

STO. CRISTO CONSTRUCTION, REPRESENTED BY ITS PROPRIETOR, NOEL J. CRUZ, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 246777. March 02, 2021

Ponente: DELOS SANTOS, J.

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DELOS SANTOS, J.:

This is a Petition for Certiorari[1] under Rule 64 in relation to Rule 65 of the Rules of Court assailing Decision No. 2018-317[2] dated March 15, 2018 of the Commission on Audit (COA) which affirmed Notice of Disallowance (ND) No. 11-001-101-09/10[3] dated July 11, 2011.

The Facts

Sto. Cristo Construction (petitioner) is a domestic corporation engaged in the construction business. Sometime in 2010, it was awarded government contracts for road rehabilitation/improvement in Mexico, Pampanga.[4] In the same year, the road projects were implemented and completed.

From November 15 to 20, 2010, the Quality Assurance Unit (QAU) of the Department of Public Works and Highways (DPWH) reassessed 10 projects implemented by the DPWH-Pampanga 1[st] District Engineering Office (DEO). Because the reassessment yielded adverse findings, the Audit Team Leader (ATL) requested COA Technical Inspectors to conduct another inspection of the completed projects. The inspection report showed overstatement of embankment materials. Thereafter, the ATL issued four notices of disallowance disapproving the payment in the total amount of P22,626,714.71 for the 10 projects.[5]

One of the four notices was ND No. 11-001-101-09/10 dated July 11, 2011 (subject ND) which disallowed the amount of P14,926,319.76 representing the cost of deficiencies resulting from the overestimates in embankment materials in the total volume of 31,491.60 cubic meters in the projects awarded to petitioner. The persons[6] held liable in the subject ND were:

Persons Liable

Position/Designation

Nature of Participation in the Transactions

Jose G. Datu

District Engineer

[Approval of Program of Works] (POW)/Contract/[Statement of Works Accomplished] (SWA)/Payment

Manuel M. Pasco

Assistant District Engineer

Recommending approval of the transaction

Sotero L. Figureoa

Chief, Construction

Section Preparation of plans/POW/as-built plans and implementation processes

Amor Bien M. Aguas

Chief, Maintenance Section

Member, District Inspectorate Team

Adelwison P. Guevarra

Chief, Materials Quality Control Section

Member, District Inspectorate Team

Angelita Z. Pascual

Chief, Planning & Design Section

Member, District Inspectorate Team

Oscar A. Erese

Project Engineer

Management/Supervision of the project from start to completion

Mario Medina

Resident Engineer

Management/Supervision of the project from start to completion

Noel Cruz

Owner/Manager

Contractor

The officials and personnel of DPWH-Pampanga 1[st] DEO who were held liable filed an appeal arguing that: (1) the recommendations of the ATL have no factual and legal basis since the projects were all pre-audited for partial and final payments; (2) when the pre-audit findings were reversed, erosion and surface run-off have already affected the condition of the projects due to typhoons in 2010; and (3) the subject ND had become moot since the projects were already released and finally paid to the contractor. Being fait accompli, the disallowance cannot be ordered.[7]

In a Letter[8] dated January 9, 2012, Engineer Jose Datu (Engr. Datu), District Engineer of DPWH-Pampanga 1[st] DEO, requested to file an appeal from the four notices of disallowance. He stated that their office had already instructed the contractors identified in the notices of disallowance to institute corrective measures at their own expense considering that the projects were still within their warranty period. He also noted that these corrective measures have been substantially completed.

On January 13, 2012, Audit Observation Memorandum (AOM) No. 12-001[9] was issued showing the

overstatement of embankment materials, as well as the value of the overestimates which amounted to P22,626,714.71.

The Ruling of the COA Regional Office No. III

In Decision No. 2013-41[10] dated June 3, 2013, the COA Regional Director affirmed the four notices of disallowance and declared:

1)

While it is true that pre-audit was adopted in 2010, when the projects in question were implemented, and they were inspected by COA Technical Inspectors whose reports were made as guides by the auditors in allowing payments for first and final claims of the contractors, the fact will not preclude the auditor to re-perform pre-audit activities in post-audit if they are necessary; and

2)

Both the findings of QAU, DPWH and the COA Technical Inspectors are very authoritative compared to the mere general negation of the appellants.[11]

On September 9, 2013, Noel J. Cruz (Cruz), proprietor of petitioner, wrote to Engr. Enrico S. Guilas (Engr. Guilas), Officer-in-Charge, Office of the District Engineer, DPWH-Pampanga 1[st] DEO, requesting for the conduct of mint survey in order to quantify and evaluate the rectifications he has made pursuant to the instructions of Engr. Datu and Engr. Sotero L. Figueroa (Engr. Figueroa), Chief of Construction Section.[12]

On September 13, 2013, Engr. Guilas responded to Cruz and scheduled the mint surveys on several dates of the same month.[13]

On November 13, 2013, the DPWH-Pampanga 1[st] DEO issued a Memorandum[14] confirming the inspection of the projects undertaken by the petitioner. It noted the petitioner's rectification works done outside the approved plan as reflected in the contract.

