



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

RECEIVED
 FEB 18 2021
 BY: R. JAVIERA
 TIME: 3:14

EN BANC

**FORMER MUNICIPAL MAYOR
 HELEN C. DE CASTRO, TOBY C.
 GONZALES, JR., DENNIS H.
 DINO, CARMENCITA S.
 MORATA and LIZA L. HOLLON,**
Petitioners,

G.R. No. 228595

Present:

PERALTA, *Chief Justice,*
 PERLAS-BERNABE,
 LEONEN,
 CAGUIOA,
 GISMUNDO,
 HERNANDO,
 CARANDANG,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,*
 LOPEZ,
 DELOS SANTOS,
 GAERLAN, *and*
 BALTAZAR-PADILLA,** *JJ.*

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:
September 22, 2020

X-----X

DECISION

GAERLAN, J.,

This petition for *certiorari*¹ under Rule 65, in relation to Rule 64 of the Rules of Court, seeks to annul and set aside the Commission on Audit (COA) Decision² dated September 11, 2014, in the “Automatic [R]eview of the [COA] Regional Office No. V Decision No. 2012-L-007 dated June 4, 2012 partially granting the appeal of Mayor Helen C. de Castro, Municipal Government of Bulan, Province of Sorsogon, et al., from Notice of Disallowance Nos. 2008-06-27-001-101(2009) to 2008-06-27-005-101(2009)

* On official leave.

** On leave.

¹ *Rollo*, pp. 3-119.

² *Id.* at 145-158; numbered as COA Decision No. 2014-209.

0

all dated August 18, 2009 and Supplemental Notice of Disallowance No. 2008-06-27-006-101(2009) dated October 9, 2009.” The present petition likewise seeks to annul and set aside COA Resolution³ dated November 9, 2016, re: “Motion for reconsideration of Mayor Helen De Castro, Municipal Government of Bulan, Sorsogon, et al., of [COA] Decision No. 2014-209 dated September 11, 2014, which affirmed with modification [COA] Regional Office No. V Decision No. 2012-L-007 dated June 4, 2012, on the lifting and amendment of various Notices of Disallowance relative to the construction of Bulan Integrated Bus Terminal and Slaughterhouse Projects.”

Factual Antecedents

On June 30, 2003, the *Sangguniang Bayan* (SB) of the Municipality of Bulan, Sorsogon enacted Ordinance No. 004, Series of 2003,⁴ entitled “Ordinance Authorizing the Bond Flotation of the Municipality of Bulan, Province of Sorsogon in the Amount of Not Exceeding Fifty Million Pesos (P50,000,000.00) to Fund the Construction and Development of the Bulan Public Bus Terminal, The New Municipal Slaughter House and Other Priority Projects; and for Other Purposes.” Section 8 thereof authorized the Municipal Mayor to conduct public biddings for the award of contracts for construction of the projects to be funded therein.

In October 2006, the Municipal Government of Bulan (MGB) conducted public biddings for the Bulan Integrated Bus Terminal (BIBT) and Bulan Slaughterhouse projects. By virtue, thereof, contracts were awarded to the following contractors, respectively:

Project	Contractor	Contract Price
Design and Construction of the BIBT	S.R. Baldon Construction & Supply	₱32,984,700.00 ⁵
Labor and Materials for the Construction of Bulan Slaughterhouse	Steven Construction & Supply	₱4,991,800.00

After the two projects were paid, the then COA Regional Cluster Director of the Local Government Sector, Cluster II, Province of Sorsogon, issued Office Order No. 2008-06-07 dated June 23, 2008, directing the Audit Team Leader (ATL) to conduct a special audit on the BIBT and Slaughterhouse construction projects of the MGB.⁶ The special audit resulted

³ Id. at 135-144; numbered as COA Decision No. 2016-330.

⁴ Id. at 374-377.

⁵ Id. at 277-278.

⁶ id. at 145.

in the issuance of Notices of Disallowance (ND) Nos. 2008-06-27-005-101(2009) to 2008-06-27-005-101(2009)⁷ all dated August 18, 2009, and Supplemental ND No. 2008-06-27-006-101(2009)⁸ dated October 9, 2009, with the following details:

Item No.	References	Amount Disallowed	Persons Liable	Designation	Reason for Disallowance
1	ND No. 2008-06-27-001-101 (2009) ⁹	₱196,526.13	Shirley R. Baldon (Baldon)	Proprietor, S.R. Baldon Construction	Unaccomplished deficiency of 0.58% or Php196,526.13, the equivalent amount in terms of pesos.
			Toby C. Gonzales, Jr. (Gonzales)	Municipal Engineer	
			Dennis H. Dino (Dino)	BAC Chairman	
			Helen C. De Castro (De Castro)	Municipal Mayor	
2	ND No. 2008-06-27-002-101 (2009) ¹⁰	₱4,368,046.58 ¹¹	Baldon	Proprietor, S.R. Baldon Construction	Representing 16.79% as overprice net of 10% tolerable allowance from the 26.79% overpricing of COA Estimated Cost per COA Res No. 91-52 dated September 17, 1991.
			Gonzales	Municipal Engineer	
			Dino	BAC Chairman	
			De Castro	Municipal Mayor	
3	ND No. 2008-06-27-003-101 (2009) ¹²	₱2,638,776.00	Baldon	Proprietor, S.R. Baldon Construction	Representing liquidated damages for 80 days in excess of contract time.
			Gonzales	Municipal Engineer	
			Dino	BAC Chairman	

⁷ Id. at 296-300.

⁸ Id. at 301.

⁹ Id. at 296.

¹⁰ Id. at 297.

¹¹ Id. at 150; according to the assailed COA Decision dated September 11, 2014, the amount of disallowance should be ₱4,367,360.90, which was inadvertently indicated as ₱4,368,046.58.

¹² Id. at 298.

Item No.	References	Amount Disallowed	Persons Liable	Designation	Reason for Disallowance
			Castro	Municipal Mayor	
4	ND No. 2008-06-27-004-101 (2009) ¹³	₱169,721.20	Jocelyn D. Destura (Desturia)	Owner, Steven Construction and Supply	Representing liquidated damages for 34 days in excess of contract time.
			Gonzales	Municipal Engineer	
			Dino	BAC Chairman	
			Castro	Municipal Mayor	
5	ND No. 2008-06-27-005-101 (2009) ¹⁴	₱32,984,700.00	Rodosendo Razo, Jr. (Razo)	Municipal Accountant	Violation of Section 8-Implementing Rules and Regulation (IRR)-A of Republic Act (RA) No. 9184. Procuring entities without internet access may avail of the Philippine Government Procurement System (PhilGEPS) Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila. Failure to post a procurement opportunity will render the resulting contract null and void.
			Sonia G. Revilla (Revilla)	Municipal Treasurer	
			Dino	BAC Chairman	
			De Castro	Municipal Mayor	
6	ND No. 2008-06-27-006-101 (2009) ¹⁵	₱4,991,800.00	Razo	Municipal Accountant	Violation of Section 8-IRR-A of Republic Act (RA) No. 9184. Procuring entities without internet access may avail of the Philippine Government
			Revilla	Municipal Treasurer	
			Dino	BAC Chairman	

¹³ Id. at 299.

¹⁴ Id. at 300.

¹⁵ Id. at 301.

Item No.	References	Amount Disallowed	Persons Liable	Designation	Reason for Disallowance
			De Castro	Municipal Mayor	Procurement System (PhilGEPS) Public Access Terminals which shall be installed at DBM-designated locations in the provinces and in Metro Manila. Failure to post a procurement opportunity will render the resulting contract null and void

The NDs were based on the following findings:

ND No. 2008-06-27-001-101 (2009)
(Unaccomplished Deficiency of 0.58%)

In the Inspection Report¹⁶ of the COA – Technical Audit Specialists (TAS) dated August 19, 2008, the following findings and observations were made:

Ocular inspection conducted by the undersigned together with the above named MEO personnel showed that, as per documents submitted, the [above-named] project is only 99.42% completed. The deficiency in the accomplishment was due to the fact that the Bus Terminal is still tapped to temporary source pending approval with Soreco of a permanent line leading to the building. The transformer being used is a 25 kva instead of a 50 kva, as programmed. Also included in the deduction, being accessory to the transformer[,] is the cut-out/lighting arrester and the corresponding KWH meter.¹⁷

ND No. 2008-06-27-002-101 (2009)
*(Contract Cost Excess of 16.79% Net of 10% Tolerable Allowance)*¹⁸

In a handwritten Detailed Estimates,¹⁹ the COA-TAS came up with an estimated project cost of ₱26,015,762.82 only for the BIBT project. Thus, in a Cost Comparison Sheet,²⁰ the COA-TAS concluded:

¹⁶ Id. at 383-384.

¹⁷ Id. at 384.

¹⁸ Paragraph 7, COA Resolution No. 91-52 states:

The total contract price should be equal to or less than the total COA estimate plus 10% in order to sustain a finding of reasonableness, otherwise, the contract price will be deemed excessive.

¹⁹ *Rollo*, pp. 240-260.

²⁰ Id. at 261-262.

CONCLUSION:

The approved budget for the contract amounting to P32,730,452.37 and contract cost of P32,984,700.00 were found to be 25.81% and 26.79% above the COA estimated cost[,] respectively, hence considered excessive per COA Resolution No. 91-52 dated September 17, 1991 re: TSO Policy Guidelines governing auditorial review and evaluation of bidded infrastructure. The difference was due to the [overestimated] quantity of some construction materials, cost of equipment rental and cost of labor. Some construction materials were [overpriced].

