

RECEIVED
JAN 03 2020
BY: YCA
TIME: 3:25 pm



Republic of the Philippines
Supreme Court
Manila

EN BANC

SOCRATES C. FERNANDEZ,
in his capacity as Mayor of the
City of Talisay,

Petitioner,

G.R. No. 205389

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
REYES, A. JR.,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,*
INTING, and
ZALAMEDA, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

November 19, 2019

X-----X

DECISION

INTING, J.:

Before the Court is a Petition for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court seeking to set aside Decision No. 2012-042² dated April 23, 2012 and Resolution (Decision No. 2012-267)³ dated December 28, 2012 of the Commission on Audit (COA).

* On leave.

¹ *Rollo*, pp. 3-24.

² *Id.* at 26-36.

³ *Id.* at 37-41.

The Antecedents

The present case involves two contracts entered into by the City Government of Talisay, Province of Cebu, to wit: 1) the *computerization project*, which took place in 2002 to 2003, during the term of Eduardo R. Gullas as Mayor of Talisay City; and 2) the *purchase of liquid fertilizers*, which took place in 2005 to 2006, during the term of Socrates C. Fernandez (petitioner) as Mayor of Talisay City.

The computerization project

The City of Talisay, after allegedly conducting a public bidding, awarded its computerization project to PowerDev Corporation (PowerDev).⁴ The project covered the following areas:

- 1) Business Licensing, Integration of Real Property Assessment;
- 2) Personnel Information System;
- 3) Government Payroll System;
- 4) Automated Timekeeping System;
- 5) Project Monitoring System;
- 6) Building, Electrical and Water Permit Application System;
- 7) Software Development for Local Civil Registrar Information System;
- 8) Timekeeping System for Job Order Employees; and
- 9) Local Area Network.⁵

However, the Audit Team Leader (ATL) of the COA, Talisay City, questioned the foregoing project. Having found deficiencies, including lack of the required documents, the ATL issued Audit Observation Memorandum (AOM) Nos. 2004-001 and 2005-001, dated December 21, 2004 and February 9, 2005, respectively.⁶ As a consequence, the then Regional Cluster Director (RCD), Regional Legal and Adjudication Office (RLAO), COA Regional Office No. VII

⁴ *Id.* at 26.

⁵ *Id.*

⁶ *Rollo*, p. 27.

suspended the payments for the project by issuing four Notices of Suspension (NS), all dated February 27, 2006, to wit:

- 1) NS No. 2004-001-100-(2004) L2-06-159-00-008;
- 2) NS No. 2004-002-100-00-(2004) L2-06-159-00- 009;
- 3) NS No. 2004-003-100-(2004) L2-06-159-00-010; and
- 4) NS No. 2005-004-100-(2004) L2-06-159-00-011.⁷

The suspensions matured into disallowances due to non-compliance with the requirements embodied in the Notices of Suspension.⁸ Accordingly, the then RCD, RLAO, COA Regional Office No. VII issued the following Notices of Disallowance (ND), all dated April 23, 2007:

- 1) ND No. 2004-001-100-(2004) L2-07-159-00-006 for ₱8,500,000.00;⁹
- 2) ND No. 2004-002-100-(2004) L2-07-159-00-007 for ₱613,440.00;¹⁰
- 3) ND No. 2004-003-100-(2004) L2-07-159-00-008 for ₱10,086,560.00;¹¹ and
- 4) ND No. 2005-004-100-(2004) L2-07-159-00-009 for ₱7,788,000.00.¹²

The purchase of liquid fertilizers

The ATL also questioned the price of 3,333 bottles of liquid fertilizer purchased by the City of Talisay at ₱900.00 per liter or a total of ₱2,999,700.00.¹³ The highest price obtained by the ATL through canvass and actual purchase from Pacifica Agrivet was ₱171.00 per liter plus 10% thereof, or ₱188.10. Thus, the unit overprice was ₱711.90.¹⁴

⁷ *Id.*

⁸ *Id.*

⁹ *Rollo*, pp. 42-43.

¹⁰ *Id.* at 44-45.

¹¹ *Id.* at 46-47.

¹² *Id.* at 48-49.

¹³ *Id.* at 27.

¹⁴ *Id.*

As a consequence, the ATL issued AOM No. 06-001 dated November 8, 2006.¹⁵ Subsequently, the ATL issued ND No. 2007-002 dated July 23, 2007, disallowing the amount of ₱2,372,762.70 (or the unit overprice of ₱711.90 multiplied by 3,333 units).¹⁶

The COA's Ruling

On account of the audit findings, a special audit team was constituted to conduct an investigation of the above contracts under the COA Legal and Adjudication Sector (LAS) Office Order No. 2007-S-009 dated September 10, 2007.¹⁷

Pending review of the Special Investigation Report, the persons held liable under the five NDs, through counsel, filed an appeal dated December 21, 2007.¹⁸ Aside from petitioner, the persons named liable under the NDs were the other signatories, the Bids and Awards Committee (BAC) members, and the payee. Their appeal was addressed to the Regional Legal and Adjudication Director of COA Regional Office No. VII.

