

EN BANC

[G.R. No. 193143, December 01, 2020]

EMERITA A. COLLADO, SUPPLY OFFICER III, PHILIPPINE SCIENCE HIGH SCHOOL, DILLMAN CAMPUS, QUEZON CITY, PETITIONER, VS. HON. REYNALDO A. VILLAR, HON. JUANITO G. ESPINO, JR. [COMMISSIONERS, COMMISSION ON AUDIT] AND THE DIRECTOR, LEGAL SERVICES SECTOR, ADJUDICATION AND LEGAL SERVICES OFFICE, COMMISSION ON AUDIT, RESPONDENTS.

DECISION

CAGUIOA, J:

The Case

This is a Petition for *Certiorari*^[1] (Petition) under Rule 64 in relation to Rule 65 of the Rules of Court (Rules) seeking to set aside the following issuances of the Commission on Audit (COA): (i) COA Decision No. 2008-048^[2] dated May 6, 2008 (2008 COA Decision) rendered by the COA Commission Proper (COA-CP), and (ii) the Letter^[3] dated July 16, 2010 (questioned Letter) issued by the COA Director of Legal Services Sector Adjudication and Legal Services (LSS-ALS).

The instant dispute was precipitated by Notices of Disallowance Nos. 98-012-101-(89),^[4] 98-015-101-(90),^[5] and 98-013-101-(91)^[6] (Notices of Disallowance), which uniformly found petitioner Emerita A. Collado (Collado) severally and solidarily liable with several others for erroneously computing liquidated damages arising from the construction of the Philippine Science High School (PSHS)-Mindanao Campus Building Complex. The Notices of Disallowance were eventually upheld by the COA-CP in COA Decision No. 2002-282^[7] dated December 17, 2002 (2002 COA Decision) and later affirmed in the 2008 COA Decision.

Meanwhile, the questioned Letter affirmed with finality the LSS ALS' finding that Collado's Letter^[8] dated June 10, 2008 was a prohibited pleading for being a second motion for reconsideration pursuant to Section 13, Rule IX of the 1997 Revised Rules of Procedure of the COA (1997 COA Rules).

The Facts

The material facts are undisputed. As gathered from the records, the antecedents follow.

On December 27, 1988, a contract was entered into by and between the PSHS, Diliman Campus, Quezon City and N.C. Roxas, Inc., for the

construction of the PSHS-Mindanao Campus Building Complex at Mintal, Davao City in the amount of P9,064,799.76 which was to be completed within 240 calendar days. Due to certain circumstances beyond its control, the contractor requested an extension of the contract time, which the Department of Science and Technology (DOST)-Wide Infrastructure Committee granted for 50 days from September 12, 1989, the original completion date, to November 1, 1989 but with a notification and reminder to the contractor that even considering the grant of extension, the completion date of the project had elapsed and the same was already subject to liquidated damages.

The then PSHS Auditor, in her letter dated July 23, 1990, informed the Director, Technical Services Office, [the COA], that even with the granting of the extension of the contract time, the contractor had already incurred a negative slippage of 63.58% as of February 15, 1990. However, the DOST-Wide Infrastructure Committee decided to continue with the project as it would entail a longer time to finish the project if they rescind[ed] the contract and conducted another bidding.

On July 31, 1990, a Supplemental Contract was entered into by and between the PSHS and N.C. Roxas, Inc. for the completion of the Academic Building (Phase 1), and concreting of the [d]riveway[,] etc., to be completed within 45 days, with a contract price of P2,333,313.61 under the same terms and conditions as the original contract dated December 27, 1988.

On January 25, 1991, the PSHS Board of Trustees in its Resolution No. 1 terminated the two Contracts (Original and Supplemental) for failure of the contractor to finish the projects.