On February 27, 2014, petitioner filed an Appeal[15] from the subject ND. Cruz averred that the subject ND was not delivered to him personally and that he only obtained a copy of it in 2013. He claimed that the rectifications have been made under the supervision and direction of DPWH representatives and in the presence of the local barangay officials. He likewise alleged that the engineers who inspected the construction sites did not consider the deterioration of the road, the effects of flooding, wear and tear, and the fact that there is no depreciation of the project.[16]

The Ruling of the COA Proper

In Decision No. 2015-11[17] dated April 6, 2015, the COA declared the four notices of disallowance final and executory.

Petitioner moved for reconsideration of the April 6, 2015 Decision. Cruz reiterated that he did not receive the subject ND in violation of his right to due process.

On March 15, 2018, the COA rendered Decision No. 2018-317[18] with the dispositive portion as follows:

WHEREFORE, premises considered, the appeal of Mr. Noel J. Cruz, Proprietor, Sto. Cristo Construction, from Commission on Audit (COA) Regional Office No. III Order of Execution dated July 31, 2012, on the payment for the construction of Multi-Purpose Building, Anderson Elementary School, Arayat, Pampanga, in the

amount of P300,061.51, is deemed MOOT and ACADEMIC, while the appeal from ND No. 11-001-101-09/10 dated July 11, 2011 and Motion for Reconsideration of COA Decision No. 2015-11 dated April 6, 2015, both on the excess payment by the Department of Public Works and Highways-Pampanga 1st [District Engineering] Office, resulting from overestimates in embankment materials in seven infrastructure projects in Mexico, Pampanga, in the total amount of P14,926,319.76, are hereby DENIED for lack of merit.[19]

Considering the lack of service of the subject ND, the COA decided the appeal on its merits.

The COA ratiocinated that there is no showing that rectifications have been made and that they have been confirmed as sufficiently compliant with the COA reevaluation. It opined that if the rectifications were indeed requested by the DPWH and completed by Cruz, the DPWH officials and personnel should have invoked these as defenses in their appeal from the notices of disallowance before the COA Proper. Moreover, it noted that the fact that both the QAU of the DPWH and the COA Technical Inspectors have discovered adverse findings in the reassessment of petitioner's projects reinforces the subject ND. The COA did not find reason to question the technical methods used in said reassessment as the inspecting officers enjoy the presumption of regularity in the performance of their duties.[20]

Hence, this petition.

Arguments of the Parties

Petitioner argues that the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not appreciate the rectification works undertaken by the petitioner in rendering the assailed Decision.

Petitioner asseverates that the COA erred in not giving credence to its claim that the DPWH requested the implementation of the rectification works and that the DPWH found the works sufficient. It stresses that at the time the DPWH officials filed their appeal from the notices of disallowance, it had no knowledge of the disallowance and the rectification works have yet to be undertaken.[21]

Petitioner maintains that the COA violated its right to due process when it rendered the assailed Decision sans proper basis to support the same. It posits that the COA erred when it relied on the presumption of regularity of performance of official duty in arriving at its decision, without properly considering the evidence presented by the petitioner.[22]

The COA, through the Office of the Solicitor General, for its part, maintains that the fact that the DPWH officials did not invoke petitioner's rectifications as defense in their appeal only shows that they were not convinced that the deficiencies found during the evaluation and inspection of the projects had been sufficiently addressed.[23] It declares that the pieces of documentary evidence relied upon by petitioner, are all self-serving because the truthfulness of the contents thereof was not verified nor confirmed by the QAU of the DPWH and the COA Technical Inspectors.[24] It stresses that without the reevaluation or reassessment of the COA Technical Inspectors, a notice of disallowance cannot be reversed or set aside based on a mere certification from the agency being audited that rectifications had already been made on the projects subject of the ND.[25]

The Issue

Whether or not the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it sustained the disallowance of the amount paid to the contractor despite the rectification works undertaken by the latter in the subject infrastructure projects.

The Ruling of the Court

The petition is barren of merit.

Jurisprudence defines grave abuse of discretion as the capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility. The abuse of discretion must be grave, so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[26] In a petition for certiorari under Rule 64 in relation to Rule 65 of the Rules of Court, the petitioner must satisfactorily show that the quasi-judicial authority committed not only a reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed decision, resolution, or order.[27]

An inspection conducted by the COA Technical Inspectors revealed that the road projects of herein petitioner suffered cost deficiencies in the total amount of P14,926,319.76 resulting from overestimates in embankment materials. Prior to said inspection, the QAU of the DPWH uncovered adverse findings when it reassessed petitioner's projects. Petitioner claims that upon receipt of the copy of the subject ND, it made the necessary corrective actions to satisfy the required volume of materials upon the instruction of Engr. Datu and Engr. Figueroa. Thus, it insists that the COA should have reversed its Decision affirming the subject ND since the deficiencies have been sufficiently addressed in its rectification works. But a careful reading of the subject ND and AOM No. 12-001 will show that the petitioner misconstrued the real import of the disallowance. Pertinent portions of the subject ND and AOM No. 12-001 read:

ND No. 11-01-101-09/10

The total amount of P14,926,319.76 was disallowed in audit resulting from over estimates in embankment materials (Item 104) totaling 31,491.60 cubic meters as indicated in the individual Re-Inspection Report for each of the seven (7) infrastructure projects rendered on various dates by the Technical Audit Division-Pampanga Group, COA Regional Office No. III, City of San Fernando, Pampanga.

x x x x

Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowances not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under sections 48 and 51 of P.D. 1445.[28]

AOM No. 12-001

We have reviewed the calendar year 2011 Technical Evaluation Reports rendered by the Technical Audit Specialists in the inspection of various projects implemented by DPWH-Pampanga 1[st] DEO for calendar year 2010 and noted the following observations, to wit:

Over estimates in embankment materials resulting from a re-inspection/re-evaluation often (10) infrastructure projects implemented by the agency for CY 2010.

