

## EN BANC

[ G.R. No. 205389, November 19, 2019 ]

**SOCRATES C. FERNANDEZ, IN HIS CAPACITY AS MAYOR OF THE CITY OF TALISAY, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.**

### DECISION

**INTING, J.:**

Before the Court is a Petition for *Certiorari*<sup>[1]</sup> under Rule 64 in relation to Rule 65 of the Rules of Court seeking to set aside Decision No. 2012-042<sup>[2]</sup> dated April 23, 2012 and Resolution (Decision No. 2012-267)<sup>[3]</sup> dated December 28, 2012 of the Commission on Audit (COA).

#### *The Antecedents*

The present case involves two contracts entered into by the City Government of Talisay, Province of Cebu, to wit: 1) the *computerization project*, which took place in 2002 to 2003, during the term of Eduardo R. Gullas as Mayor of Talisay City; and 2) the *purchase of liquid fertilizers*, which took place in 2005 to 2006, during the term of Socrates C. Fernandez (petitioner) as Mayor of Talisay City.

#### *The computerization project*

The City of Talisay, after allegedly conducting a public bidding, awarded its computerization project to PowerDev Corporation (PowerDev).<sup>[4]</sup> The project covered the following areas:

- 1) Business Licensing, Integration of Real Property Assessment;
- 2) Personnel Information System;
- 3) Government Payroll System;
- 4) Automated Timekeeping System;
- 5) Project Monitoring System;
- 6) Building, Electrical and Water Permit Application System;
- 7) Software Development for Local Civil Registrar Information System;
- 8) Timekeeping System for Job Order Employees; and
- 9) Local Area Network.<sup>[5]</sup>

However, the Audit Team Leader (ATL) of the COA, Talisay City, questioned the foregoing project. Having found deficiencies, including lack of the required documents, the ATL issued Audit Observation Memorandum (AOM) Nos. 2004-001 and 2005-001, dated December 21, 2004 and February 9, 2005, respectively.<sup>[6]</sup> As a consequence, the then Regional Cluster Director (RCD), Regional Legal and Adjudication Office (RLAO), COA Regional Office No. VII suspended the payments for the project by issuing four Notices of Suspension (NS), all dated February 27, 2006, to wit:

- 1) NS No. 2004-001-100-(2004) L2-06-159-00-008;
- 2) NS No. 2004-002-100-00-(2004) L2-06-159-00-009;
- 3) NS No. 2004-003-100-(2004) L2-06-159-00-010; and
- 4) NS No. 2005-004-100-(2004) L2-06-159-00-011.<sup>[7]</sup>

The suspensions matured into disallowances due to non-compliance with the requirements embodied in the Notices of Suspension.<sup>[8]</sup> Accordingly, the then RCD, RLAO, COA Regional Office No. VII issued the following Notices of Disallowance (ND), all dated April 23, 2007:

- 1) ND No. 2004-001-100-(2004) L2-07-159-00-006 for P8,500,000.00;<sup>[9]</sup>
- 2) ND No. 2004-002-100-(2004) L2-07-159-00-007 for P613,440.00;<sup>[10]</sup>
- 3) ND No. 2004-003-100-(2004) L2-07-159-00-008 for P10,086,560.00;<sup>[11]</sup> and
- 4) ND No. 2005-004-100-(2004) L2-07-159-00-009 for P7,788,000.00.<sup>[12]</sup>

#### *The purchase of liquid fertilizers*

The ATL also questioned the price of 3,333 bottles of liquid fertilizer purchased by the City of Talisay at P900.00 per liter or a total of P2,999,700.00.<sup>[13]</sup> The highest price obtained by the ATL through canvass and actual purchase from Pacifica Agrivet was P171.00 per liter plus 10% thereof, or P188.10. Thus, the unit overprice was P711.90.<sup>[14]</sup>

As a consequence, the ATL issued AOM No. 06-001 dated November 8, 2006.<sup>[15]</sup> Subsequently, the ATL issued ND No. 2007-002 dated July 23, 2007, disallowing the amount of P2,372,762.70 (or the unit overprice of P711.90 multiplied by 3,333 units).<sup>[16]</sup>

#### *The COA's Ruling*

On account of the audit findings, a special audit team was constituted to conduct an investigation of the above contracts under the COA Legal and Adjudication Sector (LAS) Office Order No. 2007-S-009 dated September 10, 2007.<sup>[17]</sup>

Pending review of the Special Investigation Report, the persons held liable under the

five NDs, through counsel, filed an appeal dated December 21, 2007.<sup>[18]</sup> Aside from petitioner, the persons named liable under the NDs were the other signatories, the Bids and Awards Committee (BAC) members, and the payee. Their appeal was addressed to the Regional Legal and Adjudication Director of COA Regional Office No. VII.

On June 3, 2009, the Regional Director of COA Regional Office No. VII transmitted the appeal to the Team Leader of the special investigation team for appropriate action.<sup>[19]</sup>

On April 23, 2012, the COA rendered the assailed Decision No. 2012-042<sup>[20]</sup> dated April 23, 2012, denying the appeal and affirming the subject disallowances. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. ND Nos. 2004-001-100-(2004) L2-07-159-00-006 for P8,500,000.00; 2004-002-100-(2004) L2-07-159-00-007 for P613,440.00; 2004-003-100-(2004) L2-07-159-00-008 for P10,086,560.00; and 2005-004-100-(2004) L2-07-159-00-009 for P7,788,000.00, all dated April 23, 2007; and ND No. 2007-002 dated July 23, 2007, disallowing the amount of P2,372,762.70, are hereby AFFIRMED.<sup>[21]</sup>

Aggrieved, the persons liable under the five NDs, through counsel, filed a Motion for Reconsideration.<sup>[22]</sup> Having found no merit in the Motion for Reconsideration, the COA denied it with finality in the assailed Resolution (Decision No. 2012-267)<sup>[23]</sup> dated December 28, 2012. Accordingly, the COA affirmed Decision No. 2012-042 dated April 23, 2012.