Upon post-audit, the Auditor discovered that the liquidated damages imposed by PSHS Management on the contractor was only P252,114.79 instead of P2,400,134.65 or a difference of P2,148,019.86. x x x.^[9]

x x x Notice of termination dated January 30, 1991, was furnished the Manager, Suretyship Department, Government Service Insurance System (GSIS) Makati, in a letter dated February 5, 1991, of the Director, PSHS, with the request for payment of the amount of P906,480.00, under Performance Bond G(13) GIF Bond No. 041917 for the Contract dated December 27, 1988 with contract price of P9,064,799.76 and the amount of P233,331.36 under GSIS Performance Bond G(13) GIF Bond of No. 049783 for the Supplemental Contract dated July 31, 1990, with a contract price of P2,333,313.61. It appeared, however, in the letter of the General Manager, N.C. Roxas, Inc., dated March 27, 1991 and in the letter of the Director[,] PSHS, dated June 3, 1991, that the amounts under the aforesaid GSIS Performance Bonds were already released to N.C. Roxas, Inc.^[10]

Consequently, the COA State Auditor IV (COA Auditor)^[11] issued the Notices of Disallowance covering the deficiency in the amount of liquidated damages deducted from the payments made to N.C. Roxas, Inc., for being contrary to the formula

provided in the Implementing Rules and Regulations (IRR) of Presidential Decree No. (P.D.) 1594.^[12] Thus:

Progress Billings	% Accomplished	Liquidated Damages (Actually Deducted)	Liquidated Damages (As Computed)	Difference
1 st	7.00%	on schedule	-	-
2 nd	10.99%	on schedule	-	-
3 rd	25.47%	on schedule	-	-
4 th	37.22%	2,130.86	11,736.60	(9,605.74)
5 th	45.04%	21,959.78	181,917.30	(159,957.52)
6 th	70.20%	148,268.25	381,439.49	(233,171.24)
7 th	75.69%	25,397.49	289,283.29	(273,885.80)
8 th	80.14%	12,497.65	158,444.10	(145,946.45)
9 th	81.74%	2,166.76	152,575.80	(150,409.04)
10 th	85.01%	4,143.86	82,156.20	(78,012.34)
11 th	87.24%	6,052.80	176,049.00	(169,996.20)
12 th	91.04%	9,989.34	170,180.70	(160,191.36)
13 th	96.08%	15,535.96	264,073.49	(248,537.53)
14 th	98.09%	3,829.24	123,234.30	(119,405.06)
15 th	98.11%	142.80	399,044.39	(398,901.50)
Total		252,114.79	2,400,134.65	(2,148,019.86) ^[13]

Based on the records, N.C. Roxas, Inc. incurred delay starting from the 4th progress billing for a total of 409 days (from November 2, 1989 to December 15, 1990).^[14] Thus:

Contract Price (CP)	P9,064,799.16
Total Amount Payable (based on 98.11% completion rate less P2,622.00 due to use of 5/32" instead of 3/16" thickness of truss members)	P8,893,585.26
Liquidated damages	$= 1/10 \times 1\% (\text{CP} - \text{value completed as of expiration of contract time}) \times \text{days of delay}$ $= .001 (9,064,799.16 - 3,196,499.29) \times 409$ $= \text{P2,400,134.85}$

Thus, due to the insufficient deduction in liquidated damages (*i.e.*, P252,114.79 instead of P2,400,134.65), there was an overpayment in the progress billings made to N.C. Roxas, Inc. in the amount of P2,148,019.86.^[15] In effect, because the formula used was different from that mandated in the IRR of P.D. 1594, it would

appear that PSHS incurred a total expenditure of P8,641,470.47, instead of only P6,793,450.41.

