

EN BANC

[G.R. No. 167219, February 08, 2011]

**RUBEN REYNA AND LLOYD SORIA, PETITIONERS, VS.
COMMISSION ON AUDIT, RESPONDENT.**

DECISION

PERALTA, J.:

Before this Court is a Petition for *certiorari*,^[1] under Rule 64 of the Rules of Court, seeking to set aside Resolution No. 2004-046,^[2] dated December 7, 2004, of the Commission on Audit (COA).

The facts of the case are as follows:

The Land Bank of the Philippines (Land Bank) was engaged in a cattle-financing program wherein loans were granted to various cooperatives. Pursuant thereto, Land Bank's Ipil, Zamboanga del Sur Branch (Ipil Branch) went into a massive information campaign offering the program to cooperatives.

Cooperatives who wish to avail of a loan under the program must fill up a Credit Facility Proposal (CFP) which will be reviewed by the Ipil Branch. As alleged by Emmanuel B. Bartocillo, Department Manager of the Ipil Branch, the CFP is a standard and prepared form provided by the Land Bank main office to be used in the loan application as mandated by the Field Operations Manual.^[3] One of the conditions stipulated in the CFP is that prior to the release of the loan, a Memorandum of Agreement (MOA) between the supplier of the cattle, Remad Livestock Corporation (REMAD), and the cooperative, shall have been signed providing the level of inventory of stocks to be delivered, specifications as to breed, condition of health, age, color, and weight. The MOA shall further provide for a buy-back agreement, technology, transfer, provisions for biologics requirement and technical visits and replacement of sterile, unproductive stocks.^[4] Allegedly contained in the contracts was a stipulation that the release of the loan shall be made sixty (60) days prior to the delivery of the stocks.^[5]

The Ipil Branch approved the applications of four cooperatives. R.T. Lim Rubber Marketing Cooperative (RT Lim RMC) and Buluan Agrarian Reform Beneficiaries MPC (BARBEMCO) were each granted two loans. Tungawan Paglaum Multi-Purpose Cooperative (Tungawan PFMP) and Siay Farmers' Multi-Purpose Cooperative (SIFAMCO) were each granted one loan. Pursuant to the terms of the CFP, the cooperatives individually entered into a contract with REMAD, denominated as a "Cattle-Breeding and Buy-Back Marketing Agreement."^[6]

In December 1993, the Ipil Branch granted six loans to the four cooperative

borrowers in the following amounts:

Date of Release	Name of Borrower	Amount of Loan	Amount of Livestock Insurance	Amount Paid to Cattle Supplier (REMAD)
12-10-93	RTLim RMC	P 795,305	P 62,305	P 733,000
12-10-93	BARBEMCO	482,825	37,825	445,000
12-16-93	Tungawan PFMPC	482,825	37,825	445,000
12-22-93	SIFAMCO	983,010	77,010	906,000
12-22-93	RTLim RMC	187,705	14,705	173,000
12-22-93	BARBEMCO	<u>448,105</u>	<u>35,105</u>	<u>413,000</u>
TOTAL		P3,375,775	264,775	3,115,000 ^[7]

As alleged by petitioners, the terms of the CFP allowed for pre-payments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. This Court notes, however, that copies of the CFPs were not attached to the records of the case at bar. More importantly, the very contract entered into by the cooperatives and REMAD, or the "Cattle-Breeding and Buy-Back Marketing Agreement"^[8] did not contain a provision authorizing prepayment.

Three checks were issued by the Ipil Branch to REMAD to serve as advanced payment for the cattle. REMAD, however, failed to supply the cattle on the dates agreed upon.

In post audit, the Land Bank Auditor disallowed the amount of P3,115,000.00 under CSB No. 95-005 dated December 27, 1996 and Notices of Disallowance Nos. 96-014 to 96-019 in view of the non-delivery of the cattle.^[9] Also made as the basis of the disallowance was the fact that advanced payment was made in violation of bank policies and COA rules and regulations. Specifically, the auditor found deficiencies in the CFPs, to wit:

The Auditor commented that the failure of such loan projects deprived the farmer-beneficiaries the opportunity to improve their economic condition.

From the Credit Facilities Proposals (CFP), the Auditor noted the following deficiencies.

x x x x

4. No. 1 of the loan terms and conditions allowed prepayments without taking into consideration the interest of the Bank. Nowhere in the documents reviewed disclosed about prepayment scheme with REMAD, the supplier/dealer.

There was no justification for the prepayment scheme. Such is a clear deviation from existing procedures on asset financing under which the Bank will first issue a "letter guarantee" for the account of the borrower.

Payment thereof will only be effected upon delivery of asset, inspection and acceptance of the same by the borrower.

The prepayment arrangement also violates Section 88 of Presidential Decree (PD) No. 1445, to quote:

Prohibition against advance payment on government - Except with the prior approval of the President (Prime Minister), the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final shall be made on any such contract except upon a certification by the head of the agency concerned to have effect that the services or supplies and materials have been delivered in accordance with the terms of the contract and have been duly inspected and accepted.

Moreover, the Manual on FOG Lending Operations (page 35) provides the systems and procedures for releasing loans, to quote:

Loan Proceeds Released Directly to the Supplier/Dealer - Proceeds of loans granted for the acquisition of farm machinery equipment; and sub-loan components for the purchase of construction materials, farm inputs, etc. shall be released directly to the accredited dealers/suppliers. Payment to the dealer shall be made after presentation of reimbursement documents (delivery/ official receipts/ purchase orders) acknowledged by the authorized LBP representative that same has been delivered.

