

**ARMANDO G. ESTRELLA AND LYDIA G. CHUA, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.***G.R. No. 252079. September 14, 2021*

Ponente: LOPEZ, M., J.

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This Petition for Certiorari[1] under Rule 64, in relation to Rule 65 of the Revised Rules of Court, challenges Decision No. 2018-046[2] dated January 22, 2018 and Resolution No. 2020-008[3] dated November 25, 2019 of the Commission on Audit (COA) Proper, which sustained the liability of petitioners Armando G. Estrella (Estrella) and Lydia G. Chua (Chua) under Notice of Disallowance (ND) No. 10-003[4] dated May 12, 2011.

**FACTS**

The Department of Public Works and Highways – National Capital Region (DPWH-NCR) took on an infrastructure project for the Restoration of the Damaged Revetment/Dredging of Flood Control of Meycauayan River (Valenzuela Side), funded under Special Allotment Release Order (SARO) No. A-09-09064[5] dated December 21, 2009. For this purpose, P40,000,000.00 was released under Sub-Allotment No. SR2009-12-007232[6] dated December 22, 2009. On that day, then DPWH-NCR Regional Director Edilberto D. Tayao (Tayao) requested the modification of the project to eight (8) phases, each phase to be separately bid out for P5,000,000.00.[7] DPWH Assistant Secretary Dimas S. Soguilon (Soguilon) and Undersecretary Manuel M. Bonoan (Bonoan) recommended and approved the request on December 28, 2009.[8] The DPWH-NCR Bids and Awards Committee (BAC) allegedly conducted a public bidding on the same day. Notably, only one contractor bid for each phase of the project. The project was awarded to and implemented by these lone bidders for each phase: (1) Phases I and II – RNN Construction;[9] (2) Phases II and IV – R.M. Nuñez Construction;[10] Phases V and VI – RAIN Construction Corporation;[11] and (4) Phases VII and VIII – AKN Construction Corporation.[12]

Upon post-audit, Audit Observation Memorandum (AOM) No. 10-09[13] dated November 9, 2010 was issued, citing the following irregularities:

- The presence of the same members of the Board of Directors (BOD) and owners in all the companies to whom the contracts were awarded created a condition that restrained the natural competition among prospective bidders during the bidding processes; thus, resulting in only one bidder for each phase of the project. All the eight phases were awarded equally to the four (4) contractors. x x x x
- Two of the contractors (RNN Construction and R.M. Nuñez Construction) x x x x did not meet the requirements under Section 23.5.2.5 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 9184, which states that the prospective bidder must have an experience of having completed within a period of ten (10) years from the date of submission and receipt of bids, at least one contract that is similar to the contract to be bid and whose value, adjusted to current prices using the National Statistics Office (NSO) consumer price indices, must be at least fifty [percent] (50%) of the [Approved Budget for the Contract] to be bid x x x. Further, Section 34.3, Rule X of the IRR of RA No. 9184, provides that the post-qualification shall verify, validate, and ascertain all statements made and documents submitted by the bidder with the Lowest

Calculated Bid/Highest Rated Bid, using the non-discretionary criteria, as stated in the bidding documents. x x x

- Section 54.1 of the IRR-A of RA No. 9184 may have been violated when the project was modified and implemented by phases. Under the said provision, splitting of government contract is not allowed. Thus, the amount indicated in the [Approved Budget for the Contract]/SARO shall not be divided into several projects for bidding.

- When the request for the modification of the project into small phases of [P5,000,000.00] each was approved, it was no longer mandatory for the DPWH-NCR to advertise the Invitation to Bid in a newspaper of general nationwide circulation as required under Section 21.2.3 of IRR-A of RA No. 9184; thus, negating the widest possible dissemination of the invitation to ensure the most number of prospective bidders to get the best possible proposal as to quality and cost. Instead, the DPWH-NCR BAC had to deal with the single bidder to whom the contracts were awarded and whose companies are run by the same person/owners sitting as members of the BOD; thus, compromising the integrity of the procurement process[.]