NOTE: Unit prices were based on the previously reviewed contracts and the unit prices used in the project, Construction of Slaughterhouse[,] located at Brgy. J.P. Laurel, Bulan, Sorsogon. The equipment rental rates were based on the DPWH rental rates of heavy equipments [sic].²¹

ND No. 2008-06-27-003-101 (2009)

(Liquidated Damages for 80 Days Excess of Contract Time)

The special audit yielded to the following findings as to the timeliness of the completion of the BIBT project:

CONSTRUCTION OF [BIBT]

Contract Duration	180 Calendar Days
Notice to Proceed	December 13, 2006
Actual Date of Construction Started	December 23, 2007
Actual Date Completed	September 29, 2007
No. of days from Signing of NTP to Completion	260 Calendar Days

That the contractor shall commence work on the Site within 30 calendar days after the date of receipt of NTP on December 13, 2006

January	13-31, 2007 -	19
February	01-28, 2007 -	28
March	01-31, 2007 -	31
April	01-30, 2007 -	30
May	01-31, 2007 -	31
June	01-30, 2007 -	30
July	01-31, 2007 -	31
August	01-31, 2007 -	31
September	01-29, 2007 -	29

====

²¹ Id. at 262.

Total	260
Less (Contract Time)	<u>180</u>
Excess of Contract Time 80 x P32,984.70 = P 2,638,776.00 (Liquidated Damages)	

That suspension order²² issued by the Hon. Mayor [De Castro], for work stoppage starting July 02, 2007 to September 10, 2007, due to refinancing agreement between the lending bank and the LGU ha[s] no legal basis. x x x²³

ND No. 2008-06-27-004-101 (2009)

(Liquidated Damages for 34 Days Excess of Contract Time)

The special audit yielded to the following findings as to the timeliness of the completion of the Bulan Slaughterhouse project:

CONSTRUCTION OF BULAN SLAUGHTERHOUSE

Contract Duration	180 Calendar Days
Notice to Proceed	December 13, 2006
Actual Date of Construction Started	December 23, 2006
Certificate Issued to LBP Irosin Branch, Sorsogon that the project is still on-going	July 24, 2007 ²⁴

Accomplishment report²⁵ submitted to Hon. Mayor Helen C. De Castro of LGU Bulan, Sorsogon by Engr. [Gonzales], Municipal Engineer dated April 29, 2007, was 100% completed, while on the contrary a certification was likewise issued dated May 29, 2007,²⁶ with 100% work accomplishment x x x.

December	23-31, 2006 -	9
January	01-31, 2007 -	31
February	01-28, 2007 -	28
March	01-31, 2007 -	31
April	01-30, 2007 -	30
May	01-31, 2007 -	31
June	01-30, 2007 -	30
July	01-24, 2007 -	<u>24</u>

²² Id. at 264.

²³ Id. at 341-342.

²⁴ Id. at 355.

²⁵ Id. at 356.

²⁶ Id. at 357.

Total	214
Less (Contract Time)	180
Excess of Contract Time	<u>34</u>
34 x P4,991.80 =	<u>P169,721.20</u> [LD] ²⁷

ND No. 2008-06-27-005-101 (2009)
 and ND No. 2008-06-27-006-101 (2009)
(Failure to Post the Procurement Opportunity thru the PhilGEPS Website)

The ATL declared the contracts over the BIBT and the Bulan Slaughterhouse projects null and void, by reason of the failure of the MGB to post procurement opportunities relative thereto in the PhilGEPS website, in violation of Section 8-IRR-A of Republic Act (R.A.) No. 9184.

The above NDs were all duly received by the persons held liable. Within the reglementary period of six months, petitioners (public officials of the MGB) together with the private contractors, namely: Baldon and Engr. Destura, appealed the said NDs to the Regional Director (RD) of the COA Regional Office (RO) No. V, Rawis, Legaspi City, raising the following issues:

1. Whether the disallowance of P196,526.13, representing cost of unaccomplished work/deficiency in the Construction of the BIBT, could now be lifted in view of the subsequent accomplishment done by Contractor-(S.R. Baldon);
2. Whether Baldon, et. al. could be held liable for the Final Cost Variance (FCV) of P4,368,046.58 in the Construction of BIBT, which amount represents the excess of Contract Price of P32,984,700.00 over COA estimated cost of P26,015,762.82, after considering the 10% allowable variance of P2,600,890.60;
3. Whether there is legal basis to bill or charge S.R. Baldon Construction and Supply x x x for LD amounting to P2,638,776.00, in the light of the idle time allowed and the suspension order issued by Hon. Mayor x x x De Castro;
4. Whether Steven Construction and Supply, represented by its proprietor x x x Destura, should be held liable for LD amounting to P169,721.20 despite allegation by management that the Construction of Bulan Slaughterhouse was finished within the contract duration of 180 days;
5. Whether there is basis to nullify the entire contracts for the Construction of the BIBT and Slaughterhouse, and disallow the related

²⁷ Id. at 350-351.

costs, for reasons that the Municipality failed to post the procurement opportunities in the PhilGEPS.”²⁸

On June 4, 2012, the RD rendered COA Regional Office No. V. Decision No. 2012-L-007, disposing as follows:

- (1) ND No. 2008-06-27-001-101 (2009) amounting to P196,526.13 was partly affirmed holding the contractor liable for liquidated damages amounting to P145,770.60 only, assessed by reason of the delay in the delivery or installation of additional 25 kva transformer and its accessories in the main terminal building;
- (2) ND No. 2008-06-27-002-101 (2009) amounting to P4,368,046.58 was partly lifted in so far as the portion that relates to overpricing is concerned, but not the portion that relates to overestimation in quantity amounting to P2,838,384.00;
- (3) ND No. 2008-06-27-003-101 (2009) amounting to P2,638,776.00 was lifted for lack of legal basis without prejudice to the administrative liability of the Honorable Mayor (and other officials, if any), for issuing a patently erroneous and baseless suspension of work order that ran counter to Item 9, (1) of Annex “E” to IRR-A of RA 9184;
- (4) ND No. 2008-06-27-004-101 (2009) amounting to P169,721.00 was lifted due to insufficiency of evidence, but with a stern warning to the Municipal Engineer to stop giving inconsistent and misleading information (i.e. dates of project completion, work accomplishment, etc) to users of his reports; and
- (5) ND No. 2008-06-27-005-101 (2009) and 2008-06-27-006-101 (2009) totaling P37,976,500.00 are lifted for want of legal basis, without prejudice to the administrative liability of the BAC Secretariat for dereliction of duties and conduct grossly prejudicial to the best interest of service and/or other criminal or civil liabilities that may be imposed under appropriate laws and regulations.²⁹

The Decision of the COA-RD of Region V was elevated to respondent COA Proper for automatic review pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the COA (RRPC) as the RD modified the ruling of the ATL.

On September 11, 2014, respondent rendered the assailed Decision,³⁰ the dispositive portion of which reads:

²⁸ Id. at 147-148.

²⁹ Id. at 148-149.

³⁰ Id. at 145-158.

WHEREFORE, in view of the foregoing, this Commission **AFFIRMS** with **MODIFICATION** COA Regional Office No. V Decision No. 2012-L-007 dated June 4, 2012, as follows:

The modified **ND No. 2008-06-27-001-101 (2009)**, holding x x x Baldon, Proprietor, S.R. Baldon Construction and Supply, liable for the liquidated damages amounting to P145,770.60 only based on the Inspection/Evaluation Report dated March 18, 2011 of COA TAS is affirmed;

The partial lifting of **ND No. 2008-06-27-002-101 (2009)** is sustained but the correct amount of the ND should be P4,367,360.90 instead of P4,368,046.58. Consequently, the amount of P2,509,485.57 pertaining to the overpricing is lifted but the remaining P1,857,875.33 for the overestimation in quantity is sustained;

The lifting of **ND No. 2008-06-27-003-101 (2009)** in the amount of P2,638,776.00 is hereby set aside. Mayor x x x De Castro shall be held liable for the amount of disallowance for her issuance of a work suspension order not in accordance with the provision of Item 9 (1) Annex E to IRR-A of R.A. 9184;

The lifting of **ND No. 2008-06-27-004-101 (2009)** amounting to P169,721.00 is hereby set aside. Engr. x x x Gonzales, x x x Municipal Engineer, MGB, Province of Sorsogon, shall be held liable for the amount of disallowance for misfeasance in giving inconsistent and misleading information regarding the date the project was completed; and

The lifting of **ND No. 2008-06-27-005-101 (2009)**; and **ND No. 2008-06-27-006-101 (2009)** totaling P37,976,500.00 is affirmed for want of legal basis without prejudice to the administrative liability of Mayor x x x De Castro, Head of Procuring Entity and the BAC members for their violation of the provisions of R.A. 9184 and its IRR regarding the full use of the PhilGEPS.

The Audit Team Leader, Municipal Government of Bulan, province of Sorsogon, is hereby directed to prepare a Notice of Settlement of Suspensions/Disallowances/Charges to reflect the disallowance lifted, and issue an amended Notice of Disallowance to reflect the reduced amount in accordance with the attached Schedule I, forming an integral part of this Decision.