On June 3, 2009, the Regional Director of COA Regional Office No. VII transmitted the appeal to the Team Leader of the special investigation team for appropriate action.¹⁹

On April 23, 2012, the COA rendered the assailed Decision No. 2012-042²⁰ dated April 23, 2012, denying the appeal and affirming the subject disallowances. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit. ND Nos. 2004-001-100-(2004) L2-07-159-00-006 for P8,500,000.00; 2004-002-100-(2004) L2-07-159-00-007 for P613,440.00; 2004-003-100-(2004) L2-07-159-00-008 for P10,086,560.00; and 2005-004-100-(2004) L2-07-159-00-009 for P7,788,000.00, all dated April 23, 2007; and ND No. 2007-002

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Rollo*, pp. 51-54.

¹⁹ *Id.* at 27-28.

²⁰ *Id.* at 26-36.

dated July 23, 2007, disallowing the amount of P2,372,762.70, are hereby AFFIRMED.²¹

Aggrieved, the persons liable under the five NDs, through counsel, filed a Motion for Reconsideration.²² Having found no merit in the Motion for Reconsideration, the COA denied it with finality in the assailed Resolution (Decision No. 2012-267)²³ dated December 28, 2012. Accordingly, the COA affirmed Decision No. 2012-042 dated April 23, 2012.

Hence, petitioner filed the instant petition for *certiorari* in representation of all the persons named liable in the NDs issued by the COA. Among those so named are former City Mayor Eduardo R. Gullas, Viluzminda G. Villarante, Emma L. Macuto, Edgar M. Mabinay, Atty. Aurora Econg, Joan L. Vebar, Audie B. Bacasmas, and Emely S. Cabrera (collectively, Gullas, *et al.*).

On November 20, 2018, Gullas, *et al.*, through counsel, filed a Motion for Severance²⁴ with the Court, praying that the case involving the computerization project be re-docketed as a separate petition.

In the Court's Resolution²⁵ dated March 19, 2019, the Motion for Severance was denied for lack of merit. Subsequently, Gullas, *et al.* filed a Motion for Reconsideration,²⁶ but this was likewise denied in the Court's Resolution²⁷ dated August 6, 2019.

The Issues

The present petition raises the following assignment of errors:

I

RESPONDENT COMMISSION ON AUDIT (COA) DEPRIVED PETITIONER AND THE OTHER PERSONS NAMED LIABLE IN THE NOTICE OF DISALLOWANCE (ND) [OF] THEIR RIGHT

²¹ *Id.* at 35.

²² *Id.* at 55-63.

²³ *Id.* at 37-41.

²⁴ *Id.* at 397-402.

²⁵ *Id.* at 405-406.

²⁶ *Id.* at 407-413.

²⁷ *Id.* at 416-417.

TO DUE PROCESS WHEN THEIR APPEAL ADDRESSED TO THE DIRECTOR OF THE LEGAL AND ADJUDICATION SECTOR OF COA REGIONAL OFFICE NO. VII WAS NOT DECIDED BY SAID OFFICIAL BUT FORWARDED TO THE COMMISSION PROPER.

II

RESPONDENT ERRED IN DISALLOWING THE PAYMENTS MADE BY THE CITY OF TALISAY TO POWERDEV FOR ITS INFORMATION TECHNOLOGY PROJECT.

III

RESPONDENT ERRED IN HOLDING [HEREIN] PETITIONER AND OTHER PERSONNEL OF THE CITY OF TALISAY [LIABLE] FOR THE ALLEGED OVERPRICING IN THE PURCHASE OF LIQUID FERTILIZERS.²⁸

The Court's Ruling

The petition lacks merit.

The Court finds that petitioner and the other persons held liable under the NDs were not deprived of due process, and the COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned NDs. However, with respect to the computerization project, the persons held liable thereunder are relieved of personal liability up to the extent of the benefit that the City of Talisay has derived from the project.

I. Petitioner and the other persons named in the NDs were not deprived of due process.

Under the then 1997 Revised Rules of Procedure of the COA,²⁹ an aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, NDs and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit.³⁰ In turn, the party aggrieved by

²⁸ *Id.* at 8.

²⁹ Approved on January 23, 1997.