Deficiencies found in the re-inspection/re-evaluation of ten (10) infrastructure projects conducted by the Technical Audit Specialists-Pampanga Team during the first quarter of 2011 resulted to a total cost deficiency of P22,626,714.71.

Annex "A" of the Revised Implementing Rules and Regulations of R.A. 9184 (Detailed Engineering for the Procurement of Infrastructure Projects) provides that:

"3(d) Quantities – All construction "quantities shall be computed to a reasonable accuracy of not more than plus or minus ten percent (10%) of the final quantities of the as-built structure."

"3(i) Program of Work – The program of work shall include, among other things, estimates of the work, items, quantities, and costs and a PERT/CPM network of the project activities."

The DPWH-Pampanga 1[st] DEO implemented various projects for CY 2010 out of which ten (10) projects were inspected/re-evaluated and the following overstatement of embankment materials were reported:

Name of Project/Contractor/Year Implemented

Cost Deficiency

Overstatement of Embankment Materials

Sto. Cristo Construction (2010)

1. Rehabilitation/Improvement of San Vicente-Pangatlan Rd., Mexico, Pampanga

P 540, 983.00

1,176.05 cubic meters

2. Rehabilitation/Improvement of Divisoria-Mabalukuk Rd., Mexico, Pampanga

916,387.45

1,995.40 cubic meters

3. Rehabilitation/Improvement of Camuning-Eden Rd., Mexico, Pampanga

1,140,678.00

2,469.00 cubic meters

4. Rehabilitation/Improvement of Acli-Camuning Rd., Mexico, Pampanga

3,582,484.20

7,729.20 cubic meters

5. Rehabilitation/Improvement of San Antonio-San Roque Rd., Mexico, Pampanga

3,787,660.00

8,270.00 cubic meters

6. Rehabilitation/Improvement of San Agustin-San Patricio Rd., Mexico, Pampanga

2,486,559.11

4,869.40 cubic meters

7. Rehabilitation/Improvement of Eden-Suclaban Rd., Mexico, Pampanga

2,471,568.00

4,983.00 cubic meters

R.D. Sadsad Construction (2010)

8. Repair/Improvement of Inuman Baka Creek-Sta. Ana Mexico Section, Sta. Ana, Mexico, Pampanga

2,935,626.50

27,985.00 cubic meters

M.S. Cruz Builders (2010)

9. Rehabilitation/Improvement of San Rafael-Sabanilla Rd., Mexico, Pampanga

944,031.90

1,869.00 cubic meters

ERMY Construction (2010)

10. Rehabilitation/Improvement of San Jose Malino-Anao-Cawayan Rd., Mexico[,] Pampanga

3,820,736.55

8,073.40 cubic meters

Total

P22,626,714.71

31,492.05 cubic meters[29]

Individual re-inspection reports were rendered by the TAS on various dates indicating therein the variances in embankment materials. The total cost of deficiencies amounted to P22,626,714.71. Corresponding Notices of Disallowance for the ten (10) projects, all dated July 11, 2011, have been issued to the management duly received on July 20, 2011.

Had a complete detailed engineering been conducted, there will be no overestimation of embankment materials in the Program of Work.

Overstatement of embankment materials will result to excessive costing leading to possible loss of government funds if not recovered from the concerned contractors.

On January 11, 2012, management forwarded their appeal on the disallowance to Regional Director, COA Regional Office No. III.

Recommendation:

We recommend that management as well as all the persons determined liable refund the value of the total overestimates in embankment materials. Management should also exercise closer supervision and prudence in the implementation of projects to ensure that these are in accordance with plans and specifications. Likewise, the agency officials concerned should see to it that complete detailed engineering are prepared for each project to be implemented, not only for ensuring compliance, but also for validation and monitoring purposes.[30] (Emphases supplied)

The subject ND was issued because of the "overestimation of embankment materials in the Program of Work." The audit team expressly stated in the AOM that there would have been no overestimation had a complete detailed engineering been conducted.

Detailed Engineering forms part of the procurement planning stage. The DPWH Manual of Procedures for the Procurement of Locally-Funded Infrastructure Projects through Public Bidding (DPWH Manual) requires that the procuring entity shall initiate procurement only after the detailed engineering for the project, including technical investigations, surveys and designs, and acquisition of the right-of-way, has been sufficiently carried out. The

detailed engineering must be undertaken in accordance with the standards and specifications prescribed by the Secretary of the DPWH or his duly authorized representative, and in accordance with the provisions of Annex "A" of IRR-A of Republic Act No. 9184.[31] Work under detailed engineering includes the preparation of quantity estimates. Under the DPWH Manual, all construction quantities shall be estimated with a degree of accuracy of not more than plus or minus 10% of final quantities of the as-built structure.[32] It further provides:

