

# **ATTY. PRAXEDIO P. DINGCONG, PETITIONER, VS. HON. TEOFISTO T. GUINGONA, JR., CHAIRMAN, B. C. FERNANDEZ, JR., AND COMMISSIONER EUFEMIO C. DOMINGO, COMMISSIONER, COMMISSION ON AUDI...**

*G.R. No. 76044. June 28, 1988*

Ponente: MELENCIO-HERRERA, J.

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## **MELENCIO-HERRERA, J.:**

An appeal on Certiorari seeking to annul and set aside the decision of respondent Commission on Audit (COA) in its 7th Indorsement of 1 September 1986 disallowing petitioner's claim for reimbursement of payments he had advanced for services rendered on "pakyao" basis in the renovation and improvement of the office of the Bureau of Treasury, Iloilo City.

Petitioner, Atty. Praxedio P. Dingcong, was the former Acting Regional Director of Regional Office No. VI of the Bureau of Treasury in Iloilo City, until his retirement on 17 January 1984.

On three occasions — June 1982, September 1982 and February 1983 — petitioner, after public bidding, contracted, admittedly on an "emergency labor basis," the services of one Rameses Layson, a private carpenter and electrician on "pakyao" basis for the renovation and improvement of the Bureau of Treasury Office, Iloilo City. Layson submitted the lowest bids so that the contracts were awarded to him. as follows:

Dates

Contract amount

Working Days

June, 1982

**P2,800.00**

17 days

Sept., 1982

2,980.00

44 days

Feb., 1983

2,522.00

35 days

Total

**P8,302.00**

Subsequently, Layson was hired as a casual employee in the Bureau of Treasury Office in order to do away with the hiring of a private carpenter and electrician.

When petitioner retired on 17 January 1984, among the items disallowed by the Resident Auditor was the amount of P6,574.00 from the labor contracts with Layson, by reducing the latter's daily rate from P40.00 per day to P18.00 daily.

Petitioner appealed to the Chairman of the Commission on Audit, who affirmed the disallowance as being "excessive and disadvantageous to the government," but increased Layson's daily rate to P25.00 thereby reducing the total amount disallowed to P4,276.00. Despite petitioner's request for reconsideration, respondent Commission remained unmoved, hence, the instant appeal.

On 8 April 1987, we resolved to give due course to the petition and required the parties to submit their respective memoranda, which they have done.

Petitioner assails the disallowance as invalid for being a usurpation of a management function and an impairment of contract.

We reject petitioner's submission.

Not only is the Commission on Audit (COA) vested with the power and authority, but it is also charged with the duty, to examine, audit and settle all accounts pertaining to x x x the expenditures or uses of funds x x x owned x x x by, or pertaining to, the Government or any of its subdivisions, agencies, or instrumentalities (Article IX [D], Section 2 [1], 1987 Constitution). That authority extends to the accounts, of all persons respecting funds or properties received or held by them in an accountable capacity (Section 26, P. D. No. 1445). In the exercise of its jurisdiction, it determines whether or not the fiscal responsibility that rests directly with the head of the government agency has been properly and effectively discharged (Section 25[1], *ibid.*), and whether or not there has been loss or wastage of government resources. It is also empowered to review and evaluate contracts (Section 18 [4], *ibid.*). And, after an audit has been made, its auditors issue a certificate of settlement to each officer whose account has been audited and settled in whole or in part, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges or suspensions (Section 82, *ibid.*)

Viewed in this light, the disallowance made by COA is neither illegal nor a usurpation of a management function. The authority of the petitioner, as agency head, to enter into a contract is not being curtailed. What COA maintains is that the "pakyao" contract has proved disadvantageous to the government.

Addressing this issue now, the payments for the "pakyao" labor contract were disallowed on the ground that the cost of that contract was excessive and, therefore, disadvantageous to the government in that the rate applied by petitioner was P40.00/day when the prevailing rate at that time was only P25.00/day for casuals.

We find ourselves in disagreement.

The labor contract entered into by petitioner was on the "pakyao" basis. On the other hand, the transaction was audited on a daily minimum wage rate basis. The result was that the emergency nature of the contract was overlooked, a different cost of labor for casuals was imposed, the assistance of two other carpenters who worked

with Layson even on Saturdays was disregarded, and Layson's additional skill as an electrician and plumber was not adequately considered.

Indeed, the criteria for a daily wage rate contract can hardly be applied to "pakyao" arrangements, the two being worlds apart. In "pakyao" a worker is paid by results. It is akin to a contract for a piece of work whereby the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or consideration. The contractor may either employ his labor or skill, or also furnish the material (Article 1713, Civil Code). Not so in a contract on a daily wage basis, where what is paid for is the labor alone. Under the "pakyao" system, payment is made in a lump sum; the laborer makes a profit for himself, which is justified by the fact that any loss would also be borne by him. On the other hand, no profit inures to the daily wage worker and no materials are furnished by him. The "pakyao" arrangement is not without its advantages. The tendency to dillydally on the work, generally experienced in a daily wage contract, is hardly present in labor on a "pakyao" basis. The latter can also be more flexible, with the need for supervision reduced to the minimum. It is not necessarily frowned upon. In fact; it is recognized in the Labor Code (Article 101), and even in the Revised Manual of Instructions to Treasurers, which provides that "except in construction or repairs requiring technical skill such as upon buildings, bridges, water works structures, culverts, etc., when the total cost of the work does not exceed P3,000.00, the same may be performed under the 'pakyao' contract x x x." (Section 750). In this case, each contract with Layson did not exceed P3,000.00.

Recourse to a "pakyao" labor contract, therefore, is not necessarily disadvantageous. In this case, it was entered into only after public bidding pursuant to existing regulations through canvass among three qualified "bidders." Since Layson submitted the lowest price, each contract was awarded to him. The Court also notes that Layson was subsequently hired as a casual in the Bureau of Treasury Office in order to do away with the hiring of a carpenter and electrician, thereby exhibiting an awareness on petitioner's part of government interests and a positive effort to avail of cost-cutting options.

WHEREFORE, the Decision of the Commission on Audit is hereby SET ASIDE, and it is hereby ordered to refund to petitioner the disallowed item of P4,276.00, which amount was deducted from his terminal leave voucher upon his retirement.

**SO ORDERED.**

Yap, C. J. (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

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