³⁰ Section 1, Rule V of the 1997 Revised Rules of Procedure of the Commission on Audit.

a final order or decision of the Director may appeal to the Commission Proper.³¹

Pending the resolution of the appeal, which was filed before the Regional Legal and Adjudication Director in December 2007, the 2009 Revised Rules of Procedure of the COA (2009 Revised Rules of COA)³² took effect. Under these Rules, the pertinent provisions on appeal substantially remained the same. Section 1, Rule V of the 2009 Revised Rules of COA states that “*an aggrieved party may appeal from the decision of the Auditor to the Director who has jurisdiction over the agency under audit.*” In turn, Section 7, Rule V of the 2009 Revised Rules of COA provides:

Sec. 7. Power of Director on Appeal. – The Director may affirm, reverse, modify or alter the decision of the Auditor. If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Directors’ decision. The dispositive portion of the Director’s decision shall categorically state that the decision is not final and is subject to automatic review by the CP.

In this case, however, observance of the aforementioned rules of procedure was impracticable. Here, the investigation of the case was conducted by a special team of auditors, and this team was headed by Atty. Roy L. Ursal (Ursal), the Regional Director himself.³³ Through LAS Office Order No. 2007-S-009, Director Ursal, Atty. Federico E. Dinapo, Jr., Atty. Marites E. Banzali, and Ma. Jocelyn N. Merencillo were deputized to act for and in behalf of the COA in the investigation of the case.³⁴ Certainly, the direct referral to the Commission Proper of the decision appealed from, rendered by the special audit team headed by Director Ursal himself, was appropriate under the circumstances.

At any rate, it has been ruled time and again that the essence of due process is the *opportunity to be heard*.³⁵ In administrative proceedings, the parties are heard when they are accorded a *fair and reasonable opportunity* to explain their case or are given the chance to

³¹ Section 1, Rule VI of the 1997 Revised Rules of Procedure of the Commission on Audit.

³² Approved on September 15, 2009.

³³ *Rollo*, p. 81.

³⁴ *Id.*

³⁵ *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713, 726 (2016).

have the ruling complained of reconsidered.³⁶ Further, it is settled that there is no denial of procedural due process where the opportunity to be heard either through oral arguments or through pleadings is accorded.³⁷

In this case, petitioner and the other persons named liable in the NDs were accorded the opportunity to be heard when their appeal was given due course and decided on its merits by the Commission Proper. They were also able to file a motion for reconsideration of the denial of their appeal which the Commission Proper likewise duly considered before ruling to deny it with finality. Evidently, petitioner and all the persons liable under the NDs were not deprived of due process.

II. The COA did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the questioned NDs.

By *grave abuse of discretion* is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.³⁸ The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.³⁹ The burden lies on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.⁴⁰

In this case, the Court finds no grave abuse of discretion on the part of the COA in issuing the questioned NDs. The oft-repeated rule is that findings of administrative agencies are accorded not only respect but also finality when the decision or order is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.⁴¹ Here,

³⁶ *Id.*

³⁷ *Vivo v. Phil. Amusement and Gaming Corporation*, 721 Phil. 34, 41 (2013).

³⁸ *Career Service Executive Board, represented by its Executive Director, Maria Anthonette Velasco-Allones v. COA et al.*, G.R. No. 212348, June 19, 2018.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Buisan, et al. v. Commission on Audit, et al.*, 804 Phil. 679, 695 (2017).

the COA merely discharged its duties and acted within the bounds of the law.

A. The COA did not err in disallowing the payments made by the City of Talisay to PowerDev for its computerization project.

Republic Act No. (RA) 9184 or the “*Government Procurement Reform Act*” requires that all procurement shall be done through competitive bidding, except in cases where resort to alternative methods of procurement may be allowed to promote economy and efficiency.⁴² RA 9184 pertinently provides:

ARTICLE IV COMPETITIVE BIDDING

Sec. 10. Competitive Bidding. – All Procurement shall be done through Competitive Bidding, except as provided for in Article XVI of this Act.

x x x x

ARTICLE XVI ALTERNATIVE METHODS OF PROCUREMENT

Sec. 48. Alternative Methods. – Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

- (a) Limited Source Bidding, otherwise known as Selective Bidding x x x;
- (b) Direct Contracting, otherwise known as Single Source Procurement x x x;
- (c) Repeat Order x x x;
- (d) Shopping x x x; or
- (e) Negotiated Procurement x x x.

⁴² Section 10, Article IV, in relation to Article XVI, of Republic Act No. (RA) 9184.

As held by the COA, the investigating team found nothing in the records that would show that the Software Development Agreements (SDAs) or the project proposals were executed, approved, and signed by the City Mayor concerned only after there had been public biddings conducted for the purpose.⁴³ On the contrary, the investigating team observed circumstances strongly indicating that public biddings were not actually conducted for the entire computerization project. Further, the COA noted the investigating team's observation that the SDAs and the project proposals, which were attached to certain disbursement vouchers (DVs), were executed prior to the dates of the alleged advertisement and bidding.⁴⁴ Thus, the COA upheld the investigating team's conclusion that the SDAs could not have been the result of the purported bidding.

