

EN BANC

[G.R. No. 242925, November 10, 2020]

**NAOMI K. TORRETA AND JAIME M. LOPEZ, PETITIONERS, VS.
COMMISSION ON AUDIT, RESPONDENT.**

DECISION

GAERLAN, J.:

The case is a petition for *certiorari* and prohibition with application for preliminary injunction and temporary restraining order^[1] filed by Naomi K. Torreta (Torreta) and Jaime M. Lopez (Lopez), herein (petitioners), who are officers of National Dairy Authority (NDA), seeking to annul and set aside the Notices^[2] and Decisions^[3] issued by herein public respondent Commission on Audit (COA) against NDA which awarded dairy cows in the amount of P17,316,000.00 to HapiCows@Tropical Dairy Farm, Inc. (Hapicows) under NDA's Dairy Multiplier Farm Program in 2009.

Antecedents

NDA is a government-owned and controlled corporation created by Republic Act (R.A.) No. 7884. The NDA was created to be the central policy determining and directing body tasked to ensure the accelerated development of the Philippine dairy industry, in accordance with the policies and objectives set forth by the law.

Under the NDA's Dairy Multiplier Farm Program (Program), NDA is to distribute imported, mature female dairy animal to eligible and qualified participants, who, within a certain period of time, would make a repayment-in-kind: For every one mature female dairy animals, payment shall be by way of two mature female dairy animals with similar or higher dairy blood composition and with condition similar to the animals originally received by the Multiplier Farm Partner from the NDA.^[4]

The Qualification Requirements and Selection Criteria of the Application for the Batch 10 Imported Animals^[5] under the Program is as follows:

1. Submit a formal Letter of Intent to Avail of Batch 10 imported dairy animals[.]
2. Pass the Technical Evaluation of NDA on Viable Dairy Farm Operation covering:
 - a)Acceptability & Readiness of Farm Site/Location
 - Has the capability to provide the minimum animal-to-land area requirement;
 - b)Availability & Adequacy of Farm/Utility Resources
 - Has own production facility & equipment;

c) Adequacy of & Accessibility to Feeds Resources

d) Dairy Husbandry Capability & Readiness of the Proponent

- Provide clean, fresh water at all times (ad libitum supply)
- Conducts regular health tests, if and when applicable, on Tuberculosis, Leptospirosis, and Brucellosis
- Conducts regular vaccination, if and when applicable, on Hemorrhagic septicemia and Foot and Mouth Disease
- Provide a daily; dry matter equivalent to 10% of the animal's body weight (minimum of 40 kg of fresh roughage and 2 kg concentrate.)
- Maintains technical and financial records.

3. The cooperative/organization to which the partner is a member must be of good standing in accordance with the Cooperative Development Authority (CDA) and Securities and Exchange Commission (SEC) rules and policies.
4. Existing partner must have a good credit/updated loan standing with the National Dairy Authority while new farmers must have a good track record with the cooperative.
5. Existing partners has the capacity and ability to pay the animals being availed from the National Dairy Authority (NDA); and
6. Able to pay the hauling cost of the animals being availed from the quarantine site to point of destination.^[6]

NDA found Hapicows qualified for the program. On August 20, 2009, NDA delivered 134 heads of imported pregnant dairy animals to Hapicows' farm in Pagbilao, Quezon. The other 16 heads empty imported animals were delivered in Ayusan, Tiaong, Quezon farm.^[7] At the same time, the Memorandum of Agreement (MOA)^[8] between NDA and Hapicows was executed; herein petitioners signing the said MOA as officers of NDA. Torreta is the Deputy Administrator while Lopez is Division Chief of the Technical Support Unit of NDA.^[9]

COA, thereafter, conducted a post-audit on NDA's Program. The Audit Team Leader (ATL) of respondent issued Audit Observation Memorandum (AOM) No. 10-006^[10] dated March 5, 2010 noting that the dispersal of the 150 heads of dairy animals in favor of Hapicows was of doubtful validity due to lack of proper recording as stated in the approved NDA Board Resolution No. 424 Series of 2009 and as required under Section 112 of Presidential Decree (P.D.) No. 1445. Thus, ATL recommended that management of NDA comply with the aforementioned laws and requested the submission of the following documents:

- a) acknowledgment receipt of the dairy animals by Multiplier-Farmpartners;
- b) MOA entered into by and between NDA and the Multiplier Farmpartners;
- c) criteria for eligibility requirements of progressive

farms/entities; and

- d) technical evaluation and actual accreditation report for each farm by the designated NDA officers including location and terms of lease of pasture area.^[11]

NDA allegedly filed the requested documents. However, ATL found that not all the requested documents were submitted. This prompted them to issue Notice of Suspension (NS) No. 10-001-(10)^[12] on June 21, 2010. Further, ATL requested for additional supporting documents.

