

VIRGILIO C. ARRIOLA AND JULIAN L. FERNANDEZ, PETITIONERS, VS. COMMISSION ON AUDIT AND THE BOARD OF LIQUIDATORS, RESPONDENTS.

G.R. No. 90364. September 30, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition seeks the review by certiorari of Decision No. 943 dated July 14, 1985 of the Commission on Audit (hereafter "COA") which disallowed the amount of P83,914.22 from the sum of P262,662.00, representing the total cost of the Batangas Water Well Project undertaken by the National Coal Authority (or "NCA"), and holding petitioners personally liable for the satisfaction of the disallowed amount.

The following facts are undisputed:

Sometime in October 1985, the (defunct) National Coal Authority (or NCA), a subsidiary of the Philippine National Oil Co. (PNOC), invited eight accredited and prequalified contractors of PNOC to bid for the construction of a water well (known as the Batangas Water Well project) at the Batangas Coal Terminal of NCA in Sta. Rita, Batangas. Since only one contractor submitted a bid, the NCA Contract Committee (or Committee) invalidated the bidding.

On November 13, 1985, the Committee opened the re-bidding during which P.I. Well Drilling Corporation (or P.I. Wells) was declared the winning bidder, with a bid of P277,662.00. Upon negotiation by the Committee however, P.I. Wells reduced its bid from the original contract amount of P277,662.00 to P262,662.00, or a total discount of P15,000.00. The contract was thereafter approved by the NCA Administrator and by the NCA Executive Committee.

On 9 December 1985, NCA Administrator M.V. Tiaoqui wrote P.I. Wells advising it of NCA's acceptance of its bid to undertake the Batangas Water Well project for the amount of P262,662.00.

On 28 January 1986, the contract between NCA and P.I. Wells was submitted to the Commission on Audit (or COA) for post-audit review.

On 14 February 1986, the Batangas Water Well Projects was completed by the contractor.

On 9 April 1986, under a First Indorsement addressed to the Auditor of the NCA, (p. 67, Annex "J," p. 67, Rollo) the COA Technical Service Office (or COA-TSO) requested for a "breakdown of the contract amount of P262,662.00 showing in sufficient detail the quantity and unit cost of all items comprising the direct cost of labor and materials together with the derivation of the total indirect cost to facilitate the review of the contract." This Indorsement was forwarded by the NCA-assigned auditor to the NCA for appropriate action.

In response to this directive, the NCA submitted detailed cost estimates to aid in the review of the P.I. Wells contract.

In a Memorandum dated 15 September 1986, Jose F. Mabanta (Actg. Manager of the COA-TSO), wrote Mr. Ernesto Morales, the NCA-assigned auditor, informing him that the contract for the Batangas Wells Project was excessive by 46.94%, as follows:

"Please be informed that the contract entered into on December 9, 1985 by and between the National Coal Authority and P.I. Well Drilling Corporation for the construction of Batangas Water Well System in Sta. Rita, Batangas in the contract amount of P262,662.00 has been found by this Commission to be excessive by 46.94% with regards to the technical aspects of the review and pursuant to the Commission on Audit Circular No. 86-257 dated March 31, 1986. The discrepancy amounting to P83,914.22 was due to the higher unit cost used in the preparation of the detailed agency estimates. Attention is hereby invited to the attached cost comparison made by an engineer of this office." (p. 161, Rollo)

On September 15, 1986, Mr. Morales forwarded a copy of the Memorandum to the NCA and demanded the refund of the amount of P83,914.22.

On 10 March 1987, Mr. Morales issued a Certificate of Settlement and Balances (CSB No. 87-0001-42), demanding settlement of the amount of P71,746.66 (or P83,914.22 less 10% withholding taxes amounting to P3,776.44) from the following NCA management officials since they were signatories to the check and payment voucher:

"M.V. Tiaoqui — Administrator

V.C. Arriola — Deputy Administrator

P.J. Manhit — Project Manager

S.F. Soller — Chief Account(ant)

J.L. Fernandez — Internal Auditor"

(p. 14, Rollo)

On 7 April 1987, NCA requested the COA-TSO to recheck the first review conducted by said office, contending that the unit price difference of some materials/equipment used in the contract could have arisen from the difference in specifications of these materials and the changes in prices from the date of bidding in December 1985, to the COA findings in August 1986. The COA-TSO however, reiterated its original finding that the contract price was P83,914.22 or 46.95% above COA cost and therefore excessive (Annex "N," Petition, p. 83, Rollo).

On July 7, 1987, the NCA sought reconsideration of the Decision of the COA-TSO (Annex "P," Petition, p. 85, Rollo) pointing out that what had been "submitted to the COA was not the NCA estimate but the breakdown prepared by the contractor," (par 4.3, Petition, p. 12, Rollo) that is, "the detailed contract breakdown submitted to the COA was not the official version submitted by P.I. Wells to NCA" (par. 4.13, Petition, p. 15, Rollo). The COA-TSO however, sustained its findings and even came out with a higher amount of disallowance of P95,885.30 compared to its earlier finding of P83,914.22. NCA appealed to the COA.