In his petition, petitioner strongly insists that "the bidding process and the disbursement of the expense for the Information Technology Project of the City of Talisay were all done in accordance with law and at no disadvantage to the government whatsoever."⁴⁵ Quite the contrary, however, he admits in his Memorandum⁴⁶ that the City of Talisay directly contracted with PowerDev. He asserts that "[t]he choice of directly contracting with PowerDev brought advantages to the City as it expedited the process, and most importantly is that the desired and much needed automation of its processes were accomplished in a short period of time".⁴⁷ He adds that "by contracting directly with PowerDev, [he] was able to save time, resources and costs in producing the much needed automation, complying with the 3rd requirement of the aforesaid rule, that the 'method chosen promotes economy and efficiency, and that the most advantageous price for the government is obtained.'"⁴⁸

Beyond doubt, the COA was correct in concluding that no public biddings were conducted for the computerization project. Anent the contention that the City of Talisay validly resorted to direct contracting as an alternative method of procurement, the Court finds it to be unworthy of consideration. It is evident that such claim is a mere afterthought. Also, if it was indeed the intention of the City of Talisay to

⁴³ *Rollo*, p. 29.

⁴⁴ *Id.*

⁴⁵ *Rollo*, p. 14.

⁴⁶ *Id.* at 213-249.

⁴⁷ *Id.* at 225.

⁴⁸ *Id.*

resort to direct contracting, it remains questionable that all the SDAs and project proposals were supported by bidding documents, including Advertisement to Bid, Abstract of Bids/Canvass, TWG Resolutions, and BAC Minutes.⁴⁹ These documents were not necessary in direct contracting as this method of procurement “does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a *pro-forma* invoice together with the conditions of sale, which offer may be accepted immediately or after some negotiations.”⁵⁰ In addition, petitioner has not clearly shown any of the allowed conditions for direct contracting, to wit:

- (a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source, i.e. when patents, trade secrets and copyrights prohibit others from manufacturing the same item;
- (b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or,
- (c) Those sold by an exclusive dealer or manufacturer, which does not have subdealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the Government.⁵¹

The COA also observed the lack of an appropriation ordinance for the realignment of funds. This contravenes RA 7160 or the “Local Government Code (LGC) of 1991,” which entails the passage of an ordinance in order for a local government to realign its budget. The pertinent provisions are Sections 336 and 346 thereof, which provide:

Sec. 336. *Use of Appropriations Funds and Savings.* – Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the *sanggunian* concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings

⁴⁹ *Rollo*, p. 29.

⁵⁰ Section 48(b), Article XVI of RA 9184.

⁵¹ Section 50, Article XVI of RA 9184.

in other items within the same expense class of their respective appropriations.

Sec. 346. *Disbursements of Local Funds and Statement of Accounts.* – Disbursement shall be made in accordance with the ordinance authorizing the annual or supplemental appropriations without the prior approval of the *sanggunian* concerned. Within thirty (30) days after the close of each month, the local accountant shall furnish the *sanggunian* with such financial statements as may be prescribed by the COA. In the case of the year-end statement of accounts, the period shall be sixty (60) days after the thirty-first (31st) of December.

Petitioner argues that the passage of an ordinance had been rendered moot as the funds were already realigned and disbursed. Through the Executive Orders (EOs)⁵² issued by petitioner and former City Mayor Gullas, funds were taken from the savings from various items in the city budget and the 20% Development Fund and transferred to Information Technology Equipment and Software.⁵³ In view thereof, petitioner contends that the only proper act that the *Sangguniang Panlungsod* (SP) could make was to pass a resolution ratifying the realignment of funds. Thus, he asserts that the passage of SP Resolution No. 2006-79 for the ratification of the realignment of funds has the same effect as that of an appropriation ordinance.

In his memorandum, petitioner also avers that the SP, through 3rd SP Resolution No. 2009-105 and 1st SP Resolution No. 2001-45, granted him and Gullas, respectively, the authority to represent the City of Talisay “in all contracts and memoranda of agreement made pursuant to a law or ordinance.”⁵⁴ He argues that by virtue of these Resolutions, he

⁵² *Rollo*, p. 32. These Executive Orders (EO) are as follows:

- a. EO No. 2004-06 dated 14 April 2004, signed by Mayor Gullas realigning the amount of P3.8M from Account No. 208 – Other Structures; Traffic Signals and Accessories to Account No. 215;
- b. EO No. 2004-21 dated 10 September 2004, signed by Mayor Fernandez realigning the amount of P1.090M from the 20% Development Fund and P5.634M from the General Fund;
- c. EO No. 2004-21A dated 6 October 2004, signed by Mayor Fernandez realigning the amount of 3.850M;
- d. EO No. 2004-37 dated 5 November 2004, realigning the amount of P3M;
- e. EO No. 2004-42 dated 15 December 2004, signed by Mayor Fernandez realigning the amount of P1.9 M from the 20% Development Fund.

⁵³ *Id.* at 32.

⁵⁴ *Id.* at 271-272.

and Gullas were legally authorized to proceed with the execution of the SDAs.

