

ODELON T. BUSCAINO, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 110798. July 20, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for certiorari assailing the decision of the Commission on Audit (COA) which adjudged petitioner Odelon T. Buscaino jointly and solidarily liable with the President of Polytechnic University of the Philippines (PUP), Dr. Pablo Mateo, and other PUP officials and employees in the amount of P1,527,176.40 for audit disallowances based on the schedule of disallowances submitted by the resident COA Auditor of the Polytechnic University of the Philippines.

The facts of the case that matter are as follows:

Petitioner Odelon T. Buscaino is the Director of Fiscal Management Services of the Polytechnic University of the Philippines (PUP) with position item of Chief Financial Management Officer II. His functions include signing disbursement vouchers and certifying the availability of funds and legality and propriety of supporting documents. As such, petitioner is one of the necessary PUP official signatories to every disbursement voucher of PUP before payment thereon can be made.

Petitioner is also a member of the PUP Canvass and Award Committee which reports the results of every bid or canvass conducted and at the same time, recommends to the PUP President the award of purchase or service contract to a supplier.

Ireneo Monteverde, former Auditor of PUP, issued four (4) Certificates of Settlement and Balances (CSBs) No. 86-003-151, 86-004-151, 86-007-151, and 86-008-151, dated May 23, July 28, November 12, and December 15, 1986, respectively, disallowing in audit an aggregate amount of P993,933.32, involving overpriced purchases of various office and school supplies in violation of pertinent laws, applicable rules and regulations.

A motion for reconsideration of the aforesaid disallowances was interposed by former PUP President Dr. Pablo Mateo and the herein petitioner, Odelon Buscaino.

On March 3, 1989, the Commission on Audit (COA) came out with its Decision No. 826, affirming subject disallowances ordered by the PUP Auditor on the ground that there was "no public bidding and/or canvass resulting in overpricing" in the purchase of the various office and school supplies in question and holding petitioner jointly and severally liable with Dr. Pablo Mateo, and Dr. Juan E. Manuel, Jr., former President and Vice-President of PUP, respectively, for the said disallowances.

In a letter, dated August 2, 1989, addressed to then Commission on Audit Chairman Eufemio Domingo, petitioner sought reconsideration of Decision No. 826 on the following grounds:

- a. Based on existing documents, there was evident suppression of vital information which if made known to the authorities concerned, may have rendered a contrary decision; and

b. The existing conditions and circumstances, at the time when some of the purchase were made, have not been given due consideration in post auditing the vouchers for the payment thereof.

During the pendency of the motion for reconsideration, former Auditor Ireneo Monteverde was succeeded by Auditor Federico Calpotura. After a reevaluation of the disallowances with respect to subject transactions, the motion for reconsideration was denied in COA Decision No. 1508 dated September 20, 1990. The aforesaid decision likewise increased the amount of disallowances from P993,933.32 to P2,379,304.98 and the corresponding Certificates of Settlement and Balances (CSBs) from four (4) to sixteen (16). As a result, petitioner is being held jointly and solidarily liable for the following transactions:

Check No. Nature of Transaction Amount Disallowed Reason for Disallowance

CSB No. 86- 007-151

1. TW- 8,05,333,824

Purchase of school and supplies

P206,534.15

Aside from being signatory to Box No. 4 of the voucher, Mr. Buscaino is a signatory to the Abstract of Bids as member of the Canvass and Award Committee, which certified that the prices are fair and the lowest, and recommended the award to the Supplier.

