



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

LUIS RAYMUND F. VILLAFUERTE, JR.,
Petitioner,

G.R. No. 246053

- versus -

COMMISSION ON AUDIT,
Respondent.

Present:

GESMUNDO, *CJ*,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
LOPEZ, J., *JJ*.

Promulgated:

April 27, 2021

X-----*Antonio G. Sison*-----X

DECISION

ZALAMEDA, J.:

In this Petition for *Certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, petitioner Luis Raymund F. Villafuerte, Jr. seeks to annul the Decision No. 2015-481¹ dated 29 December 2015 and the

¹ *Rollo*, pp. 60-63; penned by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia.

Resolution (Decision No. 2018-453)² dated 21 December 2018 issued by respondent Commission on Audit (COA) affirming Notice of Disallowance (ND) No. 2010-100-007(08) dated 21 September 2010 against the partial payment amounting to Php4,250,000.00 for the procurement of one unit of second-hand shipping vessel with a total contract price of Php8,500,000.00 by the Provincial Government of Camarines Sur (PG-CamSur).

Antecedents

In 2007, the PG-CamSur determined the need for the procurement of a shipping vessel for the promotion of the tourism industry in the province, particularly the Caramoan peninsula. Pursuant thereto, Provincial General Services Officer (PGSO) Bernardo A. Prila (Prila) prepared a purchase request recommending the purchase of a shipping vessel with a minimum carrying capacity of 82 passengers and an estimated cost of Php8,500,000.00. The PR, dated 11 September 2007, was signed by PGSO Prila, certified by Provincial Treasurer Mario T. Alicaway, and approved by petitioner as Provincial Governor.³

On the same date, the Provincial Bids and Awards Committee (BAC) issued Resolution No. 329, Series of 2007, adopting direct contracting as the alternative mode of procurement for the shipping vessel. As stated in the said Resolution, the necessary invitations were sent to shipping companies, which submitted offers to the PG-CamSur. The offers were consolidated to form a short list of suppliers from which the PG-CamSur chose the offer made by Regina Shipping Lines, Inc. (Regina Shipping) for the sale of its vessel, MV Princess Elaine, in the amount of Php8,500,000.00. After issuance of a purchase order, the PG-CamSur made a partial payment to Regina Shipping in the amount of Php4,250,000.00 on 19 December 2007.⁴

On post-audit, the Audit Team Leader and Supervising Auditor of Camarines Sur Province (auditors) found that vital documents evidencing the transaction for the sale of the shipping vessel were not attached to the disbursement voucher. Further, the partial payment made by PG-CamSur to Regina Shipping was considered an advance payment contrary to the terms specified in the purchase order and in violation of Section 338 of Republic Act No. (RA) 7160, otherwise known as the Local Government Code of 1991, and Section 88(1) of Presidential Decree No. (PD) 1445 or the

² *Id.* at 65-70.

³ *Id.* at 7.

⁴ *Id.* at 135-136.



Government Auditing Code of the Philippines. Hence, the auditors issued Audit Observation Memorandum (AOM) No. 2008-100-026(2007) dated 28 February 2008 notifying PG-CamSur of the deficiencies and requesting comments and justifications thereon.⁵

Subsequently, the auditors issued Notice of Suspension (NS) No. 2009-100-0021(08) dated 15 December 2009⁶ reiterating their previous findings and requesting submission of the following requirements:

1. Delivery receipt/Sales Invoice;
2. Acknowledgement Receipt for Equipment (ARE);
3. Acceptance and Inspection Report;
4. Deed of Sale duly notarized;
5. Notice of Direct Contracting in the Agency Website;
6. Notice of Direct Contracting in the Phil GEPS;
7. Request for Price Quotation to selected suppliers/Canvass;
8. BAC Resolution which shall state that a survey of the industry/market has been conducted to justify the exclusivity of the distributorship/dealership of the goods;
9. BAC Resolution adopting Direct Contracting was not approved by the Governor;
10. BAC Recommendation and Approval of the Governor in the contract;
11. DTI business name registration or SEC registration certificate;
12. Valid and current Mayors Permit; &
13. Tax Clearance Certificate.⁷

On 02 September 2010, the PG-CamSur issued a letter-response to NS No. 2009-100-0021(08) and proffered the following justifications: (1) the vessel was already in use by the provincial government prior to the partial payment; (2) although the Deed of Absolute Sale of Vessel was executed only on 25 March 2008, the delivery and physical possession of the vessel was made prior to the date of execution and payment; (3) the contract price has not been fully paid as of the date of the letter despite the transfer of the vessel's ownership and registration to the provincial government; (4) direct contracting was resorted to by the BAC because of the good track record of the supplier; and (5) the supplier was the only company willing to deliver possession of the vessel pending payment thereof by the provincial government.⁸

⁵ *Id.* at 136.