The DPWH shall implement, at the Central, Regional, and District Offices, a system for the review and assurance of the quality of detailed engineering outputs to ensure that they conform to the prescribed design standards and will allow estimates of quantities to be made within plus or minus ten percent (10%) of the final values of the completed structure. The survey and design data of structural components that are prone to significant overstatement and variation, such as earthworks, and base course, shall be especially scrutinized to assure the integrity of the design and estimates.[33] (Emphasis supplied)

In this case, the quantity or volume estimates of the embankment materials, which estimates were used in the Program of Work during procurement and presumably were stipulated in the contracts between the DPWH and the petitioner, turned out to be significantly more than the quantity or volume of materials actually used in the road projects. The failure of the officials of the DPWH-Pampanga 1st DEO to satisfactorily prepare the quantity and cost estimates of the embankment materials in the detailed engineering phase of the projects resulted in the excess payment to petitioner in the total amount of P14,926,319.76. The audit team unequivocally stated that excessive costing and overestimated quantities of embankment materials would lead to wastage of government coffers if the disallowed amount is not recovered from the identified contractors. It is crystal clear that the subject ND was issued because of this excess payment caused by the overestimation which transpired prior to the construction and implementation of the road projects and not because of any defect, or deficiency in the performance of petitioner's works. What is at issue here is the excessive use of public funds to procure a surplus of embankment materials, which can only be settled upon the return of the excess payment made to petitioner. Indubitably, the COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it did not consider the rectification works conducted by the petitioner in the road projects.

Anent the issue of due process, the Court is not convinced that petitioner's right to due process was violated. Under the 2009 Revised Rules of Procedure of the COA, an aggrieved party may appeal the decision of the auditor by filing an appeal memorandum with the Director who has jurisdiction over the agency under audit within six months after receipt of the decision.[34] In case of adverse decision by the Director, the aggrieved party may file a petition for review with the Commission Secretariat within the time remaining of the prescribed six-month period.[35]

Here, petitioner questioned the disallowance less than 32 months from the issuance of the subject ND. Petitioner claims that he only received a copy of the subject ND sometime in late 2013, but failed to allege and prove the exact date of receipt which is determinative of whether the appeal was timely filed. The records are bereft of any showing when petitioner received a copy of the subject ND. This notwithstanding, the COA accommodated petitioner's appeal, gave it the opportunity to present its side of the controversy, and decided its appeal on the merits. This is not to mention that what it filed before the Commission Secretariat was an appeal memorandum instead of a petition for review. Accordingly, petitioner cannot justifiably claim that it was denied due process.

Further, petitioner cannot fault the COA for relying on the presumption of regularity in the performance of official duty in the assailed Decision. First, the subject ND obligates the officials of the DPWH-Pampanga 1st DEO and petitioner to return the total value of the overestimates. It does not contemplate the conduct of the rectification works as sufficient compliance of petitioner's obligation. Second, there was no compelling reason to disturb the uniform factual findings of the DPWH-QAU and its own Technical Inspectors who have the skill, expertise, and

experience to conduct the reassessment and inspection. Finally, there is no evidence or hint of irregularity in the performance of the DPWH-QAU and the COA Technical Inspectors of their duties. Settled is the rule that every public official is entitled to the presumption of good faith in the discharge of official duties such that in the absence of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.[36]

Time and again, we have recognized the key role of the COA as the guardian of public funds and properties. It is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law.[37] The COA is accorded wide latitude and complete discretion to exercise its constitutional duty to the extent that the Court generally sustains the COA's decisions in recognition of its expertise in the implementation of the laws it has been entrusted to enforce, especially if its findings are supported by substantial evidence.[38] However, when there is a clear showing that the COA has acted without, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, the Court shall set aside the COA's findings.[39] Such grave abuse of discretion was not established in this case.

WHEREFORE, in view of the foregoing reasons, the Court DISMISSES the Petition for Certiorari of Sto. Cristo Construction, represented by its proprietor, Noel J. Cruz and AFFIRMS the Commission on Audit Decision No. 2018-317 dated March 15, 2018.

SO ORDERED.

Peralta, C.J., Gesmundo, Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, and J. Lopez, JJ., concur.

Perlas-Bernabe, J., please see concurring opinion.

Caguioa, J., see concurring opinion.

Leonen, J., I join Justice Perlas-Bernabe concurring.

Carandang, J., I join concurring opinion of J. Perlas-Bernabe.

[1] Rollo, pp. 3-13.

[2] Id. at 22-28.

[3] Id. at 48-51.

[4] Petitioner's projects involve the rehabilitation/improvement of the following roads in Mexico, Pampanga: (1) San Vicente-Pangatlan Road; (2) Divisoria Mabalukluk Road; (3) Camuning-Eden Road; (4) Acli-Camuning Road; (5) San Antonio-San Roque Road; (6) San Agustin-San Patricio Road; and (7) Eden-Suclaban Road.

[5] Rollo, p. 24.

[6] Id. at 49.

[7] Id. at 24-25.

[8] Id. at 78-79.

[9] Id. at 80-82.

[10] Id. at 25.

[11] Id.

[12] Id. at 29.

[13] Id. at 30.

[14] Id. at 33-34.