For such overpaid amount, the COA Auditor found the following persons solidarily liable: (i) N.C. Roxas, Inc., as payee, (ii) Evelyn B. Rabaca (Rabaca), Accountant III, (iii) Rufina E. Vasquez (Vasquez), Administrative Officer V, for her act of "certifying the expense as necessary, lawful and incurred under [her] direct supervision," and (iv) Collado for her act of "computing the erroneous [liquidated damages] to be imposed."^[16]

In a Letter^[17] dated September 17, 1998, Collado, together with Vasquez, sought reconsideration of the Notices of Disallowance with the COA Auditor. They explained that the computation of liquidated damages was reached in consultation with the previous auditor and was based on their understanding of the IRR of P.D. 1594.^[18] They also claimed that their computations were legal and proper considering that the vouchers of N.C. Roxas, Inc. passed the previous accountant in charge of reviewing the transactions.^[19] The said vouchers also passed previous auditors from 1989 to 1992.^[20] At the same time, Collado and Vasquez appealed for "humane consideration" as the PSHS-Mindanao Campus Building Complex has "served the best interest of the scholars."^[21]

The records also showed that Collado and Vasquez could no longer recover from the payee as it was discovered that Nicanor C. Roxas, Manager of N.C. Roxas, Inc., died sometime in 1992.^[22]

Ruling of the COA Auditor

In a Reply-Letter^[23] dated September 24, 1999, the COA Auditor Ma. Eleanor C. A. Calo denied reconsideration of the Notices of Disallowance and affirmed the COA Auditor's previous findings. The COA Auditor cited Contract Implementation (CI) 7 of the IRR of P.D. No. 1594, to wit:

After a careful review of the documents submitted and the rules and regulations pertinent on the matter, we believe that the disallowances should be sustained. Applicable to herein request for reconsideration is CI 7 of the Implementing Rules and Regulations of PD 1594 as amended in June 1982, which expressly provided the formula for computing the liquidated damages as follows:

"CI 7 Liquidated Damages

Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the Government for liquidated damages, and not by way of penalty, **an amount equal to one tenth of one percent (0.10%) of the total contract cost minus the value of the completed portions of the contract certified by the Government Office concerned as usable as of the expiration of the contract time, for each**

calendar day of delay, until the work is completed and accepted [or] taken over by the Government. x x x"

Based on the aforecited provision of law, it is clear that the formula considered the contract price and the completed portions of the contract. However, **the PSHS management committed error in using the formula 1/10 of 1% of the value of every claim of the contractor only, resulting to insufficient deduction of liquidated damages from the contractor.**

In view of the foregoing, your request for reconsideration is regrettably denied. x x x^[24]

Unsatisfied, Collado and Vasquez appealed^[25] to the COA National Government Audit Office I (COA-NGAO) pursuant to Rule V of the 1997 COA Rules.

Ruling of the COA-NGAO

In a Decision^[26] dated March 28, 2001, the COA-NGAO, through Marcelino P. Hanopol, Jr., Director IV, sustained the findings of the COA Auditors and affirmed the liability of Collado, *inter alia*, based on Section 103 of P.D. No. 1445.^[27] However, under the decretal portion of the decision, the COA-NGAO **reduced** the amount of liquidated damages chargeable insofar as it exceeded 15% of the total contract price,^[28] as mandated by CI 8.4 of the IRR of P.D. No. 1594:^[29]

Wherefore, in view of the foregoing, the instant appeal of the appellants is denied for lack of merit. **The assailed disallowances are hereby affirmed with a modification that in no case shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price.** Accordingly, the appellee/auditor is directed to compute the correct liquidated damages and make an (sic) appropriate adjustments on the Certificate of Settlement and Balances. It is understood, however, that this decision is subject to review and approval of the COA Commission Proper in accordance with Section 6, Rule V of the 1997 Revised Rules of Procedure of the Commission on Audit.

SO ORDERED.^[30]

Collado and Vasquez subsequently filed a Motion for Reconsideration^[31] dated May 16, 2001, once again disclaiming their liability for the amount corresponding to the under-deducted liquidated damages.^[32]

The 2002 COA Decision of the COA-CP

On automatic review,^[33] the COA-CP^[34] in the 2002 COA Decision denied the Motion for Reconsideration dated May 16, 2001, with modification only as to additional persons liable:

WHEREFORE, premises considered, the instant request for reconsideration is hereby denied for lack of merit and the instant disallowance is hereby affirmed with a modification to the effect that Ms.