Aggrieved, S. R. Baldon, Orencio C. Luzuriaga, petitioners De Castro, Dino, Gonzales, Liza L. Hollon (Hollon), and Carmencita S. Morata (Morata) moved for reconsideration, which respondent COA denied in its assailed Resolution³¹ dated November 9, 2016, the dispositive portion of which reads:

WHEREFORE, premises considered, this Commission hereby **DENIES** the motion for reconsideration. Accordingly, [COA] Decision No. 2014-209 dated September 11, 2014, which affirmed with modification

³¹ Id. at 135-144.

COA Regional Office No. V. Decision No. 2012-L-007 dated June 4, 2012, on the lifting and amendment of various [NDs] relative to the construction of [BIBT] and Slaughterhouse Projects in the Municipality of Bulan, Sorsogon, is **AFFIRMED with FINALITY**.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of the appropriate charges, if warranted, against the persons liable for the transaction.³²

Hence, the present petition.

GROUNDS

A

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT CAPRICIOUSLY DISALLOWED IN AUDIT BASED ON A WRONG LEGAL AUTHORITY THE WORK SUSPENSION ORDER ISSUED BY PETITIONER x x x DE CASTRO; AND IT EVEN WHIMSICALLY HELD HER LIABLE FOR THE SUPPOSED LIQUIDATED DAMAGES IN THE x x x BIBT OF THE MUNICIPALITY OF BULAN, SORSOGON.

B

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT INSISTED TO APPLY THE ACEL EQUIPMENT RENTAL RATES (A PRIVATE GROUP'S INTIATIVE WHICH WAS ADOPTED BY THE DPWH AS PART OF ITS GUIDELINES IN PROJECT COSTING) IN THE BIBT PROJECT WHICH BECAME THE BASIS OF THE ASSAILED COA RESOLUTION AND THE ASSAILED COA DECISION (ANNEXES A AND B HEREOF) TO AFFIRM PART OF THE DISALLOWANCE IN THE ASSAILED ND NO. 2008-06-27-002-101(2009) (ANNEX E HEREOF) WHICH DPWH GUIDELINES HAD NOT BEEN LEGALLY PUBLISHED OR FILED FOR ITS OWN ORDINANCE ON EQUIPMENT RENTAL.

C

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REPEATEDLY DID NOT RESOLVE THE SUBJECT CASE IN EACH STAGE OF THE APPEAL ON TIME WHICH IS IN VIOLATION OF THE PROVISIONS OF THE 2009 RRPC AND THE PETITIONER'S RIGHTS TO DUE PROCESS AND TO SPEEDY DISPOSITION OF THE SUBJECT CASE.

³² Id. at 141-142.

4

D

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT WANTONLY DID NOT INDIVIDUALLY RESOLVE OR HAD CAPRICIOUSLY DISREGARDED ARGUMENTS I(a) AND III OF PETITIONERS DE CASTRO AND GONZALES AND ARGUMENT I OF PETITIONER BALDON IN THE SUBJECT MR (ANNEX C HEREOF) AND FALSELY CLAIMING IN THE ASSAILED COA RESOLUTION (ANNEX A HEREOF) THAT THEY WERE MERE REHASH OR REITERATION OF THE GROUNDS ALREADY PASSED UPON EARLIER IN THE ASSAILED COA DECISION (ANNEX B HEREOF) WHICH DISREGARD OR CLAIM VIOLATED THE RESPONDENT'S OWN 2009 RRPC AND THE PETITIONERS' RIGHT TO DUE PROCESS.

E

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN, DESPITE BEING CONTRARY TO EXISTING JURISPRUDENCE, IT STILL IMPUTED LIABILITY TO PETITIONER x x x DE CASTRO AS HEAD OF PROCURING ENTITY FOR THE ALLEGED OVERESTIMATION IN QUANTITY OF MATERIALS IN THE CONSTRUCTION OF THE BULAN INTEGRATED BUS TERMINAL PROJECT.

F

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SUSTAINED OR AFFIRMED THE ALLEGED OVERESTIMATION IN QUANTITY AMOUNTING TO P 1,857,875.33 AS THE REMAINING DISALLOWANCE UNDER ND NO. 2008-06-27-002-101(2009) DESPITE THE OBVIOUSLY QUESTIONABLE COMPUTATION (THAT IS, UNDERESTIMATION IN THE COA COST ESTIMATE) AND THE TOTAL DISREGARD OF RELEVANT CIRCUMSTANCES MATERIALLY AFFECTING THE PROJECT COSTING MADE BY THE COA INSPECTOR CONCERNED.

G

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN INSTEAD OF ALREADY ATTACHING THE AMENDED NOTICES OF DISALLOWANCE TO THE ASSAILED COA DECISION (ANNEX B HEREOF) IN ORDER TO REFLECT THE REDUCED AMOUNT OF DISALLOWANCE BASED ON THE SCHEDULE APPENDED THERETO AS ANNEX I AND FORMING AN INTEGRAL PART OF THE SAID COA DECISION, IT ONLY DIRECTED THE AUDIT TEAM LEADER CONCERNED TO ISSUE THE SUPPOSEDLY AMENDED NDs, THEREBY DEPRIVING THE PETITIONERS OF THE EXACT FACTS AND REASONS FOR THE DISALLOWANCE, AMONG OTHERS. AND WORSE, THE RESPONDENT HAD OPENLY TOLERATED THE CONCERNED AUDIT TEAM LEADER'S NOT

ISSUING THE AMENDED NOTICES OF DISALLOWANCE EVEN AFTER THE ASSAILED COA RESOLUTION (ANNEX A HEREOF) WAS PROMULGATED, OR MORE THAN TWO (2) YEARS DELAYED ALREADY, IN VIOLATION OF PETITIONERS' RIGHT TO DUE PROCESS AND THE PERTINENT PROVISIONS OF THE 2009 RRPC.

H

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT SUDDENLY AND SURREPTITIOUSLY CHANGED OR SUBSTITUTED THE AMOUNT AND REASON FOR THE DISALLOWANCE STATED IN THE ASSAILED ND NO. 2008-06-27-001-101(2009) (ANNEX D HEREOF) WITHOUT FIRST ISSUING AND SERVING A NEW NOTICE OF DISALLOWANCE DESPITE ITS CLEAR VIOLATION OF COA CIRCULAR NO. 2009-006 DATED SEPTEMBER 15, 2009 AND THE PETITIONERS' RIGHT TO DUE PROCESS.

I

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT AFFIRMED THE ASSAILED NDs DESPITE THEIR PATENT SERIOUS DEFECT FOR THEIR FAILURE TO CITE THE LAW VIOLATED AS REQUIRED UNDER THE 2009 RRPC WHICH SERIOUS DEFECT INFRINGED THE PETITIONERS' RIGHT TO DUE PROCESS.

J

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT RULED THAT PETITIONER x x x GONZALES x x x IS LIABLE FOR THE P169,721.00 DISALLOWANCE UNDER THE ASSAILED ND NO. 2008-06-27-004-101(2009) (ANNEX G HEREOF) FOR AN ALLEGED MISFEASANCE IN PURPORTEDLY GIVING INCONSISTENT AND MISLEADING INFORMATION REGARDING THE DATE THE SLAUGHTERHOUSE PROJECT WAS COMPLETED WHICH IS NOT A GROUND FOR DISALLOWANCE OF TRANSACTION CLAIM OR PAYMENT.

K

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT STILL MADE A PRONOUNCEMENT THAT PETITIONERS x x x DE CASTRO, AS HEAD OF PROCURING ENTITY, AND THE BAC MEMBERS ARE ADMINISTRATIVELY LIABLE FOR VIOLATION OF THE PROVISIONS OF R.A. [NO.] 9184 AND ITS IRR REGARDING THE FULL USE OF PHILGEPS, DESPITE THE LIFTING OF ND NO. 2008-06-27-005-101(2009) AND ND NO. 2008-06-27-005-101(2009) FOR WANT OF LEGAL BASIS.

L

RESPONDENT COA HAD COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT OVERCHARGED THE PETITIONERS IN THE AMOUNT OF FILING FEES THAT THEY WERE MADE TO PAY WHEN THEY FILED THEIR APPEAL BEFORE THE COA REGION V DIRECTOR, LEGASPI CITY DESPITE THE CLEAR PROVISION OF THE 2009 RRPC.³³

RULING

Before We delve into the substance of the petition, We shall first address the issue regarding the timeliness of the instant petition.

According to the respondent, the petition should be dismissed for having been filed beyond the 30-day reglementary period for the filing of a petition for *certiorari* under Section 3,³⁴ Rule 64 of the Rules of Court. Respondent, through the Office of the Solicitor General (OSG), points out that petitioners received a copy of the assailed COA Decision on September 29 2014 and, in turn, filed a motion for reconsideration on October 9, 2014³⁵. Considering that the fresh period rule enunciated in *Neypes v. Court of Appeals*³⁶ does not apply to petitions for *certiorari* under Rule 64,³⁷ petitioners had only 20 days remaining, or until December 19, 2016, to file the petition. Accordingly, since petitioners received a copy of the assailed COA Resolution denying their motion for reconsideration on November 29, 2016, the filing of the petition on December 29, 2016 was 10 days late.

Indeed, a review of the timeline shows the instant petition for review was filed out of time and could have been dismissed by this Court outright. Time and again, We have emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.³⁸

³³ Id. at 12-15.

³⁴ Sec. 3. *Time to file petition* - The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

³⁵ *Rollo*, pp. 411-414.

³⁶ 506 Phil. 613 (2005).

³⁷ *Fortune Life Insurance Company, Inc. v. COA Proper et al.*, 752 Phil. 97, 106 (2015).