2. TW 8-05- 333-823 -do- 68,125.00 -do-

CSB No. 86- 008-151 3. TW 8,05,333,876

-do-

58,294.00

-do-

4. SNB- 3873896-1 -do- 42,038.50 -do-

5. SNB- 3873960-2 Purchase of 6 drums Hy-tox 10,800.00 -do-

6. SNB- 3874005-5 Purchase of 500 boxes of chalk 6,925.00 -do-

CSB No. 87- 002-151 7. SNB- 3874216-6

Purchase of 1,000 rolls typewriter ribbons

14,250.00

Signatory only to the Abstract of Bids, as member of the Canvass and Award Committee which certified that the prices are fair and the lowest, and recommended the award to the supplier

8.SNB- 3874214-4 -do- 14,250.00 -do-

9.SNB- 3874235-4 Purchase of school and office supplies 31,550.00 -do-

CSB NO. 87- 004-151 10.SNB-3874384-6

-do-

24,121.00

-do-

11.TW-B, 05,466,446 -do- 216,289.50 -do-

12.TW-B 05,466,445 -do- 62,573.00 -do-

CSB No. 87- 005-151 13.TW-B, 05,509-319

-do-

14,344.00

-do-

14.SN6- 1968866-1 -do- 29,100.00 -do-

15.TW-B, 05,509,321 -do- 12,773.00 -do-

16.TW-B, 05,509,320 -do- 36,567.70 -do-

17.TW-B, 05,509,323 -do- 124,971.75 -do-

18.TW-B, 05,509,322 -do- 55,098.50 -do-

19.SN6- 1968869-4 -do- 15,949.80 -do-

20.SN6- 1968879-0 Purchase of 6 drums of Hy-tox chlorine 10,770.00 -do-

CSB No. 87- 017-101 21.TW-B, 05,204,044

Purchase of 125 units of Manual Typewriters

50,800.00

Short delivery by four (4) units. Mr. Buscaino is the signatory to Box 4 of the voucher certified that the transaction was supported by documents appearing legal and proper. The voucher was supported by only one (1) Sales Invoice bearing only 121 serial nos. and no other proof of additional delivery.

CSB No.86- 002-151 22.SN5- 7567061-6

Payment of housing P allowance for Feb. 1986 to former PUP Pres.

500.00

Mr. Buscaino is the signatory to Box 4 of the voucher, certified that the transaction was supported by documents appearing legal and proper. The voucher is not supported by any document.

CSB No.86- 003-151 23.SN5- 7580362-0

-do- Mar. 1985

500.00

-do-

CSB No.86- 004-151 24.SN5- 7580561

-do- April, 1985

500.00

-do-

CSB No.86- 005-151 25.SN5- 7580726

-do- May 1985

500.00

-do-

CSB No.86- 006-151 26. SN5- 7580937-1

-do- June 1985

500.00

-do-

CSB No.86- 003-151 27.SNB- 3873861-1

-do- July ,1985

500.00

-do-

CSB No.86- 008-151 28.SNB- 3874007-0

-do- August, 1985

500.00

-do-

CSB No.86- 004-151 29.SN5- 7580508-6

Payment of gasoline and toll gate fees

302.00

-do-

CSB No.86- 004-151 30.SN5- 7580551-0

Purchase of 249 supplies

249.00

Mr. Buscaino is the signatory to Box 4 of the voucher. The supplies were delivered in advance (on Mar 8/85) w/o canvasses nor Purchase Order. The confirmation of the delivery was on Mar.20,1985.

CSB No. 86- 008-101 31.TW-B-05- 333-932

Payment of ITT Telephone System to Asia Pacific Phil., Inc.

405,000.00

Mr. Buscaino is the signatory to Box 4 of the voucher. Per CSB issued by the former Auditor. There was no refund in 1985 for the purpose. The transaction was paid out of the revalidated CDCs of prior years' accounts payable obligated in 1983 in favor of various creditors other than the supplier, hence, violation of Sec. 43, P.D. 1177.

32.SN5- 7580495-0 Purchase of school and office supplies 12,000.00 Mr. Buscaino is the signatory to Box 4 of the voucher, certifying that the transaction was supported by documents appearing legal and proper. The transaction was not supported by any canvass nor Purchase Order. It was an advanced delivery confirmed only later.