- A physical inspection of the completed project was made on November 9, 2010 by the Audit Team together with the COA Technical Audit Specialists and representative from DPWH-NCR. Barely seven months after the completion of the project, it was noted that big cracks and a collapsed midsection (portion) are present in the entire 422-meter structure, revealing that substandard materials were used and an unacceptable construction method was applied during project construction. This condition could have been avoided had strict and regular monitoring of the project implementation been undertaken.[14]

On January 14, 2011, the DPWH-NCR submitted the following justifications in response to the AOM:[15]

- The project title was requested to be modified and then segmentalized into eight phases x x x purposely x x x as there was an urgent need to immediately restore these priority projects damaged by Typhoons Ondoy and Pepeng to its original state to prevent loss of life/property and the best way was to divide the project into phases, where work can be undertaken by several contractors simultaneously; thus, it will be completed soonest, precluding further damages and mitigating flooding within the area and vicinity of Caloocan, Malabon, Navotas, and Valenzuela. x x x x

- The DPWH-NCR BAC and Technical Working Group (TWG) failed to take into consideration the said observation in the post-qualification conducted because the project was evaluated as bid-out by phases x x x and only one bidder submitted for each phase so there was no chance to compare and validate that members of the BOD for one construction company are likewise members/BOD of the other construction companies. Nevertheless, they will be more prudent and cautious in the post-evaluation of succeeding projects particularly those to be implemented by segments/phases.

- The respective contractors, even before the Conduct of Inspection dated November 9, 2010 by the COA Technical Audit Team, has continuously been undertaking the repair of cracks. The collapsed midsection (portion) seen by the Audit Team was not a collapsed section but part of the repair being done. Concrete adjacent to the walkway was cut and removed and a tie beam for support was installed. Bamboos as part of the repair works were only used for shoring. The said repair was done at no government expense, with their Office taking the necessary steps for the repair of the project.

- RNN Construction Corporation showed that it had experience in undertaking of Flood Control contract in the amount of P2[,850,050.00, which it completed in the year 2000; and R.M. Nuñez Construction Corporation showed to have implemented a Flood Control Project in the amount of P2,409,675.24, completed in the year 2004. The values adjusted to current prices using the NSO consumer price indices as done through computer computation, found the previous projects of the two contractors to be at least fifty percent (50%) of the [Approved Budget for the Contract] to be bid as reflected in the Contract Profile Eligibility Processing Results of both contractors which was processed at the Central BAC.[16]

Unsatisfied, ND No. 10-003[17] dated May 12, 2011 was issued, disallowing payments made to the contractors amounting to an aggregate of P36,084,006.06 "due to splitting of the SARO and contract for the implementation of the project x x x to avoid reversion of fund[s] received on December 28, 2009 and for other reasons stated in [the AOM]."[18] Estrella, as then Assistant Regional Director and Chairman of the DPWH-NCR BAC, and Chua, as BAC Member, were charged liable to settle the disallowance. Along with Estrella and Chua, the DPWH officers (Bonoan, Soguilon, and Tayao) who recommended and approved the modification of the project into phases, and the rest of the BAC Members, were likewise made liable. Notably, the contractors, as recipients of the disallowed amounts, were not held liable in the ND.[19]

Between petitioners, only Estrella joined the appeal to the COA National Government Section (NGS) – Cluster D, reiterating the submissions stated in the response to the AOM.[20]

#### COA NGS — CLUSTER D RULING

In its Decision No. 2013-001[21] dated January 11, 2013, the COA NGS ruled that there was no illegal splitting of contract because the modification of the project into phases was justified by the urgency of its completion, and there was no showing that it was done to purposely circumvent RA No. 9184.[22] Consequently, Bonoan, Soguilon, and Tayao, who were held liable merely for recommending and approving the modification of the project, were absolved from liability.[23] On the other hand, the liability of Estrella and the BAC Members was upheld due to the irregularities in the procurement process, i.e., there was no compliance with the pre-procurement requirements; there was no public bidding; and the post-qualification evaluation was not conducted properly.[24] Lastly, the COA NGS confirmed government loss due to the structural defects found during the COA inspection on November 9, 2010. The COA NGS concluded:

WHEREFORE, premises considered the ND amounting to P36,084,006.06 which was issued by the [Audit Team Leader] and [Supervising Auditor] of DPWH is hereby affirmed with the exclusion of Appellants, [Bonoan, Soguilon, and Tayao] as persons liable.[25] (Emphasis in the original.)

The case was elevated to the COA Proper on automatic review pursuant to Section 7,[26] Rule V of the 2009 Revised Rules of Procedure of the [COA] (RRPC).