³⁸ *Subic Bay Metropolitan Authority v. COA*, G.R. No. 230566, January 22, 2019.

However, there are certain exceptions that allow a relaxation of the procedural rules. In the case of *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA*,³⁹ the Court restated the reasons which may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) **the merits of the case**; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and, (f) the other party will not be unjustly prejudiced thereby.⁴⁰

As in any case, this Court is duty-bound to preliminarily ascertain, based on the records, whether the petition has *prima facie* merit, before resolving to dismiss the same on a procedural ground. Here, it is notable that even the OSG, in its partial manifestation⁴¹, disagrees with respondent COA Proper's ruling on certain points and raises reversible errors allegedly committed by the latter. Taking cue therefrom, this Court has found *prima facie* merit on matters raised in the instant petition for review, which behooved Us to relax technical rules and entertain the petition.

Now We resolve the petition, beginning with the collateral issues raised by petitioners.

Petitioners argue that respondent violated their right to speedy disposition of their case when the latter repeatedly failed to timely resolve the subject case in each stage of the appeal, within the periods provided in the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC). Petitioners asseverate that: despite the filing of their Appeal Memorandum on February 17, 2010 before the COA-RD of Region V, the latter decided the case on June 4, 2012 beyond the 15-day period⁴² prescribed by the 2009 RRPC; despite the indorsement of the case on June 8, 2012 to the respondent COA Proper for automatic review of the Decision of the COA-RD of Region V, respondent rendered the herein assailed Decision on September 11, 2014 only, beyond the 60-day period⁴³ prescribed; and, despite the filing of their Motion for Reconsideration on October 9, 2014, respondent resolved the same on November 9, 2016 only, beyond the 60-day period prescribed.

³⁹ 750 Phil. 258 (2015).

⁴⁰ Id. at 274-275, citing *Sanchez v. Court of Appeals*, 452 Phil. 665, 674 (2003).

⁴¹ *Rollo*, pp. 432-435.

⁴² Sec. 9. **Period to Decide Case** – The Director shall render his decision on the case within fifteen (15) days after submission of complete documents necessary for evaluation and Decision.

⁴³ Sec. 4. **Period for Rendering Decision** - Any case brought to the Commission Proper shall be decided within sixty (60) days from the date it is submitted for decision or resolution, in accordance with Section 4, Rule III hereof.

In responding to petitioners' claim, COA counters that petitioners failed to show that the delay was capricious, vexatious and oppressive in character, so as to amount to a violation of petitioners' right to speedy disposition of the case. COA likewise submits that the delay was justified by the necessity for thoroughness in audit.

Respondent's position is well-taken.

Section 16, Article III of the 1987 Constitution guarantees that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies. This constitutional right is not only afforded to the accused in criminal proceedings but extends to all parties in all cases pending before judicial, quasi-judicial and administrative bodies - any party to a case can demand expeditious action from all officials who are tasked with the administration of justice.⁴⁴

It must be noted, however, that the right to a speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient;⁴⁵ it is dependent on the facts and circumstances of a particular case.⁴⁶ Thus, it is doctrinal that in determining whether a party is denied the right to speedy disposition of cases, the following factors are considered and weighed: (1) length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.⁴⁷

In this case, after weighing the length of time it took the lower tribunals to decide the instant case *vis-a-vis* the necessity to exercise even the standard degree of thoroughness in the examination and resolution of six disallowances in audit—some of which involving issues that are complex or technical in nature, this Court is of the view that the delay in the resolution of the case was not inordinate.

Petitioners likewise bewail that they were denied administrative due process in view of the following circumstances: failure of respondent to resolve every individual argument raised by petitioners in their Motion for Reconsideration; non-issuance of the amended NDs, in conformity with the pronouncement of respondent in the assailed Decision; and failure of the assailed NDs to cite the law violated.

⁴⁴ *Revuelta v. People of the Philippines*, G.R. No. 237039, June 10, 2019.

⁴⁵ *Id.*

⁴⁶ *Navarro v. COA*, G.R. No. 238676, November 19, 2019.

⁴⁷ *Id.*

Again, this Court is unimpressed.

The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard.⁴⁸ In administrative proceedings, procedural due process has been recognized to include the following: (1) the right to actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.⁴⁹

Contrary to petitioners' view that ND Nos. 2008-06-27-001-101 (2009), 2008-06-27-003-101 (2009), and 2008-06-27-004-101 (2009) are defective notices for not indicating the particular violations of law upon which the disallowance was based, the Court finds them sufficient enough to comply with the requirements of administrative due process. After all, in administrative proceedings, "due notice" simply means the information that must be given or made to a particular person or to the public within a legally mandated period of time so that its recipient will have the opportunity to respond to a situation or to allegations that affect the individual's or public's legal rights or duties.⁵⁰

In this case, ND Nos. 2008-06-27-001-101 (2009), 2008-06-27-003-101 (2009), and 2008-06-27-004-101 (2009) bore the following reasons for disallowance:

References	Facts and/or Reasons for Disallowance
ND No. 2008-06-27-001-101 (2009)	Unaccomplished deficiency of 0.58% or P196,526.13[,] the equivalent amount in terms of pesos. Per inspection report attached on Special Audit Report (Annexes "M- 1-5")
ND No. 2008-06-27-003-101 (2009)	Representing liquidated damages for 80 days in excess of contract time attached in the Special Audit Report as Annex "Z- 15-A"
ND No. 2008-06-27-004-101 (2009)	Representing LD for 34 days in excess of contract time attached in the Special Audit Report as Annexes "Z- 16-A" & "18-a-d"

⁴⁸ *Vivo v. Phil. Amusement and Gaming Corporation*, 721 Phil. 34, 39 (2013).

⁴⁹ *Id.* at 43, citing *Casimiro v. Tandog*, 498 Phil. 660, 667 (2005).

⁵⁰ *Security and Exchange Commission v. Universal Rightfield Property Holdings, Inc.*, 764 Phil. 267, 283 (2015).

The above-stated reasons, with reference to pertinent documents, were adequate enough to inform the parties concerned that the corresponding bases for the disallowance are contractual in character, thereby affording the parties the opportunity not only to respond, but more importantly, to properly formulate their defenses in their Appeal Memorandum before the COA-RD of Region V.

Neither does the non-issuance of the amended NDs in conformity with the disposition made by respondent in its assailed decision, impair the petitioners' right to due process that would warrant the nullification of the subject NDs. Petitioners have been amply notified of factual and legal basis of each disallowance through the assailed Decision, thus, belying that they were deprived of the exact facts and reasons for their respective liabilities.

Lastly, that respondent did not discuss every individual issue raised by petitioners in their motion for reconsideration does not by itself amount to a violation of their right to due process. It is an accepted practice that courts or tribunals are not required to resolve all issues raised in pleadings unless necessary for the resolution of the case.⁵¹ Apparently, COA deemed it unnecessary to pass upon some points raised by petitioners, considering that it has exhaustively passed upon the decisive issues involved in this case in its assailed Decision.

All told, the Court finds no compelling reason to grant the instant petition on account of the alleged violations of petitioners' right to speedy disposition of cases and due process.

This brings Us to the main issues affecting each Notice of Disallowance.

ND No. 2008-06-27-001-101 (2009)

(Liquidated Damages by Reason of the Delay in the Delivery or Installation of Additional 25Kva Transformer and its Accessories in the Main Terminal Building)

To begin Our discussion on the matter, it bears to recall that the initial finding that prompted the disallowance under ND No. 2008-06-27-001-101 (2009) was the installation of a 25kva, instead of a 50kva, transformer as programmed, which accounted for the 0.58% unaccomplished deficiency. On appeal to the COA-RD of Region V, petitioners and Baldon offered the documents below to show the private contractor's rectification of the deficiency following their receipt of the ND:

⁵¹ *Insular Bank of Asia & America v. IAC*, 249 Phil. 417, 427 (1988).

1. Letter/Report issued by the Office of the Municipal Engineer, dated October 20, 2009, stating that per inspection of the BIBT project conducted on even date, the 50kva transformer and its accessories, in accordance with the Program of Work (POW), had been installed;⁵²
2. Letter of the contractor Baldon, dated October 3, 2009, informing the Municipal Mayor of the installation of the 50kva transformer, as well as all electrical equipment and accessories, had been properly installed;⁵³
3. Certification issued by Sorsogon I Electric Cooperative, Inc. (SORECO) on September 30, 2009, stating that a secondary line (consisting of units steel poles; one unit 50kva transformer; and one unit kwh meter class 200) has been installed at the BIBT.⁵⁴

As stated above, the COA-RD of Region V modified the disallowance under ND No. 2008-06-27-001-101 (2009), assessing the private contractor's liability at ₱145,770.60 only, as liquidated damages by reason of the delay in the delivery or installation of additional 25kva transformer and its accessories in the main terminal building. Upon automatic review of the COA Proper, the respondent affirmed the modification made by the COA-RD of Region V.

In presently assailing ND No. 2008-06-27-001-101 (2009), petitioners draw attention to the apparent distinctions between the original ND No. 2008-06-27-001-101 (2009) issued by the ATL, on one hand, and the modified ND No. 2008-06-27-001-101 (2009) as assessed by the COA-RD of Region V, on the other hand, as shown below:

	ND No. 2008-06-27-001-101 (2009)	
	ORIGINAL	MODIFIED
AMOUNT	₱196,526.13	₱145,770.60
REASON FOR DISALLOWANCE	Unaccomplished deficiency of 0.58% upon per inspection	Liquidated Damages by reason of the delay in the delivery and installation of additional 25 kva transformer and its accessories in the main terminal building

Petitioners assert that there was denial of administrative due process when, after the private contractor Baldon had established that her construction firm had rectified the deficiency cited by the ATL in the original ND No. 2008-06-27-001-101 (2009), the COA-RD and respondent COA Proper still partly sustained the said disallowance based on a new ground. Considering that the basis for the liability under the modified ND was different from that originally cited, petitioners claim that a new ND should have been issued covering the

⁵² *Rollo* p. 306.