In cases where supplier requires Cash on Delivery (COD), the checks may be issued and the cooperative and a LBP representative shall release the check to the supplier and then take delivery of the object of financing."^[10]

The persons found liable by the Auditor for the amount of P3,115,000.00 which was advanced to REMAD were the following employees of the Ipil Branch:

1. Emmanuel B. Bartocillo - Department Manager II
2. George G. Hebrona - Chief, Loans and Discounts Division
3. **Petitioner Ruben A. Reyna - Senior Field Operations Specialist**
4. **Petitioner Lloyd V. Soria - Loans and Credit Analyst II**
5. Mary Jane T. Cunting^[11] - Cash Clerk IV
6. Leona O. Cabanatan - Bookkeeper III/Acting Accountant.^[12]

The same employees, including petitioners, were also made respondents in a

Complaint filed by the COA Regional Office No. IX, Zamboanga City, before the Office of the Ombudsman for Gross Negligence, Violation of Reasonable Office Rules and Regulations, Conduct Prejudicial to the Interest of the Bank and Giving Unwarranted Benefits to persons, causing undue injury in violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the *Anti-Graft and Corrupt Practices Act*.^[13]

On January 28, 1997, petitioners filed a Joint Motion for Reconsideration claiming that the issuance of the Notice of Disallowance was premature in view of the pending case in the Office of the Ombudsman. The Motion was denied by the Auditor. Unfazed, petitioners filed an appeal with the Director of COA Regional Office No. IX, Zamboanga City. On **August 29, 1997**, the COA Regional Office issued **Decision No. 97-001** affirming the findings of the Auditor. On February 4, 1998, petitioners filed a Motion for Reconsideration, which was denied by the Regional Office in **Decision No. 98-005**^[14] issued on **February 18, 1998**.

Petitioners did not file a Petition for Review or a Notice of Appeal from the COA Regional Office Decision as required under Section 3, Rule VI^[15] of the 1997 Revised Rules of Procedure of the COA. Thus, the Decision of the Director of COA Regional Office No. IX became final and executory pursuant to Section 51^[16] of the Government Auditing Code of the Philippines. Consequently, on April 12, 1999, the Director of the COA Regional Office No. IX issued a Memorandum to the Auditor directing him to require the accountant of the Ipil Branch to record in their books of account the said disallowance.^[17]

On July 12, 1999, the Auditor sent a letter to the Land Bank Branch Manager requiring him to record the disallowance in their books of account. On August 10, 1999, petitioners sent a letter^[18] to COA Regional Office No. IX, seeking to have the booking of the disallowance set aside, on the grounds that they were absolved by the Ombudsman in a February 23, 1999 Resolution,^[19] and that the *Bangko Sentral ng Pilipinas* had approved the writing off of the subject loans.

The February 23, 1999 Resolution of the Ombudsman was approved by Margarito P. Gervacio, Jr. the Deputy Ombudsman for Mindanao, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant complaint is hereby dismissed for lack of sufficient evidence.

SO ORDERED.^[20]

COA Regional Office No. IX endorsed to the Commission proper the matter raised by the petitioners in their August 10, 1999 letter. This is contained in its February 28, 2000 letter/endorsement,^[21] wherein the Director of COA Regional Office No. IX maintained his stand that the time for filing of a petition for review had already lapsed. The Regional Director affirmed the disallowance of the transactions since the same were irregular and disadvantageous to the government, notwithstanding the Ombudsman resolution absolving petitioners from fault.

In a Notice^[22] dated June 29, 2000, the COA requested petitioners to submit a reply in response to the letter/endorsement of the Regional Office Director. On August 10, 2000, petitioners submitted their Compliance/ Reply^[23], wherein they argued that the Ombudsman Resolution is a supervening event and is a sufficient ground for exemption from the requirement to submit a Petition for Review or a Notice of Appeal to the Commission proper. Petitioners also argued that by invoking the jurisdiction of the Commission proper, the Regional Director had waived the fact that the case had already been resolved for failure to submit the required Petition for Review.

On July 17, 2003, the COA rendered Decision No. 2003-107^[24] affirming the rulings of the Auditor and the Regional Office, to wit:

WHEREFORE, foregoing premises considered, this Commission hereby affirms both the subject disallowance amounting to P3,115,000 and the Order of the Director, COA Regional Office No. IX, Zamboanga City, directing the recording of subject disallowance in the LBP books of accounts. This is, however, without prejudice to the right of herein appellants to run after the supplier for reimbursement of the advance payment for the cattle.^[25]

In denying petitioners request for the lifting of the booking of the disallowance, the COA ruled that after a circumspect evaluation of the facts and circumstances, the dismissal by the Office of the Ombudsman of the complaint did not affect the validity and propriety of the disallowance which had become final and executory.^[26]

On August 22, 2003, petitioners filed a Motion for Reconsideration, which was, however, denied by the COA in a Resolution^[27] dated December 7, 2004.

Hence, herein petition, with petitioners raising the following grounds in support of the petition, to wit:

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DECLARING THE PREPAYMENT STIPULATION IN THE CONTRACT BETWEEN THE BANK AND REMAD PROSCRIBED BY SECTION 103 OF P.D. NO. 1445, OTHERWISE KNOWN AS THE STATE AUDIT CODE OF THE PHILIPPINES.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION FOR HOLDING THE PETITIONERS ADMINISTRATIVELY LIABLE FOR HAVING PROCESSED THE LOANS OF THE BORROWING COOPERATIVES IN ACCORDANCE WITH THE BANK'S MANUAL (FOG) LENDING OPERATIONS.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT HELD THE PETITIONERS LIABLE AND, THEREFORE, IN EFFECT LIKEWISE OBLIGATED TO REFUND THE DISALLOWED AMOUNT EVEN AS AMONG