The pertinent portion of COA Decision No. 1508 reads:

"xxx In sum, these disallowances are the result of overpricing of school and office supplies procured without canvassing or bidding in the aggregate amount of P1,948,455.33; unnecessary procurement of telephone system; short delivery of four (4) units of typewriter at a total cost of P50,800.00; unauthorized collection of allowances; and expenditures for health, transportation, and gasoline for unofficial purposes."

The aforecited decision included Mr. Jaime Dolor, Mr. Juan del Rosario and Mr. Adolfo Aquino as additional persons jointly and severally liable with the petitioner and the other PUP officials.

Again, petitioner presented a motion for reconsideration of the above decision, alleging among others, that:

- Petitioner Buscaino had signed Box No. 4 of the Disbursement Vouchers (Form No. 5A, Rev. 1981) in his capacity as Chief of Accounting Office whose only concern was to type figures and computations and to check if all documents required for the transactions are attached and has nothing to do with overpricing; and
- Petitioner, as a public official, properly and regularly discharged his duties, or performed the acts in accordance with law and regulations for the signature to the vouchers, and that he did not do any act contrary to his official duty or omit to do anything which such a duty may require.

Petitioner contends that as Chief Accounting Officer, (a) the nature of the design of the Disbursement Vouchers he signed precludes petitioner from liability in the disallowances; (b) the purchases and prices were legal and regular; (c) petitioner had no reason to believe that the acts of his superior are not regular; and (d) petitioner acted with extraordinary care and in utmost good faith.

On August 19, 1991, petitioner wrote to Auditor Federico Calpotura requesting that he be furnished with documents and informations needed for his defense, that would exclude him from liability, including the following:

- Quotations of prices of every item re-canvassed by then COA Auditor Monteverde, indicating the brand and/or quality of the items;
- Names and addresses of suppliers/persons/entities where the items were re-canvassed;
- Date when items were re-canvassed; and
- Certified copies of official forms in the re-canvass of the items

Auditor Calpotura responded to the request of petitioner in the negative, stating that:

"No such documents as you indicated above were turned over to the undersigned. However, the manner and basis of the disallowances were explained (and) noted in each disallowed transaction in every CSB issued by then Auditor Monteverde."

Petitioner's follow-up elicited a similar response:

"I can understand your plight of course but I can't produce what I don't have. Please see the individual CSB which you have already obtained from this Office where I relayed (sic) upon, since said document are official."

Thereafter, petitioner wrote to the then Commission on Audit Chairman Domingo questioning the propriety and validity of the new CSBs issued by Auditor Calpotura on September 27 and 28, 1989, increasing the

disallowances to P2,379,304.98.

On April 12, 1993, the COA rendered Decision No. 2826, disposing thus:

"After a circumspect evaluation of the facts of the case and a scrutiny of the accompanying documents, this Commission finds merit in the recommendation of the new PUP Auditor to exclude Mr. Buscaino from the list of persons held liable for the above-enumerated transactions which were partly disallowed on the ground of overpricing. The excessiveness of the purchase prices in those transactions is outside the ambit of responsibility of Mr. Buscaino who signed the corresponding vouchers only in his capacity as an accounting officer.

x x x

However, for the rest of the transactions in question, it was clearly established that Mr. Buscaino either signed the subject documents as an accounting official or as a member of the Canvass and Awards Committee that recommended the award of the corresponding contracts to the suppliers or both accounting official and member of such committee. x x x

Premises considered, this Committee hereby excludes Mr. Buscaino from the list of persons liable for the audit disallowances amounting to P428,678.12 made on the eight (8) above-mentioned transactions. However, he shall remain jointly and severally liable with the other PUP officials and employees for the rest of the transactions described in the schedule of disallowances submitted by the PUP Auditor amounting to P1,527,176.40."

Unable to obtain complete affirmative relief from respondent COA, petitioner found his way to this Court via the petition for certiorari under consideration.

The sole issue posed for resolution here is - whether or not the Commission on Audit committed grave abuse of discretion amounting to lack or excess jurisdiction in holding petitioner jointly and solidarily liable with the other PUP officials and employees for reimbursement of subject audit disallowances.