⁵³ *Id.* at 307.

⁵⁴ *Id.* at 308.

same. Petitioners, thus, argue that respondent COA committed grave abuse of discretion when it affirmed ND No. 2008-06-27-001-101 (2009) as modified by the COA-RD of Region V.

The argument lacks merit.

While the original and the modified ND No. 2008-06-27-001-101 (2009) may appear to refer to distinct violations, both are predicated on the same cause, which was the failure of the contractor to fulfill its obligation to install a 50kva transformer and its accessories in the main terminal building of the project within the contract time. Based on record, it is evident that the shift from the initial ground of disallowance to the new one was simply the residual result of the rectification of the deficiency beyond contract time, that perforce had the effect of causing further delay in the completion of the BIBT project. Hence, petitioners could not have been surprised at all by the succeeding assessment for delay, so as to validate their claim of denial of due process. After all, the cause of the modified disallowance was subsumed in the original. Accordingly, a new notice of disallowance is not required; the modification of the original ND No. 2008-06-27-001-101 (2009) suffices under the circumstances of this case.

In view thereof, the respondent COA Proper aptly affirmed the modification made by the COA RD on ND No. 2008-06-27-001-101 (2009), especially since the evidence on record clearly supports the contractor's liability for the said delay.

In this connection, it may not be amiss to state that the COA is not required to limit its review only to the grounds relied upon by a government agency's auditor with respect to disallowing certain disbursements of public funds. In consonance with its general audit power, respondent Commission on Audit is not merely legally permitted, but is also duty-bound to make its own assessment of the merits of the disallowed disbursement and not simply restrict itself to reviewing the validity of the ground relied upon by the auditor of the government agency concerned. To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective.⁵⁵

ND No. 2008-06-27-002-101 (2009)
(Cost of Overestimated Quantities of Construction Materials, Rental Cost of Equipment and Cost of Labor Net of 10% Tolerable Allowance)

⁵⁵ *Maritime Industry Authority v. COA*, 750 Phil. 288, 334 (2015).

1

The amount originally disallowed under ND No. 2008-06-27-002-101 (2009) was ₱4,367,360.90, computed as follows:⁵⁶

Contract Cost	32,984,700.00
Less COA Estimated Cost	26,015,762.82
Difference: (Gross Variance)	6,968,937.18
Gross Variance / Allowable Variance x 100 = 26.79%	
Less: 10% of COA Estimate (Allowable Variance) ⁵⁷	2,601,576.28
Net Cost Variance (NCV) Disallowed in Audit	₱4,367,360.90 ⁵⁸

The disallowed NCV under the original ND No. 2008-06-27-002-101 (2009) consisted of two parts, namely, overestimated quantities and overpricing.⁵⁹

Details	Overestimated Quantities		Overpricing		Total	
	Amount (P)	%	Amount (P)	%	Amount (P)	%
Portion of CV for construction materials, rental cost of equipment and cost of labor	2,838,384.00	42.54	3,834,453.30	57.46	6,672,837.30	100
CV for mobilization, overhead cost and contractors profit and tax	125,960.89	42.54	170,138.99	57.46	296,099.88	100
Total Cost Variance/ Gross Variance Equivalent to 26.79%	2,946,344.89	42.54	4,004,592.29	57.46	6,968,937.18	100
Less COA Allowable Variance: 10% of Total Estimate: (26,015,762.82)	1,106,710.55	42.54	1,494,865.73	57.46	2,601,576.28	100
Net Cost Variance (NCV) Disallowed	P1,857,875.33	42.54	P2,509,485.57	57.46	P4,367,360.90	100⁶⁰

⁵⁶ *Rollo*, p. 150.

⁵⁷ Paragraph 7, COA Resolution No. 91-52 states:

The total contract price should be equal to or less than the total COA estimate plus ten percent (10%) in order to sustain a finding of reasonableness, otherwise, the contract price will be deemed excessive.

⁵⁸ According to the assailed COA Decision dated September 11, 2014, the amount of disallowance should be ₱4,367,360.90, which was inadvertently indicated as ₱4,368,046.58.

⁵⁹ *Rollo*, p. 151.

⁶⁰ *Id.* at 151-152.

0

On appeal to the COA-RD of Region V, the amount of disallowance was reduced to ₱1,857,875.33, after the RD lifted the disallowance of Php2,509,485.57 representing the NCV of the alleged overpriced construction materials. The reason for the partial lifting of the disallowance was the failure of the COA-TAS to support the finding of overpricing with actual canvass sheets and/or price quotations from identified suppliers, as required under COA Memorandum No. 97-012.⁶¹

Thus, the remaining amount of disallowance pertains to the NCV of the overestimated quantities of construction materials, rental cost of equipment and cost of labor. Petitioners fault the respondent COA Proper in sustaining the disallowance thereof. They argue that respondent gravely abused its discretion in giving credence to the Detailed Estimates⁶² made by the COA-TAS, which are attended with the following supposed defects and irregularities:

Point 1:

It must be noted that in the Detailed Estimates under Masonry Works, page 2, for 10,475 hollow blocks used, Engr. Gomez estimated only 611 bags of cement needed or to be used.

However on page 5, for another Masonry Works, for 13,800 pieces of hollow blocks[,] Gomez estimated that only 120 bags of cement are needed.

x x x x

Point 2:

Relative to the Perimeter Fencing, on page 1 of both the LGU Program of Work and the COA Detailed Estimates, the COA inspector (Engr. Gomez) did not include in his Detailed Cost Estimates the use of scaffoldings for the construction of the perimeter fence. x x x

Point 3:

In the COA Detailed Estimates prepared by the COA inspector, the employment of a Civil Engineer, or an Electrical Engineer, or a Project Engineer who must supervise, check and oversee the whole project as big as the Bus Terminal was not

⁶¹ COA Memorandum Order No. 97-012 dated March 31, 1997 states:

x x x x

3.2 To firm up the findings to a reliable degree of certainty, initial findings of overpricing based on market price indicators mentioned in pa. 2.1 above have to be supported with canvass sheet and/or price quotations indicating: a) the identities of the suppliers or sellers; b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency; c) the specifications of the items which should match those involved in the finding of overpricing; d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction.

⁶² *Rollo*, pp. 240-260.

included. The BIBT was a big civil works project awarded to a contractor who must hire a professional civil engineer, or any other engineer, depending on the line of work or project being done. The labor cost for such engineer was obviously disregarded or omitted by the COA inspector[,] which could partly account for or explain or reduce the alleged overestimated cost of the project.

Point 4:

COA Inspector (Engr. Gomez) raised the issue that for the acquisition of common borrow which will be used as filling material, why adopt the farther source in the LGU estimate and pay a higher cost of P220.00 per cubic meter instead of the nearer source with lower cost of P130 per cubic meter? He claimed that] in this material alone, the government could have saved P90.00 per cubic meter of P1,944,000.00 for 21,600 cubic meters.⁶³

It must be pointed out that the site of the [BIBT] is very much different from that of the Municipal Slaughterhouse. The BIBT project is located in a rice field needing more selected type of filling materials than the usual filling materials for the construction site of an ordinary project like a slaughterhouse. The BIBT serves as a facility that can carry heavier loads like, not only the building but several buses equivalent to 50 units at some point of time, and thus, the foundation materials had included selected filling materials like boulders and rocks. The area at the site of the BIBT project sits on a ground softer than at the slaughterhouse site. Thus, there was a need for a selected borrow since safety like security is a main concern for the Bus Terminal Management.

Accordingly, [the] alleged savings of P90.00 per cubic meter for 21,600 cubic meters or a total amount of P1,944,000.00 is totally baseless and therefore there was no overestimation in the quantity and price of the borrow used as filling materials for the BIBT project.

Point 5:

The COA inspector (Engr. Gomez) had questioned the rental of Road Grader estimated by the LGU of Bulan at P12,048.00 per eight-hour operation based on Municipal Ordinance No. 002, Series of 2005⁶⁴ [xxx] which is the prevailing rate at the construction site. Engr. Gomez used the DPWH Regional Equipment Rental rates based on the DPWH Order No. 57, Series of 2002, dated February 13, 2002 which is legally non-existent for not having been published or filed with the Office of the National Administrative Register (ONAR) as already discussed above. And if Engr. Gomez used any other rates prevailing in a locality outside of the LGU [of] Bulan or in a place far from the construction site like Legaspi City, then Engr. Gomez failed to consider the factors that affect costing or pricing or

⁶³ Id. at 388.

⁶⁴ Id. at 385-386.

rental, like distance, time and the added cost of hauling the heavy equipment to and from the project site at Bulan Sorsogon.⁶⁵

While this Court finds points 1 to 4 raised by petitioners to be ostensibly sound in theory, it is unfortunate that petitioners failed to present before Us the LGUs Program of Work (POW), in order to enable Us to confirm whether the items or expenses referred to in petitioners' arguments indeed form part of the agency approved budget, and whether they constitute the remaining gross variance of ₱2,964,344.89. Considering that the said document is clearly relevant to the material allegations in this petition, petitioners should have presented the same.