⁶ *Id.* at 115-116.

⁷ *Id.* at 115.

⁸ *Id.* at 136.



For failure of the PG-CamSur to settle the deficiencies noted in the NS and to sufficiently answer the issues in the assailed transaction, the auditors issued ND No. 2010-100-007(08) dated 21 September 2010 disallowing the partial payment amounting to Php4,250,000.00. As stated in the ND, the transaction was considered an illegal and irregular transaction since it was an advance payment on the shipping vessel and the PG-CamSur failed to provide necessary documents to warrant the use of direct contracting as the mode of procurement.⁹ The following persons were determined liable for the transaction:

Name	Position/Designation	Nature of Participation in the Transaction
Luis Raymund F. Villafuerte, Jr.	Provincial Governor	For approving the transaction
Leticia L. Aliorde	Provincial Accountant	Certified that the [disbursement voucher] was supported with complete documents
Mario T. Alicaway	Provincial Treasurer	For being then the Provincial Treasurer
Bernadette G. Carlos, M.D.	Former BAC Chairman	For being the BAC Chairman and certifying that the conditions and requirements resulting to direct contracting were present
Jaime M. Letada, Jr.	BAC Member	For being the BAC Member and certifying that the conditions and requirements resulting to direct contracting were present.
Santiago V. Pan	BAC Member	Same as above
Fortunato C. Pena	BAC Member	Same as above
Bernardo A. Prila	BAC Member/OIC PGSO	For being [a] BAC Member and certifying on the Obligation Request that the transaction was charge to appropriation/allotment necessary (sic), lawful and under his direct supervision and that supporting documents valid, proper and legal. ¹⁰

⁹ *Id.* at 95.

¹⁰ *Id.* at 96.



Aggrieved by the issuance of the ND, petitioner and the rest of the persons held liable therein (co-appellants) filed an appeal with the COA Regional Office (RO). They reiterated their argument that physical possession of the vessel had already been transferred to the PG-CamSur prior to partial payment thereof. They also questioned the necessity of submitting the supporting documents in the NS/ND as the absence of these did not make the transaction itself illegal or unlawful. Since the transaction was not illegal *per se*, it should be passed in audit considering the PG-CamSur had already benefited from the transaction. Further, they insist the payment to Regina Shipping is proper on the basis of *quantum meruit*.¹¹

Decision of the COA Regional Office

The COA RO V, through its Decision No. 2012-L-033¹² dated 05 November 2012, denied the appeal lodged by petitioner and his co-appellants, to wit:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, Notice of Disallowance No. 2010-100-007(08) dated September 21, 2010 in the amount of P4,250,000.00 is **AFFIRMED**.¹³

As held by the COA RO V, circumstances surrounding the partial payment by the PG-CamSur to Regina Shipping support the finding that it was in fact an advance payment. The Deed of Absolute Sale of the vessel was completed and signed only on 25 March 2008 or more than three months after the partial payment on 19 December 2007. The Delivery Receipt issued by Regina Shipping was also dated 29 February 2008 or more than two months after the partial payment.

The COA RO V noted the submission by petitioner and his co-appellants of the required documentation for the procurement of the vessel in their appeal. Nonetheless, their earlier non-submission of the documents enumerated in the NS/ND, which are required by applicable COA rules and regulations, as well as RA 9184, made the transaction an irregular and illegal expenditure.

¹¹ *Id.* at 137.

¹² *Id.* at 135-146.

¹³ *Id.* at 146.