[15] In its Appeal Memorandum, petitioner also sought the reconsideration of Order of Execution dated July 30, 2013. Said Order was issued by the Regional Director of COA Regional Office No. III to enforce ND No. 12-002-01 dated July 31, 2012 which disallowed the payment in the amount of P300,061.51 for the construction of Multi-Purpose Building of Anderson Elementary School in Arayat, Pampanga. Petitioner was also the contractor of the project.

[16] Rollo, pp. 37-44.

[17] Supra note 10.

[18] Supra note 2.

[19] Rollo, p. 27.

[20] Id.

[21] Id. at 10.

[22] Id. at 12.

[23] Id. at 70.

[24] Id. at 71.

[25] Id.

[26] *Abpi v. Commission on Audit*, G.R. No. 252367, July 14, 2020; *Fortune Life Insurance Company, Inc. v. Commission on Audit Proper*, 752 Phil. 97, 107 (2015).

[27] *Career Executive Service Board v. Commission on Audit*, 833 Phil. 433, 444 (2018).

[28] Rollo, pp. 49-51.

[29] The total volume of the overestimates in embankment materials for the 10 projects is 69,419.40 cubic meters.

[30] Rollo, pp. 80-82.

[31] The 2016 Revised Implementing Rules and Regulations of Republic Act No. 9184, otherwise known as The Government Procurement Reform Act.

[32] DPWH Manual of Procedures for the Procurement of Locally-Funded Infrastructure Projects through Public Bidding, Item 2.2.2.3.f; 2016 IRR of R.A. No. 9184, Item 3(d).

[33] DPWH Manual of Procedures for the Procurement of Locally-Funded Infrastructure Projects through Public Bidding, last paragraph of Item 2.2.2.3.

[34] Revised Rules of Procedure of the Commission on Audit (2009), Rule V, Sections 1, 2, and 4.

[35] Id. at Sections 1, 2, and 3.

[36] *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765 (1998).

[37] *Nayong Pilipino Foundation, Inc. v. Chairperson Pulido Tan*, 818 Phil. 406, 414 (2017).

[38] *See Development Bank of the Philippines v. Commission on Audit*, 808 Phil. 1001, 1017 (2017).

[39] *National Power Corp. Board of Directors v. Commission on Audit*, G.R. No. 242342, March 10, 2020.

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

The instant disallowance case involves the award of seven (7) government contracts for the rehabilitation and improvement of various roads in Mexico, Pampanga (road projects) by the Department of Public Works and Highways (DPWH) to petitioner Sto. Cristo Construction (petitioner), as contractor, sometime in 2010.

After the road projects' completion later that year, a group of technical inspectors of respondent, Commission on Audit (COA) conducted a re-inspection and found that the said projects suffered cost deficiencies stemming from overestimates in embankment materials in the total volume of 31,491.60 cubic meters, valued at the aggregate amount of P14,926,319.76. This eventually led to the issuance of Notice of Disallowance No. 11-001-101-09/10[1] dated July 11, 2011 (ND) disallowing the aforementioned sum, with a directive against the erring DPWH officials and petitioner to refund said disallowed amount.[2]

After receipt of the ND,[3] petitioner claimed that it was allegedly instructed by certain officials of the DPWH to conduct rectification works involving the same road projects.[4] This was the thrust of petitioner's appeal to the COA-Proper, where it prayed for such works to be recognized as sufficient compliance of its civil obligation under the ND.[5]

In Decision No. 2018-317[6] dated March 15, 2018, the COA-Proper affirmed petitioner's liability for the disallowed amount. Unconvinced with their existence and degree of compliance with COA standards, the tribunal refused to appreciate the alleged rectification works, explaining that:

This Commission is not convinced. There is no showing that the alleged rectifications made have undergone and have been confirmed as sufficiently compliant with COA revaluation. Moreover, if these were in fact requested by DPWH and completed by Mr. Cruz, the DPWH officials and personnel should have invoked these as defenses in their appeal or in their Petition for Review.[7] (Emphases and underscoring supplied)

In his petition before the Court, petitioner argues that, in rendering the assailed Decision, the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not appreciate the alleged rectification works on the basis of quantum meruit, primarily maintaining that the COA erred in not giving credence to the acknowledgment made by certain officials of the DPWH-Pampanga 1st District Engineering Office that the said works were indeed undertaken.[8]

As the ponencia correctly ruled, no grave abuse of discretion may be attributed to the COA in this case.[9]

Recently, the Court, in *Torreta v. COA (Torreta)*,^[10] laid down the following guidelines on civil liability for disallowed government contracts:

1.

If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2.

If a Notice of Disallowance is upheld, the rules on return are as follows:

a.

Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

b.

Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarity liable together with the recipients for the return of the disallowed amount.

c.

The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of quantum meruit on a case to case basis.

d.

These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved. (Emphasis and underscoring supplied)

The foregoing rules were crafted in recognition of "the peculiarity of [disallowance] cases involving government contracts for procurement of goods or services [which] necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, [the Court] deemed [it] fit that x x x recipients be ordered to return what they received subject to the application of the principle of quantum meruit."^[11] According to case law,^[12] the principle of quantum meruit operates as an equitable device to prevent the government's unjust enrichment at the expense of innocent parties, who are allowed to recover or otherwise retain a reasonable value for the goods delivered or services rendered for the benefit of the State.