On this note, We stress that the burden of demonstrating, plainly and distinctly, all facts essential to establish their right to a *writ of certiorari* lies on petitioners.⁶⁶ In other words, the burden of proof to show grave abuse of discretion is on the petitioners.⁶⁷ Here, by not attaching a relevant document in support of their arguments, petitioners failed to discharge their burden of proof.

As to the costing of heavy equipment rentals, petitioners argue that COA erroneously sustained the reliance of the COA-TAS upon the Department of Public Works and Highways (DPWH) rental rates, as mandated by DPWH Department Order (D.O.) No. 57, series of 2002,⁶⁸ in arriving at the rental cost estimates. According to petitioners, since DPWH D.O. No. 57, series of 2002, was not published in the University of the Philippines (U.P.) Law Center - Office of the National Administrative Register (ONAR), the same is "inexistent."

We agree with petitioners that the lack of publication and non-submission to the U.P. Law Center – ONAR, of DPWH Department Order (D.O.) No. 57, series of 2002, rendered the same ineffective, insofar as it requires the adoption of the Associated Construction Equipment Lessors, Inc. (ACEL) rental rates as the basis of equipment rental cost in the preparation of a project's Approved Budget for Contract (ABC). This Court has emphasized that both the requirements of publication and filing of administrative issuances intended to enforce existing laws—R.A. No. 9184, in this case—are mandatory for the effectivity of said issuances.⁶⁹

However, the ineffectiveness thereof notwithstanding, COA is not precluded from adopting the rental rates prescribed by the DPWH, if it is shown that the same is more practical and of least cost to the government. This is in view of COA's

⁶⁵ Id. at 94-97.

⁶⁶ *Morales, Jr. v. Ombudsman Carpio-Morales*, 791 Phil. 539, 556 (2016).

⁶⁷ Id.

⁶⁸ Item A.3.1 of DPWH D.O. No. 57, series of 2002, states:

A.3 Equipment Expenses.

A.3.1 Rental equipment which shall be based on the prevailing "Associated Construction Equipment Lessors, Inc." (ACEL) rental rates approved for the use by the DPWH. Rental Rates of Equipment not indicated in the ACEL booklet shall be taken from the rental rates prepared by the Bureau of Equipment. x x x

⁶⁹ *Rep. of the Phils. v. Pilipinas Shell Petroleum Corporation*, 574 Phil. 134, 144 (2008), *NASECORE v. Energy Regulatory Board*, 517 Phil. 23, 54 (2006).

mandate preventing excessive and unnecessary costs to the government. In this case, it is apparent that the DPWH rental rates are lower than that prescribed in Municipal Ordinance No. 002, Series of 2005, which was used as basis in the preparation of the ABC for the BIBT project. Hence, the COA did not commit grave abuse of discretion in sustaining the COA-TAS rental cost estimate for the lease of heavy equipment, based on the DPWH rental rates.

This brings Us to the issue of who are liable under ND No. 2008-06-27-002-101 (2009). We hold that only the BAC Chairman Dino and Municipal Engineer Gonzales are liable for this disallowance. Under Section 103 of Presidential Decree (P.D.) No. 1445, 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. Considering that the BAC chairman and the municipal engineer were directly involved in the preparation of the budget for the project, they should be made liable for the overestimated quantity of the materials and the rates used for the costing of the BIBT project.

Petitioner De Castro, on the other hand, cannot be held liable under this disallowance, since she had nothing to do with the preparation of the estimated cost of the BIBT project.⁷⁰ Applying the *Arias*⁷¹ doctrine, the fact that petitioner De Castro was the final approving authority of the transactions in question and that the officers who processed the same were directly under her supervision, do not suffice to make her liable, in the absence of indication that she had notice of any circumstance that could have aroused her suspicion that what she was approving falls within the purview of an excessive transaction. To be clear, the documents in question involve technical matters that are beyond the professional competence of De Castro.

The proprietor of the private contractor S.R. Baldon Construction and Supply should be excluded from liability under this disallowance, since she was not privy to the preparation of the estimates for project. The Court finds fault in COA's imputation of liability against the contractor on the basis of unjust enrichment.⁷² For one to be liable under the principle of unjust enrichment, the essential elements must be present: (1) that the defendant has been enriched, (2) that the plaintiff has suffered a loss, (3) that the enrichment of the defendant is without just or legal ground, and (4) that the plaintiff has no other action based on contract, quasi-contract, crime or quasi-delict.⁷³ In this case, the first element is lacking, as it was never alleged, much less proved, that the overestimated quantities of construction materials, rental costs of equipment and labor cost, were not utilized or spent for the project or that the same channeled directly for personal use or gain of the private contractor.

⁷⁰ *Dr. Salva v. Chairman Carague*, 540 Phil. 279, 286 (2006).

⁷¹ *Arias v. Sandiganbayan*, 259 Phil. 794 (1989).

⁷² The principle of unjust enrichment under Article 22 of the Civil Code ordains that "every person, who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."

⁷³ *Shinryo (Philippines) Company, Inc. v. RRN Incorporated*, 648 Phil. 342, 351 (2010).

1

ND No. 2008-06-27-003-101 (2009)

(Liquidated Damages for 80 Days Excess of Contract Time)

The assailed COA Decision held petitioner De Castro, as then municipal mayor of Bulan, Sorsogon, liable for the disallowance under ND No. 2008-06-27-003-101 (2009) in the amount of ₱2,638,776.00, representing the liquidated damages for the 80-day delay in the completion of the BIBT project. In so ruling, the respondent invalidated the Work Suspension Order dated May 15, 2007 issued by petitioner De Castro, which served as the basis for the contractor to stop the work operations on the project from July 2, 2007 until September 10, 2007. According to COA, De Castro's Work Suspension Order, which was predicated on the municipal government's recourse to undertake an alternative financing scheme to fund the project, is not a fortuitous event that would render it a valid ground for work suspension under Item 9(1) of Annex E to IRR-A of R.A. No. 9184, which states:

9.1. The procuring entity shall have the authority to suspend the work wholly or partly by written order for such period as may be deemed necessary, due to force majeure or any fortuitous events or for failure on the part of the contractor to correct bad conditions which are unsafe for workers or for the general public, to carry out valid orders given by the procuring entity or to perform any provisions of the contract, or due to adjustment of plans to suit field conditions as found necessary during construction. The contractor shall immediately comply with such order to suspend the work wholly or partly.

COA further ruled that neither does the said circumstance fall under Item 9(2) of Annex E to IRR-A of R.A. No. 9184, which enumerates the following grounds for a contractor to request for work suspension:

9.2. The contractor or its duly authorized representative shall have the right to suspend work operation on any or all projects/activities along the critical path of activities after fifteen (15) calendar days from date of receipt of written notice from the contractor to the district engineer/regional director/consultant or equivalent official, as the case may be, due to the following:

a. There exist right-of-way problems which prohibit the contractor from performing work in accordance with the approved construction schedule.

b. Requisite construction plans which must be owner-furnished are not issued to the contractor precluding any work called for by such plans.

c. Peace and order conditions make it extremely dangerous, if not possible, to work. However, this condition must be certified in writing by the Philippine National Police (PNP) station which has responsibility over

the affected area and confirmed by the Department of Interior and Local Government (DILG) Regional Director.

d. There is failure on the part of the procuring entity to deliver government-furnished materials and equipment as stipulated in the contract.

e. Delay in the payment of contractor's claim for progress billing beyond forty- five (45) calendar days from the time the contractor's claim has been certified to by the procuring entity's authorized representative that the documents are complete unless there are justifiable reasons thereof which shall be communicated in writing to the contractor.

Taking exception therefrom, petitioners argue that the respondent committed grave abuse of discretion in relying solely upon the grounds for work suspension mentioned in Items 9(1) and (2) of Annex E to IRR-A of R.A. No. 9184 to invalidate the subject Work Suspension Order. They assert that De Castro's order may likewise be justified under the General Welfare Clause of the Local Government Code. Expounding on this assertion, they explain that in order to fund the construction and development of the several priority projects, such as the BIBT, SB Ordinance No. 004, series of 2003,⁷⁴ was enacted authorizing the municipal mayor to float Bulan bonds in the amount of ₱50,000,000.00. In the same ordinance, the municipal mayor was also authorized to undertake alternative arrangements should such be necessary due to cost considerations. Thereafter, when the implementation of the Bulan bonds turned out to be difficult, SB Resolution No. 033 series of 2007⁷⁵ was issued on July 16, 2007, authorizing the municipal mayor to apply, negotiate and enter into a contract of loan or any credit accommodation or facility to finance the early redemption or bail-out of the outstanding Bulan Bonds. Considering the amount of time, it would take to process the refinancing agreement, petitioner De Castro issued the questioned Work Suspension Order in order to protect the interest of the municipality from being sued by the private contractor for any resulting delay in the payment of progress and final billings.

Petitioners likewise submit that, in any case, since the date of approval of the loan is uncertain and beyond the control of De Castro, it can be considered a fortuitous event or force majeure, which thus constitutes as valid basis for the issuance of the challenged Work Suspension Order. Accordingly, they argue that there was no delay in the completion of the project since the work suspension was justified.

Petitioners further lament the imposition of personal liability upon De Castro for the subject disallowance. They claim that assuming that there was indeed a delay, the liability to pay liquidated damages must be shouldered by

⁷⁴ *Rollo*, 374-377.