Likewise, it was pointed out by the COA RO V that PG-CamSur adopted the alternative mode of direct contracting instead of competitive bidding as mandated by the procurement law. However, conditions surrounding the procurement of the shipping vessel failed to support the agency's use of direct contracting. Finally, petitioner cannot be absolved from liability under the doctrine in *Arias v. Sandiganbayan*.¹⁴

Decision of the COA Proper

On 29 December 2015, the COA Proper, through Decision No. 2015-481, dismissed the petition for review filed by petitioner and his co-appellants for being filed out of time, *Viz.*;

WHEREFORE, premises considered, the petition for review is hereby **DISMISSED** for being filed out of time. Accordingly, Commission on Audit Regional Office No. V Decision No. 2012-L-033 dated November 5, 2012 affirming the Notice of Disallowance No. 2010-100-007 (2008) dated September 21, 2010 on the payment to Regina Shipping Lines, Inc. for the purchase of a second-hand shipping vessel in the amount of P4,250,000.00 is **FINAL AND EXECUTORY**.

The Prosecution and Litigation Office, Legal Services Sector, is further directed to refer this case to the Office of the Ombudsman for the filing of appropriate charges against erring officials and employees of the Provincial Government of Camarines Sur, if warranted.¹⁵ (Emphases Supplied)

While the first motion for extension for 60 days filed by petitioner and his co-appellants was granted, the second motion for extension they filed was denied. Accordingly, the period to file their petition for review was set until 14 January 2013. However, the petition for review was filed through registered mail only on 11 February 2013 and was received by the COA Proper only on 27 February 2013. Hence, the COA Proper dismissed the petition for review for being filed out of time. As ruled by the COA Proper, petitions for extension are directed to the discretion of the court and favorable action cannot be taken for granted by the parties. Parties who rely on or anticipate a favorable action do so at their own risk.¹⁶

¹⁴ *Id.* at 138-145; 259 Phil. 794 (1989).

¹⁵ *Id.* at 62.

¹⁶ *Id.* at 60-62.

The aggrieved parties filed a motion for reconsideration, which was denied for lack of merit through Resolution No. 2018-453 dated 21 December 2018.¹⁷ The COA Proper maintained their stance that the petition for review filed by petitioner and his co-appellants was filed out of time. At any rate, even if the case is decided on the merits, the assailed ND would still be sustained. The procurement of MV Princess Elaine did not undergo public bidding as required by law. The use of direct contracting as an alternative mode of procurement had no legal basis. Even assuming that the procurement was made through limited source bidding as insisted by the movants, the procurement was still attended by irregularities. Accordingly, the COA Proper affirmed with finality its Decision No. 2015-481 dated 29 December 2015.¹⁸

Issues

Petitioner raises the following issues in the present petition before the Court, thus:

I

PUBLIC RESPONDENT COA GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT SUMMARILY DISMISSED THE *PETITION FOR REVIEW* CONSIDERING THAT, ON THE BASIS OF THE VERY SAME FACTS AND ISSUES RAISED IN THE CASE *A QUO*, PETITIONER VILLAFUERTE WAS ALREADY ABSOLVED OF ANY LIABILITY THERETO BY THE OMBUDSMAN IN THE *FIRST OMBUDSMAN COMPLAINT* AND THE *SECOND OMBUDSMAN COMPLAINT*. HENCE, ADMINISTRATIVE *RES JUDICATA* OUGHT TO GUIDE THE RESOLUTION OF THE CASE *A QUO*.

II

PUBLIC RESPONDENT COA GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, WHEN IT PERFUNCTORILY DISMISSED THE *PETITION FOR REVIEW* DESPITE THE FACT THAT (1) THE SAME WAS TIMELY FILED WITHIN THE EXTENSION PRAYED FOR AND LONG BEFORE PUBLIC RESPONDENT COA COULD EVEN ACT ON THE *FIRST MOTION FOR EXTENSION*, WHICH IT GRANTED; (2) PUBLIC RESPONDENT COA ALREADY TOOK COGNIZANCE OF THE *PETITION FOR REVIEW* AND ORDERED THE REGIONAL COA TO FILE AN ANSWER THERETO; AND (3) THE *ANSWER TO THE PETITION FOR REVIEW* OF REGIONAL COA DID NOT EVEN

¹⁷ Supra note 2.

¹⁸ *Id.* at 60-63.



QUESTION THE TIMELINESS OF THE *PETITION FOR REVIEW*.

III

THE PROCEEDINGS BEFORE PUBLIC RESPONDENT COA OUGHT TO BE ANNULLED AND DECLARED VOID FOR VIOLATING PETITIONER VILLAFUERTE'S FUNDAMENTAL AND CONSTITUTIONAL RIGHT TO SPEEDY DISPOSITION OF CASES.

