



Republic of the Philippines
Supreme Court
Manila

EN BANC

EDDA V. HENSON,
Petitioner,

G.R. No. 230185

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS, and
GAERLAN, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

July 7, 2020

X-----X

DECISION

HERNANDO, J.:

Before the Court is a Petition for *Certiorari*¹ filed under Rule 64, in relation to Rule 65, of the Rules of Court assailing the December 13, 2011 Decision² and

¹ *Rollo*, pp. 3-16.

² *Id.* at 25-34; penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

the December 27, 2016 Resolution³ of respondent Commission on Audit (COA)-Commission Proper (CP).

Factual Antecedents

The Intramuros Administration (IA) is a government agency created under Presidential Decree (PD) No. 1616 on April 10, 1979.⁴ Under its charter, it is mandated to undertake the orderly restoration and development of Intramuros as a monument to the Hispanic Period of the Philippine history.⁵

In December 1991, under the administration of petitioner Edda V. Henson (petitioner), IA held a public bidding for the construction of three (3) houses (House Nos. 5, 6, and 7) in Plaza San Luis Cultural Commercial Complex.⁶ Three bidders participated in the bidding.⁷ All their bids, however, exceeded the Agency Approved Estimate (AAE) of the project in the amount of ₱13,187,162.90.⁸ But because of time constraints and to avoid the possible reversion of the funds intended for the project, the Bidding and Awards Committee (BAC) of IA opted not to conduct a second bidding, and instead, negotiated with the lowest bidder, Argus Development Corporation (Argus), to reduce its bid to ₱13,187,162.90.⁹ Argus agreed on the condition that IA would supply construction materials in the amount of not less than ₱3,391,000.00 and that the architectural details would be downgraded.¹⁰

Contracts for Phase I in the amount of ₱9,863,237.40 and Phase II in the amount of ₱3,323,925.50 were executed by the parties on December 27, 1991 and May 15, 1992, respectively.¹¹

Supplemental contracts were also executed for Variation Order No. 1 on October 8, 1992 in the amount of ₱3,377,071.84 and for Variation Order No. 2 on January 26, 1993 in the amount of ₱1,457,069.71 in view of the conversion of the pension houses into a boutique hotel, and later, into a hotel laboratory school.¹²

³ Id. at 17-24; penned by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isable D. Agito.

⁴ Id. at 25.

⁵ Id.

⁶ Id. at 26.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

On March 23, 1993, Argus completed the project and was paid a total of ₱18,001,977.77.¹³

On September 18, 1996, as requested by the then incoming Administrator of IA, Atty. Karlo Q. Butiong, a COA audit team was created to conduct a post-inspection of the project and a re-examination of related documents in view of the inherent and hidden defects in the construction of the project.¹⁴

On June 5, 1997, Notice of Disallowance (ND) No. 97-0001-101 (92-93) was issued disallowing the amount of ₱2,328,186.00, broken down as follows:¹⁵

Reasons for Disallowance	Amount Disallowed
Contract cost of Phase II of the Project amounting to ₱3,323,925.50 exceeded the COA estimate by 3% due to over-estimate in unit costs and quantities of some pay items	₱80,781.62
Supplemental contract cost for Variation Order No. 1 amounting to ₱3,377,071.84 exceeded the COA estimate by 23.36% due to over-and-under estimate in unit cost and quantities of additive and deductive pay items	₱ 639,523.72
Supplemental contract cost for Variation Order No. 2 amounting to ₱1,457,069.71 exceeded the COA estimate by 68.28% due to some mathematical error and unsupported claim in Variation Order No. 1	₱ 591,259.50
Cost of construction materials supplied by the agency which were confirmed included in the bill of materials but were not deducted from the payments to the contractor	₱ 1,016,621.16
Total	₱2,328,186.00¹⁶

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 26-27.

¹⁶ Id. at 27.

