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[G.R. No. 211553, September 13, 2016]

LEANDRO B. VERCELES, JR., PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

BRION, J.:

We resolve the petition for *certiorari*[1] filed by Leandro B. Verceles, Jr., to assail the October 28, 2010 decision[2] and December 6, 2013 resolution[3] of the Commission on Audit (COA) in Case No. 2008-016.

Antecedents

The Provincial Government of Catanduanes (*the province*), represented by then Governor Leandro B. Verceles, Jr. (*Verceles*), engaged the Provincial Environment and Natural Resources Office (*PENRO*) to carry out the province's tree seedlings production project (*the project*).[4] The province and PENRO entered into several Memoranda of Agreement (*MOA*) to implement the project.[5]

On June 11, 2001, the Sangguniang Panlalawigan (*SP*), through Resolution No. 067-2001, gave blanket authority to the governor to enter into contracts on behalf of the province.[6] The SP reaffirmed the authority given to the governor through Resolution Nos. 068-2001 and 069-2001.[7] On the same date, the SP also resolved to give the governor the power to realign, revise, or modify items in the provincial budget.[8]

The cost of the project was allegedly paid out of the Economic Development Fund (*EDF*) allocation in the provincial budget for calendar years (CY) 2001 and 2002.[9] The EDF is the 20% portion of the province's internal revenue allotment (IRA) required by law to be spent on development projects.[10]

The province and PENRO subsequently executed the following MOA:[11]

MOA	Date	Amount (in pesos)	Supposed Authority	Funding Source
First MOA	27 September 2001	1.5 Million	SP Resolution No. 67-2001; affirmed in SP Resolution Nos. 68-	EDF allocation in the CY 2001 Budget

			2001 and 69-2001.	
Second MOA	30 October 2001	1.5 Million	the same	Savings from the EDF (CY 2001) transferred to the *Environment Management Program*
Third MOA	6 May 2002	3 Million	the same	EDF allocation in the CY 2002 Budget
Fourth MOA	22 August 2002	3 Million	the same	Savings from the EDF (CY 2002) transferred to *Trees Seedling Production of Environmental Safeguard*
Fifth MOA	26 September 2002	1 Million	the same	Savings from the EDF (CY 2002) transferred to *Trees Seedling Production of Environmental Safeguard*

On October 12, 2001, the SP issued Resolution No. 104-A-2001,[12] which effectively revoked the blanket authority given to the governor to enter into contracts on behalf of the Province.[13]

On February 4, 2003, the COA Audit Team Leader issued an *Audit Observation Memorandum* (AOM), finding that Verceles should have sought prior authority from the SP pursuant to Sections 22 (c)[14] and 465 (b) (1) (vi)[15] of Republic Act No. 7160 or the Local Government Code (*LGC*) before executing any MOA after the issuance of Resolution No. 104-A-2001.[16]

Verceles filed his comments. The Audit Team Leader forwarded the AOM to the COA Regional Office.[17] The Regional Office affirmed the AOM and issued Notices of Disallowance in the total amount of P7,528,175.46.[18]

Verceles moved but failed to obtain reconsideration of the *Notices of Disallowance*. The Legal and Adjudication Office also denied his appeal and motion for reconsideration. Verceles elevated the case to the COA proper (national office) to challenge the disallowed payments.[19]

In his petition[20] before the COA, Verceles mainly argued that the payments for the

project were covered by appropriations under the EDF allocation of the provincial budget for CYs 2001 and 2002.[21] Verceles argued that the local chief executive need not secure express or specific authorization from the SP as long as a budget for a contract is already appropriated. He claimed that the *first* and *third* MOAs were funded by the EDF allocation in the CYs 2001 and 2002 budgets, and that, the *second, fourth, and fifth* MOAs were funded by valid augmentations from other items also under the EDF allocation.

The COA Decision

The COA denied Verceles' petition for lack of merit.[22]

The COA held that the augmentations or realignments made by Verceles to fund the *second, fourth, and fifth* MOAs[23] were contrary to Section 336[24] of the LGC.[25] The COA ruled that the disbursements also violated Section 85 (1)[26], of Presidential Decree (PD) No. 1445 or the *Government Auditing Code of the Philippines* and Section 305 (1)[27] of the LGC.[28] These provisions underscore the need for an appropriation before contracts involving the expenditure of public funds may be entered into.

The COA further ruled that at the time Verceles made the augmentations to fund the *second, fourth, and fifth* MOAs, he was not authorized by the SP, and that the CY 2003 appropriation ordinance could not ratify the MOAs entered into in CYs 2001 and 2002.[29]

The COA also explained that Resolution Nos. 067-2001, 068-2001, and 069-2001 authorized Verceles' predecessor *only* (former Governor Hector Sanchez) and that the grant of authority did not extend to Verceles.[30] The COA reasoned that a *resolution* does not have the attribute of permanence.[31] Consequently, the public funds spent to pay for the project had no legal basis.[32] Thus, the *first* and *third* MOAs were still unauthorized even assuming they were funded by the EDF allocation in CYs 2001 and 2002.

