

**DANTE M. POLLOSO, PETITIONER, VS. HON. CELSO D. GANGAN,
CHAIRMAN, COMMISSION ON AUDIT, HON. RAUL C. FLORES,
COMMISSIONER, COMMISSION ON AUDIT, HON. EMMANUEL M.
DALMAN, COMMISSIO...**

G.R. No. 140563. July 14, 2000

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Before this Court is a petition for review from the decision of the Commission on Audit (COA), dated 28 September 1999 of herein petitioner Dante M. Polloso, from the disallowance by the COA Unit Auditor of the amount of P283,763.39 representing payment of legal services rendered by Atty. Benemerito A. Satorre to the National Power Corporation (NPC).

The facts of the case are undisputed.

In 1994, the National Power Corporation (NPC), represented by its President Dr. Francisco L. Viray entered into a service contract with Atty. Benemerito A. Satorre. Under said contract, Satorre was to perform the following services for the Leyte-Cebu and Leyte-Luzon Interconnection Projects of the NPC:

- Provide services on administrative and legal matters.
- Facilitate, coordinate between the Office of the Project Director and the Project Manager, and the Office of the Regional Legal Counsel and other NPC Offices, Local Government Units and Agencies of Government involving administrative cases and legal problems.
- Provide direction, supervision, coordination and control of right-of-way activities in the project.
- Perform other pertinent services as may be assigned him by the Project Director and Project Manager from time to time.[1]

The contract provided that in consideration for services rendered, Satorre would receive a monthly salary P21,749.00 plus representation and transportation allowance of P5,300.[2]

On 12 January 1995, Unit Auditor Alexander A. Tan, NPC-VRC, Cebu City issued Notice of Disallowance No. 95-0001-135-94 for the payment of the services rendered by Atty. Satorre for the period covering March to December 1995 in the total amount of P283,763.39. The following reasons were cited for said disallowance:

1)

The contract for services did not have the written conformity and acquiescence of the Solicitor General or the Corporate Counsel and concurrence of the Commission on Audit as required under COA Circular No. 86-255 dated April 2, 1986.

2

The contract was not supported with Certificate of Availability of Funds as required under Sec. 86 of P.D. 1445.

3)

The contract was not submitted to the Civil Service Commission for final review and was not forwarded to the Compensation and Position Confirmation and Classification Bureau, DBM for appropriate action as required in CSC MC # 5 Series of 1985.[3]

Accordingly, the following were held to be personally liable for the amounts due to Atty. Satorre: Dr. Francisco Viray, NPC contracting party; Manolo C. Marquez, for certifying the claim as necessary, lawful and authorized; Andrea B. Roa and Romeo Gallego, for verifying the supporting documents to be complete and proper; Jesus Aliño, for reviewing the supporting documents to be complete and proper; Dante M. Polloso, Project Manager II, Leyte-Cebu Interconnection Project (LCIP), National Power Corporation-Visayas Regional Center, for approving the claim; and Benemerito Satorre, as the payee.[4]

On 27 January 1995, only petitioner Dante Polloso submitted a letter-explanation refuting the alleged violation contained in the Notice of Disallowance and sought reconsideration thereof.[5] This was denied by the Unit Auditor in a resolution, dated 30 March 1995.[6]

On 10 October 1995, petitioner appealed the denial of the Unit Auditor to the Regional Director, COA Regional Office No. VII;[7] the latter denied the same.[8]

On 29 June 1998, a petition for review was filed before the Commission Proper, Commission on Audit, Central Office.[9] On 29 October 1999, the COA issued the decision assailed before this Court. The dispositive portion thereof, reads:

Thus, it is crystal clear from the aforequoted provision of law and regulations that the service contract entered into by and between the National Power Corporation and Atty. Satorre is in contravention thereof.

Upon the foregoing considerations, the instant appeal of MR. DANTE M. POLLOSO, has to be, as it is hereby denied. Accordingly, the disallowance of P283,763.39 is hereby affirmed.[10]

Hence, this appeal, petitioner raising the following issues:

I

DOES THE PROHIBITION UNDER COA CIRCULAR NO. 86-255 DATED APRIL 2, 1986 AND SEC. 212 OF THE GOVERNMENT ACCOUNTING AND AUDITING MANUAL IMPOSED ON GOVERNMENT AGENCIES FROM HIRING PRIVATE LAWYERS "TO HANDLE THEIR LEGAL CASES" APPLY TO A LAWYER HIRED BY VIRTUE OF A SERVICE CONTRACT BUT WHO ACTUALLY HANDLE PURELY RIGHT-OF-WAY MATTERS (EXCLUDING HANDLING OF COURT CASES)?