Before delving into the merits of the case, the timeliness of the petition must first be looked into and passed upon.

Respondent maintains that the petition must be denied on the ground of late filing; pointing out that on July 15, 1993, when the petitioner presented his motion for extension of time for the filing of a petition for review of COA Decision No. 2826, almost two months had already lapsed from the time of receipt of subject decision on May 30, 1993 and not on June 15, 1993, as theorized upon by petitioner. It is also claimed that on August 2, 1989, when petitioner filed a motion for reconsideration of COA Decision No. 2826, dated July 24, 1989, the eight (8) days that had lapsed must be deducted from the mandatory period of thirty days for filing a petition for certiorari. It is then submitted that the petitioner had only twenty-two days left, from May 30, 1993, within which to bring his petition.

Petitioner, on the other hand, insisted that he received a copy of COA Decision No. 2826 on June 15, 1993, such that when he prayed for an extension of time within which to file his petition, on July 15, 1993, the said motion was seasonably presented within the thirty-day period.

At the outset, it must be stressed that the COA Decision petitioner appeals from is COA Decision No. 2826 dated April 12, 1993, the last decision of the Commission on Audit on the matter. Consequently, the thirty day period for filing a petition for certiorari should be reckoned from the date subject decision was received by the petitioner. Our pivot of inquiry therefore is the true date petitioner received COA Decision No. 2826.

As evinced by the allegations of the parties, the issue at bar is factual in nature. Normally, this Court does not rule on a question of fact. However, since the factual issue aforesaid is relevant to the resolution of the issue of

timeliness of filing of the petition, the Court may rule on this question.

Respondent contends that subject decision was received by petitioner, through his secretary, on May 30, 1993. On the other hand, it is petitioner's submission that he received such decision on June 15, 1993, when a copy thereof was sent to his residence by PUP President Zenaida Olonan as he was then on official sick leave from PUP.

Petitioner's allegation that he received the decision only on June 15, 1993 finds support in the evidence that he was, in fact, on official sick leave from PUP, as shown by Annex "A" - a medical certificate from Lyceum Northwestern General Hospital in Dagupan City stating that petitioner was under the hospital's medical care, Annex "A-1" - petitioner's approved application for leave from PUP for the period April 12 to May 31, 1993 and Annex "A-2" - petitioner's approved application for leave for the period June 1-30, 1993. It is thus understandable that petitioner received subject decision by registered mail on June 15, 1993 and his motion for extension of time sent in on July 15, 1993 was filed on the thirtieth day, within the 30-day reglementary period.

Assuming arguendo that the thirty days for filing a petition for certiorari had already lapsed, this Court may still allow and, in fact, has allowed some meritorious cases to proceed despite the procedural defect or lapse; in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.[1]

Going into the merits of the case, the Court finds that the Commission on Audit acted with grave abuse of discretion in handing down its assailed decision. The various disbursements upon which petitioner's liability is based have not been indubitably established as patently invalid or irregular and the disallowances ordered by COA were not substantiated by sufficient evidence on record.

To begin with, as regards the items disallowed on the ground of overpricing, petitioner was adjudged liable therefor because he was a member of the Canvass and Award Committee which was tasked to certify that the prices submitted were the lowest and which recommended the award to the supplier. The disallowances were made on the basis of respondent's allegation or theory that the school and other office supplies may be bought from other suppliers at prices much lower than those of the supplier to whom the bid was awarded.

In order to find out how the COA reached such a conclusion, petitioner asked the COA to furnish him with the necessary information and/or documents that would indicate the large disparity in the prices such as the quotation of prices of every item re-canvassed by the resident auditor, reflecting the brand or quality of the items, the names and addresses of the suppliers where the items were re-canvassed and the date subject items were re-canvassed. Respondent COA, however, did not furnish the same on the two occasions that the said request was made. Without the necessary information and/or documents, it baffles the Court how COA could have arrived at the conclusion that there were cases of overpricing. And without the needed information and/or documents, the petitioner was not afforded the opportunity to refute the disallowances, item by item, and to justify the legality of the purchases involved. As argued by the petitioner,

"How can the undersigned (petitioner) determine the difference in prices and per cent increases between the then procurement officer's canvassed prices and the then COA Auditor's re-canvassed prices and possibly justify item by item the legality of the purchase when as you said 'no such document as you indicated above were turned-over to the undersigned (present PUP COA Auditor)'? The purchase orders contain several items and it is important that those items which were allegedly overpriced should be identified."

