

MANUEL LEYCANO, JR., PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. NO. 154665. February 10, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Commission on Audit (COA) Decision No. 2002-129 dated July 18, 2002 which denied petitioner's appeal of the Notices of Disallowance Nos. 99-001-221 (95) to 99-005-221 (95), all dated June 10, 1999, is being challenged in the present Petition for Certiorari.

Petitioner Manuel Leycano, Jr. was the Provincial Treasurer of Oriental Mindoro and at the same time a member of the Provincial School Board (PSB) of that province.[1] During his tenure, he was appointed by the PSB as a member of its Inspectorate Team which, according to him, had the function of "monitoring the progress of PSB projects."

In the year 1995, several checks were issued to various private contractors in connection with the repair, rehabilitation, and construction projects covered by the Special Education Fund (SEF)[2]of Oriental Mindoro in the following public schools:

- Bethel Elementary School
- Papandungin Elementary School
- Palangan Elementary School
- Bayanan II ES
- Calingag ES
- Nabuslot CS
- Batino ES
- Calapan CS
- D. Safaden MS
- B. del Mundo ES
- Bansud Proper ES
- Bansud CS
- P. Tolentino MS
- Malaya ES

- Ordivilla ES
- Casiligan ES
- Pola CS
- Bayuin ES
- Malad ES
- Malayas ES
- Manual HS
- Suqui ES
- San Antonio ES
- Nabuslot NHS
- Melgar MS

The Special Audit Team, COA Regional Office No. IV, headed by State Auditor Joselyn Cirujano (the Auditor), subsequently audited selected transactions under the SEF of the Province of Oriental Mindoro, among which were the abovementioned projects (the projects).

The Special Audit Team found deficiencies in the projects, hence, it issued the questioned Notices of Disallowance holding petitioner, along with Sangguniang Panlalawigan Member Remedios Marasigan and Schools Division Superintendent Benjamin Cruz, liable for signing the Certificates of Inspection (the dates of which have not been alleged by either party) relative to the projects and thereby falsely attesting to their 100% completion.

The Notices also held liable the following officers for having certified or reported the 100% completion of the projects: Provincial Engineer Elmer Dilay, Engineering Assistant Gerardo Ilagan, Municipal Treasurer Nelson Buñag, Chief of Planning and Programming Section Venancio Austria, and Maintenance and Construction Foremen Rod Villanueva and Richard Magtibay.

Petitioner appealed the Notices of Disallowance to the COA, through the Regional Director, COA Regional Office No. IV, praying that his name be deleted from among the persons liable.

The Regional Director, by decision embodied in a 1st Indorsement dated June 21, 2000, modified the Auditor's findings by excluding petitioner from those liable, noting inter alia the joint certification of the Schools Division Superintendent and the Provincial Engineer stating that the projects undertaken and charged against the SEF which were found either incomplete or inexistent by the Auditor in 1996 had already been corrected by the contractors concerned. And he certified the case to the Commission Proper pursuant to Rule V Section 6 of the Revised Rules of Procedure of the COA.[3]

On request of the Local Government Audit Office of the COA, the projects were re-inspected by the Technical Audit Specialist, who still found deficiencies in the completion of the projects in the total amount of P1,039,339.57.

The COA, by the assailed Decision dated July 18, 2002, finding no sufficient justification to exclude petitioner from liability, denied his appeal:

Upon all the foregoing considerations, the instant request has to be, as it is hereby denied. However, the

disallowance should be reduced from P1,828,969.66 to P1,039,399.57 based on the result of the reinspection by the Technical Audit Specialist. Accordingly, the Auditor is hereby directed to adjust the [Certificate of Settlement and Balance] and monitor the settlement of the disallowance by the persons named liable under the Notices of Disallowance and to submit a periodic report thereon to the Commission.

Hence, the present petition. Petitioner faults the COA for having "committed reversible error in the interpretation/application of the law and acted with grave abuse of discretion amounting to excess of jurisdiction in the appreciation of the facts and evidence presented," in support of which he advances the following arguments:

- COA relied solely on the findings of the State Auditor;
- COA made erroneous findings of fact and law;
- Audit report is not in accordance with prescribed Auditing Standard
- Audit Report was meant to harass

The first and second arguments are inter-related and will be discussed together.