⁷⁵ *Id.* at 378.

the private contractor alone, based on the tenor of Item 8(1), Annex “E” of the IRR of R.A. No. 9184, which reads:

8.1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the procuring entity for liquidated damages, and not by way of penalty, an amount, as provided in the conditions of contract, equal to at least one tenth (1/10) of one (1) percent of the cost of the unperformed portion of the works for every day of delay.

Petitioner’s last argument was echoed by the OSG in its Partial Manifestation.

We find merit in petitioners’ arguments.

The above-cited clause on liquidated damages is clear about its purpose and application: it is a deterrent against delays by the contractor, which result in a breach of the contract. The same clause provides that the reckoning of the delay excludes any time extension duly granted. In other words, if the delay is not the contractor’s fault, the clause on liquidated damages is not triggered and no such damages are due. Consequently, ND No. 2008-06-27-003-101 should be set aside. Under Part 1⁷⁶ of the Rules of Return in the case of *Madera v. COA*,⁷⁷ there is no amount to disallow or to return.

Even assuming such liquidated damages are due, it must likewise be noted that the suspension was due to an ongoing loan negotiation which followed the failure of the bond flotation initially intended to fund the project. Petitioner De Castro argues that the issuance of the work suspension order was done to protect the interests of the municipality by avoiding collection suits from private contractors. This, to Our mind, is a badge of good faith which may excuse the “return” of the amount disallowed, as per Part 2a⁷⁸ of *Madera*.

ND No. 2008-06-27-004-101 (2009)

(Disallowance by Reason of Alleged Misfeasance in Giving Inconsistent and Misleading Information Regarding the Actual Date of Completion of the said Project)

⁷⁶ Part 1 provides: If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

⁷⁷ G.R. No. 244128, September 8, 2020.

⁷⁸ Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

Under the original ND No. 2008-06-27-004-101 (2009), the amount of ₱169,721.20 was disallowed, covering the liquidated damages for the purported 34-day delay in the completion of the Bulan Slaughterhouse project, based on a Certification⁷⁹ issued by Municipal Engineer Gonzales, dated July 24, 2007, which states that the BIBT and the Bulan Slaughterhouse projects were still on-going. On appeal to the COA-RD for Region V, Gonzales explained that the content of the said Certification dated July 24, 2007 was an honest mistake. He claimed the project was actually completed on April 29, 2007, based on his Accomplishment Report⁸⁰ on even date. He further argued that even supposing that the actual completion date was on May 29, 2007, as purported by the Certification⁸¹ issued by the Project-in-Charge and noted by him, the same was still well-within schedule, and thus, there was no basis to impose liquidated damages.

On July 4, 2012, the COA Regional Director for Region V issued a Decision lifting ND No. 2008-06-27-004-101 (2009) due to insufficiency of evidence that the Bulan Slaughterhouse was completed beyond schedule, but gave a stern warning to the municipal engineer to stop giving inconsistent and misleading information (i.e. dates of project completion, work accomplishment, etc.) to users of his reports.

On automatic review of the decision of the COA RD, the COA Proper set aside the lifting of ND No. 2008-06-27-004-101 (2009). The public respondent found Municipal Engineer Gonzales, solely and personally liable for the disallowance under ND No. 2008-06-27-004-101 (2009), by reason of his alleged misfeasance in giving inconsistent and misleading information regarding the actual date of completion of the said project. The COA Proper held that although there was no legal basis to sustain the ND No. 2008-06-27-004-101 (2009), as issued by the ATL, the same is without prejudice to the administrative liability of the Municipal Engineer for his misfeasance.

Petitioners now assail the ruling of respondent COA Proper, arguing that misfeasance is not a ground for disallowance. Along this line of argument, the OSG likewise challenges the said COA ruling, arguing that the liability imposed upon Gonzales cannot be considered as a disallowance since there is no irregular or excessive expenditure to speak of in this case. The OSG posits that in imposing liability on Gonzales for his supposed misfeasance, the public respondent, in excess of its jurisdiction, rendered the municipal engineer guilty of an administrative offense. According to the OSG, COA Proper, in effect, imposed a fine upon Gonzales for his alleged misfeasance, in the guise of a disallowance.

⁷⁹ *Rollo*, p. 355.

⁸⁰ *Id.* at 356.

⁸¹ *Id.* at 357.

We agree with the OSG.

The power of COA to disallow expenditures proceeds from its duty⁸² to prevent irregular⁸³, unnecessary⁸⁴, excessive⁸⁵, or extravagant⁸⁶ expenditures or uses of government funds or property,⁸⁷ and those which are illegal⁸⁸ and unconscionable.⁸⁹ It stands to reason, therefore, that in the absence of these anomalous types of disbursements, there is no ground to warrant the disallowance of an expenditure.

Such is the situation in this case. To recall, the purported ground for the issuance of ND No. 2008-06-27-004-101 (2009) by the ATL, was the illegal or irregular disbursement of the sum of ₱169,721.20 representing the liquidated damages for the alleged 34-day delay in the completion of the Bulan Slaughterhouse project — an amount that ought to have been deducted from the final payment to the private contractor.⁹⁰ However, upon review of both the COA RD and the COA Proper, both tribunals found no sufficient basis to sustain the assessment of the ATL under the original ND No. 2008-06-27-004-101 (2009), ostensibly holding that there was insufficient evidence to establish the alleged 34-day delay.

On this score, Our own perusal of the evidence yields to the same finding. On one hand, the single evidence relied upon by the ATL in support of its finding of delay, was the Certification⁹¹ issued by petitioner Gonzales dated July 24, 2007, stating that the construction of the project was then still ongoing. On the other hand, petitioners harped on the following documents to prove that the project was completed prior to its deadline on June 20, 2007, and the statement made by Gonzales in the Certification dated July 24, 2007, regarding the ongoing status of the project, was an honest mistake:

⁸² COA Circular 85-55a, September 8, 1985.

⁸³ **Irregular expenditure** signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law.

⁸⁴ **Unnecessary expenditure** pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service.

⁸⁵ **Excessive expenditure** signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits.

⁸⁶ **Extravagant expenditure** signifies those incurred without restraints, judiciousness and economy. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, waste grossly excessive, and injudicious.

⁸⁷ Section 33 of P.D. No. 1445.

⁸⁸ **Illegal expenditures** are expenditures which are contrary to law.

⁸⁹ **Unconscionable expenses** are expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair or honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.

⁹⁰ Item 8.3 of Annex "E" of the IRR-A of R.A. No. 9148.

⁹¹ *Rollo*, p. 355.

4

- a. Accomplishment Report issued by Municipal Engineer Gonzales, dated April 29, 2007, stating that the Bulan Slaughterhouse was actually completed on April 29, 2007;⁹²
- b. Request for Inspection and Final Payment, dated May 28, 2007, from Steven Construction and Supply, addressed to then Mayor De Castro;⁹³
- c. Certification issued by the Project-in-Charge Mr. Benito Marquez, and noted by Municipal Engineer Gonzales, dated May 29, 2007, stating that the project was 100% work accomplished as of May 29, 2007;⁹⁴
- d. Official Receipt issued by Steven Construction dated June 4, 2007, acknowledging that final payment has been made by the LGU of Bulan for a project already completed.⁹⁵

To Our minds, petitioners' documentary evidence preponderantly establish that the project was completed prior to the expiration of the 180-day contract time, ending on June 20, 2007. In their chronological sequence, these documents credibly tell the following narrative: that on April 29, 2007 (128 days from the commencement date), the construction of Bulan Slaughterhouse project was completed; thereafter, on May 28, 2007, the private contractor requested the municipal government to conduct an inspection on the project as a necessary precursor for the final payment; on May 29, 2007 (still well-within the 180-day contract time), the project was inspected and the work thereon was certified as 100% accomplished "as of" the inspection date; accordingly, the final payment was made to the private contractor on 4 June 2007. Under the foregoing established facts, the purported delay in the project completion—the basis for the issuance of the original ND No. 2008-06-27-004-101 (2009)—is belied.

In view thereof, the amount covered by ND No. 2008-06-27-004-101 (2009), as assessed by the ATL, cannot be characterized as an illegal or irregular disbursement so as to constitute a valid ground for its disallowance. Accordingly, no liability in audit arises therefrom, considering that a liability for disallowance should partake of the nature of an obligation for restitution⁹⁶ of an expenditure or disbursement that is found to be illegal, irregular, unnecessary, excessive, extravagant or unconscionable.

⁹² Id. at 356.

⁹³ Id. at 358.

⁹⁴ Id. at 357.

⁹⁵ Id. at 358.

⁹⁶ Section 4.17 of the 2009 COA Rules and Regulations on the Settlement of Accounts:

4.17. Liability - a personal obligation arising from an audit disallowance or charge which may be satisfied through payment or restitution as determined by competent authority or by other modes of extinguishment of obligation as provided by law.

