

EN BANC

[G.R. No. 131077, August 07, 1998]

**LEONISA E. SUAREZ, PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

DECISION

PANGANIBAN, J.:

A public officer cannot be held responsible for unauthorized increases in public expenditures or for high cost estimates in public biddings without proof of his or her participation therein. An administrative decision holding such public officer liable, without any evidence at all to back it up, is void for being rendered with grave abuse of discretion amounting to lack of jurisdiction.

The Case

Before us is a petition for certiorari seeking the reversal of the Decision^[1] dated January 18, 1996 and the Resolution^[2] dated September 9, 1997, promulgated by the Commission on Audit in COA Decision No. 96-021 and 97-506, respectively.

The assailed Decision disposed as follows: ^[3]

"PREMISES CONSIDERED, the instant appeal must be as it is hereby denied for lack of merit and the herein disallowance of the Auditor is hereby affirmed."

Petitioner's Motion for Reconsideration was denied by Respondent Commission in its September 9, 1997 Resolution:^[4]

"Accordingly, there being no new and material evidence adduced as would warrant reversal of the decision sought to be reconsidered, COA Decision No. 96-021 is hereby affirmed. However, the appeal of Messrs. Cayo E. Villanueva and Alfredo B. Adorable for exclusion from those persons found liable under the subject disallowance may now be given due course."

The Antecedent Facts

In his Comment, the solicitor general relates these undisputed facts:^[5]

"On June 19, 1990, the Prequalification, Bids and Awards Committee (PBAC) of the Export Processing Zone Authority (EPZA) conducted a public bidding for the supply and installation of an Electrical Distribution System, Phases I and II, Stage II in the Cavite Export Processing Zone (CEPZ).

The PBAC was composed of the following officials of EPZA, namely:

1. Tomas I. Alcantara - Chairman
2. Ernesto Arrobio - Vice-Chairman
3. Dante Quindoza - Member
4. Sonia Valdeavilla - Member
5. Floro Roco - Member
6. Leonisa E. Suarez - Member
(Petitioner herein)
(p. 123, Records))

Of the three (3) prospective bidders: Andrada Construction, Power Electric Co., Inc. (PELCO Inc.) and Prime Index, Inc., only two (2) participated in the aforesaid public bidding by submitting their respective bids, as follows:

1. PELCO, Inc. - P2,966,155.00
2. Prime Index Phil. Inc. - P3,425,096.00
(p. 123, Records)

The third bidder Andrada Construction did not submit any bid but submitted instead a letter of regret.

After evaluating the aforementioned bids, PBAC, in a Memorandum dated July 9, 1990, declared PELCO Inc. as the lowest complying bidder and thus recommended that the project be awarded to said PELCO Inc. (p. 128, Records).

The above recommendation by PBAC was based on the Approved Agency Estimate (AAE) of the project in the amount of P2,860,156.72 (p. 126, Records) and the Allowable Government Estimate (AGE) in the amount of P3,027,891.19 (p. 123, Records).

The AAE was, in turn, based on the Program of Work (POW) which indicates the amount of P2,306,578.00 as direct cost of the project (pp. 124-125, Records).

On August 2, 1990, the contract involving the bidded project was executed between EPZA, through its Administrator Romeo J. Farolan, and PELCO Inc. through the latter's President and General Manager Dionisio S. Barroga.

On November 28, 1990, the parties to the above contract executed a supplemental agreement for additional works costing P2,663,394.01.

Thereafter, the main contract and the supplemental agreement were submitted for review and evaluation by the Technical Services Office (TSO) of public respondent COA.

In an 'Indorsement' dated April 3, 1991, Director Arturo D. Dadufalsa of the TSO furnished the COA resident Auditor in EPZA with the Contract Review Report and the Supplemental Agreement Review Report issued by the Technical Audit Specialist of the TSO (p. 34, Records)

The aforesaid reports show that the main contract and the supplemental agreement were above COA TSO estimates by as much as 31.55% and 34.53%, respectively, due to the 'higher cost of Transformers and wrong application of the Value Added Tax (VAT)' in the Approved Agency Estimate (AAE).