Held liable were petitioner for approving the payment and Pelagio R. Alcantara (Alcantara), Chief of Urban Planning and Community Development Office, for certifying the legality of the expenses which were incurred under his supervision.¹⁷

On March 6, 1998, both petitioner and Alcantara sought reconsideration.¹⁸ They likewise requested that they be furnished copies of the documents upon which the ND was based.¹⁹

Ruling of the Regional Director

On March 31, 1998, the Director of the National Government Audit Office (NGAO) II rendered a Decision upholding the disallowance.²⁰

Unfazed, petitioner and Alcantara appealed to respondent COA- CP arguing that the disallowance was not supported by evidence considering that the auditor failed to conduct an actual canvass of the materials used in the construction; that they were denied due process as the audit team failed to disclose its findings within a reasonable time; and that there was no negligence or bad faith on their part.²¹

In his Answer, the then Director of NGAO II contended that the appeal was belatedly filed as it was filed beyond the six (6)-month period.²²

Ruling of respondent COA-CP

Although it found that the appeal was indeed belatedly filed, respondent COA-CP, nevertheless, took cognizance of the appeal in the interest of substantial justice.²³

Respondent COA-CP partially granted the appeal as it found that petitioner and Alcantara were not afforded due process in accordance with COA Memorandum No. 97-012 dated March 31, 1997.²⁴ Apparently, while the source of the reference values or base prices were disclosed to petitioner and Alcantara, the audit team failed to furnish them with authenticated copies of the source documents such as the Canvass Sheets, the price quotations, and other supporting documents to allow them to compare the prices and to

¹⁷ Id.

¹⁸ Id.

¹⁹ Id. at 27-28.

²⁰ Id. at 28.

²¹ Id.

²² Id. at 28-29.

²³ Id. at 29-30.

²⁴ Id. at 30-31.

refute the disallowances or justify the legality of the purchases, item by item.²⁵ The auditor also failed to conduct an actual canvass of the prices of specific items purchased and instead relied on the price data supplied by the Price Evaluation Division – Technical Services Office.²⁶ Consequently, respondent COA-CP reconsidered the disallowed amounts of ₱80,781.62 and ₱639,523.72 in the contract costs for Phase II and Variation Order No. 1.²⁷

Respondent COA-CP, however, affirmed the disallowed amounts of ₱1,016,621.16, representing the cost of construction materials supplied by IA which were included in the bill of materials but were not deducted from the payment made to Argus, and ₱591,259.50, representing the excess contract costs due to mathematical error and unsupported claim in Variation Order No. 1.²⁸

Respondent COA-CP also found that the provisions of the law on public bidding were not complied with.²⁹ Thus, aside from petitioner and Alcantara, it also held liable for the disallowance the Project Construction Manager, Bibiano M. Valbuena; the BAC Chairman, Merceditas C. de Sahagun; and the BAC members, namely, Dominador C. Ferrer, Jr., Augusto P. Rustia, Pelagio R. Alcantara, Jr., and Manuela T. Waquiz.³⁰

The dispositive portion of the December 13, 2011 Decision reads:

WHEREFORE, foregoing premises considered, the herein appeal is **PARTIALLY GRANTED**. The amount of disallowance is hereby reduced from ₱2,328,186.00 to ₱1,607,880.66 in view of the reconsidered amount of ₱720,305.34. Accordingly, ND No. 97-0001-101 (92-93) dated June 5, 1997 is hereby modified to the amount of ₱1,607,880.66. Likewise, the Project Construction Manager and the BAC Chairman and members are included as persons liable, namely, Mr. Valbuena, Ms. de Sahagun, Messrs. Ferrer, Jr., Rustia, and Alcantara, and Ms. Waquiz.

The ATL, IA, is hereby instructed to issue the corresponding Notice of Settlement of Suspension/Disallowance/Charge for the reconsidered disallowance amounting to ₱720,305.34 and the Supplemental ND in the amount of ₱1,607,880.66 to the aforementioned persons liable. The Director, Cluster D- Economic Services, National Government Sector, this Commission, shall supervise and monitor the implementation of this decision.³¹

²⁵ Id.

²⁶ Id. at 31.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 32-33.

³⁰ Id. at 31-32.

³¹ Id. at 33.

Petitioner moved for reconsideration but the same was unavailing.

