

EN BANC

[G.R. NO. 157875, December 19, 2006]

DR. TERESITA L. SALVA, PRESIDENT OF THE PALAWAN STATE UNIVERSITY (FORMERLY PALAWAN STATE COLLEGE), PETITIONER, VS. GUILLERMO N. CARAGUE, AS CHAIRMAN, COMMISSION ON AUDIT, RAUL FLORES, AS COMMISSIONER, COMMISSION ON AUDIT AND EMMANUEL M. DALMAN, IN HIS CAPACITY AS COMMISSIONER, RESPONDENTS

AUSTRIA-MARTINEZ, J.

Petitioner Dr. Teresita L. Salva, President of the Palawan State University (formerly Palawan State College [PSC]), is being held personally liable by the Commission on Audit (COA) for the disallowance made on the construction of Phase II, Multi-Purpose Building of the PSC in the amount of P274,726.38.

In 1992, the PSC and the Integrand Development Construction, Inc. (IDCI) entered into a Construction Agreement for the construction of the PSC Multi-Purpose Building (Phase II) for the price of P1,685,883.45.^[1] When the COA-Technical Audit Specialist (COA-TAS) reviewed the contract, it found an excess of P456,242.97, which was later reduced to P274,726.38. The excess was attributed to the costs of items of mobilization/demobilization and earthfill and compaction. The COA-TAS's computation was as follows:

	Contract Price	COA Estimates	Excess
I. Mobilization	P 85,000.00	P 20,576.44	P 64,423.56
II. Earthfill and Compaction	530, 910.00	197,157.15	333,752.85
III. Construction CS-I	21,226.90	19,871.99	1,354.01
IV. Construction of Bleacher	363,047.00	364,962.89	(1,915.89)
V. Concreting of Slab	555,790.00	551,918.26	3,871.74
VI. Construction of Interior Walls	97,454.00	93,337.32	4,116.68
VII. Installation of RCS Pipes	<u>32,456.45</u>	<u>35,046.02</u>	<u>(2,589.57)</u>
Total	P1,685,883.45	P1,282,870.07	P403,013.38
10%		<u>128,287.00</u>	<u>(128,287.00)</u>
	P1,685,883.45	P1,411,157.07	P274,726.38 ^[2]

Petitioner contested the assessment made by the COA-TAS, arguing that the mobilization and demobilization was computed at P20,567.44 based at 2% Direct Costs per DPWH Order No. 3 but excluding the cost of providing temporary facilities such as *bodega*, perimeter fence, and access road, which were all included in the computation of the mobilization item by the agency; and the cost of earthfill and compaction was computed only at 8 working days, which is too short for a volume of 2,0334 cubic meters.

In COA Decision No. 95-211 dated March 28, 1995, the disallowance made by the COA-TAS was affirmed, and petitioner, together with PSC Vice-President Francisco M. Romantico and PSC Accountant Carolina S. Baloran, were held jointly and severally liable for the amount of P274,726.38.^[3]

The COA further affirmed said disallowance in COA Decision No. 2000-273 dated September 26, 2000, with the modification that Romantico and Baloran were excused from any liability, while Engineers Norberto S. Dela Cruz and Lucy Janet Pasion, and the IDCI Manager, were included as persons liable for the amount.^[4]

Petitioner sought reconsideration thereof but it was denied by the OCA per its Resolution dated March 18, 2003 denominated as COA Decision No. 2003-063, the dispositive portion of which reads:

WHEREFORE, in view of all the foregoing considerations and upon the recommendation of the Technical Services Division, COA Regional Office No. IV, Quezon City, that no new material evidence or substantial matters have been raised to warrant a reversal or modification of the subject decision, this Commission has no other recourse but to deny the instant motion for reconsideration.

Accordingly, COA Decision No. 2000-273, dated September 26, 2000 is hereby affirmed with finality. Engr. Norberto S. Dela Cruz, Engr. Lucy Janet Pasion, Dr. Teresita Salva and the Manager, Integrand Development Construction, Inc. remain to be liable for the disallowed amount of P274,726.38.^[5]

Hence, the present Amended Petition for *Certiorari* under Rule 65 of the Rules of Court, claiming that the COA committed grave abuse of discretion amounting to excess or lack of jurisdiction

- I. x x x IN NOT FINDING THAT THE PETITIONER SHOULD NOT BE MADE LIABLE ON THE GROUND THAT SHE APPROVED IN GOOD FAITH THE AWARD;
- II. x x x WHEN IT AFFIRMED THE COMPUTATION OF THE AMOUNT OF DISALLOWANCE MADE BY THE COA TECHNICAL AUDIT SPECIALIST;
- III. x x x WHEN IT RENDERED THE ASSAILED RESOLUTION IN DENIAL OF THE PETITIONER'S RIGHT TO DUE PROCESS;
- IV. x x x IN AFFIRMING THE LIABILITY OF THE PETITIONER WHILE ABSOLVING THE OTHER OFFICIALS AND EVEN THE BOARD OF

TRUSTEES OF THE PSC, THUS VIOLATING HER RIGHT TO EQUAL PROTECTION.^[6]

The pivotal issue in this petition is whether or not petitioner should be held personally liable for the disallowed amount of P274,726.38.

Petitioner is found liable under Section 103 of Presidential Decree No. 1445 or the Government Auditing Code of the Philippines, which provides:

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.^[7]

Related to the foregoing is Section 19 of the Manual on Certificate of Settlement and Balances,^[8] which states:

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

In the present case, the reason put forth by the COA in holding petitioner liable was due to the diversion of the sources for filling materials resulting in the use of additional equipment and expense. The COA found that since it was petitioner who directly caused such diversion, then she should be personally liable for the resulting additional expense.

It should be noted that the disallowance fell under Mobilization and Demobilization, and Earthfill and Compaction expenses, as appearing in the Approved Agency Estimates (AAE). Under the AAE, the contract price for the Mobilization and Demobilization was at P85,000.00 as against the COA estimate of P20,576.44, while the Earthfill and Compaction was at P530,910.00 as against the COA estimate of P197,157.15. The COA computed the Mobilization/Demobilization at 2% of the estimated direct cost per DPWH Department Order No. 30 (January 30, 1991). On the other hand, COA estimated the Earthfill and Compaction cost at P77.60 per cubic meter, while the PSU estimated the same at P77.60. Thus, the resulting discrepancy in the costing made by the COA and the PSU.

The AAE was prepared by PSU Engineers Norberto S. dela Cruz and Lucy Janet R. Pasion.^[9] Petitioner's only participation therein was to approve the same. As in the case of Suarez v. Commission on Audit,^[10] petitioner had nothing to do with the preparation and the computation of the AAE. Therefore, she should not have been held liable for the amounts disallowed during the post-audit.