Accordingly, the COA resident [a]uditor disallowed the amount of P792,034.14 on the main contract and the amount of P683,687.45 on the supplemental agreement or an aggregate amount of P1,179,719.59 for the two contracts.

Thereafter, notices of disallowance were issued to the following persons who were determined to have been jointly and severally liable for the amounts disallowed, viz:

1. Jorge G. Basalo
Assistant Division Chief
Engineering Department
2. Engr. Antonio M. Pulido
Chief, Construction Division
Engineering Department
3. Engr. Carlos Tangwangco
Chief, Power and Communications Division
Engineering Department
4. Engr. Ralph L. Miñoza
Manager, Engineering Department
5. Ms. Leonisa E. Suarez (herein petitioner)
Chief, Environmental Safety Division
6. Engr. Ponciano O. Ramel
Deputy Administrator
Infrastructure Services
7. Mr. Mariano T. Laxa
Manager, Financial Services Department
8. Cayo Villanueva
Deputy Administrator
Support Services
9. Alfredo B. Adorable
Manager, Internal Audit office
10. Power Electrical Co., Inc. (PELCO Inc.) Contractor
(pp. 39-59, Records)

Except for PELCO Inc., all the aforementioned EPZA officials jointly moved for the reconsideration of the disallowance in question but the same was denied in a Memorandum dated April 14, 1994 issued by COA Corporate Auditor Flora C. Feliciano (pp. 113-115, Records).

Dissatisfied therewith, the concerned EPZA officials, including herein petitioner, appealed to public respondent COA on June 9, 1994.

However, in a Decision dated January 15, 1996, public respondent COA denied the appeal

On February 26, 1996, appellants, including herein petitioner, filed a Motion for Reconsideration of the aforementioned Decision.

On March 16, petitioner, together with her co-appellants Cayo E. Villanueva and Alfredo Adorable, filed an 'Appeal for Exclusion from [L]iability.'

On September 9, 1997, public respondent COA rendered a Resolution (COA Decision No. 97-506) denying appellants' Motion for Reconsideration, but declared that 'the appeal of Messrs. Cayo E. Villanueva and Alfredo B. Adorable for exclusion from those persons found liable under the subject disallowance may now be given due course.' (Annex A, p. 3, Petition)"

Ruling of the Commission on Audit

Respondent COA denied petitioner's appeal, ruling as follows:

"This Commission finds the instant request devoid of merit. It must be pointed out that by using the price of only one brand while specifying three (3) brands, PEZA had not exercised prudence in the preparation of the AAE. There was no canvass made on the other brands specified, i.e., G.E and Westinghouse. By using the price of the Philec brand which is higher, in the preparation of AAE, the AGE necessarily increased, giving advantage to the bidder carrying/specifying such brand, thus resulting in a situation disadvantageous to the government.

Anent the allegation of non-observance of due process in the issuance of the said disallowance, the same deserves scant consideration. Upon learning that the COA-TSO source of prices was the Northwest Electrical Supply, appellants could have asked for verification, made comparison and could have raised the issue in their appeal.

As regards the allegation that COA officials themselves are to be blamed for acting without dispatch, it is worthy to note that the pre-audit of the financial transactions of national government agencies and government-owned and/or controlled corporations had been lifted as early as 1989. Thus, the review of subject contract was done as part of the post-audit.

With reference to the appeal for exclusion from liability filed by Messrs. Cayo E. Villanueva, Deputy Administrator for Support Services, Alfredo B. Adorable, Manager, Internal Audit Office and Leonisa E. Suarez, Chief Environmental Safety Division, suffice it to state that the involvement of Messrs. Villanueva and Adorable in the project has no bearing or relevance on the preparation of the AAE, which was the ground for the disallowance, as this was actually prepared by the EPZA Engineering Department Technical Staff. Thus, they cannot be held liable for the disallowance. However, this Commission finds no sufficient basis to exclude Ms. Leonisa E. Suarez who is a member of the PBAC, from those answerable for the disallowance, as she had not shown good faith and diligence in performing properly her functions as such member."^[6]

Hence, this petition.^[7] In his Comment dated February 24, 1998, the solicitor general disagreed with the assailed judgments of respondent and prayed that the