Hence, petitioner filed the instant petition for *certiorari* in representation of all the persons named liable in the NDs issued by the COA. Among those so named are former City Mayor Eduardo R. Gullas, Viluzminda G. Villarante, Emma L. Macuto, Edgar M. Mabinay, Atty. Aurora Econg, Joan L. Vebar, Audie B. Bacasmas, and Emely S. Cabrera (collectively, Gullas, *et al.*).

On November 20, 2018, Gullas, *et al.*, through counsel, filed a Motion for Severance<sup>[24]</sup> with the Court, praying that the case involving the computerization project be re-docketed as a separate petition.

In the Court's Resolution<sup>[25]</sup> dated March 19, 2019, the Motion for Severance was denied for lack of merit. Subsequently, Gullas, *et al.* filed a Motion for Reconsideration,<sup>[26]</sup> but this was likewise denied in the Court's Resolution<sup>[27]</sup> dated August 6, 2019.

### *The Issues*

The present petition raises the following assignment of errors:

#### I

RESPONDENT COMMISSION ON AUDIT (COA) DEPRIVED PETITIONER

AND THE OTHER PERSONS NAMED LIABLE IN THE NOTICE OF DISALLOWANCE (ND) [OF] THEIR RIGHT TO DUE PROCESS WHEN THEIR APPEAL ADDRESSED TO THE DIRECTOR OF THE LEGAL AND ADJUDICATION SECTOR OF COA REGIONAL OFFICE NO. VII WAS NOT DECIDED BY SAID OFFICIAL BUT FORWARDED TO THE COMMISSION PROPER.

## II

RESPONDENT ERRED IN DISALLOWING THE PAYMENTS MADE BY THE CITY OF TALISAY TO POWERDEV FOR ITS INFORMATION TECHNOLOGY PROJECT.

## III

RESPONDENT ERRED IN HOLDING [HEREIN] PETITIONER AND OTHER PERSONNEL OF THE CITY OF TALISAY [LIABLE] FOR THE ALLEGED OVERPRICING IN THE PURCHASE OF LIQUID FERTILIZERS.<sup>[28]</sup>

### *The Court's Ruling*

The petition lacks merit.

The Court finds that petitioner and the other persons held liable under the NDs were not deprived of due process, and the COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned NDs. However, with respect to the computerization project, the persons held liable thereunder are relieved of personal liability up to the extent of the benefit that the City of Talisay has derived from the project.

#### *I. Petitioner and the other persons named in the NDs were not deprived of due process.*

Under the then 1997 Revised Rules of Procedure of the COA,<sup>[29]</sup> an aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, NDs and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit.<sup>[30]</sup> In turn, the party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.<sup>[31]</sup>

Pending the resolution of the appeal, which was filed before the Regional Legal and Adjudication Director in December 2007, the 2009 Revised Rules of Procedure of the COA (2009 Revised Rules of COA)<sup>[32]</sup> took effect. Under these Rules, the pertinent provisions on appeal substantially remained the same. Section 1, Rule V of the 2009 Revised Rules of COA states that "*an aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit.*" In turn, Section 7, Rule V of the 2009 Revised Rules of COA provides:

*Sec. 7. Power of Director on Appeal.* - The Director may affirm, reverse, modify or alter the decision of the Auditor. If the Director reverses,

modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Directors' decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the CP.

In this case, however, observance of the aforementioned rules of procedure was impracticable. Here, the investigation of the case was conducted by a special team of auditors, and this team was headed by Atty. Roy L. Ursal (Ursal), the Regional Director himself.<sup>[33]</sup> Through LAS Office Order No. 2007-S-009, Director Ursal, Atty. Federico E. Dinapo, Jr., Atty. Marites E. Banzali, and Ma. Jocelyn N. Merencillo were deputized to act for and in behalf of the COA in the investigation of the case.<sup>[34]</sup> Certainly, the direct referral to the Commission Proper of the decision appealed from, rendered by the special audit team headed by Director Ursal himself, was appropriate under the circumstances.

At any rate, it has been ruled time and again that the essence of due process is the *opportunity to be heard*.<sup>[35]</sup> In administrative proceedings, the parties are heard when they are accorded a *fair and reasonable opportunity* to explain their case or are given the chance to have the ruling complained of reconsidered.<sup>[36]</sup> Further, it is settled that there is no denial of procedural due process where the opportunity to be heard either through oral arguments or through pleadings is accorded.<sup>[37]</sup>

In this case, petitioner and the other persons named liable in the NDs were accorded the opportunity to be heard when their appeal was given due course and decided on its merits by the Commission Proper. They were also able to file a motion for reconsideration of the denial of their appeal which the Commission Proper likewise duly considered before ruling to deny it with finality. Evidently, petitioner and all the persons liable under the NDs were not deprived of due process.

## *II. The COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned NDs.*

By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.<sup>[38]</sup> The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.<sup>[39]</sup> The burden lies on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.<sup>[40]</sup>

In this case, the Court finds no grave abuse of discretion on the part of the COA in issuing the questioned NDs. The oft-repeated rule is that findings of administrative agencies are accorded not only respect but also finality when the decision or order is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.<sup>[41]</sup> Here, the COA merely discharged its duties and acted within the