As an exceptional rule of equity justifying the retention of public funds, quantum meruit should only operate in cases where the records clearly establish a factual basis for its application. In this regard, jurisprudence states that the burden to clearly allege and substantiate with convincing evidence lies with the parties asserting a limited or complete lack of liability for audit disallowances. As held in the recent case of *Lazaro v. COA*,^[13] "[i]t is not th[e] Court's duty to construe their incomplete submissions and vague narrations to determine merit in their assertions[:]"^[14]

In asserting limited or complete lack of liability based on the principle of quantum meruit and good faith, petitioners, in good diligence, bear the burden to clearly allege and support the factual basis for their claims. It is not this Court's duty to construe their incomplete submissions and vague narrations to determine merit in their assertions.^[15] (Emphasis and underscoring supplied)

In my view, petitioner failed to discharge this burden.

As basis to supposedly prove the alleged conduct of rectification works, petitioner cited the Memorandum[16] dated November 13, 2013 (DPWH Memorandum) issued by certain officials of the DPWH-Pampanga 1st District Engineering Office, which reads:

Submitting is the inspection report conducted by this Office of various projects undertaken by Mr. NOEL J. CRUZ, owner of STO. CRISTO CONSTRUCTION. In the course of the inspection, it was found out that the rectification works were undertaken outside the approved plan of the projects as reflected in the contract. According to Mr. Noel J. Cruz, in his sworn statement, copy attached, he was directed and/or instructed by the DPWH Engineers at that time namely Jose G. Datu, District Engineer, Sotero L. Figueroa, Chief Construction Section, to construct embankment work on designated places within the Barangay in coordination with the Barangay Officials and the DPWH Engineers. As such, according to Mr. Cruz, he followed what has been directed to him and was inspected by Engineers Eric D. Dunglao and Angelito G. Magat of the same office. It is informed that the validation was conducted because of the claim of the contractor that he had undertaken rectification works as shown in the attached latest survey conducted at the site witnessed by a representative of this office.[17] (Emphasis supplied)

On its face, it may be readily observed that the DPWH Memorandum does not contain any detail on the scope, manner, quality, and extent of petitioner's alleged rectification works. Neither does the document indicate whether petitioner sufficiently addressed the deficiencies flagged in the ND. Besides, as earlier explained, the COA had already examined the said works but found them unworthy of credit for lack of evidence "showing that [they] have undergone and have been confirmed as sufficiently compliant with COA reevaluation."[18]

To add, the other documents presented by petitioner similarly fail to convince. For one, the sworn statement of Noel J. Cruz (Cruz),[19] the owner/proprietor of petitioner, merely contains bare, self-serving assertions, which was neither confirmed nor verified by the DPWH or the COA. The same may also be said of the Letter[20] dated November 15, 2013 written by Cruz to the district engineer of DPWH.

While records also disclose a Letter[21] dated January 9, 2012 (January 9, 2012 letter) written by DPWH-Pampanga District Engineer Jose G. Datu to the COA, which mentions "substantial completion" of corrective measures by petitioner, there is no indication whether the works were made in relation to the excess embankment materials subject of the disallowance.[22] On this score, the COA even doubted that the performance of such works were indeed based on the confirmed instructions of the DPWH officials. The COA held that, if the works had indeed sufficiently addressed the deficiencies, the erring DPWH officers should have invoked their performance as a defense in their respective appeals of the ND but did not despite being given the opportunity during the disallowance proceedings.

Notably, in the absence of a clear showing of grave abuse of discretion, the COA's factual findings must stand. As a constitutionally-created, specialized agency endowed with broad audit powers, the factual findings of the COA have been accorded not only with respect by the Court but also finality so long as they are not tainted with unfairness or arbitrariness amounting to grave abuse of discretion.[23] Absent any clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COA, the Court is without certiorari jurisdiction to reverse the former's factual findings.[24] Furthermore, as the party seeking review of the COA's decision, it is petitioner who bears the burden of proving the factual basis of its quantum meruit defense, which, as earlier explained, it failed to do in this case.

At this juncture, it bears pointing out that by raising the alleged rectification works as a defense, petitioner actually misapprehended the import of the disallowance.

Based on the sworn statement of Cruz, it appears that petitioner undertook the alleged works to rectify a perceived breach of contract stemming from a shortfall in the volume of materials:

3. That after finishing the projects there were inspections made and I was informed that the materials dumped Item 104-Emb[ank]ment were not sufficient to comply with the intent of the contracts, and this exceptions were in the re-evaluation report conducted by TAS-COA Regional Office III on the projects, and Notices of Disallowance were issued because of the shortfalls;
4. That thereafter, I was instructed by Engr. Jose Datu, District Engineer. DPWH and Engr. Sotero L. Figueroa, Chief Construction Section, to rectify any shortfall to satisfy the required volume of materials;
5. That I followed the instructions and made the necessary rectification and the work done were inspected by Engineers Eric Dumlao and Angelito Magat of DPWH Pampanga 1[st] District Engineering Office, who found the projects already in order.[25] (Emphases and underscoring supplied)

However, contrary to said perception, the underlying cause of the disallowance was not based on any breach in the performance of work but rather the excessive use of public funds to procure a surplus of embankment materials. Reference to Audit Observation Memorandum[26] (AOM) dated January 13, 2012 issued by the COA shows that the overestimate of embankment materials was the result of the DPWH's failure, as a procuring entity, to conduct a complete detailed engineering before awarding the road projects to petitioner. This flaw led to the excessive public funds, as pointed out in the AOM:

Had a complete detailed engineering been conducted, there will be no overestimation of embankment materials in the Program of Work.