II

WILL COA CIRCULAR NO. 86-255 DATED APRIL 2, 1986 AND SEC. 212, VOLUME I OF THE GOVERNMENT ACCOUNTING AND AUDITING MANUAL OPERATE TO RESTRICT THE PRACTICE OF THE LAW PROFESSION AND THEREFORE REPUGNANT TO SEC. 5, ARTICLE VII OF THE 1987 PHILIPPINE CONSTITUTION?

III

DOES SECTION 38, CHAPTER 9, BOOK I OF EXECUTIVE ORDER NO. 292, OTHERWISE KNOWN

AS THE ADMINISTRATIVE CODE OF 1987 APPLY TO PETITIONER FOR HAVING ACTED IN GOOD FAITH AND WITHOUT MALICE AND MERELY IMPLEMENTED A VALID CONTRACT ENTERED INTO BY THE PRESIDENT OF THE NATIONAL POWER CORPORATION?

IV

DOES THE PRINCIPLE OF "QUANTUM MERUIT" APPLY TO THE SERVICES RENDERED BY ATTY. SATORRE WHICH BENEFITTED THE NATIONAL POWER CORPORATION?[11]

The petition is without merit.

In the main, petitioner posits that the phrase "handling of legal cases" should be construed to mean as conduct of cases or handling of court cases or litigation and not to other legal matters, such as legal documentation, negotiations, counseling or right of way matters.

To test the accuracy of such an interpretation, an examination of the subject COA Circular is in order:

SUBJECT: Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases.

It has come to the attention of this Commission that notwithstanding restrictions or prohibitions on the matter under existing laws, certain government agencies, instrumentalities, and government-owned and/or controlled corporations, notably government banking and financing institutions, persist in hiring or employing private lawyers or law practitioners to render legal services for them and/or to handle their legal cases in consideration of fixed retainer fees, at times in unreasonable amounts, paid from public funds. In keeping with the retrenchment policy of the present administration, this Commission frowns upon such a practice.

Accordingly, it is hereby directed that, henceforth, the payment out of public funds of retainer fees to private law practitioners who are so hired or employed without the prior written conformity and acquiescence of the Office of the Solicitor General or the Government Corporate Counsel, as the case may be, as well as the written concurrence of the Commission on Audit shall be disallowed in audit and the same shall be a personal liability of the officials concerned. [underscoring supplied]

What can be gleaned from a reading of the above circular is that government agencies and instrumentalities are restricted in their hiring of private lawyers to render legal services or handle their cases. No public funds will be disbursed for the payment to private lawyers unless prior to the hiring of said lawyer, there is a written conformity and acquiescence from the Solicitor General or the Government Corporate Counsel.

Contrary to the view espoused by petitioner, the prohibition covers the hiring of private lawyers to render any form of legal service. It makes no distinction as to whether or not the legal services to be performed involve an actual legal controversy or court litigation. Petitioner insists that the prohibition pertains only to "handling of legal cases," perhaps because this is what is stated in the title of the circular. To rely on the title of the circular would go against a basic rule in statutory construction that a particular clause should not be studied as a detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its part.[12] Petitioner, likewise, insists that the service contract in question falls outside the ambit of the circular as what is being curtailed is the payment of retainer fees and not the payment of fees for legal services actually rendered.

A retainer fee has been defined as a "preliminary fee to an attorney or counsel to insure and secure his future services, and induce him to act for the client. It is intended to remunerate counsel for being deprived, by being retained by one party, of the opportunity of rendering services to the other and of receiving pay from him, and payment of such fee, in the absence of an express understanding to the contrary, is neither made nor received in

payment of the services contemplated; its payment has no relation to the obligation of the client to pay his attorney for the services for which he has retained him to perform." [13] To give such a technical interpretation to the term "retainer fees" would go against the purpose of the circular and render the same ineffectual. In his resolution, Unit Auditor Alexander Tan expounded on the purpose of the circular, as enunciated therein:

On the claim that COA Circular 86-255 is not applicable in this case because the inhibition provided for in said Circular relates to the handling of legal cases of a government agency and that the contractor was not hired in that capacity but to handle legal matters (sic) involving right-of-way, it is maintained that the contracted service falls within the scope of the inhibition which clearly includes "the hiring or employing private lawyers or law practitioners to render legal services for them and/or to handle their legal cases..." Moreover, it is important to mention that the intention of said Circular is to curb the observed and persistent violation of existing laws and regulations, including CSC MC # 5 series of 1985 pertaining to the employment of private lawyers on a contractual basis in government agencies which involves the disbursement of public funds by subjecting the same to the conformity and concurrence requirements of said Circular. Being so, the manner of agreed payment or consideration, whether termed as a fixed retainer basis or a fixed contract price patterned after existing salary scale of existing and comparable positions in NPC-VRC is immaterial as both still involve the outlay of public funds and also the contractual employment/hiring of a private lawyer.