#### COA PROPER RULING

In its Decision No. 2018-046[27] dated January 22, 2018, the COA Proper affirmed the ruling of the COA NGS in its entirety, thus:

WHEREFORE, premises considered, [COA NGS] – Cluster D Decision No. 2013-001 dated January 11, 2013 is hereby APPROVED. Accordingly [ND] No. 10-03 dated May 12, 2011 is AFFIRMED. [Bonoan, Soguilon, and Tayao], all of the [DPWH], are hereby excluded as persons liable, while [Estrella] remains liable under the ND.

The Audit Team Leader and Supervising Auditor, DPWH, shall issue a supplemental ND against the DPWH Inspectors who issued certification of completion of the projects despite the presence of structural defects.[28] (Emphases in the original.)

Estrella this time with Chua, moved for reconsideration,[29] but the COA Proper denied it in a Resolution dated November 25, 2009. Hence, this petition. Petitioners aver that the procurement requirements under RA No. 9184 were complied with.[30] Also, petitioners maintain that there was no loss on the part of the government as the contractors have completed the project and fully rectified the defects found in it. As such, petitioners argue that the ND should be lifted.[31]

In its Comment,[32] the Office of the Solicitor General (OSG), for the COA Proper, counters that rectification of the defects cannot extinguish petitioners' liability under the ND because the ND is not solely grounded upon such

defects, but also upon the BAC officers' misfeasance in the conduct of the procurement process, which denied the government of its right to secure the most advantageous cost for the project.

#### ISSUE

Whether the COA Proper committed grave abuse of discretion in sustaining ND No. 10-03.

#### RULING

The Court finds the petition partly meritorious.

#### Propriety of the Disallowance

RA No. 9184 was enacted to promote transparency in the procurement process and implementation of contracts, as well as to provide a platform of competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding. To this end, Section 10,[33] Article IV of RA No. 9184 mandates that all acquisition of goods, consulting services, and the contracting for infrastructure projects by any branch, department, office, agency, or instrumentality of the government, including state universities and colleges, government-owned and/or -controlled corporations, government financial institutions, and local government units shall be done through competitive bidding.[34] Competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition, and to preclude suspicion of favoritism and anomalies in the execution of public contracts.[35] Thus, the BAC was tasked to "advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids undertake post-qualification proceedings, [and] recommend award of contracts." [36]

The 2009 Revised Implementing Rules and Regulations (IRR) of RA No. 9184 laid down definitive requirements for every procurement. One of the basic pre-procurement requirements is posting the Invitation to Bid/Request for Expression of Interest. Section 21.2.1, Rule VII of the Revised IRR provides:

21.2.1. [T]he Invitation to Bid/Request for Expression of Interest shall be:

x x x x

b)

Posted continuously in the PhilGEPS website, the website of the procuring entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting on date of advertisement; and

c)

Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for seven (7) calendar days, if applicable, as certified by the head of the BAC Secretariat of the procuring entity concerned. (Emphases supplied.)

Under Rule VII, the Invitation to Bid/Request for Expression of Interest must contain the following information:

#### 21.1 Contents of the Invitation to Bid/Request for Expression of Interest

The Invitation to Bid/Request for Expression of Interest shall provide prospective bidders the following information, among others:

a) For the procurement of:

x x x x

ii) Infrastructure projects, the name and location of the contract to be bid, the project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works;

x x x x

b) A general statement on the criteria to be used by the procuring entity for the eligibility check, the short listing of prospective bidders, in the case of the procurement of consulting services, the examination and evaluation of bids, post-qualification, and award;

c) The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;

d) [Approved Budget for the Contract] to be bid;

e) The source of funding;

f) The period of availability of the Bidding Documents, the place where the Bidding Documents may be secured, the website where the Bidding Documents may be downloaded, and, where applicable, the price of the Bidding Documents;

g) The contract duration or delivery schedule;

h) The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned procuring entity, as well as its designated contact person; and

i) Such other necessary information deemed relevant by the procuring entity. (Emphases supplied.)

Rule VII of the Revised IRR also requires the conduct of a pre-bid conference:

22.1 For contracts to be bid with an approved budget of One Million Pesos (P1,000,000.00) or more, the BAC shall convene at least one (1) pre-bid conference to clarify and/or explain any of the requirements, terms, conditions, and specifications stipulated in the Bidding Documents. x x x

22.2. The pre-bid conference shall be held at least twelve (12) calendar days before the deadline for the submission and receipt of bids. If the procuring entity determines that, by reason of the method, nature, or complexity of the contract to be bid or when international participation will be more advantageous to the GOP, a longer period for the preparation of bids is necessary, the pre-bid conference shall be held at least thirty (30) calendar days before the deadline for the submission and receipt of bids.