On 14 July 1989, the COA rendered Decision No. 943 dismissing the appeal of NCA Deputy Administrator V.C. Arriola but reducing the amount disallowed to P83,766.60.

On 9 August 1989, Mr. Ernesto Morales, the Auditor-in-Charge of NCA's liquidation before the Board of Liquidators, wrote the Director and General Manager of the Board of Liquidators, requesting that copies of the COA Decision be furnished the NCA officials concerned (p. 3 of Annex "A" Petition, p. 29, Rollo, Emphasis ours).

On 19 September 1989, contrary to the directive of Mr. Morales, petitioners Arriola and Fernandez received copies of COA Decision No. 943 from Wenceslao M. Buenaventura, Director/General Manager of the Board of Liquidators, who demanded solely from the two the payment of the amount disallowed by COA.

Hence, this petition by Arriola and Fernandez, questioning Mr. Buenaventura's move, assigning the following errors:

"I

"RESPONDENT COMMISSION ON AUDIT VIOLATED PETITIONERS' RIGHT TO DUE PROCESS OF LAW WHEN CERTAIN DOCUMENTS MADE THE BASIS OF THE COA DECISION WERE NOT SHOWN THE PETITIONERS DESPITE REPEATED DEMANDS FOR THE PRODUCTION OF THE SAME.

"II

"RESPONDENT COMMISSION ON AUDIT'S FINDING THAT THE AMOUNT OF P83,766.60 SHOULD BE DISALLOWED IN AUDIT IS NOT SUPPORTED BY THE EVIDENCE. FURTHER, SAID FINDING IS NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.

"III

"RESPONDENT COMMISSION ON AUDIT ERRED IN CLAIMING THE AMOUNT OF P83,766.60 FROM PETITIONERS IN THEIR PERSONAL CAPACITY WITHOUT ANY FINDING OR EVEN AN ALLEGATION THAT PETITIONERS ACTED IN BAD FAITH OR WITH MALICIOUS INTENT OR THAT THEY ACTED NEGLIGENTLY UNDER THE PREVAILING CIRCUMSTANCES." (pp. 17-18, Rollo)

On the first issue, the Solicitor General had at the outset disputed petitioners' right to raise the issue of due process for the first time on appeal. We shall relax this rule in the interest of justice (*Caltex Phils., Inc. v. The IAC and Herbert Manzano*, G.R. No. 74730, August 25, 1989, 176 SCRA 741, at p. 747) since petitioners have been adjudged personally liable for the disallowed amount.

Petitioners insist that despite their repeated requests, COA did not show them the canvass sheets upon which the disallowance was premised.

In his Consolidated Comment, the Solicitor General belies petitioners' claim, citing a letter dated January 5, 1990 of the COA-TSO Director, Mr. Arturo Dadulfaza (Annex "A," p. 132, Rollo) who pointed out that petitioners never made any formal request to be shown the canvass sheets and that they never questioned the validity of the canvass. Petitioners have countered that aside from the fact that Dir. Dadulfaza was not present during the meetings between NCA officials and COA representatives, precisely no formal request was made because COA had made "repeated verbal denials" with the statement that said source document was confidential. Thus, in his affidavit, Atty. Bethany G. Kapili, who served as Regulation Office/In-house Counsel for the NCA during the time the award of P.I. Wells was made, raised the following points:

"5. That subsequent to the filing of the letter for reconsideration mentioned in paragraph no. 31, together with Mr. J. L. Fernandez, the internal auditor of the defunct NCA and Mr. S. F. Soller, then accountant of the same office, went to the office of Commission on Audit (COA) and met with Engr. Jose Damole of the COA Technical Services Office (TSO) to explain to the COA-TSO why the NCA-P.I. Well Drilling Corporation contract was not excessive by as much as P83,914.22 and that we pointed out to Engr. Jose Damole that the COA-TSO may have committed an error in its review of the subject contract, by its failure to secure a price quotation of an item (1 unit Goulds Submersible Pump Model 25 EL 30432, 3HP, 230V) including that of all

its accessories;

"6. That considering the insistence of COA-TSO that the price of the subject water pump was only P26,035.00 with no indication whether or not the said price includes all the required accessories, we asked Engr. Jose Damole to be allowed to confer with the personnel of TSO who procured the canvass, in order that we will be able to verify the source and the veracity of TSO's canvass;

"7. That to our dismay, we were not even allowed to talk to the COA-TSO personnel who procured the subject canvass;

"8. That contrary to the allegation of Arturo D. Dadufalza, Director of COA-TSO, contained in his letter dated January 5, 1990, attached as Annex 'A' of the consolidated comment of the COA and the Board of Liquidators, in G.R. No. 90364, that 'the canvass sheets were not submitted to the defunct NCA since no formal request was made,' the defunct NCA represented by J. L. Fernandez, S. F. Solter and the undersigned repeatedly requested the COA-TSO to be shown the canvass of the items involved;

"9. That the NCA did not make its request in writing, to the COA-TSO for the said office to furnish NCA the canvass of the Goulds Submersible Water Pump, because we have been repeatedly denied of our request made during the meetings with representatives of COA-TSO and we were informed that the information obtained by the COA-TSO in relation to canvass of prices of materials, was confidential." (pp. 144-145, Rollo) (italics ours).

