

EDMUNDO C. SAMBELI, DOING BUSINESS AS ECS ENTERPRISES, PETITIONERS, VS. PROVINCE OF ISABELA, PROVINCIAL TREASURER OF ISABELA AND COMMISSION ON AUDIT, RESPONDENTS.

G.R. No. 92279, June 18, 1992

Ponente: PARAS, J.

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PARAS, J.:

The instant petition seeks to annul and set aside the ruling of respondent Commission on Audit (COA) affirming the action of respondent Provincial Auditor of Isabela which:

“(a) withheld the payment to petitioner of the amount of P380,400.10, representing the unpaid balance of the price of 300 units of wheelbarrow and 873 pieces of shovel;

“(b) required the refund of the amount of P195,893.10 representing the overpayment to petitioner for the same items.” (p. 35, Rollo).

The pertinent background facts are uncontroverted.

On October 2, 1987, an agreement was entered into by and between the Province of Isabela and ECS Enterprises, herein petitioner, for the purchase of 300 units of wheelbarrows, 837 pieces of shovels and 1 set of radio communication equipment. Out of the items to be delivered, a partial delivery of 150 units of wheelbarrows and 419 pieces of shovels were made on November 11, 1987 for the total price of P380,538.60. The Provincial Auditor allowed the payment of only 50% or P190,338.20 "pending receipt of the reply to the query to the Price Evaluation Division, COA, Technical Staff Office, Quezon City." (Annex 'N' Petition, p. 25 Rollo)

A second delivery of 150 units of wheelbarrows and 418 pieces of shovels was made on December 1, 1987 and payment of P190,200.00 or 50% of P380,400.00 was allowed by the Provincial Auditor, bringing the total payments made to P380,538.20 or 50% of P761,077.20 (the total cost of 300 units of wheelbarrows and 837 pieces of shovels).

Based on the findings of the Price Evaluation Division, COA Technical Service Office, Quezon City, the Provincial Auditor advised the Provincial Treasurer in his letter dated February 20, 1988 that an overprice in the total amount of P619,042.20 exists out of the total price of P761,077.20 offered by ECS Enterprises or an overpayment of P195,893.10. The said findings of the Price Evaluation Division are hereinbelow quoted as follows:

"A comparison between the purchase price of the Province and the findings of the Price Evaluation Division is presented hereunder showing the difference:

Purchase Price

Price Hvs. Div.

"Item/Description

Unit Price

Total

Unit Price

Total

Difference

1) 200 units,

P1, 768.00

P530, 400.00

P320.00

P96, 000

P434, 400.00

2) 837 pcs. shovels

230.00

230,676.40

55.00

46,035

184,641.40

Total

P761, 076.40

vvvvvvvvvvvv

P142, 035

vvvvvvvvvv

P619, 041.40

vvvvvvvvvvvv

"Payment of Three Hundred Eighty Thousand Five Hundred Thirty Eight and 60/100 Pesos Only (P380,538.60) was made on the strength of the certification issued by the Bureau of Supply Coordination that the prices are reasonable. A difference of Two Hundred Thirty Eight Thousand Five Hundred Three and 60/100 PESOS Only (P238,503.60) between the amount paid of Three Hundred Eighty Thousand Five Hundred Thirty Eight and 60/100 Pesos Only (P380,538.60) and the total price due if computed on the Price Evaluation Division canvass Manila Price of One Hundred Forty Two Thousand Thirty Five and 00/100 Pesos Only (P142,035.00).

"If thirty percent (30%) equivalent to Forty Two Thousand Six Hundred Ten and 50/100 (P42,610.50) of the Manila Price total will be allowed for handling and freight expenses to be deducted from P238,503.60, still an overpayment of One Hundred Ninety Five Thousand Eight Hundred Ninety Three and 10/100 Pesos Only (P195,893.10) still exists.

"It is recommended that future claims of ECS Enterprises be withheld and applied to the refund for overpayment." (Annex J, Petition, pp. 122-124, Rollo)

The President/General Manager of ECS Enterprises in his letter dated April 1, 1988 to the Provincial Treasurer made no comment on the overpricing but instead proposed a 10% deduction on the unpaid balance.

