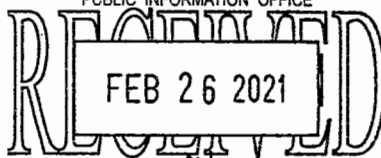




SUPREME COURT OF THE PHILIPPINES
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BY: JUAN
TIME: 2:40

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **DECEMBER 1, 2020**, which reads as follows:

“G.R. No. 210900 – MAURA BAGHARI-REGIS, petitioner, versus COMMISSION ON AUDIT, respondent.

X-----X

RESOLUTION

In its Resolution¹ dated June 6, 2017, the Court dismissed the petition for *certiorari* in view of the finality of the Decision of the Commission on Audit (COA) in COA Decision No. 2012-140. The Court agreed with the COA that petitioner failed to follow its Rules of Procedure when she filed her motion for reconsideration of the COA Decision well past the reglementary period and after a Notice of Finality of Decision had already been issued.

The Court further held that, in the absence of grave abuse of discretion, the factual findings of the COA, which are supported by evidence on record, must be accorded great respect and finality. Moreover, the Court disagreed with petitioner’s contention that she should not be held liable since her duty was merely ministerial. The Court held that, as found by the COA, the act of certifying the legality and necessity of the payment involves a certain degree of discretion and judgment on petitioner’s part. Even without a valid contract nor a public bidding, she still certified that the payments were legal and valid. Her certification was one of the primary considerations in the approval of the payments to Aboitiz Air Transport Corporation (AATC) and Transpac Air Cargo Corporation (TACC). Hence, she should be held personally liable for the said amount, together with the other officials who are liable under the Notice of Disallowance (ND) mentioned in the Court’s Resolution.

The dispositive portion of the Court’s Resolution reads:

¹ Rollo, pp. 157-167.

WHEREFORE, the petition is **DISMISSED** in view of the finality of the Decision No. 2012-140 dated September 13, 2012 of the Commission on Audit. Accordingly, execution may be issued against the persons identified in the Notice of Disallowance No. PPC 2007-002(2004) dated July 11, 2007, including petitioner Maura Baghari-Regis.²

Petitioner files the instant motion for reconsideration,³ maintaining that she exercised good faith in certifying the legality and necessity of the payments to AATC and TACC. Petitioner also invokes the ruling of the Sandiganbayan in Criminal Case No. 28404,⁴ which is allegedly based on the same set of facts as in this case and which acquitted former Philippine Postal Corporation (PPC) Postmaster General Antonio Z. De Guzman for violation of Section 3(g) of Republic Act No. (RA) 3019.

The Court partially grants the motion for reconsideration. While the Court finds no cogent reason to exclude petitioner from liability in ND No. PPC 2007-002(2004) dated July 11, 2007, the Court modifies its Resolution to the extent that the principle of *quantum meruit* should herein apply in favor of the payees, AATC and TACC.

Firstly, the ruling in Sandiganbayan Criminal Case No. 28404 holds no sway in the case at bar. Suffice it to state, the threshold issue in said case, as declared by the anti-graft court itself, was whether the accused, on behalf of the government, entered into a contract that is manifestly and grossly disadvantageous to the same.⁵ The Sandiganbayan ruled that he did not because the prosecution failed to refute the defense of the accused that at the time the contract with AATC was executed, PPC was spending ₱22.00 per kilogram of mail. As such, based on the new rate of ₱8.00 per kilogram of mail to be paid to AATC, PPC even stood to generate savings.⁶

While it may be that the Sandiganbayan also held that the case “would appear to fall under Sec. 53(b) of RA 9184,”⁷ an exception to the general requisite of public bidding, “on account of exigency of service at the Philpost at that time,” it bears stressing, however, that the Sandiganbayan, in the same breath, said that “[i]n any event, lack of public bidding alone does not automatically equate to a manifest and gross disadvantage to the government”⁸ as was the ruling of this Court in *Caunan v. People*.⁹ To be sure, therefore, the Sandiganbayan was not making a categorical pronouncement on the presence or absence of public bidding precisely because it was not an element of the crime under Section 3(g) of RA 3019.

² Id. at 166.

³ Id. at 168-179.

⁴ See Decision dated May 19, 2011 rendered by the Sandiganbayan First Division, id. at 180-206.

⁵ *Rollo*, p. 197.

⁶ Id. at 200-201.

⁷ Id. at 202.

⁸ Id. at 203.

⁹ 614 Phil. 179 (2009).

On the other hand, the threshold issue in this disallowance case is whether the subject expenditures were irregular for lack of public bidding and for lack of a valid exception to this general rule. The presence or absence of public bidding or any valid exceptions thereto is, consequently, crucial. The resolution of any irregularities surrounding the expenditure would, in turn, raise the issue on whether petitioner should be held liable for her certification of the subject expenditures as necessary and legal.

More significantly, there is another offshoot case against De Guzman entitled *Office of the Ombudsman v. De Guzman*¹⁰ (*Office of the Ombudsman*), which also tackled the same set of facts as in here. This administrative case reached the Court, with De Guzman being found guilty of gross neglect of duty when he, on behalf of PPC, entered into a service contract with AATC without public bidding. The Court ruled against the defense of De Guzman that notwithstanding the absence of public bidding, there was nevertheless a valid negotiated procurement under Section 53(b) of RA 9184. The Court held that the expiration of the mail carriage drivers' employment contracts was not a calamitous event contemplated under Section 53(b).