Hence, while the circular uses the phrase "retainer fees," such should not be given its technical interpretation but should mean any "fee" paid for any legal service rendered. As pointed out by the Office of the Solicitor General, any interpretation of subject circular to the contrary would open the floodgate to future circumventions thereof by the simple expedience of hiring private lawyers to service the legal needs of the government not on a retainer basis but by way of service contract akin to that which Atty. Satorre and the NPC entered into. [14] No dictum is more fundamental in statutory interpretation than that the intent of the law must prevail over the letter thereof, for whatever is within the spirit of the statute is within the statute, since adherence to the letter would result in an absurdity, injustice and contradictions and would defeat the plain and vital purpose of the statute. [15]

It bears repeating that the purpose of the circular is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government. This is in line with the Commission on Audit's constitutional mandate to promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties. [16] Having determined the intent of the law, this Court has the imperative duty to give it effect even if the policy goes beyond the letter or words of the statute. [17]

Hence, as the hiring of Atty. Satorre was clearly done without the prior conformity and acquiescence of the Office of the Solicitor General or the Government Corporate Counsel, as well as the written concurrence of the Commission on Audit, the payment of fees to Atty. Satorre was correctly disallowed in audit by the COA.

Thus being said, it is no longer necessary to delve into whether or not the hiring of Atty. Satorre is in accord with the rules of the Civil Service Commission.

Petitioner's claim that the Circular is unconstitutional for being an invalid restriction to the practice of the law profession, is clearly bereft of any merit. The Government has its own counsel, which is the Office of the Solicitor General headed by the Solicitor General, [18] while the Office of the Government Corporate Counsel (OGCC) acts as the principal law office of the government-owned or controlled corporations. [19] It is only in special cases where these government entities may engage the services of private lawyers because of their expertise in certain fields. The questioned COA circular simply sets forth the prerequisites for a government agency instrumentality in hiring a private lawyer, which are reasonable safeguards to prevent irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties. We fail to see how the restrictions

contained in the COA circular can be considered as a curtailment on the practice of the legal profession.

Anent petitioner's argument that he cannot be held liable for effecting payment of the disallowed amount because he is not privy to the service contract, we find the same to be unmeritorious. This is because petitioner's liability arose from the fact that as project manager, he approved the said claim. In addition, his assertion that a refusal on his part to certify payment of the same would subject him to criminal and civil liabilities cannot hold water simply because it was his duty not to approve the same for payment upon finding that such was irregular and in contravention of COA Circular No. 86-255, dated 2 April 1986.

We cannot grant the prayer of the petitioner that Atty. Satorre should be compensated based on the principle of quantum meruit, on the ground that the government will be unjustly enriched at the expense of another. We do not deny that Atty. Satorre has indeed rendered legal services to the government. However to allow the disbursement of public funds to pay for his services, despite the absence of requisite consent to his hiring from the OSG or OGCC would precisely allow circumvention of COA Circular No. 86-255. In any event, it is not Atty. Satorre who is liable to return the money already paid him, rather the same shall be the responsibility of the officials concerned, among whom include herein petitioner.

WHEREFORE, the petition is hereby DENIED for lack of showing that the respondents committed a reversible error.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and De Leon, Jr., JJ., concur.

[1] Rollo, pp. 21-22.

[2] Id., at 22.

[3] Id., at 25.

[4] Id., at 25-27.

[5] Id., at 28.

[6] Id., at 30-32.

[7] Id., at 33-37.

[8] Id., at 38.

[9] Id., at 39-53.

[10] Id., at 56.

[11] Id., at 10.

[12] *Sarcos v. Castillo* 26 SCRA 853, 862 (1969)

[13] Ernesto L. Pineda, CODE OF PROFESSIONAL RESPONSIBILITY, (citing 7 C.J.S. 1019; *Hilado vs. David*, 84 Phil. 579) p. 225.

[14] Rollo, p. 79.

[15] *Peralta vs. Civil Service Commission*, 212 SCRA 425 (1992), citing *Hidalgo vs. Hidalgo*, 33 SCRA 105 (1970)

[16] Section 2(2), Article X-D, 1987 CONSTITUTION.

[17] *Luzon Stevedoring Corporation vs. Anti-Dummy Board*, 46 SCRA 474, 488 (1972)

[18] Sections. 34-37, Chapter 12, Title III, Book IV, ADMINISTRATIVE CODE OF 1987.

[19] Section 10, Chapter 3, Title III, Book IV, ADMINISTRATIVE CODE OF 1987.

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