The Provincial Auditor forwarded the matter to the COA Regional Director who formally endorsed the stand of the Provincial Auditor, as follows:

"In view of the foregoing, we favorably endorse the stand of the Provincial Auditor in his letter to the Provincial Treasurer Ilagan, Isabela that the total claim of ECS Enterprises in the total amount of P761,077.20 is overpriced by P619,041.40 or a refund of P195,893.10 must be made by the supplier out of the P380,538.60 total payments already made by the Province of Isabela as presented by the Provincial Auditor in the preceding indorsement." (Annex N, Petition; p. 125, Rollo)

The Regional Director further made the following findings:

"the submitted documents disclosed the following deficiencies:

"1. The contract for the purchase of 300 units of wheelbarrows and 837 pieces of shovels was entered into by and between the Province of Isabela and ECS Enterprises without the prior necessity of a public bidding to determine the most advantageous prices;

"2. The following conditions among others, set in the 2nd indorsement dated December 10, 1987 of Mr. David Rubio, Director, Supply Coordination Office to the Provincial Governor, Ilagan, Isabela were not adhered to:

‘(a) the agency concerned shall negotiate further for lower prices such terms and conditions advantageous to the government; and

‘(b) substitute offer/s at lower prices shall be given due consideration upon appreciation of their quality and effectiveness.’”(p. 26, Rollo)

ECS Enterprises appealed to the respondent Commission on Audit. In a letter dated December 12, 1989, the said Commission denied the appeal and affirmed the position of the Provincial Auditor and the COA Regional Director, as follows:

"This has reference to your appeal in behalf of ECS Enterprises from the action of the Provincial Auditor of Isabela in withholding the payment of P380,400.60 representing the unpaid balance of the price of 300 units of wheelbarrows and 837 pieces of shovels purchased by the Province of Isabela from your Company.

"Relative thereto, we invite your attention to the letter of this Commission to then Governor Melanio T. Singson of Isabela, dated August 3, 1988, copy attached, confirming the action taken by the Provincial Auditor in demanding the refund of the excess payment made by the Provincial Treasurer of Isabela to your Company for the reasons stated therein.

"Upon a circumspect evaluation of the grounds relied upon, your within appeal, this Commission finds the same to be devoid of any merit. The price quotation of the Supply Coordination Office provides that the prices set therein are authorized ceiling or purchasing prices. It can be deduced therefrom that the prices to be agreed upon shall not exceed said amount, thereby signifying that negotiations for a lower price may be resorted to in the best interest of the government. Moreover, the action taken by the Provincial Auditor and the COA

Regional Director, as representatives of the Commission on Audit, is in accordance with the law and in pursuance of the mandate of the Constitution which vests in this Commission the exclusive authority 'to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties.'" (Art. IX-D, Sec. 2 (2) 1987 Constitution).

"Accordingly, this Commission regrets to dismiss, as it hereby dismisses, your herein appeal for lack of merit." (Annex R, Petition, pp. 126-127, Rollo).

Hence, the present petition.

Petitioner assails the ruling of the COA as not valid. It contends that the contract of sale has not only been perfected between the Province of Isabela and petitioner but delivery has been made by it with the corresponding partial payment by the Province of Isabela. Thus, it is allegedly incumbent upon COA to authorize the payment of the balance because to act otherwise will constitute an impairment of contract.

We reject petitioner's contention.

In the exercise of the regulatory power vested upon it by the Constitution, the Commission on Audit adheres to the policy that government funds and property should be fully protected and conserved and that irregular, unnecessary, excessive or extravagant expenditures or uses of such funds and property should be prevented. On the proposition that improper or wasteful spending of public funds or immoral use of government property, for being highly irregular or unnecessary, or scandalously excessive or extravagant, offends the sovereign people's will, it behooves the Commission on Audit to put a stop thereto. (Tantuico, State Audit Code Philippines, p. 235)

In the cases of *Danville Maritime, Inc. v. Commission on Audit*, 175 SCRA 701 (1989) and *D.M. Consunji Inc. v. Commission on Audit*, 199 SCRA 549 (1991), We defined the role of the COA in this wise:

"x x x No less than the Constitution has ordained that the COA shall have exclusive authority to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary excessive, extravagant or unconscionable expenditures or use of government funds and properties." (Art. IX D, Sec. 2(2) 1987 Constitution of the Philippines) (underscoring supplied)

Indeed, not only is the Commission on Audit (COA) vested with the power and authority, but is also charged with the duty to examine, audit and settle all accounts pertaining to x x x the expenditure or uses of funds xxx owned by, or pertaining to, the Government or any of its subdivisions, agencies or instrumentalities (Article IX (D-1) Section 2(1), 1987 Constitution). That authority extends to the accounts of all persons respecting funds or properties received or held by them in any 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. (Sec. 82, *ibid*.) (*Dingcong v. Guingona* 162 SCRA 782)

VIEWED in this light, the disallowance made by the respondent Commission on Audit is not without any Constitutional and legal basis. We, therefore, affirm the same.

WHEREFORE, for lack of merit, the petition is DISMISSED. No costs.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Grino-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

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