The Court in *Office of the Ombudsman* further held that there was really no board resolution authorizing De Guzman to enter into a contract with AATC. The cost analysis study of petitioner was likewise taken against De Guzman in this wise:

x x x Respondent admits that a post study was conducted on the delivery system to study its effectivity. This means that immediately after the contracts¹¹ were executed, the Central Mail Exchange Center was already gauging the delivery system's performance and studying alternative solutions. Before the contracts expired, there was still time to consider outsourcing mail carriage and the conduct of public bidding.

However, respondent chose to wait until the contracts expired to offer the Board of Directors a viable solution. Under the guise of an "emergency," he was able to skirt the requirement of competitive bidding and directly contract with Aboitiz One. Had outsourcing been discussed before the employment contracts actually expired, there would have been time to conduct a competitive public bidding.¹²

Thus, petitioner's invocation of good faith has no leg to stand on.¹³ The explicit rule under the procurement law for public bidding was clearly violated. While it may not have been done blatantly or with malice, there is strong evidence that petitioner was grossly negligent about it, at the very least, as it was established in *Office of the Ombudsman* that, in fact, there was no board resolution authorizing the contracts and that the cost analysis

¹⁰ 819 Phil. 282 (2017).

¹¹ These pertain to the mail carriage drivers' employment contracts.

¹² *Office of the Ombudsman v. De Guzman*, supra note 10, at 302-303.

¹³ This situation is covered by Rule 2(d) under the Rules on Return in *Madera v. COA*, G.R. No. 244128, September 8, 2020.

study petitioner herself authored even proved that there was no valid exception to forego public bidding. In fine, the COA correctly included petitioner as among those liable for the disallowances by virtue of her act in certifying that the payments to the service contractors were lawful and necessary despite the absence of a public bidding.

The foregoing, notwithstanding, the Court cannot dismiss the fact that AATC and TACC did render services for PPC in 2004 that undoubtedly redounded to the benefit of the government. In the interest of substantial justice and equity, therefore, and in conformity with the principle of *quantum meruit*, AATC and TACC should be compensated — or otherwise, permitted to retain reasonable amounts they received in payment — for the use of their resources up to the extent of the actual services they rendered. Otherwise, the government would be unjustly enriched at the expense of both corporations.¹⁴

The ruling of the Court in *Fernandez v. Commission on Audit*¹⁵ is instructive:

Under the principle of *quantum meruit*, in an action for work and labor, payment shall be made in the amount reasonably deserved, as it is unjust for a person to retain any benefit without paying for it. To deny PowerDev of compensation for the use of its equipment and services would be tantamount to injustice, which the Court cannot countenance. **Accordingly, while the lack of the required ordinance and the failure to observe the proper procedure for the public bidding necessitated the disallowance of the payments for the computerization project, personal liability should not attach to petitioner and the other persons named liable under the NDs up to the extent of the benefit that the government of the City of Talisay has derived from the project.**¹⁶
(Emphasis and underscoring supplied)

This reduction in the disallowed amount should similarly redound to the benefit of herein petitioner, who, under Rule 2(b) of *Madera v. COA*,¹⁷ shall only be solidarily liable with AATC and TACC for the net disallowed amount: the difference between the total amount they each received from the PPC in the disallowed transactions and the *quantum meruit* price.

WHEREFORE, the motion for reconsideration is **PARTIALLY GRANTED**. Notice of Disallowance No. PPC 2007-002 (2004) dated July 11, 2007 disallowing the payments made to Aboitiz Air Transport Corporation and Transpac Air Cargo Corporation in the total amount of ₱29,156,397.22 for failure to conduct public bidding in violation of Republic Act No. 9184, and for failure to execute a formal written contract is **AFFIRMED**.

¹⁴ *Fernandez v. Commission on Audit*, G.R. No. 205389, November 19, 2019.

¹⁵ *Id.*


¹⁶ *Id.* at 23-24.

¹⁷ *Supra* note 13.

However, the Commission on Audit is hereby **DIRECTED** to determine and ascertain with dispatch, on a *quantum meruit* basis, the total compensation due to Aboitiz Air Transport Corporation and Transpac Air Cargo Corporation for their services under the subject contracts of carriage of mail which redounded to the benefit of the Philippine Postal Corporation, and to thereafter recover from Aboitiz Air Transport Corporation and Transpac Air Cargo Corporation the difference between the total amount they each received from the Philippine Postal Corporation and the *quantum meruit* price.

Accordingly, the extent of the solidary liability of petitioner under Notice of Disallowance No. PPC 2007-002(2004) is adjusted to the net disallowed amount or the difference between the total amount received by Aboitiz Air Transport Corporation and Transpac Air Cargo Corporation and the *quantum meruit* price.” Perlas-Bernabe, Leonen and Delos Santos, JJ., on official leave. (28)

By authority of the Court:


EDGAR O. ARICHETA
Clerk of Court

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G.R. No. 210900
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