mistakes, errors, irregularities, or illegal acts of its officials and agents, irrespective of rank. This principle ensures the efficient conduct of the affairs of the State without any hindrance to the implementation of laws and regulations by the government. This holds true even if its agents' prior mistakes or illegal acts shackle government operations and allow others—some by malice—to profit from official error or misbehavior, and even if the rectification prejudices parties who have meanwhile received benefit.[157] Indeed, in the 2004 Decision, this Court even directed the Ombudsman to determine the possible criminal liability of public officials and private persons responsible for the

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[156] *Rollo*, pp. 801-803.
[157] *Secretary of Finance v. Ora Maura Shipping Lines*, 610 Phil. 419 (2009).

contract, and the OSG to undertake measures to protect the government from the ill effects of the illegal disbursement of public funds.[158]

The equitable doctrine of estoppel for the *prevention of injustice* and is for the protection of those who have been misled by that which on its face was fair and whose character, as represented, parties to the deception will not, in the interest of justice, be heard to deny.[159] It cannot therefore be utilized to insulate from liability the very perpetrators of the injustice complained of.

VI.
The findings of the Office of the Ombudsman are not controlling in the instant case.

Respondents further claim that this Court has recognized the fact that it did not determine or adjudge any fraud that may have been committed by individual respondents. Rather, it referred the matter to the Ombudsman for the determination of criminal liability.[160] The Ombudsman in fact made its own determination that there was no probable cause to hold individual respondents criminally liable.[161]

Respondents miss the point. The main issue in the instant case is whether respondents are guilty of fraud in obtaining and executing the automation contract, to justify the issuance of a writ of preliminary attachment in petitioner's favor. Meanwhile, the issue relating to the proceedings before the Ombudsman (and this Court in G.R. No. 174777) pertains to the finding of lack of probable cause for the possible criminal liability of respondents under the Anti-Graft and Corrupt Practices Act.

The matter before Us involves petitioner's application for a writ of preliminary attachment in relation to its recovery of the expended amount under the voided contract, and not the determination of whether there is probable cause to hold respondents liable for possible criminal liability due to the nullification of the automation contract. Whether or not the Ombudsman has found probable cause for possible criminal liability on the part of respondents is not controlling in the instant case.

CONCLUSION

If the State is to be serious in its obligation to develop and implement coordinated anti-corruption policies that promote proper management of public affairs and public property, integrity, transparency and accountability,[162] it needs to establish and promote effective practices aimed

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[158] Supra note 6.
[159] 31 C.J.S. Estoppel §1 (1964).
[160] *Rollo*, pp. 893-897.
[161] Id. at pp. 807-808.
[162] Chapter 2, Article 5(1), United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).

at the prevention of corruption,[163] as well as strengthen our efforts at asset recovery.[164]

As a signatory to the United Nations Convention Against Corruption (UNCAC),[165] the Philippines acknowledges its obligation to establish appropriate systems of procurement based on transparency, competition and objective criteria in decision-making that are effective in preventing corruption.[166] To promote transparency, and in line with the country's efforts to curb corruption, it is useful to identify certain fraud indicators or "red flags" that can point to corrupt activity. [167] This case – arguably the first to provide palpable examples of what could be reasonably considered as "red flags" of fraud and malfeasance in public procurement - is the Court's contribution to the nation's continuing battle against corruption, in accordance with its mandate to dispense justice and safeguard the public interest.

WHEREFORE, premises considered, the Petition is **GRANTED.** The Amended Decision dated 22 September 2008 of the Court of Appeals in CA-G.R. SP. No. 95988 is **ANNULLED AND SET ASIDE.** A new one is entered **DIRECTING** the Regional Trial Court of Makati City, Branch 59, to **ISSUE** in Civil Case No. 04-346, entitled *Mega Pacific eSolutions, Inc., vs. Republic of the Philippines*, the Writ of Preliminary Attachment prayed for by petitioner Republic of the Philippines against the properties of respondent Mega Pacific eSolutions, Inc., and Willy U. Yu, Bonnie S. Yu, Enrique T. Tansipek, Rosita Y. Tansipek, Pedro O. Tan, Johnson W. Fong, Bernard I. Fong and Lauriano Barrios.

No costs.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[163] Chapter 2, Article 5(2), United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).
[164] Chapter 5, Article 51, United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).
[165] United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).
[166] Chapter 2, Article 9, United Nations Convention Against Corruption. 2349 U.N.T.S. 41 (in force 14 Dec. 2005) (signed by the Philippines on 09 Dec. 2003 and ratified on 8 Nov. 2006).
[167] Most Common Red Flags of Fraud and Corruption in Procurement (available at <http://siteresources.worldbank.org/INTDOII/Resources/Red_flags_reader_friendly.pdf> (last visited on 8 January 2016).

WE CONCUR:

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

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

MARIA LOURDES P. A. SERENO
Chief Justice