Hence, petitioner filed the instant Petition raising the following issues:

THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO DISCLOSE THEIR FINDINGS TO THE PETITIONER, DECIDE THE PETITION FOR REVIEW AND MOTION FOR RECONSIDERATION WITHIN REASONABLE TIME;

THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT UPHELD THE DISALLOWANCE IN THE AMOUNT OF ₱1,016,621 REPRESENTING THE COST OF CONSTRUCTION MATERIALS SUPPLIED BY THE AGENCY; [AND]

THE RESPONDENT [COA-CP] COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING PETITIONER AS ONE OF THOSE LIABLE TO THE DISALLOWANCE OF [₱]591,259 ALLEGEDLY UNSUPPORTED CLAIM IN VARIATION ORDER NO. 1 DUE TO MATHEMATICAL ERROR.³²

The Court's Ruling

The Petition must fail.

Timeliness of the Petition

First off, respondent COA-CP contends that the instant Petition should be dismissed outright for late filing. Respondent COA-CP alleges that the instant Petition was belatedly filed because as per records, a copy of the December 27, 2016 Resolution was earlier served at the address of record of petitioner's counsel by personal service on January 17, 2017, and again, by registered mail on January 26, 2017; that said copy was not received by petitioner's counsel because she had already moved out; and that a certified true copy of the Decision was resent to petitioner's counsel at her new address only because of her letter belatedly informing respondent COA-CP of the change of address.³³

Petitioner, on the other hand, counters that in the absence of proof, such as an affidavit attesting that a copy of the December 27, 2016 Resolution was indeed served on her counsel on January 17, 2017 through personal service, and again, on January 26, 2017 through registered mail, the reckoning of the period to file the

³² Id. at 8.

³³ Id. at 71-82.

instant Petition should be March 13, 2017, the actual date of receipt of her counsel.³⁴ She also claims that a mere photocopy of the logbook³⁵ of respondent COA-CP indicating that service was made on her counsel on January 17, 2017, and again, on January 26, 2017 will not suffice.³⁶

The Court sides with respondent COA-CP.

In the case of *Gatmaytan v. Sps. Dolor*,³⁷ the Court gave no credence to the allegation of the petitioner that her counsel received a copy of the decision on a later date for lack of evidentiary basis. In that case, the petitioner claimed that the Court of Appeals erroneously reckoned the date of service on an earlier date as the service on that date was ineffectual having been made on her counsel's former address. Though the Court, in that case, found that the service earlier made to petitioner's counsel was indeed ineffectual, it nevertheless affirmed the dismissal of the appeal due to the failure of the petitioner to discharge the burden of proving the actual date of receipt of her counsel. The Court emphasized that the burden of proving a fact lies on the party who alleges it and that mere allegation does not suffice.

Similarly, in this case, petitioner contends that the counting of the period should commence on March 13, 2017 in the absence of proof that service was made on January 17 and 26, 2017. Petitioner, however, fails to realize that the burden of proving the timeliness of the instant Petition lies with her,³⁸ not respondent COA-CP. It is incumbent upon her to prove, first, that the service made on her counsel's former address was ineffectual because her counsel was able to promptly inform respondent COA-CP of her change of address, and second, that her counsel received the December 27, 2016 Resolution only on March 13, 2017. These she failed to do.

It bears stressing that "in the absence of a proper and adequate notice to the court of a change of address, the service of the order or resolution of a court upon the parties must be made at the last address of their counsel of record."³⁹ Hence, in case there is a change in address, it is the duty of the lawyer to promptly inform the court and the parties of such change to ensure that all official and judicial communications sent by mail will reach him.⁴⁰

³⁴ Id. at 110-111.

³⁵ Id. at 50.

³⁶ Id. at 110.

³⁷ 806 Phil. 1 (2017)

³⁸ See *Andaya v. National Labor Relations Commission*, 266 Phil. 277, 282 (1990).

³⁹ *Garrucho v. Court of Appeals*, 489 Phil. 150, 156 (2005).

⁴⁰ *Vill Transport Service, Inc. v. Court of Appeals*, 271 Phil. 25, 32 (1991).

Here, based on the letters⁴¹ attached to her Compliance, it appears that petitioner's counsel belatedly informed respondent COA-CP of her change of address. Thus, the service made by respondent COA-CP on January 17 and 26, 2017 at the old address of petitioner's counsel are deemed valid and effectual.

Besides, even if the Court disregards this procedural defect or lapse in the interest of substantial justice, the Petition would still be dismissed for lack of merit.