Petitioner admits having signed the Certificate of Inspection in which he attested that the projects were 100% completed. Significantly, he does not dispute the finding of the COA that the subject projects were not completed. He alleges, however, that the COA overlooked the fact that the PSB merely intended the Inspectorate Team, of which he was a member, to perform monitoring functions, leaving the strict implementation and supervision of the projects in the hands of the Provincial Engineering Office. He thus concludes that he is not the accountable officer and instead points to the Project Engineer and Provincial Engineer, who are in charge of the supervision and control of PSB Projects.

In support of his claim that the duty of strict supervision over PSB projects belongs to the Provincial Engineering Office and not to the Inspectorate Team, petitioner invokes PSB Resolution No. 05-96 APPROVING AND ADOPTING THE NEW GUIDE-LINES/PROCEDURES IN THE IMPLEMENTATION OF PSB PROJECTS approved on March 25, 1996. These new guidelines/procedures are in the form of a flow chart indicating the different stages in the implementation of PSB projects from "INCOMING REQUEST" to "PAYMENT."

At the outset, it bears stressing that petitioner's reliance on this Resolution is misplaced, as the same was approved by the PSB only on March 25, 1996, whereas all the checks paid to the concerned contractors herein were issued in the year 1995.

But assuming arguendo that the above-said PSB Resolution accurately reflects the functions of the Inspectorate Team at the time the events relevant to this case occurred, it only refutes, rather than strengthens, petitioner's contention that the Team was created "merely for monitoring functions."

The flow chart[4] clearly shows that, after the PROJECT IMPLEMENTATION stage, the project must be inspected by the PROJECT INSPECTORATE TEAM before there can be ACCEPTANCE/TURNOVER and thereafter, PAYMENT. Notably, there is no indication that the Inspectorate Team is an unessential part of the process such that payment may be released to contractors even before it has performed its functions, as petitioner seems to imply when he claims that it merely performs monitoring functions. Rather, it can be deduced from the flow chart that prior examination of the project by the Inspectorate Team is necessary before there can be acceptance or turnover of PSB projects and payment to the contractors concerned.

In light of this function of the Inspectorate Team, its members may be held liable by the COA for any irregular expenditure of the SEF if their participation in such irregularity can be established. While petitioner, in his capacity as member of the Inspectorate Team, is not an accountable officer as contemplated in Section 101 of P.D. No. 1445,[5] which states:

SEC. 101. Accountable officers; bond requirement. – (1) Every officer of any government agency whose duties permit or require the possession or custody of government funds or property shall be accountable therefor and for the safekeeping thereof in conformity with law.

(2) Every accountable officer shall be properly bonded in accordance with law,

he may, nonetheless, be held liable by the COA under the broad jurisdiction vested on it by the Constitution "to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government." [6] In addition, the authority of the COA to hold petitioner liable is also implied in its duty 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." [7]

Furthermore, Section 340 of the Local Government Code (LGC) clearly provides:

SECTION 340. Persons Accountable for Local Government Funds. — Any officer of the local government unit whose duty permits or requires the possession or custody of local government funds shall be accountable and responsible for the safekeeping thereof in conformity with the provisions of this Title. Other local officers who, though not accountable by the nature of their duties, may likewise be similarly held accountable and responsible for local government funds through their participation in the use or application thereof. (Emphasis and underscoring supplied)

Since, as earlier noted, payment should not be made to a contractor without the prior inspection of the project by the Inspectorate Team, the members thereof who sign the certificate of inspection participate in the use and application of local government funds (in this case, the Special Education Fund of the Province of Oriental Mindoro). Thus, if there is an irregularity in the performance of this duty, they may be held liable for any loss that is incurred by the government as a consequence thereof. In this case, there was such irregularity when petitioner and other members of the Team attested to the 100% completion of the projects notwithstanding their undisputed deficiencies.

In another vein, petitioner argues that his membership in the Inspectorate Team is not a valid basis for the COA to exercise jurisdiction over him since, by his claim, the creation of such Team is null and void, it being beyond the powers of the PSB as defined by the LGC.

It bears noting, however, that Section 99(b) of the LGC, which enumerates the functions of the PSB, provides that the PSB shall "[a]uthorize the provincial, city, or municipal treasurer, as the case may be, to disburse funds from the Special Education Fund pursuant to the budget prepared and in accordance with existing rules and regulations." While this provision does not mandate the PSB to create inspectorate teams, it implicitly empowers the PSB to institute measures for ascertaining that the disbursements intended will, in fact, be in accordance with the prepared budget. The creation of the Inspectorate Team in this case may be considered as one such measure and is, therefore, not null and void.

Petitioner, nonetheless, invokes good faith, claiming that he merely relied on the reports and representations of subordinates and other officers that the subject projects were already completed.