The foregoing arguments are untenable.

As stated in Section 336 of the LGC, the general rule is that funds shall be available exclusively for the specific purpose for which they have been appropriated. The exception to this is when the local chief executive is *authorized by ordinance* to augment any item in the approved annual budget from savings in other items within the same expense class. In other words, Section 336 of the LGC requires an implementing ordinance so that the local chief executive can augment items in the annual budget of the local government unit. Thus, the appropriation ordinance of a given fiscal year must expressly authorize the local chief executive before he can make augmentations in that particular year, or at the very least, he must be authorized by ordinance before he can make augmentations.⁵⁵

In this case, 3rd SP Resolution No. 2009-105 and 1st SP Resolution No. 2001-45, which purportedly granted petitioner and Gullas the authority to represent the City of Talisay in all contracts and memoranda of agreement made pursuant to a law or ordinance, do not have the force of the required ordinance that must expressly authorize the local chief executive to make augmentations or realignments in the city budget. Likewise, SP Resolution No. 2006-79, purportedly ratifying the realignment of funds to finance the computerization project through the aforesaid EOs issued by petitioner and Gullas, has no curative effect.

It must also be emphasized that the power of the local chief executive to augment items under Section 336 of the LGC is a mere exception to the general rule that funds shall be available exclusively for the specific purpose for which they have been appropriated. "*Exceptions are strictly construed and apply only so far as their language fairly warrants, with all doubts being resolved in favor of the general proviso rather than the exception.*"⁵⁶ Being an exception to the general rule, an augmentation or realignment must strictly comply with all the

⁵⁵ *Verceles v. COA*, 794 Phil. 629, 656 (2016).

⁵⁶ *Id.* at 657.

requirements for its validity. One such requirement is that the local chief executive must be authorized by an ordinance.

While ordinances are laws and possess a general and permanent character, resolutions are mere declarations of the sentiment or opinion of a lawmaking body on a specific matter and are temporary in nature.⁵⁷ As opposed to ordinances, a resolution cannot confer rights and no rights can be inferred therefrom.⁵⁸

In view thereof, ND No. 2004-001-100-(2004) L2-07-159-00-006 in the amount of ₱8,500,000.00, ND No. 2004-002-100-(2004) L2-07-159-00-007 in the amount of ₱613,440.00, ND No. 2004-003-100-(2004) L2-07-159-00-008 in the amount of ₱10,086,560.00, and ND No. 2005-004-100-(2004) L2-07-159-00-009 in the amount of ₱7,788,000.00, all dated April 23, 2007, covering the disallowed disbursements for the computerization project, should be upheld.

B. The COA also did not err in disallowing the overprice in the purchase of liquid fertilizers.

As found by the COA, the investigation of the special audit team revealed irregularities attending the bidding process. Thus:

1. The City of Talisay submitted two (2) different sets of BAC Minutes for the same BAC meeting allegedly held on 16 December 2005.

The first BAC Minutes [dated December 16, 2005], which was attached to support DV No. [sic] DV No. 300-0512-2510 for the payment to Gracias Industries does not include in the listing of the lowest bidders, the name Gracias Industries. Instead, it lists as lowest bidder for liquid fertilizer Joseth Trading. This is the last entry of bidders on the second page and signed by Gerialie P. Alob, the designated recorder of the BAC meeting.

Subsequently, the City of Talisay submitted a folder of documents in support of its defense against the disallowance. This time, it submitted another BAC Minutes [likewise dated December 16, 2005], but

⁵⁷ *Land Bank of the Philippines v. Cacayuran*, 709 Phil. 819, 830 (2013) citing *Municipality of Parañaque v. V.M. Realty Corporation*, 354 Phil. 684, 691-695 (1998).

⁵⁸ *Land Bank of the Philippines v. Cacayuran*, *supra* at 830.

instead of Joseth Trading as the lowest bidder recorded therein, it was Gracias Industries already. Also, this time, the lowest bidder for the liquid fertilizer is not anymore the last entry of the BAC minutes, but an additional five (5) entries of lowest bidders for different products and services were included, which did not appear in the BAC minutes attached to the DV.

The team hereby puts in issue the authenticity of the said two BAC Minutes. This discrepancy, if not satisfactorily explained by the City of Talisay, including its Designated Recorder of the BAC meeting, raises serious doubt as to the authenticity of these particular bidding documents and of the alleged bidding itself.⁵⁹

Petitioner argues that the foregoing finding is terribly flawed because it is not duly supported by evidence and it failed to properly consider the facts surrounding the purchase. He asserts that it was the Department of Agriculture (DA), which approached the City of Talisay and informed it that there was an on-going government project on the distribution of fertilizers to qualified beneficiaries, and that the funds therefor were already available. He adds that all that the City of Talisay had to do was to identify potential beneficiaries and conduct a bidding for the potential suppliers.

