

## EN BANC

[ G.R. No. 246777, March 02, 2021 ]

### STO. CRISTO CONSTRUCTION, REPRESENTED BY ITS PROPRIETOR, NOEL J. CRUZ, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

#### D E C I S I O N

##### DELOS SANTOS, J.:

This is a Petition for *Certiorari*<sup>[1]</sup> under Rule 64 in relation to Rule 65 of the Rules of Court assailing Decision No. 2018-317<sup>[2]</sup> dated March 15, 2018 of the Commission on Audit (COA) which affirmed Notice of Disallowance (ND) No. 11-001-101-09/10<sup>[3]</sup> dated July 11, 2011.

##### The Facts

Sto. Cristo Construction (petitioner) is a domestic corporation engaged in the construction business. Sometime in 2010, it was awarded government contracts for road rehabilitation/improvement in Mexico, Pampanga.<sup>[4]</sup> In the same year, the road projects were implemented and completed.

From November 15 to 20, 2010, the Quality Assurance Unit (QAU) of the Department of Public Works and Highways (DPWH) reassessed 10 projects implemented by the DPWH-Pampanga 1<sup>st</sup> District Engineering Office (DEO). Because the reassessment yielded adverse findings, the Audit Team Leader (ATL) requested COA Technical Inspectors to conduct another inspection of the completed projects. The inspection report showed overstatement of embankment materials. Thereafter, the ATL issued four notices of disallowance disapproving the payment in the total amount of P22,626,714.71 for the 10 projects.<sup>[5]</sup>

One of the four notices was ND No. 11-001-101-09/10 dated July 11, 2011 (subject ND) which disallowed the amount of P14,926,319.76 representing the cost of deficiencies resulting from the overestimates in embankment materials in the total volume of 31,491.60 cubic meters in the projects awarded to petitioner. The persons<sup>[6]</sup> held liable in the subject ND were:

Persons Liable	Position/Designation	Nature of Participation in the Transactions
Jose G. Datu	District Engineer	[Approval of Program of Works] (POW)/Contract/[Statement of Works Accomplished] (SWA)/Payment
Manuel M. Pasco	Assistant District Engineer	Recommending approval of the transaction
Sotero L.	Chief, Construction	Section Preparation of

Figureoa		plans/POW/as-built plans and implementation processes
Amor Bien M. Aguas	Chief, Maintenance Section	Member, District Inspectorate Team
Adelwison P. Guevarra	Chief, Materials Quality Control Section	Member, District Inspectorate Team
Angelita Z. Pascual	Chief, Planning & Design Section	Member, District Inspectorate Team
Oscar A. Erese	Project Engineer	Management/Supervision of the project from start to completion
Mario Medina	Resident Engineer	Management/Supervision of the project from start to completion
Noel Cruz	Owner/Manager	Contractor

The officials and personnel of DPWH-Pampanga 1<sup>st</sup> DEO who were held liable filed an appeal arguing that: (1) the recommendations of the ATL have no factual and legal basis since the projects were all pre-audited for partial and final payments; (2) when the pre-audit findings were reversed, erosion and surface run-off have already affected the condition of the projects due to typhoons in 2010; and (3) the subject ND had become moot since the projects were already released and finally paid to the contractor. Being *fait accompli*, the disallowance cannot be ordered.<sup>[7]</sup>

In a Letter<sup>[8]</sup> dated January 9, 2012, Engineer Jose Datu (Engr. Datu), District Engineer of DPWH-Pampanga 1<sup>st</sup> DEO, requested to file an appeal from the four notices of disallowance. He stated that their office had already instructed the contractors identified in the notices of disallowance to institute corrective measures at their own expense considering that the projects were still within their warranty period. He also noted that these corrective measures have been substantially completed.

On January 13, 2012, Audit Observation Memorandum (AOM) No. 12-001<sup>[9]</sup> was issued showing the overstatement of embankment materials, as well as the value of the overestimates which amounted to P22,626,714.71.