22.3. The pre-bid conference shall discuss, among other things, the eligibility requirements and the technical and financial components of the contract to be bid. x x x

22.4. The minutes of the pre-bid conference shall be recorded and made available to all participants not later than three (3) calendar days after the pre-bid conference. Any statement made at the pre-bid conference shall not modify the terms of the Bidding Documents, unless such statement is specifically identified in writing as an amendment thereto and issued as a Supplemental/Bid Bulletin. (Emphases supplied.)

In this case, we find no reason to deviate from the findings of the COA as regards the DPWH-NCR's non-compliance with the requirements under RA No. 9184 and its Revised IRR. Well-settled is the rule that factual findings of administrative agencies, like the COA, are generally respected and even afforded finality, when supported by substantial evidence, because of their special knowledge and expertise in matters falling under their jurisdiction. This Court is not a trier of facts and, generally, it shall not re-evaluate and substitute the administrative agency's judgment as to the sufficiency of evidence. In any case, the schedule of the procurement activities[37] as reflected in the records supports the COA Proper's findings that the pre-procurement

requirements were not complied with, and a public bidding was not conducted. Records show that the original project was modified into eight separate contracts. The modification was requested on December 22, 2009, and approved on December 28, 2009. Yet, petitioners claim that all the pre-procurement requirements above-cited were complied with, and a public bidding was conducted on the same day that the modified project was approved. This claim is untenable considering that substantial changes on the specifications of the project, such as completion time and budget allotted, were made when the project was modified. Such significant matters are required to be included in the Invitation to Bid under RA No. 9184 and its Revised IRR. As aptly observed by the COA Proper, the BAC could not have possibly advertised the Invitation to Bid with the necessary modifications, complied with all the other pre-procurement requirements, conducted a public bidding, and evaluated the bidders' eligibility on the same day:

[Estrella's] liability remains under the assailed ND as BAC Chairman. Pursuant to RA No. 9184, The BAC shall prepare the bidding documents, conduct pre-procurement conference, advertise and post the Invitation to Bid or Request for Expression of Interest, and conduct pre-bid conference prior to the conduct of public bidding. This Commission holds that it would be improbable for the DPWH-NCR BAC to conduct public bidding on the very same day that the request for modification of the project title was approved without complying with the aforecited activities to be undertaken by the BAC. Thus x x x Estrella is liable for the disallowance because it appears that there was no public bidding conducted for the project.

Even assuming without conceding that a public bidding was conducted, x x x Estrella is tasked, together with the other BAC members, to conduct post-qualification evaluation of the winning bidders. It appears on record that the BAC failed to evaluate the eligibility of the winning bidders in the post-qualification stage. Evaluation of the documents presented disclosed that there were interlocking directors among the winning bidders. There was also a finding that two of the winning bidders failed to comply with the requirement set forth in Section 23.5.2.5 of the IRR of RA No. 9184 as to the experience of the contractor on a similar project previously conducted and completed. x x x Estrella further recommended the award of the contract to the winning bidders without conducting the post-qualification evaluation. Failure to comply with the required post-qualification evaluation as mandated by RA No. 9184 is one of the reasons for the issuance of the assailed ND. x x x[38]

The importance of the statutory procurement requirements cannot be overemphasized. We stress public biddings, together with the other procurement requirements, are systematic and definitive methods governed by the principles of transparency, competitiveness, simplicity, and accountability, purposely adopted to protect public interest by giving the public the best possible advantages through open competition, and to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.[39] To this end, administrative rules and regulations are enacted for strict and faithful compliance to protect the government coffers from unscrupulous transactions. Payments made by virtue of contracts, awarded without complying with the express procedures of the law and the rules, are considered illegal expenditures which warrant disallowance.[40] In view of this alone, no grave abuse of discretion can be imputed against the COA Proper in upholding the ND as the questioned transactions were undertaken without adhering to the express provisions of RA No. 9184 and its Revised IRR.