Q

Turning now to the liability imposed upon the Municipal Engineer Gonzales to pay the amount of ₱169,721.20 under ND No. 2008-06-27-004-101 (2009) on the ground of his supposed misfeasance, the same clearly constitutes an administrative liability, since it was meted not for the purpose of restituting the government of an unlawful disbursement, but obviously as a fine or penalty. By doing so, COA clearly overstepped its authority to merely initiate appropriate administrative action, as well as civil and criminal, against any government officer or employee, whenever upon examination or audit, a violation of law or regulation is discovered or disclosed.⁹⁷

ND No. 2008-06-27-005-101 (2009) and
ND No. 2008-06-27-006-101 (2009)

ND Nos. 2008-06-27-005-101 (2009) and ND No. 2008-06-27-006-101 (2009), which declared null and void the contracts over the BIBT and the Bulan Slaughterhouse projects, respectively, were predicated on petitioners' violation of Section 8-III-A of R.A. No. 9184, for their failure to post procurement opportunities relative to the said projects in the PhilGEPS website. On appeal to the COA RD for Region V and upon automatic review by the COA Proper, both tribunals found no legal basis to nullify the subject contracts and ordered the lifting of the said disallowances, without prejudice to the administrative liability of the municipal officers and employees responsible for the said violation. The COA Proper ratiocinated:

It is clear from the provision of Section 8.2.1 and 8.3.1 of IRR-A of R.A. No. 9184 that the Procuring Entity is mandated to fully use the PhilGEPS. The Head of the Procuring Entity (HOPE) and BAC in this case, deliberately violated the said provisions through its failure to post the invitation to bid of the said project procurement, results of bidding and related information in the PhilGEPS website.

However, since the project was already completed and delivered, and the public has benefited therefrom, equitable considerations allow for payment to the Contractor based on *quantum meruit*.⁹⁸

Petitioners now assail the portion of the COA Proper Decision finding them administratively liable for the non-posting of the invitation to bid for the BIBT and the Bulan Slaughterhouse projects in the PhilGEPS website. According to petitioners, respondent had illegally assumed administrative

⁹⁷ Section 31 of Volume 1: Government Auditing Rules and Regulations of the Government Accounting and Auditing Manual provides:

Section 31. Initiation of criminal, civil, or administrative action. — Pursuant to its constitutional power to examine, audit and settle all accounts of the government, the Commission may initiate, in the proper forum, an appropriate criminal, civil or administrative action against any government officer or employee, or even private persons, whenever upon examination, audit, or settlement of an account or claim, a violation of law or regulation is discovered or disclosed.

⁹⁸ *Rollo*, p. 155.

disciplinary jurisdiction when it proclaimed petitioners be administratively liable under ND Nos. 2008-06-27-005-101 (2009) and ND No. 2008-06-27-006-101 (2009), notwithstanding its own finding that the said disallowances had no legal basis.

The contention is misplaced.

Subsumed in respondent's authority to initiate an appropriate criminal, civil or administrative action, whenever it discovers a violation of a law or regulation upon examination, audit, or settlement of an account or claim,⁹⁹ is the authority make preliminary findings and conclusions as bases for filing such actions. Hence, it is within the bounds of COA's jurisdiction to make determinations as to petitioners' administrative liability, albeit preliminarily and only for the purpose of filing the appropriate action.

Under the circumstances, respondent COA's disposition of ND Nos. 2008-06-27-005-101 (2009) and ND No. 2008-06-27-006-101 (2009), which states "without prejudice to the administrative liability of Mayor De Castro, Head of Procuring Entity and the BAC Members for violation of the provisions of R.A. No. 9184 and its IRR regarding the full use of PhilGEPS" is not indicative of an imposition of administrative liability. Hence, the respondent committed no grave abuse of discretion in making such pronouncement.

At this point, the Court finds it premature to resolve the defenses raised by petitioners to justify the non-posting of the procurement opportunities in the PhilGEPS website, as to do so would be preempting the resolution of the administrative case against them involving the matter.

WHEREFORE, premises considered, the petition is **PARTIALLY GRANTED**. The assailed COA Decision dated September 11, 2014 and Resolution dated November 9, 2016 are **MODIFIED** as follows:

The modified ND No. 2008-06-27-001-101 (2009), holding Shirley R. Baldon, Proprietor, S.R. Baldon Construction and Supply, liable for the liquidated damages amounting to ₱145,770.60 only based on the Inspection/Evaluation Report dated March 18, 2011 of COA-TAS is affirmed;

The partial lifting of ND No. 2008-06-27-002-101 (2009) is sustained but the correct amount of the ND should be ₱4,367,360.90 instead of

⁹⁹ Sec. 31 of Volume 1 of Government Auditing Rules and Regulations of the Government Accounting and Auditing Manual

0


₱4,368,046.58. Consequently, the amount of ₱2,509,485.57 pertaining to the overpricing is lifted but the remaining ₱1,857,875.33 for the overestimation in quantity is sustained. BAC Chairman Dennis H. Dino and Municipal Engineer Toby C. Gonzales, Jr. shall be liable for the disallowance;

The lifting of ND No. 2008-06-27-003-101 (2009) in the amount of ₱2,638,776.00 is hereby affirmed;


The lifting of ND No. 2008-06-27-004-101 (2009) amounting to ₱169,721.00 is hereby affirmed due to insufficiency of evidence of the 34-day delay in project completion, but with a stern warning to the Municipal Engineer to stop giving inconsistent and misleading information (i.e. dates of project completion, work accomplishment, etc) to users of his reports; and

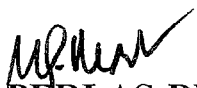
The lifting of ND No. 2008-06-27-005-101 (2009); and ND No. 2008-06-27-006-101 (2009) totaling ₱37,976,500.00 is affirmed for want of legal basis without prejudice to the administrative liability of Mayor Helen C. De Castro, Head of Procuring Entity and the BAC members for their violation of the provisions of Republic Act No. 9184 and its IRR regarding the full use of the PhilGEPS.

SO ORDERED.

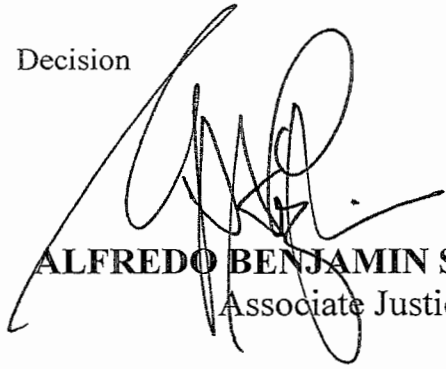

SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

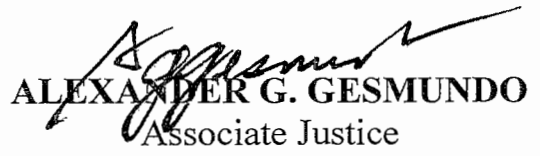

DIOSDADO M. PERALTA
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

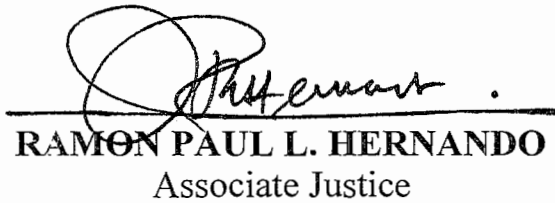

MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



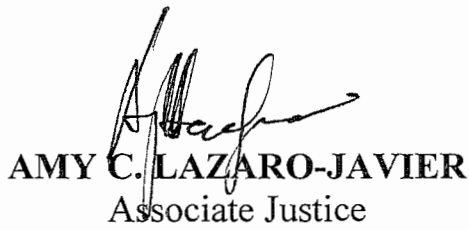
ALEXANDER G. GESMUNDO
Associate Justice



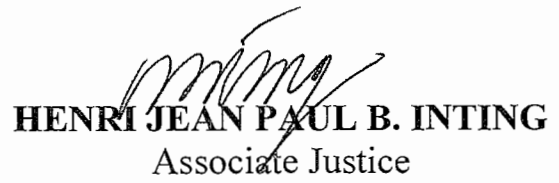
RAMON PAUL L. HERNANDO
Associate Justice



ROSMARID. CARANDANG
Associate Justice

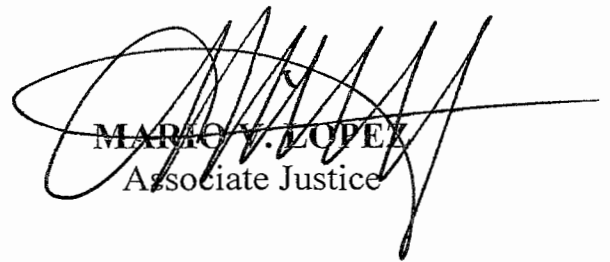


AMY C. LAZARO-JAVIER
Associate Justice

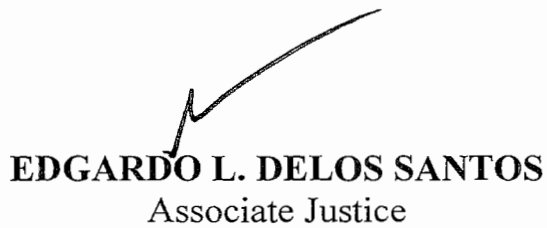


HENRI JEAN PAUL B. INTING
Associate Justice

(on official leave)
RODIL V. ZALAMEDA
Associate Justice



MARIO V. LOPEZ
Associate Justice

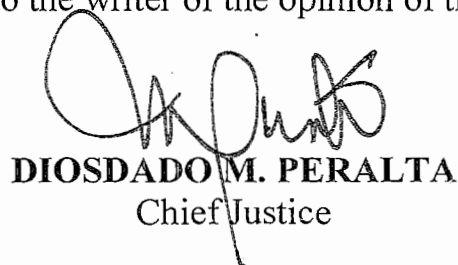


EDGARDO L. DELOS SANTOS
Associate Justice

(on leave)
PRISCILLA J. BALTAZAR-PADILLA
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

1