The requirements of due process of law mandate that every accused or respondent be apprised of the nature and cause of the charge against him, and the evidence in support thereof be shown or made available to him so that he can meet the charge with traversing or exculpatory evidence. COA's failure to furnish or show to the petitioner the

inculpatory documents or records of purchases and price levels constituted a denial of due process which is a valid defense against the accusation. Absent any evidence documentary or testimonial to prove the same, the charge of COA against the herein petitioner must fail for want of any leg to stand on.

In the 1991 decision in the case of Virgilio C. Arriola and Julian Fernandez vs. Commission on Audit and Board of Liquidators,[2] rendered on September 30, 1991, which was reiterated in the case of National Center for Mental Health Management vs. Commission on Audit on December 6, 1996,[3] this Court succinctly held that mere allegations of overpricing are not,

" `x x x in the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects.'

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:

`x x x As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality, special features of units purchased and the like x x x'

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.

xxx xxx xxx

We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. xxx

xxx xxx xxx

It was incumbent upon the COA to prove that its standards were met in its audit disallowance. The records do not show that such was done in this case.

x x x absent due process and evidence to support COA's disallowance, COA's ruling on petitioner's liability has no basis."

Indeed, without the evidence upon which the charge of overpricing is anchored, apart from being a denial of due process, it would not be possible to attach liability to petitioner.

As regards the disallowance of the PUP President's monthly housing allowance of P500.00, COA contends that subject disbursement was disallowed for "lack of legal basis". However, the petitioner herein has pointed out the proper basis for such housing allowance. Evidence on record includes a copy of the resolution of the PUP Board of Trustees, Resolution No. 1445 dated February 4, 1977, authorizing the grant of commutable housing allowance to the head of the College and a certification from the PUP Cashier attesting to the payment of similar monthly housing allowance to past Presidents of the institution (PUP).

The said Resolution of the Board of Trustees of PUP authorizing a housing allowance was a sufficient basis for the disbursement. As the Solicitor General stated in his Comment, it is beyond petitioner's competence to pass upon the validity of such board resolution, his duty with respect thereto being purely ministerial. Petitioner could

not have questioned the grant of housing allowance as his task was just to certify that the disbursement was properly supported by the Resolution of the PUP Board of Trustees. It was an error for respondent COA to hold him liable in connection with subject disbursement.

Anent the charge of short delivery of four units of typewriter, respondent COA held petitioner accountable for the four undelivered typewriters for the reason that the disbursement voucher bears his certification that the purchase was duly supported by the requisite documents although the delivery of the 125 total units purchased was short of four units.

However, pertinent records indicate that the four typewriters in question were delivered on January 6, 1984 under Delivery Receipt No. 155526 with the notation - "To complete delivery per MN # 68446 (Sales Invoice)". Sales Invoice 68466 is the original receipt for the 125 units of typewriter purchased. But as explained by petitioner, upon delivery of the 125 typewriters he ordered the return of the four units which were defective, such that the four units involved were covered by a different delivery receipt. The fact of delivery thereof is also evidenced by a gate pass, dated January 6, 1984, containing a list of the items that were transported on said date, including the four units of typewriter bearing serial numbers 32209353, 32209340, 32209864 and 32109158, respectively. The same was likewise certified to by PUP Property Inspector Juan del Rosario under his Management Inspection Report dated March 19, 1984 and by Property Officer Adolfo Aquino under the corresponding Memorandum Receipt of March 20, 1984.