Petitioners further point out that whereas the letter dated August 28, 1986 of Gracia Severo B. Espiritu, Chief of COA's Price Monitoring Division, had stated that "an actual canvass in the open market/other resources was undertaken x x x" it was only on January 5, 1990 (after petitioners had filed their petition) that it was disclosed that COA had arrived at the amount of P26,035.00 for submersible pump "pursuant to price quotations provided by three suppliers of submersible pump." Allegedly, the belated disclosure denied petitioners the opportunity to rebut COA's price quotations. For instance, petitioners claim, "if price quotations were taken from three (3) suppliers, then the exact figure of P26,035.00 is a compromise/arbitrary amount arrived at — either this is the highest amount observed or this is the average of three (3) prices supplied" (p. 143, Rollo).

We agree that petitioners were indeed not given due process in this case.

We note that while NCA had provided receipts and invoices to show the acquisition costs of materials found by COA to be over-priced, COA merely referred to "a cost comparison made by an engineer of COA-TSO, based on unit costs furnished by the Price Monitoring Division of the COA-TSO," (p. 124, Rollo).

In fairness to petitioners, COA should have, with respect for instance to the submersible pump, produced a written price quotation specifically for "1 unit Goulds Submersible Pump Model 25 EL 30432, 3 HP, 230 V., coupled to "Franklin Submersible Electric Motor, 3 HP, 230 V. 3-phase, 60 Hz 3450 RPM." The cost evaluation sheet, dated September 15, 1986, Item No. 12 (attached to the decision of Mr. Jose F. Mabanta, (Actg. Director, COA-TSO), merely refers to a "Goulds submersible pump." While it is true that Mrs. Espiritu's report dated August 28, 1986 on price findings states with respect to said pump, as follows:

"Item
Description
----- Quoted price
as of 12-15-85
----- Price Findings
as of 12/86

1 unit 'Goulds'
Submersible Deep
well Pump Model 25E 130432
coupled to 'Franklin'
Submersible Electric Motor,
3HP, 230 volts,
3-phase, 60Hz, 3450 RPM P 72,550.00 P26,035.20

x x x." (p. 80, Rollo)

this is not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, a valid basis for outright disallowance of agency disbursements/cost estimates for government projects.

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee mandatory access to the COA source documents/canvass sheets. Besides, this gesture would have been in keeping with COA's own Audit Circular No. 85-55-A par. 2.6, that:

"x x x As regards excessive expenditures, they shall be determined by place and origin of goods, volume or quantity of purchase, service warranties/quality,' special features of units purchased and the like' x x x."

By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The transparency would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit.

The second assigned error is tied in with the first.

We agree with petitioners that COA's disallowance was not sufficiently supported by evidence, as it was premised purely on undocumented claims, as in fact petitioners were denied access to the actual canvass sheets or price quotations from accredited suppliers. Circular No. 85-55-A of the Commission on Audit lays down the following standards for "Excessive" Expenditures:

"3.3 'EXCESSIVE' EXPENDITURES

Definition: The term 'excessive expenditures' signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

Standard for 'Excessive' Expenditures

The term 'excessive expenditures' pertains to the variables of Price and Quantity.

1.

Price — The price is excessive if it is more than the 10% allowable price variance between the price paid for the item bought and the price of the same item per canvass of the auditor.

Volume Discounts — The price is deemed excessive if the discounts allowed in bulk purchases are not reflected in the price offered or in the award or in the purchase/payment document.

3.

Factors to be Considered — In determining whether or not the price is excessive, the following factors may be considered.

A —

Supply and demand forces in the market

Ex. —

Where there is a supply shortage of a particular product, such as cement or GI Sheets, prices of these products may vary within a day.

B —

Government Price Quotations

C —

Warranty of Products or Special Features

The price is not necessarily excessive when the service/item is offered with warranty or special features which are relevant to the needs of the agency and are reflected in the offer or award.

D —

Brand of Products

Products of recognized brand coming from countries known for producing such quality products are relatively expensive.

Ex. —

Solingen scissors and the like which are made in Germany are more expensive than scissors which do not carry such brand and are not made in Germany.

It was incumbent upon the COA to prove that the foregoing standards were met in its audit disallowance. The records do not show that such was done in this case.

On the third issue, absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis.

ACCORDINGLY, the questioned Decision No. 943 of the COA is hereby SET ASIDE. No Costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Regalado, and Davide, Jr., JJ., concur.

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