The dispositive portion of the COA decision reads:

> **WHEREFORE**, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, LAO-Local Resolution No. 2007-002 dated January 16, 2007 affirming the Notices of Disallowance in the aggregate amount of P7,528,175.46 is hereby **AFFIRMED**.[33]

Verceles moved but failed to obtain reconsideration of the COA decision.[34] He came to this Court for relief through the present petition for *certiorari*. On August 12, 2014, the Court granted Verceles' prayer for the issuance of a temporary restraining order enjoining the implementation of the assailed COA decision.[35]

The Petition

Verceles anchors his petition on the following grounds:

First, the COA disregarded Section 465 (b) (1) (vi) of the LGC, an exception to

Section 22 (c) of the same code.[36]

According to Verceles, while prior authorization to enter into a contract is the general rule, the LGC identifies an exception, *i.e.*, when the contract entered into is pursuant to a law or ordinance. He points out that the funding for the *first* and *third* MOAs were approved and included in the budget of the province for CYs 2001 and 2002.[37]

Verceles posits that even granting that Resolution No. 104-A-2001 had revoked the governor's blanket authority to enter into contracts on behalf of the province, the MOAs merely implemented the items already identified in the appropriation ordinances for CYs 2001 and 2002. Thus, he could (as he did) enter into the MOAs to implement the approved items in the budget.[38]

Second, he vetoed Resolution No. 104-A-2001.[39]

Third, Resolution Nos. 67-2001, 68-2001, and 69-2001 had the force and effect of an ordinance and, thus, were effective during his term.[40] He argues that these resolutions carried the legislative intent to authorize the provincial governor to negotiate and contract loans on behalf of the province.[41] These resolutions were not time-bound.[42]

Fourth, all the MOAs had proper funding authorizations.

Verceles claims that the *first* and *third* MOAs were covered by appropriations under the EDF of the Province's CY 2001 and CY 2002 budgets.[43]

The *second, fourth and fifth* MOAs, on the other hand, were funded from augmentation of funds from savings, which augmentations were ratified in the CY 2003 appropriation ordinance. Augmentation is allowed under Section 336 of the LGC and Article 454 (b) of the LGC implementing rules and regulations.[44] Verceles underscores that the appropriation ordinance for CY 2003[45] ratified the *second, fourth, and fifth* MOAs.[46]

Finally, Verceles submits that the COA violated his constitutional right to speedy disposition of cases when it took it more than ten (10) years to resolve the case.[47]

The COA's Comment

The COA, through the Office of the Solicitor General, denies that it gravely abused its discretion when it affirmed the *Notices of Disallowance*.

The COA maintains that it correctly disallowed the cost of the project based on the grounds discussed in the assailed decision.[48] The COA emphasizes that when the local chief executive enters into contracts, the law requires prior authority from the SP.[49] The COA insists that Verceles executed the MOAs without the prior authorization from the SP. The appropriation ordinances for CYs 2001 and 2002 did not specifically authorize Verceles to enter into MOAs with the PENRO.[50]

Having affirmed the *Notices of Disallowance* on legal grounds, the COA insists that it did not abuse, much less gravely abuse, its discretion. The *abuse of discretion* that warrants the issuance of the writ of *certiorari* must be *grave*, which means that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner, or that the respondent tribunal refused to perform the duty enjoined or to act in contemplation of law.[51]

Finally, the COA submits that the right to the speedy disposition of cases is a flexible concept such that a mere mathematical counting of the time involved is not sufficient; the right is deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays.[52]

The Issue

The issue is whether the COA gravely abused its discretion when it disallowed the payments for the questioned MOAs and held Verceles[53] liable for the amount disallowed.

Our Ruling

We partly grant the petition.

Notwithstanding the number of arguments raised by the parties, the Court focuses its attention on two concepts decisive in the resolution of the present case: (1) the authority of the governor as the local chief executive to enter into contracts on behalf of the province; and (2) the power of the governor to augment items in the provincial budget.

The authority of the governor to enter into contracts on behalf of the province

Section 16 of the LGC, also known as the *general welfare clause*, empowers the local government units (LGUs) to act for the benefit of their constituents. The LGUs exercise powers that are: (1) expressly granted; (2) necessarily implied from the power that is expressly granted; (3) necessary, appropriate, or incidental for its efficient and effective governance; and (4) essential to the promotion of the general welfare of the inhabitants.[54]

As the chief executive of the province, the governor exercises powers and performs duties and functions that the LGC and other pertinent laws provide.[55] These include the power to enter into contracts on behalf of the province.

In support of their competing claims, it is notable that both Verceles and the COA invoke the same provisions of the LGC: *Section 22 (c)* and *Section 465 (b) (1) (vi)*.

Section 22 (c) of the LGC provides that "*[u]nless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned*."

Section 465 (b) (1) (vi) of the LGC, on the other hand, states that "*. . . the Chief Executive . . . [shall] [r]epresent the province in all its business transactions and*