Specifically, petitioner alleges that, due to the geographical location of the various PSB projects, coupled with his

immense responsibilities as Provincial Treasurer, he had to delegate the actual inspection of PSB projects to the Municipal Treasurers. Moreover, he claims that he was convinced to sign the Certificate of Inspection by the representation of the Project Engineer and Provincial Engineer appearing in the Statements of Work Accomplished that there was 100% project completion, as well as by the existence of Acceptance Reports issued by officials of the Department of Education Culture and Sports (DECS).

Petitioner concludes that he cannot be held liable in view of the doctrine enunciated in *Arias v. Sandiganbayan*, to wit:

We can, in retrospect, argue that *Arias* should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.[8] (Emphasis and underscoring supplied)

Circumstances obtaining in this case, however, preclude the application of *Arias*.

To begin with, when petitioner signed the certificate of inspection, he was acting not in his capacity as treasurer but as a member of the Inspectorate Team. The function of inspecting PSB projects is not among the duties of a treasurer enumerated in Section 470 of the LGC.[9] Since, petitioner was not then acting as a head of office, *Arias* finds no application.

Significantly, petitioner himself acknowledges the distinction between his office as treasurer and his position as member of the Inspectorate Team. In fact, he takes it to the extreme, arguing that, in his capacity as member of the Team, he was not even a public officer: "It is admitted that herein petitioner being then the Provincial Treasurer of Oriental Mindoro was a public officer. But there is a clear and unmistakable distinction between the Office of Provincial Treasurer and membership in the PSB Inspectorate Team. As a member of the PSB, petitioner was not vested with public office as such." (Underscoring supplied) If, as petitioner argues, he was not a public officer in his capacity as member of the Inspectorate Team, then he certainly could not have been a head of office in such capacity.

Moreover, the application of *Arias* may be barred in certain cases in view of exceptional circumstances. Thus, in *Cruz v. Sandiganbayan*, this Court ruled:

Unlike in *Arias*, however, there exists in the present case an exceptional circumstance which should have prodded petitioner, if he were out to protect the interest of the municipality he swore to serve, to be curious and go beyond what his subordinates prepared or recommended. In fine, the added reason contemplated in *Arias* which would have put petitioner on his guard and examine the check/s and vouchers with some degree of circumspection before signing the same was obtaining in this case.

We refer to the unusual fact that the checks issued as payment for construction materials purchased by the municipality were not made payable to the supplier, Kelly Lumber, but to petitioner himself even as the disbursement vouchers attached thereto were in the name of Kelly Lumber. The discrepancy between the names indicated in the checks, on one hand, and those in the disbursement vouchers, on the other, should have

alerted petitioner - if he were conscientious of his duties as he purports to be - that something was definitely amiss. x x x[10] (Emphasis and underscoring supplied)

Such an exceptional circumstance exists in the present case. Assuming again that PSB Resolution No. 05-96, which petitioner cites, accurately reflects the functions of the Inspectorate Team in the implementation of PSB projects, it should have been clear to petitioner that the acceptance or turnover of PSB projects is effected only after these projects have gone through the Inspectorate Team. Thus, petitioner should have perceived the anomaly in the existence of Acceptance Reports executed by DECS officials prior to the Inspectorate Team's assessment of the projects and its issuance of a certificate of inspection. Strangely, rather than being alerted by this circumstance, petitioner even claims that these Acceptance Reports were among his bases for signing the Certificate of Inspection.

The Court, therefore, finds no grave abuse of discretion on the part of the COA when it denied petitioner's appeal.

On the third ground of the petition — that petitioner cannot be held liable for the disallowed amount since the COA released the subject Notices of Disallowance without first issuing a Certificate of Settlement and Balances (CSB) and a Notice of Suspension, the same is bereft of merit.

Section 3.5 of the Manual on Certificate of Settlement and Balances prescribed by COA Circular No. 94-001,[11] cited by petitioner, defines "Certificate of Settlement and Balances" as "[a] written notification by the auditor to the agency head and the accountable officer concerned of the total suspensions, disallowances and charges found in audit, as well as the total settlements thereof." Section 11.1.1 of the same document states that the CSB "summarizes all suspensions, disallowances and charges found in audit, including settlements thereof, as of a given date." It can thus be gathered from the Manual that the CSB is a mere summary of findings in audit which is furnished to the officers concerned. In the present case, the alleged failure to issue the CSB could not have prejudiced petitioner, since he was already amply notified by the COA of his total liability through the issuance of the subject Notices of Disallowance which were all received by him on the same day.[12]

