

EN BANC

[G.R. No. 223762, November 07, 2017]

**TOMAS N. JOSON III, PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

DECISION

TIJAM, J.:

Challenged in this Petition for *Certiorari*^[1] is the Decision^[2] dated January 29, 2015 and Resolution^[3] dated January 19, 2016 rendered by the Commission on Audit (COA) in Decision No. 2015-019 denying the Petition for Exclusion from Liability^[4] filed by Petitioner Tomas N. Joson III and affirming the Notice of Disallowance ND No. L-09-05-005 (2004-2007)^[5].

The undisputed facts of the case are as follows:

In 2007, a Special Audit Team (SAT) of the COA conducted a special audit of selected transactions of the Provincial Government of Nueva Ecija for calendar years 2004-2007. The SAT found an irregular award made by the province for the construction of the Nueva Ecija Friendship Hotel to A.V.T. Construction. Thereafter, the SAT issued Notice of Disallowance ND No. L-09-05-005 (2004-2007) disallowing the payments made to A.V.T. Construction in the total amount of Php155,036,681.77 on the following grounds:^[6]

1. The construction of the Hotel (Phase-II Hotel and Lobby) with a total contract cost of P75,970,000.00 was awarded to A.V.T. Construction, an ineligible contractor, without complying with the eligibility check process, contrary to the provisions of Section 21.2^[7] and 23^[8] of the Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184;
2. Despite the ineligibility issue, two more contracts costing Php35,037,826.50 and Php40,890,744.57, representing additional works for the Hotel, were awarded to the same contractor by way of alternative method of procurement; and
3. The Hotel remains unoperational due to the failure of the contractor to complete the project and the issuance of a Suspension Order effective July 30, 2007 by the project engineer and the provincial engineer duly noted by the former Governor.^[9]

The SAT found the members of the Bids and Awards Committee (BAC), the BAC Technical Working Group (TWG), the provincial accountant, the provincial engineer and herein Petitioner in his capacity as provincial governor of Nueva Ecija and as

head of the procuring entity, solidarily liable for the disallowed amount. Petitioner was held solidarily liable for entering into the contract with A.V.T. Construction and for approving the payment vouchers to the latter.

Petitioner appealed the disallowance. However, the Director of the Fraud Audit and Investigation Office, Legal Services Sector (LSS) of the COA denied the appeal and affirmed the disallowance in his LSS Decision^[10] No. 2009-344 dated November 27, 2009. The dispositive portion thereof reads:

WHEREFORE, premises considered, the instant appeal is denied for lack of merit and ND No. L-09-5-005 (2004-2007) dated May 14, 2009 in the total amount of P155,036,681.77 is hereby affirmed.^[11]

Petitioner then filed a petition for exclusion from liability arguing that he should not be held liable for the disallowed amount since the determination of whether a prospective bidder is eligible or not is the exclusive responsibility of the BAC and if there is indeed a liability, the members of the BAC should be held liable since they are the persons directly responsible for the transaction.

The COA in its Decision No. 2015-019^[12] denied the petition. The COA found Petitioner liable for the disallowed amount since he failed to exercise due diligence in the performance of his duty. Had he done so, Petitioner could have discovered the inadequacies of the contract's supporting documents and the winning bidder's ineligibility. Being a signatory in the contracts, Petitioner is presumed to have prior knowledge that the bidding process was tainted with ineligibility. As such, Petitioner cannot seek refuge from the Arias doctrine. The *fallo* thereof reads:

WHEREFORE, in view of the foregoing, the petitions of former Governor Tomas N. Joson III and of Provincial Accountant Romeo T. Del Mundo, both of the Provincial Government of Nueva Ecija, for exclusion from liability under Notice of Disallowance No. L-09-05-005 (2004-2007) dated May 14, 2010 are hereby DENIED. Accordingly, petitioners Joson and Del Mundo, together with the other persons named liable, shall remain solidarity liable for the subject disallowance.^[13]

Petitioner filed a motion for reconsideration^[14] of the COA decision, but the same was denied by the COA in its Resolution dated January 19, 2016.

Hence this Petition raising the following issues:

I. WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT PETITIONER FAILED TO EXERCISE DUE DILIGENCE IN THE PERFORMANCE OF HIS DUTY RELATIVE TO THE AWARD OF THE CONTRACT.

II. WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT COMPLETELY DISREGARDED THE FACT THAT THE PROJECT WAS COMPLETED, ACCEPTED, AND NOW BEING UTILIZED BY THE PROVINCIAL GOVERNMENT.^[15]

Ultimately, the issue to be resolved in this case is whether the COA gravely abused its discretion in holding petitioner personally liable for the disallowed amount of Php155,036,681.77.

Petitioner alleged that the COA gravely abused its discretion in holding him personally liable for the disallowed amount. He claimed that the BAC has the responsibility to check and determine the eligibility of the prospective bidders. Thus, petitioner, as head of the procuring entity and the local chief executive, has the right to reasonably rely on the faithful performance by the BAC of its duties. Petitioner further claimed that there was no reason for him to be particularly cautious and probe every step in the bidding process. As head of the procuring entity, he had to rely to a reasonable extent on the good faith of his subordinates in the regular performance of their duties. Finally, petitioner argued that his alleged prior knowledge of the incompleteness of documents and the ineligibility of A.V.T. Construction was merely presumed by the BAC through his signature on the contracts.