Overstatement of embankment materials will result to excessive costings leading to possible loss of government funds if not recovered from the concerned contractors.

x x x x

x x x Likewise, the agency officials concerned should see to it that complete detailed engineering are prepared for each project to be implemented, not only for ensuring compliance, but also for validation and monitoring purposes.[27] (Emphases and underscoring supplied)

At any rate, even assuming that petitioner did perform rectification works, the same cannot be credited in its favor based on the principle of quantum meruit. This is because, as Cruz himself admitted, said works relate only to the satisfaction of petitioner's already existing obligations based on its contracts with the DPWH.

Irrefragably, petitioner was already obligated to accomplish its deliverables in accordance with the quality specifications as per its contractual engagement. However, in willingly conducting the alleged corrective measures, petitioner effectively admitted that it failed in this respect. In the January 9, 2012 letter of Engineer Jose G. Datu of DPWH-Pampanga 1[st] District Engineering Office, it was even noted that the said projects were still within the warranty period allowing rectification at petitioner's own expense, viz.:

This refers to the Notice of Disallowance (ND) with ND Nos: 11-001-101-09/10 x x x

x x x Based on the report of the QAU findings, this office immediately instructed the concerned contractors to institute corrective measures at their own expense considering that the said projects were still within their warranty period x x x[28] (Emphases and underscoring supplied)

To be sure, petitioner's obligation to adequately deliver the projects according to the correct specifications is distinct from the actual cause of the disallowance, i.e., the excessive procurement of overstated embankment materials. As I see it, such excessive procurement bears no relation to petitioner's inadequate performance of

works. To allow petitioner to utilize any excess materials and apply them to the rectification works, as well as credit the same to reduce its civil liability under the ND, is tantamount to permitting petitioner to profit from its own fault or wrongdoing.

Thus, even assuming that rectification works were indeed performed, all expenses therefor, including the materials used to rectify its previous work, should be for the sole account of petitioner. Nothing should be credited in petitioner's favor because any rectification was borne from its own mistakes. In the final analysis, it should be remembered that public funds were excessively used for the bloated procurement of excess embankment materials; the Court should not diminish the ability of the government to fully recover these excess amounts for the absurd reason that petitioner corrected its previous errors which it was obligated to perform in the first place.

Accordingly, the petition should be DISMISSED and the assailed Decision No. 2018-317 dated March 15, 2018 of the Commission on Audit be AFFIRMED in full.

[1] Rollo, pp. 48-51.

[2] Id. at 24-25.

[3] Id. at 25.

[4] Id. at 26-27.

[5] See Appeal Memorandum dated February 5, 2014; id. at 37-43.

[6] Id. at 22-28. Signed by COA Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia.

[7] Id. at 27.

[8] See id. at 9-12.

[9] See ponencia, p. 12.

[10] See G.R. No. 242925, November 10, 2020.

[11] See id.

[12] See *Sto. Nino Construction v. COA*, G.R. No. 244443 October 15, 2019; *F.L. Hong Architects and Associates v. Armed Forces of the Philippines*, G.R. No. 214245, September 19, 2017; *Department of Public Works and Highways v. Quiwa*, 681 Phil. 485 (2012); *Vigilar v. Aquino*, 654 Phil. 755 (2011); *Department of Health v. C. V. Canchela & Associates*, 511 Phil. 654 (2005); *Melchor v. COA*, 277 Phil. 801 (1991); and *Eslao v. Commission on Audit*, 273 Phil. 97 (1991).

[13] See G.R. Nos. 213323 & 213324, January 22, 2019.

[14] Id.

[15] Id.

[16] Rollo, pp. 33-34.

[17] Id. at 33.

[18] Id. at 27.

[19] Id. at 31-32.

[20] Id. at 35-36.

[21] Id. at 78-79.

[22] Id. at 90.

[23] See *Veloso v. Commission on Audit*, 672 Phil. 419, 432 (2011) and *Delos Santos v. Commission on Audit*, 716 Phil. 322, 332-333 (2013).

[24] See id.

[25] Rollo, p. 31.

[26] Id. at 80-82.

[27] Id. at 82.

[28] Id. at 78-79.

CONCURRING OPINION

CAGUIOA, J.:

I agree with the ponencia's finding that there was no grave abuse of discretion by the Commission on Audit (COA) which amounted to lack or excess of jurisdiction in issuing the assailed decision. However, I feel the need to point out that there were errors by the COA in this case which may have been considered grave had the surrounding circumstances been different.