#### Liability to Return the Disallowed Amount of P36,084,006.06

The liability of approving or certifying officers in procurement disallowances is primarily civil in nature, grounded upon the principles of *solutio indebiti*[41] and unjust enrichment.[42] Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987, state:

SEC. 38. Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the

performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

x x x x

SEC. 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors. (Emphases supplied.)

In *Madera v. Commission on Audit*,<sup>[43]</sup> we affirmed:

[T]he application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognize that a payee or contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.<sup>[44]</sup> (Citation omitted and emphasis supplied.)

Further, their liability is not individual, but solidary with that of the recipients or payees in a disallowed transaction. Section 43, Chapter 5, Book VI of the same Code provides:

SEC. 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal. (Emphasis supplied.)

Verily, in *Madera*, we introduced the concept of "net disallowed amount" to clarify the nature and extent of the approving and/or certifying officers' liability in a disallowed transaction vis-à-vis that of the recipients' or payees'. We explained:

With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or proof of having acted in good faith, in the regular performance of their official duties, and the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, [Justice Estela Perlas-Bernabe] coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, [Justice Marvic Leonen] is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.<sup>[45]</sup> (Citations omitted and emphasis supplied.)

These principles were synthesized in the recent case of *Torreta v. Commission on Audit*,<sup>[46]</sup> wherein we laid down specific guidelines on the return of disallowed amounts in cases involving illegal or irregular government

contracts, viz.:

- If a Notice of Disallowance is set aside by the Court, no return shall be required from any persons held liable therein.
- If a Notice of Disallowance is upheld, the rules on return are as follows:
  - 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.
  - Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.
  - 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.
  - 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.[47] (Emphases supplied.)

By jurisprudence, the palpable disregard of laws, prevailing jurisprudence, and other applicable directives amount to gross negligence, which betrays the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.[48]

In this case, petitioners were found to have plainly violated the express procurement requirements under RA No. 9184 and its Revised IRR, making them solidarily liable with the payees for the return of the disallowed amount pursuant to paragraph 2b of the rules on return in Torreta. The ND, however, simply made the officers personally liable based on the rigid implementation of the procurement law and rules. Aside from the general averments of prejudice to the government due to the failure to comply with the procurement requirements, the ND contains no allegation, much less proof, of overpricing or undue use of the disbursed funds paid to the contractors. In fact, it is undisputed that the project (all eight phases) was 100% completed[49] following the approved plans and specifications of the contracts and, is already benefitting the public in accordance with the purpose of its construction. The structural defects found were likewise already rectified[50] pursuant to the warranty agreement[51] between DPWH-NCR and the contractors. Each contractor was then paid the contract price, with no one held liable under the ND. On this score, we have consistently sustained the grant of compensation to contractors, who have entirely or substantially accomplished their obligation under the contract on the basis of quantum meruit, regardless of any invalidity or irregularity in its procurement. In the oft-cited case of *Eslao v. Commission on Audit*,[52] the Court granted compensation to the contractor for some accomplished work in the project, even if there was failure to go through the required process of public bidding. The Court reasoned that "to deny payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another." [53] Note that these circumstances were not considered in the assailed COA Proper Decision.

Thus, notwithstanding the propriety of the disallowance, we find it improper and unjust under the circumstances to hold petitioners liable for the entire aggregate amount paid to the contractors. Applying paragraph 2c of the rules in Torreta, petitioners' liability for the disallowed amount may be reduced by the amounts due to the contractors. A further post audit should, therefore, be conducted to determine the exact value of all the works done, to which the contractors are entitled on the basis of quantum meruit. If, thereafter, it is found that excessive or undue payments were made, such disbursements shall be considered as the net disallowed amount to which

petitioners shall be solidarily liable.[54] As this is a purely factual matter and accounting technicalities are involved in the auditing process, it is only proper to remand the case to the COA for the determination of the amount to which petitioners may be made liable.[55]

At this juncture, we note that the ND had already attained finality as to Chua, who failed to question the disallowance before the COA NGS Director, and sought recourse only by joining the motion for reconsideration of the COA Proper's Decision No. 2018-046.[56] Nevertheless, the principle of immutability of judgment admits several exceptions: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[57] The Court has further allowed the relaxation of the rule on finality of judgments in order to serve substantial justice, taking into account: (1) matters of life, liberty, honor, or property; (2) the existence of special or compelling circumstances; (3) the merits of the case; (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) a lack of any showing that the review sought is merely frivolous and dilatory; and (6) the other party will not be unjustly prejudiced thereby.[58] In this case, as the proper amount of the officers' liability is yet to be determined, it would be the height of injustice to blindly yield to the principle of immutability and leave Chua liable for an erroneous substantial amount. Hence, despite procedural lapse, we rule that this decision should likewise apply to Chua.