Due process

Invoking her right to due process, petitioner puts in issue the failure of respondent COA-CP to promptly resolve her case within the prescribed period under the Constitution as it took respondent COA-CP thirteen (13) years before finally deciding the case on December 13, 2011.⁴² She likewise maintains that she was deprived of due process because she was not given copies of the documents used by the Technical Services Office of the Commission to allow her to properly and intellectually prepare her pleadings.⁴³

The essence of due process, as the Court has consistently ruled, is simply the opportunity to be heard, or to explain one's side, or to seek a reconsideration of the action or ruling complained of; thus, for as long as the party was afforded the opportunity to defend himself/herself, there is due process.⁴⁴

Here, as aptly pointed out by respondent COA-CP, petitioner was not denied due process as she was able to exhaust all legal remedies available to her and that she was informed of the basis of the disallowance.⁴⁵ As to the length of time that the case was pending before respondent COA-CP, this does not in any way affect the validity of the ND.

As to the fact that petitioner was not furnished authenticated copies of the source documents, this no longer has any bearing on the instant Petition considering that respondent COA-CP, in its December 13, 2011 Decision, already reconsidered the disallowed amounts of ₱639,523.72, representing the excess contract costs of Phase II, and ₱80,781.62, representing the excess contract cost for Variation Order No. 1, for failure of the audit team to comply with COA Memorandum No. 97-012 dated March 31, 1997, which requires that copies of the documents establishing the audit findings of over-pricing

⁴¹ *Rollo*, pp. 45-49.

⁴² *Id.* at 10.

⁴³ *Id.* at 8-9.

⁴⁴ *Development Bank of the Phils. v. Commission on Audit*, 808 Phil. 1001, 1015 (2017).

⁴⁵ *Rollo*, pp. 84-89.

should be made available to the management of the audited agency in the interest of fairness, transparency and due process.

Liability for the disallowed amounts

Citing the ruling of the Court in *Arias v. Sandiganbayan*,⁴⁶ petitioner also insists that she should not be held liable for the disallowed amounts considering that she merely relied on the findings of those under her and the expertise of those in-charge.⁴⁷ She also avers that she should not be held liable in the absence of negligence or bad faith on her part.⁴⁸

Petitioner's reliance on the *Arias* case is misplaced.

To begin with, the case of *Arias* is a criminal case for violation of Section 3, paragraph (e), of the Anti-Graft and Corrupt Practices Act, in connection with the overpricing of a land purchased by the government as a right of way for its *Manggahan* Floodway Project in Pasig, Rizal.

Second. The factual milieu therein are not in all fours with the instant case. In that case, *Arias*, the auditor who approved in audit the acquisition and payment of the lands, was acquitted by the Court because it found no other ground to sustain a conspiracy charge except for his mere signature or approval appearing on a voucher. In acquitting *Arias*, the Court took into consideration the fact that he joined the office only after the properties were purchased and the fact that he had no choice but to rely on his subordinates given the volume of documents involved in that case.

The instant case, on the other hand, involves a disallowance. And unlike in *Arias*, petitioner herein was the Administrator when the public bidding was conducted up to the time when the payment was issued to Argus. Hence, petitioner cannot evade liability.

Neither can petitioner claim that there was no negligence or bad faith on her part considering that there were blatant violations of the rules on public bidding, which petitioner as Administrator should have been aware of. As found by respondent COA-CP, the following violations were committed:

⁴⁶ 259 Phil. 794 (1989).

⁴⁷ *Rollo*, pp. 10-13.

⁴⁸ *Id.* at 14.

1. The BAC pre-qualified Argus to participate in the bidding when it was apparent in its license with the Philippine Contractors Accreditation Board that it was under the “small” category with allowable range of contract cost up to ₱3,000,000.00 only.
2. The BAC did not declare a failure of bidding when the bids offered by the three bidders exceeded the AAE for the project.
3. The BAC simply negotiated with the lowest bidder among the three bidders, to lower its bids to conform to the AAE with certain conditions and ultimately recommended the award of the contract for the project to Argus.⁴⁹

Aside from these violations, respondent COA-CP also found that Argus did not actually lower its bid from ₱16,578,757.00 to ₱13,187,162.90 as the difference of ₱3,391,594.10 matched the cost of the materials supplied by IA as requested by Argus.⁵⁰

Finally, regarding the remaining disallowance in the total amount of ₱1,607,880.66, the Court finds the same in order. The amount of ₱1,016,621.16, representing the cost of construction materials supplied by IA was disallowed because this was included in the bill of materials but not deducted from the payment made to the contractor.⁵¹ As to the amount of ₱591,259.50, this was disallowed due to mathematical error and unsupported claim in Variation Order No. 1.⁵²

In view of the foregoing, no grave abuse of discretion can be imputed to respondent COA-CP as to its finding that petitioner is one of those liable for the disallowed amount.