Petitioner also asserts that neither he nor any personnel from the City of Talisay was informed of and witnessed the alleged testing conducted by the COA Technical Services Offices, which concluded that the price of the liquid fertilizers purchased was bloated and that the contents thereof were not within the specified label in the bottle.

Further, petitioner denies the COA's claim that there were two sets of minutes of the December 16, 2005 BAC meeting. He asserts that the minutes of the BAC meeting which was submitted on December 21, 2007 to the Regional Director of COA Regional Office No. VII was the complete minutes of the BAC meeting held on December 16, 2005. Thus, he claims that the minutes attached to DV No. 300-0512-2510 was an incomplete one; and as borne out by the complete minutes, Gracias Industries who participated in the bidding and offered the lowest bid was awarded the contract.

⁵⁹ *Rollo*, pp. 34-35.

Additionally, petitioner argues that the matter of whether the price of the lowest bidder is higher than the price of other suppliers in the market who did not participate in the bidding is already beyond the scope of responsibility of the BAC. Hence, petitioner maintains that the members of the BAC of the City of Talisay and other personnel who participated in the transaction cannot be held liable for the alleged overpricing especially in the absence of any proof or evidence of wrongdoing on the part of the BAC.

The Court is not persuaded.

At this juncture, it bears to emphasize that the findings of fact of administrative agencies are generally accorded great respect, if not finality, by the courts.⁶⁰ Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant.⁶¹ By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment thereon.⁶²

In *Delos Santos, et al. v. Commission on Audit*,⁶³ the Court declared:

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

⁶⁰ *Paraiso-Aban v. Commission on Audit* (Resolution), 777 Phil. 730, 737 (2016).

⁶¹ *Id.*

⁶² *Id.*

⁶³ 716 Phil. 322 (2013).

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 x⁶⁴

In this case, the COA cannot be faulted for upholding the disallowance of the amount representing the overprice in the purchase of the liquid fertilizers as its special audit team merely based its reports and recommendations on the discrepancies found in the bidding documents submitted by petitioner. Besides, regardless of whether the City of Talisay was indeed merely acting under the direction of the DA, and of whether the bidding documents submitted by petitioner were authentic, it cannot be denied that there was irresponsibility and lack of prudence on the part of the City of Talisay when it neglected to determine the prevailing price of the liquid fertilizer. It patently took the risk of not getting the most advantageous price for the government.

As found by the COA, the *lowest* price per liter of the liquid fertilizer, as offered in the alleged bidding and purchased by the City of Talisay, was ₱900.00. On the other hand, the *highest* selling price per liter, obtained by the ATL through canvass and actual purchase from Pacifica Agrivet, was ₱171.00 per liter plus 10% thereof, or ₱188.10. Hence, there appears a considerably huge unit overprice of ₱711.90, which the Court cannot brush aside.

It is a declared policy of the State that “*all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government.*”⁶⁵ Corollary thereto, RA 9184 requires that the procuring entity shall, in all instances, ensure that the approved budget for the contract reflects the most advantageous prevailing price for the government.⁶⁶ Apparently, the City of Talisay failed in abiding by the mandate of the law.

⁶⁴ *Id.* at 332-333.

⁶⁵ Section 2 of Presidential Decree No. 1445 otherwise known as the “Government Auditing Code of the Philippines.”

⁶⁶ Section 36, Article X of RA 9184.

Consequently, ND No. 2007-002 dated July 23, 2007, disallowing the overprice in the purchase of liquid fertilizers in the amount of ₱2,372,762.70, should be sustained.

III. Good faith as a defense to avoid liability is unavailing under the circumstances; however, the liability of the persons held accountable under the computerization project shall be reduced inasmuch as the City of Talisay has derived benefits from the software and equipment installed by PowerDev.

As a rule, public officials are entitled to the presumption of good faith in the discharge of official duties.⁶⁷ Good faith is a state of mind which denotes “honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.”⁶⁸

The lack of any showing of bad faith or malice also gives rise to a presumption of regularity in the performance of official duties.⁶⁹ However, this presumption fails in the presence of an explicit rule that was violated.⁷⁰

Section 103 of Presidential Decree No. 1445 declares that 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. The public official’s personal liability arises only if the expenditure of government funds was made in violation of law.⁷¹

⁶⁷ *Blaquera v. Hon. Alcala*, 356 Phil. 678, 765 (1998).

⁶⁸ *Development Bank of the Philippines*, G.R. No. 221706, March 13, 2018.

⁶⁹ *Blaquera v. Alcala*, *supra* at 765.

⁷⁰ *Sambo, et al. v. Commission on Audit*, 811 Phil. 344, 357 (2017).

⁷¹ *Vereces, Jr. v. Commission on Audit*, *supra* note 55 at 660.

In this case, in view of violations of the LGC and RA 9184, the presumption of good faith in the discharge of official duties in favor of petitioner and the other persons liable under the assailed NDs fails. Hence, they should be held personally liable for the disallowed amounts.