### **The Ruling of the COA Regional Office No. III**

In Decision No. 2013-41<sup>[10]</sup> dated June 3, 2013, the COA Regional Director affirmed the four notices of disallowance and declared:

- 1) While it is true that pre-audit was adopted in 2010, when the projects in question were implemented, and they were inspected by COA Technical Inspectors whose reports were made as guides by the auditors in allowing payments for first and final claims of the contractors, the fact will not preclude the auditor to re-perform pre-audit activities in post-audit if they are necessary; and
- 2) Both the findings of QAU, DPWH and the COA Technical Inspectors are very authoritative compared to the mere general negation of the appellants.<sup>[11]</sup>

On September 9, 2013, Noel J. Cruz (Cruz), proprietor of petitioner, wrote to Engr. Enrico S. Guilas (Engr. Guilas), Officer-in-Charge, Office of the District Engineer, DPWH-Pampanga 1<sup>st</sup> DEO, requesting for the conduct of mint survey in order to quantify and evaluate the rectifications he has made pursuant to the instructions of Engr. Datu and Engr. Sotero L. Figueroa (Engr. Figueroa), Chief of Construction Section.<sup>[12]</sup>

On September 13, 2013, Engr. Guilas responded to Cruz and scheduled the mint surveys on several dates of the same month.<sup>[13]</sup>

On November 13, 2013, the DPWH-Pampanga 1<sup>st</sup> DEO issued a Memorandum<sup>[14]</sup> confirming the inspection of the projects undertaken by the petitioner. It noted the petitioner's rectification works done outside the approved plan as reflected in the contract.

On February 27, 2014, petitioner filed an Appeal<sup>[15]</sup> from the subject ND. Cruz averred that the subject ND was not delivered to him personally and that he only obtained a copy of it in 2013. He claimed that the rectifications have been made under the supervision and direction of DPWH representatives and in the presence of the local *barangay* officials. He likewise alleged that the engineers who inspected the construction sites did not consider the deterioration of the road, the effects of flooding, wear and tear, and the fact that there is no depreciation of the project.<sup>[16]</sup>

### **The Ruling of the COA Proper**

In Decision No. 2015-11<sup>[17]</sup> dated April 6, 2015, the COA declared the four notices of disallowance final and executory.

Petitioner moved for reconsideration of the April 6, 2015 Decision. Cruz reiterated that he did not receive the subject ND in violation of his right to due process.

On March 15, 2018, the COA rendered Decision No. 2018-317<sup>[18]</sup> with the dispositive portion as follows:

WHEREFORE, premises considered, the appeal of Mr. Noel J. Cruz, Proprietor, Sto. Cristo Construction, from Commission on Audit (COA) Regional Office No. III Order of Execution dated July 31, 2012, on the payment for the construction of Multi-Purpose Building, Anderson Elementary School, Arayat, Pampanga, in the amount of P300,061.51, is deemed MOOT and ACADEMIC, while the appeal from ND No. 11-001-101-09/10 dated July 11, 2011 and Motion for Reconsideration of COA Decision No. 2015-11 dated April 6, 2015, both on the excess payment by the Department of Public Works and Highways-Pampanga 1<sup>st</sup> [District Engineering] Office, resulting from overestimates in embankment materials in seven infrastructure projects in Mexico, Pampanga, in the total amount of P14,926,319.76, are hereby DENIED for lack of merit.<sup>[19]</sup>

Considering the lack of service of the subject ND, the COA decided the appeal on its merits.

The COA ratiocinated that there is no showing that rectifications have been made and that they have been confirmed as sufficiently compliant with the COA reevaluation. It opined that if the rectifications were indeed requested by the DPWH

and completed by Cruz, the DPWH officials and personnel should have invoked these as defenses in their appeal from the notices of disallowance before the COA Proper. Moreover, it noted that the fact that both the QAU of the DPWH and the COA Technical Inspectors have discovered adverse findings in the reassessment of petitioner's projects reinforces the subject ND. The COA did not find reason to question the technical methods used in said reassessment as the inspecting officers enjoy the presumption of regularity in the performance of their duties.<sup>[20]</sup>

Hence, this petition.