Neither is petitioner's contention that a Notice of Suspension should have been issued prior to a Notice of Disallowance impressed with merit. "Suspension" is defined by Section 3.18 of the Manual as "[t]he deferment of action to allow or disallow in audit a transaction pending compliance with certain requirements." A Notice of Suspension, as provided in Section 11.2 of the Manual, informs the concerned officer of the requirements he must submit to the auditor so that the suspension may be lifted.[13] In the present case, petitioner is being held liable, not for failure to submit any required document, nor even for the deficiency in the projects themselves, but for his act of certifying the 100% completion of these projects when, in fact, they were not completed. Thus, a Notice of Suspension would have served no purpose in this case.

In light of the foregoing discussions, consideration of petitioner's fourth argument has become unnecessary. WHEREFORE, the petition is DISMISSED.

Costs against petitioner.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares- Santiago, Carpio, Austria-Martinez, Callejo, Sr., Azcuna, Tinga, Chico-Nazario and Garcia, JJ., concur.

Sandoval-Gutierrez, J., on sick leave.

Corona, J., on leave.

[1] Local Government Code of 1991, Section 98(b)(1).

[2]SECTION 309. Special Funds. — There shall be maintained in every provincial, city, or municipal treasury the following special funds:

(a) Special Education Fund (SEF) shall consist of the respective shares of provinces, cities, municipalities and barangays in the proceeds of the additional tax on real property to be appropriated for purposes prescribed in Section 272 of this Code; x x x

SEC. 272. Application of Proceeds of the Additional One Percent SEF Tax. — The proceeds from the additional one percent (1%) tax on real property accruing to the Special Education Fund (SEF) shall be automatically released to the local school boards: Provided, That, in case of provinces, the proceeds shall be divided equally between the provincial and municipal school boards: Provided, however, That the proceeds shall be allocated for the operation and maintenance of public schools, construction and repair of school buildings, facilities and equipment, educational research, purchase of books and periodicals, and sports development as determined and approved by the Local School Board. (Local Government Code of 1991, underscoring supplied)

[3] Section 6. Power of Director on Appeal. - The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

[4]Rollo, p. 14.

[5] ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

[6] CONSTITUTION, Article IX (D), Section 2(1) (underscoring supplied).

[7]CONSTITUTION, Article IX (D), Section 2(2) (underscoring supplied).

[8] G.R. No. 81563, December 19, 1989, 180 SCRA 309, 316.

[9]ARTICLE II. — The Treasurer

SECTION 470. Appointment, Qualifications, Powers, and Duties. — (a) The treasurer shall be appointed by the Secretary of Finance from a list of at least three (3) ranking, eligible recommendees of the governor or mayor, as the case may be, subject to civil service law, rules and regulations.

(b) The treasurer shall be under the administrative supervision of the governor or mayor, as the case may be, to whom he shall report regularly on the tax collection efforts in the local government unit;

(c) No person shall be appointed treasurer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in commerce, public administration or law from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in treasury or accounting service for at least five (5) years in the case of the city or provincial treasurer, and three (3) years in the case of municipal treasurer.

The appointment of a treasurer shall be mandatory for provincial, city and municipal governments;

(d) The treasurer shall take charge of the treasury office, perform the duties provided for under Book II of this Code, and shall:

(1) Advise the governor or mayor, as the case may be, the sanggunian, and other local government and national officials concerned regarding disposition of local government funds, and on such other matters relative to public finance;

(2) Take custody of and exercise proper management of the funds of the local government unit concerned;

(3) Take charge of the disbursement of all local government funds and such other funds the custody of which may

be entrusted to him by law or other competent authority;

(4) Inspect private commercial and industrial establishments within the jurisdiction of the local government unit concerned in relation to the implementation of tax ordinances, pursuant to the provisions under Book II of this Code;

(5) Maintain and update the tax information system of the local government unit;

(6) In the case of the provincial treasurer, exercise technical supervision over all treasury offices of component cities and municipalities; and

(e) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

[10]G.R. No. 134493, August 16, 2005.

[11] Prescribing the use of the Manual on Certificate of Settlement and Balances (Revised 1993).

[12] Rollo, p. 4.

[13]The INSTRUCTIONS IN ACCOMPLISHING THE NOTICE OF SUSPENSION/S and the sample NOTICE OF SUSPENSION included in the appendices of the Manual, give the following examples of such requirements: an authorization from the Department Secretary for foreign travel, bidding documents, and authority to receive honorarium.

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