On July 26, 2010, ATL conducted an audit inventory of NDA Animals which resulted to the issuance of the second AOM No. 10-017^[13] because Hapicows failed to comply with the prescribed standards of sound dairy production and husbandry management as mandated in the MOA due to observed high incidence of mortality and abortion cases among the dairy animals. Thus, ATL recommended the following actions:

1. Reevaluate the technical and financial capability of Hapicows and determine whether Mr. Benjamin Molina (Molina) is representing Hapicows or acting in his individual capacity;
2. Implement Article 7 of the MOA providing for the repossession of the animals and termination of the MOA; and
3. Submit management action to save the remaining animals in the custody of Hapicows and its proposal for the animals' rehabilitation.^[14]

Upon the recommendation of the COA, NDA decided to pull out the animals. However, the Secretary of Agriculture Memorandum requested a suspension of the pullout and NDA acceded.^[15]

On September 28, 2010, ATL issued a Notice of Disallowance (ND) No. 10-002(10)^[16] stating that the dispersal of the 150 heads of dairy animals to Hapicows was irregular as it lacks proper evaluation and supporting documents holding herein petitioners, together with Molina, President-CEO of Hapicows, Orkhan H. Usman, NDA Former Administrator and Suplicio Bayawa Jr., NDA-Operations Department OIC, liable as signatories of the MOA.^[17]

Petitioners appealed the ND to COA Office of the Cluster Director, Corporate Government Sector, Cluster C (CGS-C). In its Decision^[18] dated July 1, 2011, the CGS-C denied the appeal, and further stating the following observations:

1. Torreta in her letter dated September 20, 2010, admitted that there was only partial submission of requirements by Hapicows, which fell short of the NDA requirements and stated that the NDA management decided to repossess the remaining animals with Hapicows;
2. Hapicows did not have a good credit/updated loan standing with the NDA in violation of Item 4 of the Qualification Requirements having only partially updated its account with the NDA per Certification dated June 22, 2010 issued

by the NDA Finance and Administrative manager;

3. There was inadequate capitalization of Hapicows with paid-up capital of only P62,500; thus, unduly exposing the dairy animals to unnecessary risk in case the Hapicows reneges or fails to comply with its duty under the MOA;
4. Hapicows was not a member of good standing in accordance with the CDA and SEC rules and policies. The certification issued by the SEC revealed that Hapicows was registered merely one year before the signing of the MOA. Also, Hapicows failed to submit certain required statements and to secure prior approval of the SEC for changes in its capital stock; and
5. As to Hapicows' three farm sites, two of which were not substantiated due to lack of lease contracts and other pertinent documents while one was covered by a lease contract that was undated and not notarized, and entered into with the punong barangay who had no property rights over the property.^[19]

Aggrieved with the above findings and decision of the CGS-C, petitioners filed a petition for review before the Commission Proper. In its Decision^[20] dated September 11, 2014, the Commission Proper denied the petition for review for lack of merit. The dispositive portion of which reads as follows:

WHEREFORE, the Commission hereby **DENIES** the herein petition for review for lack of merit and **AFFIRMS** Corporate Government Sector-C Decision No. 2011-021 dated July 1, 2011 affirming Notice of Disallowance No. 10-002-(10) dated September 28, 2010 pertaining to the dispersal of 150 heads of dairy animals to Hapicows@Tropical Dairy Farm, Inc. in the amount of P17,316,000.00. Accordingly, National Dairy Authority is hereby directed to Implement Article 7 of the Memorandum Agreement providing for the repossession of the dairy animals. Hapicows@Tropical Dairy Farm, Inc. and officials of the National Dairy Authority, who signed or initiated the Memorandum of Agreement, are jointly and severally liable for the difference between the book value of the originally distributed animals and the appraised/assessed value of the repossessed animals.^[21]

Petitioners filed a motion for reconsideration for the above Commission Proper's decision however the same was denied thru the Commission's Resolution dated August 16, 2018.^[22]

Hence, this review under Rule 64, in relation to Rule 65 of the Rules of Court.

Issues

Petitioners submit that the COA committed grave abuse of discretion amounting to lack or in excess of jurisdiction:

1. When its audit was wrongly based on its perceived evaluation process instead of what the NDA, as the country's sole dairy authority, had observed and implemented.

2. When its findings and interpretations were not based on the documents actually submitted by Hapicows to NDA and adamantly refused to acknowledge NDA's evaluation process and documentation, in direct contravention of the petitioners' right to administrative due process.
 - a) COA misinterpreted petitioner Torreta's statement and wrongly treated the same as admission of Hapicows lack of evaluation and documents.
 - b) Because COA erred in considering Hapicows and Molina as one and the same, its findings on the outstanding loans of Hapicows and its Manager Molina became disjointed and confused. Yet both notably enjoy good credit and standing regardless of whether both were to be treated as one or separately.
 - c) The NDA's and Hapicows' MOA included insurance at the time when security against risks stemming from animal safety was unfortunately rare and almost non-existent.
 - d) Hapicows' Articles of Incorporation and its capital stock were regular and its standing was unassailed.
 - e) The Tagkawayan property can serve as a third farm whenever a need for one is required. Hapicows provided two farms for the dairy animals both of which were evaluated and found qualified by the NDA.
3. Thus, petitioners cannot and should not be held liable for this transaction as no irregularity attended the same; their participation in the evaluation process is minimal while documents required by the COA and the rules have been submitted and complied by them in good faith.^[23]

Ruling of the Court

The petition for *certiorari* is bereft of merit.

I. COA acted within its constitutional mandate.

Petitioners contend that NDA was vested by law to be the country's authority on the dairy industry. Thus, they are in the best position to formulate the process of distribution of animals and the evaluation of the farms as recipient under the Program. Petitioners do not question the authority of COA to conduct audit, however, they claim that it was exercised without caution, fairness and circumspect. COA found the delivery of dairy animals to Hapicows farm irregular despite the petitioners providing it all the documents it requested in support of the award. Petitioners find COA's disallowance as arbitrary, unreasonable and wrong. By imposing its own interpretation and evaluation of the criteria set by NDA, COA effectively arrogated itself to be the authority in the dairy farm industry.^[24]

We do not agree.