The existence of the missing typewriters is also borne out by a certification dated September 3, 1993 of PUP Internal Auditor Sylvia A. Sarmiento to the effect that two Triumph typewriters with serial numbers 32209353 and 32209340 have been located at Rooms W306 and E311 and their physical existence verified.

So also, with respect to the emergency purchase and advance delivery of supplies disallowed by COA for lack of supporting canvass and purchase order, it appears that subject purchases were upon the orders of PUP President Pablo Mateo who was authorized to determine and decide on emergency purchases. The determination of whether certain supplies were urgently needed was the prerogative of the PUP President. Whenever he certified to the necessity of disbursement for emergency procurements, petitioner was not in any position to question the wisdom of such decision of the PUP President.

Respondent contends that under COA Circular 78-84, emergency purchases can only be made (1) whenever the supplies, materials and equipment are exceptionally urgent or absolutely indispensable to prevent immediate danger to, or loss of, life and/or property and (2) whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to public service; and that the petitioner did not show that the emergency purchases in question were proper.

Again, it was an error for COA to rule that petitioner had the burden of showing that the said purchases were exceptionally urgent or absolutely indispensable to prevent immediate danger to, or loss of, life and/or property or were to be used in connection with the project or activity which could not be delayed without jeopardizing public service. The PUP president is the one authorized to act on and determine the necessity of such procurement. The circular cited by respondent COA requires, among others, a "certificate by the head of the agency or his duly authorized representative as to the necessity and justification for the emergency purchase". The head of the agency referred to is no other than the PUP president. As accounting officer, petitioner's duty was merely to sign the vouchers for the disbursement of the funds therefor. And because the purchases were exceptionally urgent, the usual canvass procedure was not resorted to.

With regard to the payment of ITT telephone system to Asia Pacific Philippines, Inc., respondent also erred in adjudging petitioner liable for certifying that an allotment thereof was approved and available when in fact there

was no appropriation for that purpose.

Petitioner has established that in 1983, the Department of Budget and Management approved and released an allotment for the purchase of ITT telephone system for PUP but the contract with the original supplier thereof was rescinded due to the failure of the supplier to deliver the same. Thus, in 1985, when PUP decided to purchase the needed telephone system from Asia Pacific Phils., Inc., petitioner prepared and signed the corresponding disbursement voucher as the allotment funds therefor were intact and still available. As satisfactorily explained by petitioner, his only duty under the circumstances was to state that an allotment for the purchase of subject telephone system was existing. Respondent's finding that there was no appropriation for the purpose is therefore erroneous.

As regards the disallowance of the payment of gasoline and toll gate fees for alleged lack of legal and proper documents supporting the same, the evidence on record shows that there are attached to the covering disbursement voucher duly approved driver's tickets and receipts.

Disallowance in audit by the Commission on Audit may be set aside and nullified by the Supreme Court if tainted with grave abuse of discretion.[4] In the case under scrutiny, petitioner has amply shown that the COA disallowance in audit sued upon was attended by grave abuse of discretion warranting its nullification.

WHEREFORE, the petition is hereby GRANTED and Decision No. 2826 of the Commission on Audit REVERSED and SET ASIDE. No pronouncement as to costs.

SO ORDERED.

Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Davide, Jr., C.J., in the result.

Puno, J., No part. Related to counsel.

[1] Aurora Land Projects Corp., et al. vs. NLRC, G.R. No. 114733, Jan. 3, 1997; Republic of the Philippines vs. Sandiganbayan, G.R. No. 113420, March 7, 1997; Pampanga Sugar Development Co., Inc. vs. NLRC, G.R. No. 112650, May 29, 1997; Nerves vs. Civil Service Commission, G.R. No. 123561, July 31, 1997; Mauna vs. Civil Service Commission, 232 SCRA 388.

[2] G.R. No. 90364, 202 SCRA 147

[3] G.R. No. 114864, 265 SCRA 390

[4] CIR vs. COA, 218 SCRA 203

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