On final note, this disposition is without prejudice to any appropriate administrative or criminal actions that may be pursued against the responsible officers pursuant to existing laws and jurisprudence on illegal procurements, if warranted.

FOR THESE REASONS, the Petition for Certiorari is PARTLY GRANTED. The Decision No. 2018-046 dated January 22, 2018 and the Resolution No. 2020-008 dated November 25, 2019 of the Commission on Audit are AFFIRMED with MODIFICATION in that petitioners Armando G. Estrella and Lydia G. Chua are solidarily liable to return only the net disallowed amount, if any. Accordingly, the case is REMANDED to the Commission on Audit for the determination of the exact value of the works done, and for the issuance of an amended notice of disallowance reflecting petitioners' liability in accordance with its factual determinations.

### **SO ORDERED.**

Gesmundo C.J., Perlas-Bernabe, S.A.J., Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, and J. Lopez, JJ., concur.

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[1] Rollo, pp. 3-22.

[2] *Id.* at 23-33; Issued by Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia, and Commissioner Isabel D. Agito.

[3] *Id.* at 34.

[4] *Id.* at 34-A-37.

[5] *Id.* at 74-76.

[6] *Id.* at 77.

[7] *Id.* at 78-79.

[8] *Id.* at 40-41.

[9] Id. at 84-87.

[10] Id. at 88-91.

[11] Id. at 92-95.

[12] Id. at 96-99.

[13] Id. at 42-46.

[14] Id. at 24-26

[15] Id. at 47-48.

[16] Id. at 26-27.

[17] Id. at 34-A-37.

[18] Id. at 35.

[19] Id. at 35-36.

[20] Id. at 49-69 with Annexes.

[21] Id. at 9, 148-159.

[22] Id. at 155-156.

[23] Id. at 156.

[24] Id. at 158.

[25] Id. at 158-159.

[26] Section 7. Power of Director on Appeal. – The Director may affirm, reverse, modify or alter the decision of the Auditor. If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Director's decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the CP.

[27] Rollo, pp. 23-33.

[28] Id. at 32.

[29] Id. at 160-166 with Annexes.

[30] Id. at 12-13 and 15-17.

[31] Id. at 15.

[32] Id. at 206-228.

[33] SEC. 10 Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for this Article XVI of this Act.

[34] *De Guzman v. Office of the Ombudsman*, 821 Phil. 681, 691 (2017).

[35] *Subic Bay Metropolitan Authority v. Commission on Audit*, G.R. No. 230566, January 22, 2019.

[36] Art. V, Section 12 of RA No. 9184.

[37] Rollo, p. 180.

[38] Id. at 31.

[39] Subic Bay Metropolitan Authority v. Commission on Audit, *supra* note 32.

[40] COA Circular No. 2012-003 dated October 29, 2012; COA Circular No. 85-55-A dated September 8, 1985; PD No. 1445, Section 33.

[41] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[42] Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[43] G.R. No. 244128, September 8, 2020.

[44] Id.

[45] Id.

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

[47] Id.

[48] *Paguio v. Commission on Audit*, G.R. No. 223547, April 27, 2021; *Ngalob v. Commission on Audit*, G.R. No. 238882, January 5, 2021; *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, 821 Phil. 117, 140 (2017); *Tetangco, Jr. v. Commission on Audit*, 810 Phil. 459, 467 (2017).

[49] Rollo, pp. 133-147.

[50] Id. at 178.

[51] Id. at 141-147.

[52] 273 Phil. 97 (1991).

[53] Id.

[54] See *Melchor v. Commission on Audit*, 277 Phil. 801 (1991).

[55] Id.; See also *Torreta v. Commission on Audit*, *supra* note 43.

[56] See 2009 Revised Rules of Procedure of the Commission on Audit, as amended, approved on September 15, 2009, Rule IV, SEC. 8. Finality the Auditor's Decision. – Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

[57] *Republic of the Philippines v. Heirs of Cirilo Gotengco*, 824 Phil. 568, 578 (2018).

[58] *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019, 919 SCRA 1; Emphases supplied.

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