To recall, petitioner submitted several documents to support its claim that it conducted rectification works on the subject road projects. First was the Letter[1] dated January 9, 2012 (Letter) written by District Engineer Jose G. Datu (Engr. Datu) of the Department of Public Works and Highways Pampanga 1[st] District Engineering Office (DPWH-Pampanga 1[st] DEO), informing the COA that they had instructed the contractors to institute corrective measures on the projects. Engr. Datu's Letter was clearly responding to several Notices of Disallowance (ND), including ND No. 11-001-101-09/10[2] dated July 11, 2011 (subject ND), involving "x x x discrepancies particularly for item 104-embankment x x x"[3] as found by the DPWH Quality Assurance Unit (QAU). There was no other indication therein that the corrective works were for some other defect in the road projects. Notably, the subject ND cited the reason for disallowance as "over estimates in [the] embankment materials (Item 104) x x x." [4]

Another piece of evidence is DPWH-Pampanga 1[st] DEO's Memorandum[5] dated November 13, 2013 (Memorandum) signed by Engr. Enrico S. Guilas (Engr. Guilas), Officer-in-Charge of the Office of the District Engineer, DPWH-Pampanga 1[st] DEO. The Memorandum acknowledged that rectification works were done by petitioner outside of the project timeline. On the face of the Memorandum, it may be gleaned that Engr. Guilas also submitted an inspection report on the rectification works done. This inspection report, however, is not in the rollo of the case.

Aside from the inspection, Mint Surveys with Volume Computation were also done by DPWH-Pampanga 1[st] DEO on petitioner's rectification works upon the latter's request in its Letter[6] dated September 9, 2013. The DPWH-Pampanga 1[st] DEO's Memorandum mentioned these and cited them as attachments, but the mint surveys were likewise not made part of the rollo of the case. A read-through of petitioner's Appeal Memorandum[7] dated February 5, 2014 filed before the COA Regional Office, however, would indicate that

these mint surveys were part of petitioner's submissions to the COA.

Despite the foregoing pieces of evidence, the COA only cursorily discussed the rectification works in its assailed decision:

The Commission is not convinced. There is no showing that the alleged rectifications made have undergone and have been confirmed as sufficiently compliant with COA reevaluation. Moreover, if these were in fact requested by DPWH and completed by Mr. Cruz, the DPWH officials and personnel should have invoked these as defenses in their appeal or in their Petition for Review.

Further, great weight is accorded to the findings of QAU, DPWH and COA Technical Inspectors. The fact that both have discovered adverse findings on the reassessment of the projects reinforces the ND. This Commission also finds no reason to question the technical methods used in said reassessment, as the inspecting officers enjoy the presumption of regularity in the performance of their duties.[8]

It is clear from the above that the COA refused to consider petitioner's rectification works in its favor because no reevaluation or reassessment by the COA personnel or Technical Inspectors had been done on said works.[9] This was stressed as well in the COA's Comment[10] attached to the Petition.

It is peculiar for the COA to make a finding that there was "x x x no showing that the alleged rectifications made have undergone and have been confirmed as sufficiently compliant with COA reevaluation x x x." [11] To point out the obvious, the COA is the entity that can make this happen — it can order its Technical Inspectors to again subject the rectification works to a reevaluation. It is also the entity which can come up with a definitive finding of whether the works complied with its reevaluation. And yet, the COA did not do so even when presented with evidence of the said works.

Ordinarily, this could constitute grave abuse of discretion amounting to lack or excess of jurisdiction as it violates two components of administrative due process of law: that the tribunal must consider the evidence presented, and that the decision must be rendered in such a manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered.[12]

However, as earlier intimated, the Court observed the existence of circumstances which could sensibly explain the COA's actuations. First, the subject ND did not contemplate the performance of rectification works as a mode of extinguishing petitioner's liability thereunder. The basis of the disallowance was not any defect or deficiency in petitioner's performance of its duties under the construction contracts, but the overestimation of embankment materials which was due to the DPWH-Pampanga 1[st] DEO's failure to conduct complete detailed engineering prior to implementation of the road projects.

Second, the evidence submitted by petitioner to the Court in order to establish the rectification works was incomplete. As earlier mentioned, the rollo of this case points to the existence of mint surveys and inspection reports by the DPWH-Pampanga 1[st] DEO which were submitted to the COA; but none of these were submitted to the Court. Neither does the rollo reveal when exactly the said rectification works were done. The Court cannot thus make a definitive finding of grave abuse of discretion on the part of COA on the basis of petitioner's incomplete submissions.

Nevertheless, it should not escape the Court's attention that DPWH-Pampanga 1[st] DEO acknowledged the rectification works done by petitioner. Because of this, it is highly likely that petitioner incurred expenses above and beyond what were expected of it under the construction contracts with DPWH-Pampanga 1[st] DEO. On top of this extra-contract expense, petitioner is now also being expected to refund a portion of the contract price in the amount of the disallowance. Petitioner has effectively rendered uncompensated work to DPWH-Pampanga 1[st] DEO, despite the fact that the reason for the disallowance was the latter's overestimation of embankment

materials, without any fault on the part of petitioner. Needless to state, the decision of the Court in this case should not be construed as precluding petitioner from instituting the proper civil action to correct any possible undue prejudice it may have suffer.

[1] Rollo, pp. 78-79.

[2] Id. at 48-51.

[3] Id. at 78. Underscoring supplied.

[4] Id. at 49. Underscoring supplied.

[5] Id. at 33-34.

[6] Id. at 29.

[7] Id. at 37-44.

[8] Id. at 27. Emphasis and underscoring supplied.

[9] Id. at 71. See also ponencia, p. 6.

[10] Id. at 64-75.

[11] Id. at 27. Underscoring supplied.

[12] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642-644 (1940).

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