In *Verceles, Jr. v. COA*,⁷² Leandro B. Verceles, Jr. (Verceles), who was then the Provincial Governor of Catanduanes, was found personally liable because his acts of: (1) making augmentations without prior authority; and (2) entering into a contract on behalf of the province without requisite authority were in violation of the LGC.⁷³ The Court held that Verceles' reliance on, among others, the opinion of the Department of Interior and Local Government, could not exculpate him from his personal liability.⁷⁴ It declared that Section 336 of the LGC and Section 26 of the Province's appropriation ordinance in CY 2002, in clear and precise language, required the authority from the *Sangguniang Panlalawigan* before the governor could make augmentations or realignments of funds.⁷⁵

In the instant case, Atty. Aurora Econg, the City Legal Officer of Talisay, erroneously construed Sections 336 and 346 of the LGC by contending that the augmentation or realignment of the city budget may be done through the City Mayor's mere issuance of an EO.⁷⁶ As in the aforementioned case of Verceles, reliance on such erroneous construction should similarly not absolve the persons held liable under the NDs relating to the computerization project. Moreover, there was violation of RA 9184, specifically Section 10, Article IV in relation to Article XVI thereof, in view of the failure to conduct the required competitive bidding or the failure to show circumstances justifying the resort to any of the alternative methods of procurement. Evidently, the patent violations of the LGC and of the procurement requirements under RA 9184 negated the presumptions of good faith and regularity in the performance of official duties in favor of petitioner and the other persons liable under the NDs.

⁷² *Supra* note 55.

⁷³ *Id.* at 660.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Rollo*, p. 33.

As to the purchase of liquid fertilizers, good faith is likewise absent considering that the City of Talisay disregarded Section 36, Article X of RA 9184 by neglecting to obtain the most advantageous price for the government. The alleged *lowest* price of ₱900 per unit as offered in the alleged bidding is remarkably excessive and unreasonable considering that the *highest* price obtained through canvass and actual purchase by the ATL from Pacifica Agrivet was only ₱188.10 per unit. Further, the Court notes the COA's finding of irregularity with respect to the bidding documents submitted by petitioner which raise doubts as to their authenticity as well as the authenticity of the bidding itself. In this regard, the Court finds that petitioner and the other persons named liable for the overpriced liquid fertilizers were not in good faith while discharging their official duties.

It is worthy to note the ruling in *Joson III v. COA*,⁷⁷ where Tomas N. Joson III (Joson) assailed the denial by the COA of his petition for exclusion from liability for the disallowed amount. The Court pronounced that Joson, being the head of the procuring entity and the Governor of Nueva Ecija, is not automatically the party ultimately liable for the disallowed amount. It declared that he cannot be held liable simply because he was the final approving authority of the transaction in question and that the employees/officers who processed the same were under his supervision. Thus:

The payments to A.V.T. Construction was disallowed by COA for the reason that the prequalification 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, the NFCC 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.

⁷⁷ G.R. No. 223762, November 7, 2017, 844 SCRA 220.

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.⁷⁸

Under the circumstances of the present case, however, the Court is not inclined to apply the same ruling. Petitioner herein does not pray for exclusion from personal liability. In fact, he filed the instant petition in representation of all the persons named liable in the NDs. Moreover, he does not claim that he has no prior knowledge regarding the conduct of the bidding processes. Accordingly, the Court holds him and the other persons named in the NDs accountable for the disallowed amounts. Public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement.⁷⁹

However, the Court cannot dismiss the fact that PowerDev had already done a substantial amount of work in relation to the computerization project, which ultimately redounded to the benefit of the city government. As manifested by petitioner, almost all of the systems installed by PowerDev are still fully operational and are being used by the City of Talisay;⁸⁰ others were operational for a certain period of time, but were discontinued in view of the suspension notice, resulting in the breakdown of the software programs.⁸¹

Below is the alleged summary of the status⁸² of the software and equipment installed by PowerDev in the different departments of the City of Talisay:

<u>Software</u>	<u>Status</u>
1. Tricycle Franchise System (City Permits and Licensing Section)	- Completely installed and fully operational until the present

⁷⁸ *Id.* at 233-235.

⁷⁹ *Sambo, et al. v. Commission on Audit, supra* note 70 at 355.

⁸⁰ As of the date of the petition.

⁸¹ *Rollo*, p. 15.

⁸² As of the date of the petition.