WHEREFORE, the Petition is hereby **DISMISSED**. The December 13, 2011 Decision and the December 27, 2016 Resolution of respondent Commission on Audit-Commission Proper are **AFFIRMED**.

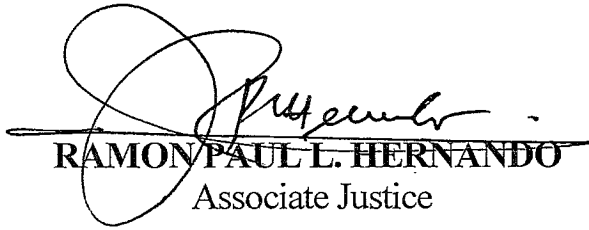
⁴⁹ Id. at 21-22.

⁵⁰ Id. at 33.

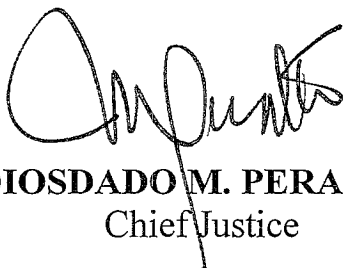
⁵¹ Id. at 31.

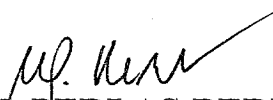
⁵² Id.


SO ORDERED.

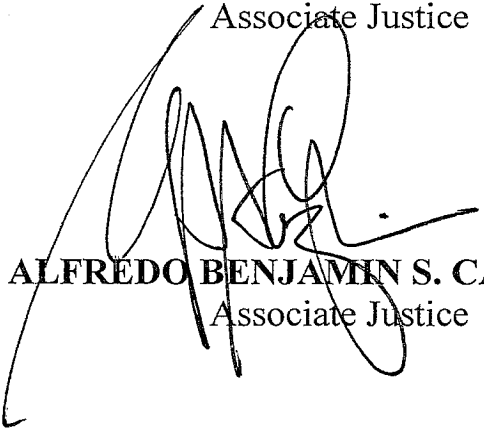

RAMON PAUL L. HERNANDO
Associate Justice


WE CONCUR:

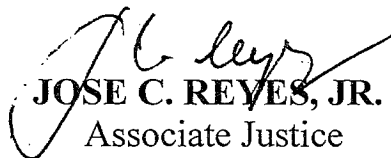

DIOSDADO M. PERALTA
Chief Justice

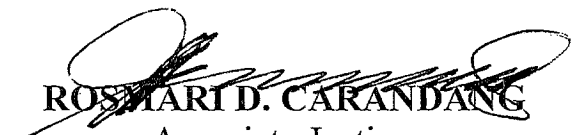

ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

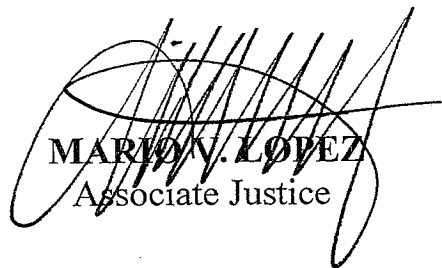

JOSE C. REYES, JR.
Associate Justice



ROSMARI D. CARANDANG
Associate Justice

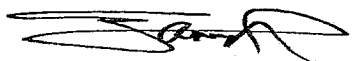

AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

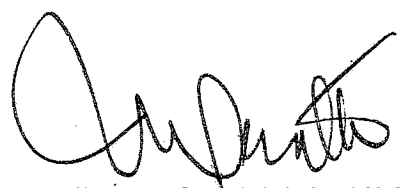

MARIO V. LOPEZ
Associate Justice

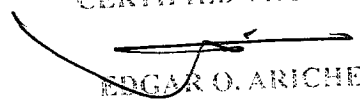

EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court