On the other hand, respondent argued that petitioner failed to exercise the necessary due diligence in the performance of his duty relative to the award of the contract. Had he done so, petitioner could have discovered the glaring inadequacies of the contract's supporting documents and the winning bidder's ineligibility. Being the signatory in the contracts, he had every opportunity to examine the supporting documents. Thus, petitioner is presumed to have prior knowledge that the bidding process was tainted with irregularity due to non-compliance with the eligibility requirements in R.A. No. 9184. As such, petitioner cannot invoke the doctrine laid down in *Amado C. Arias v. The Sandiganbayan*.^[16]

The petition is granted.

The COA found the petitioner liable under Section 19 of the Manual on Certificate of Settlement and Balances, which provides:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) *the duties, responsibilities or obligations of the officers/persons concerned*; (c) *the extent of their participation or involvement in the disallowed transaction*; and (d) the amount of losses or damages suffered by the government thereby. x x x

x x x x

19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.

19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

Related to the foregoing is Section 103 of the Presidential Decree (P.D.) No. 1445 or the Government Auditing Code of the Philippines, which states that:

SECTION 103. *General liability for unlawful expenditures.* Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Under this provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present, to wit: (a) there must be an expenditure of government funds or use of government property; (b) the expenditure is in violation of law or regulation; and (c) the official is found directly responsible therefor.^[17]

Here, petitioner was held liable because he failed to exercise due diligence in the performance of his duty relative to the award of the contract. By his signature in the award of the contract to A.V.T. Construction and the contract itself, the COA held that petitioner is presumed to have prior knowledge that the bidding process was tainted with irregularity due to the ineligibility of A.V.T. Construction. As head of the procuring entity and the former governor of Nueva Ecija, the COA maintained that petitioner has a duty to ensure that all the requirements are met and complied with before entering into a contract with A.V.T. Construction.

This Court already discussed the general policy of the Court in sustaining the decisions of administrative agencies as in the case of *Filomena G. Delos Santos, et. al., v. Commission on Audit*^[18] that:

At the outset, it must be emphasized that the COA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the COA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x.^[19]

However, We are reminded that said general policy should not be applied in a straitjacket as there are instances wherein the decisions of these agencies should be reviewed by this Court. One of those instances is when the administrative agency committed grave abuse of discretion, as in this case. There is grave abuse of

discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.^[20] In this case, the COA committed grave abuse of discretion in holding petitioner liable for the disallowed amount.

Petitioner as the governor of Nueva Ecija and head of the procuring entity pursuant to its duty provided in Section 37.2.1^[21] of the Implementing Rules and Regulations of R.A. No. 9184, approved the recommendation of the BAC to award the contract to A.V.T. Construction following their evaluation of all the documents submitted by the latter. Corollarily, petitioner awarded the contract to A.V.T. Construction and signed the same in behalf of the local government of Nueva Ecija.

The payments to A.V.T. Construction was disallowed by COA for the reason that the pre-qualification or eligibility checklist using the "pass/fail" criteria, the Net Financial Contracting Capacity (NFCC), and Technical Eligibility documents are missing.

It is well to note that the missing documents, the eligibility checklist using the pass/fail criteria,^[22] the NFCC^[23] and the technical eligibility documents, pertain to the pre-qualification stage of the bidding process. Under R.A. No. 9184, the determination of whether a prospective bidder is eligible or not falls on the BAC. The BAC sets out to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184.^[24]

Thus, the presence of the eligibility checklist, the NFCC and the technical eligibility documents are the obligations and duties of the BAC. The absence of such documents are the direct responsibility of the BAC. Petitioner had no hand in the preparation of the same. He cannot therefore be held liable for its absence.

Yet, the COA held petitioner liable because of his award of the contract to A.V.T. Construction. The COA relied on *Escara v. People*,^[25] where this Court held that the doctrine in *Arias vs. Sandiganbayan*^[26] is unavailing due to Escara's foreknowledge of an infirmity in the contract, thus:

We agree with the Sandiganbayan that *Arias* and *Magsuci* find no application to the instant case, thus:

The above defense of Escara cannot exonerate him from criminal liability. It is true that in the cases of *Arias vs. Sandiganbayan* (180 SCRA 309) and *Magsuci vs. Sandiganbayan* (240 SCRA 13), the Supreme Court rejected the theory of criminal liability where the head of office, in discharging his official duties, relied in good faith on the acts of his subordinate. The High Tribunal ruled that there should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction. In this case, however, accused Escara had foreknowledge of the irregularity attendant in the delivery of the lumber supplied by Guadines. In his letter (Exhibit "I") dated January 23, 1993 addressed to Engineer Bert Nierva, of the Provincial Engineering Office of Quezon, he acknowledged that the materials intended for the