2. Real Property Tax Assessment System (City Assessor[']s Office) - Completely installed but no longer used as of the present due to the introduction of the new assessment manual when Talisay used the new PIN (Property Index No.) replacing the PIN used when Talisay was still a municipality.
3. Personnel Information System (Human Resource Division) - Completely installed and operational until the present except for the programs on Service Records and Leave Benefits and Privileges.
4. Automated Timekeeping System (Human Resource Division) - Completely installed and fully operational until the present
5. Hardware and Software for Timekeeping for Job Order Employees (Human Resource Division) - Completely installed and fully operational until the present
6. Government Payroll System (Accounting Office) - Completely installed and fully operational until the present
7. Project Monitoring System (Office of the City Engineer) - Completely installed and was operational for a certain period of time but no longer operational as of the present due to the lack of software modifications, repair, maintenance and upgrading
8. Building, Electrical and Water Permit Application System (Office of the City Engineer) - Completely installed and was operational for a certain period but no longer operational as of the present due to the significant updates in the National Building Code (P.D. 1096), lack of software modifications, repair, maintenance and upgrading.

9. Local Civil Registrar Information System - Completely installed and was in the process of revision and upgrading to conform to the updates of printing and annotations but was halted due to the termination of the agreement with [the] contractor. System is still running until the present but is used only for queries and verification of birth records.
10. Local Area Network (LAN) Installation and Cabling - Completely installed and fully operational until the present. Only four departments are using the LAN as of the present, these are: City Assessor's Office and City Treasurer's Office; and Human Resource Division and Accounting Office.
11. E-Procurement System (General Services Office) - Completely installed and full[y] operational until the year 2009. No longer used as of the present due to lack of repair, maintenance and upgrading.⁸³

Unarguably, the local government of the City of Talisay and the citizens therein benefited from the computerization project. In the interest of substantial justice and equity, and in conformity with the principle of *quantum meruit*, PowerDev should be compensated for the use of its resources up to the extent of the actual work it performed and services it rendered. Otherwise, the government would be unjustly enriched at the expense of PowerDev.

Under the principle of *quantum meruit*, in an action for work and labor, payment shall be made in the amount reasonably deserved, as it is unjust for a person to retain any benefit without paying for it.⁸⁴ To deny PowerDev of compensation for the use of its equipment and services

⁸³ *Rollo*, pp. 15-16.


⁸⁴ *Philippine Science High School-Cagayan Valley Campus v. Pirra Construction Enterprises*, G.R. No. 204423, September 14, 2016, 803 SCRA 137, 160.

would be tantamount to injustice, which the Court cannot countenance. Accordingly, while the lack of the required ordinance and the failure to observe the proper procedure for the public bidding necessitated the disallowance of the payments for the computerization project, personal liability should not attach to petitioner and the other persons named liable under the NDs up to the extent of the benefit that the government of the City of Talisay has derived from the project.

WHEREFORE, the petition for *certiorari* is **DISMISSED**. Decision No. 2012-042 dated April 23, 2012 and Resolution (Decision No. 2012-267) dated December 28, 2012 of the Commission on Audit are **AFFIRMED**. Thus:

- 1) ND No. 2007-002 dated July 23, 2007 disallowing the overprice of ₱2,372,762.70 in the purchase of liquid fertilizers is **AFFIRMED**.
- 2) ND No. 2004-001-100-(2004) L2-07-159-00-006 of ₱8,500,000.00, ND No. 2004-002-100-(2004) L2-07-159-00-007 of ₱613,440.00, ND No. 2004-003-100-(2004) L2-07-159-00-008 of ₱10,086,560.00, and ND No. 2005-004-100-(2004) L2-07-159-00-009 of ₱7,788,000.00, all dated April 23, 2007, disallowing the payments for the computerization project, are also **AFFIRMED**.

However, the Commission on Audit is hereby **DIRECTED** to determine and ascertain with dispatch, on a *quantum meruit* basis, the total compensation due to PowerDev Corporation for the software and equipment it installed in the different departments of the City of Talisay which redounded to the benefit of the local government. Based on such determination by the Commission on Audit, PowerDev Corporation is **DIRECTED** to return the difference between the total amount it received from the City of Talisay and the *quantum meruit* price, if any.





This pronouncement is without prejudice to the filing of appropriate administrative or criminal charges against the officials responsible for the illegal disbursements.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Chief Justice

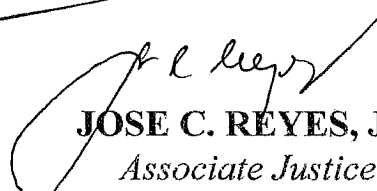

ESTELA M. PERLAS-BERNABE
Associate Justice


(On official business)
MARVIC M.V.F. LEONEN
Associate Justice

(On official business)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice


JOSE C. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

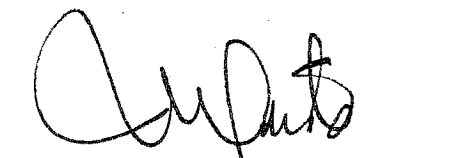

ROSMARI D. CARANDANG
Associate Justice

(On leave)
AMY C. LAZARO-JAVIER
Associate Justice

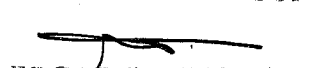

RODIL V. ZALAMEDA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