### **Arguments of the Parties**

Petitioner argues that the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not appreciate the rectification works undertaken by the petitioner in rendering the assailed Decision.

Petitioner asseverates that the COA erred in not giving credence to its claim that the DPWH requested the implementation of the rectification works and that the DPWH found the works sufficient. It stresses that at the time the DPWH officials filed their appeal from the notices of disallowance, it had no knowledge of the disallowance and the rectification works have yet to be undertaken.<sup>[21]</sup>

Petitioner maintains that the COA violated its right to due process when it rendered the assailed Decision *sans* proper basis to support the same. It *posits* that the COA erred when it relied on the presumption of regularity of performance of official duty in arriving at its decision, without properly considering the evidence presented by the petitioner.<sup>[22]</sup>

The COA, through the Office of the Solicitor General, for its part, maintains that the fact that the DPWH officials did not invoke petitioner's rectifications as defense in their appeal only shows that they were not convinced that the deficiencies found during the evaluation and inspection of the projects had been sufficiently addressed.<sup>[23]</sup> It declares that the pieces of documentary evidence relied upon by petitioner, are all self-serving because the truthfulness of the contents thereof was not verified nor confirmed by the QAU of the DPWH and the COA Technical Inspectors.<sup>[24]</sup> It stresses that without the reevaluation or reassessment of the COA Technical Inspectors, a notice of disallowance cannot be reversed or set aside based on a mere certification from the agency being audited that rectifications had already been made on the projects subject of the ND.<sup>[25]</sup>

### **The Issue**

Whether or not the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it sustained the disallowance of the amount paid to the contractor despite the rectification works undertaken by the latter in the subject infrastructure projects.

### **The Ruling of the Court**

The petition is barren of merit.

Jurisprudence defines grave abuse of discretion as the capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion,

prejudice, or personal hostility. The abuse of discretion must be grave, so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[26]</sup> In a petition for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, the petitioner must satisfactorily show that the quasi-judicial authority committed not only a reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed decision, resolution, or order.<sup>[27]</sup>

An inspection conducted by the COA Technical Inspectors revealed that the road projects of herein petitioner suffered cost deficiencies in the total amount of P14,926,319.76 resulting from overestimates in embankment materials. Prior to said inspection, the QAU of the DPWH uncovered adverse findings when it reassessed petitioner's projects. Petitioner claims that upon receipt of the copy of the subject ND, it made the necessary corrective actions to satisfy the required volume of materials upon the instruction of Engr. Datu and Engr. Figueroa. Thus, it insists that the COA should have reversed its Decision affirming the subject ND since the deficiencies have been sufficiently addressed in its rectification works. But a careful reading of the subject ND and AOM No. 12-001 will show that the **petitioner misconstrued the real import of the disallowance**. Pertinent portions of the subject ND and AOM No. 12-001 read:

ND No. 11-01-101-09/10

The total amount of P14,926,319.76 was disallowed in audit resulting from over estimates in embankment materials (Item 104) totaling 31,491.60 cubic meters as indicated in the individual Re-Inspection Report for each of the seven (7) infrastructure projects rendered on various dates by the Technical Audit Division-Pampanga Group, COA Regional Office No. III, City of San Fernando, Pampanga.

x x x x

Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowances not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under sections 48 and 51 of P.D. 1445.<sup>[28]</sup>

AOM No. 12-001

We have reviewed the calendar year 2011 Technical Evaluation Reports rendered by the Technical Audit Specialists in the inspection of various projects implemented by DPWH-Pampanga 1<sup>st</sup> DEO for calendar year 2010 and noted the following observations, to wit:

Over estimates in embankment materials resulting from a re-inspection/re-evaluation often (10) infrastructure projects implemented by the agency for CY 2010.

Deficiencies found in the re-inspection/re-evaluation of ten (10) infrastructure projects conducted by the Technical Audit Specialists-Pampanga Team during the first quarter of 2011 resulted to a total cost deficiency of P22,626,714.71.