IV

PUBLIC RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, WHEN IT FAILED TO CONSIDER THE EVIDENCE SUBMITTED BY THE PROVINCIAL GOVERNMENT AND MISAPPLIED THE LAW WHICH CLEARLY SHOW THAT OWNERSHIP OF MV PRINCESS ELAINE WAS TRANSFERRED TO THE PROVINCIAL GOVERNMENT PRIOR TO PAYMENT AND, NECESSARILY, THERE WAS NO ADVANCE PAYMENT.

V

PUBLIC RESPONDENT COA GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, WHEN IT HELD THAT PETITIONER VIOLATED RA 9184 WHEN IT MANIFESTLY DID NOT EVEN CONSIDER EXTENSIVELY THE SUBMISSIONS AND EVIDENCE ON RECORD AND MISAPPLIED THE LAW WHICH CLEARLY SUPPORT THAT THE PURCHASE MADE BY THE PROVINCIAL GOVERNMENT WAS A LIMITED SOURCE BIDDING.

VI

PUBLIC RESPONDENT COA GRAVELY ABUSED ITS DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, WHEN IT HELD THAT PETITIONER VILLAFUERTE SHOULD BE HELD PERSONALLY LIABLE FOR THE *NOTICE OF DISALLOWANCE*, CONTRARY TO SETTLED JURISPRUDENCE THAT HEADS OF GOVERNMENT AGENCIES CANNOT BE HELD PERSONALLY LIABLE ON THE BASIS OF MERE APPROVAL OF GOVERNMENT DOCUMENTS PREPARED BY THEIR SUBORDINATES, BECAUSE SUCH HEADS OF GOVERNMENT AGENCIES HAVE A RIGHT TO REASONABLY RELY ON THEIR SUBORDINATES IN GOOD FAITH.¹⁹

In response to the above arguments, COA, through the Office of the Solicitor General (OSG), contended that the dismissal of the petition for review for having been filed out of time was correct. Petitioner cannot presume his second motion for extension would be granted. He was neither

¹⁹ *Id.* at 15-16.



denied due process nor his right to speedy disposition of cases violated. COA's challenged issuances were rendered in accord with law, jurisprudence and the evidence presented. All the documents supporting the transaction were dated after the partial payment was made, and the certifications allegedly proving the actual date of delivery were dated much later, after the issuance by the audit team of the AOM and NS.²⁰

Further, the use of direct contracting for the procurement of the vessel has no legal basis. The dismissal of petitioner's cases before the Office of the Ombudsman (OMB) does not bar the COA from holding petitioner liable over the disallowed amount. The criminal and administrative cases before the said office are separate from the proceedings on the disallowance before the COA. There was also no violation of petitioner's right to speedy disposition of cases. The supposed delays taken by the COA in deciding the case were neither arbitrary nor whimsical on its part.²¹

Ruling of the Court

The petition lacks merit. Notwithstanding, the Court will first discuss the procedural issues raised by petitioner.

Dismissal of petitioner's cases before the OMB

According to petitioner, the present case is the third time he has been vexed over the same allegations of facts and issues on the purchase of MV Princess Elaine. The OMB issued a Joint Resolution²² dated 09 May 2011 finding no probable cause against petitioner for violation of Sections 3(e) and (g) of RA 3019. The same Resolution also dismissed the administrative charges against him for said purchase. On 28 March 2018, the OMB also rendered a Consolidated Resolution²³ dismissing criminal and administrative charges against petitioner over the alleged advance payment for MV Princess Elaine. The OMB took note of Joint Resolution dated 09 May 2011 and ruled that it was bound by its earlier findings. Petitioner now insists the factual findings of the OMB in the foregoing resolutions ought to govern the disposition of the very same facts at issue in the present case on the ground of administrative *res judicata*.

²⁰ *Id* at 572-580.

²¹ *Id.* at 581-588.

²² *Id.* at 175-190.

²³ *Id.* at 535-552.



Petitioner's argument has no merit.

Well-settled is the rule that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer.²⁴ According to this "threefold liability rule," a public officer may be held civilly liable to reimburse the injured party if his wrongful acts or omissions result in damages. If the law violated attaches a penal sanction, the erring officer may also be punished criminally. Lastly, such violation may also lead to administrative sanctions if disciplinary measures are warranted based on evaluation of the conduct of the public official. Actions resulting from each of these liabilities may proceed independently of one another, as in fact, the quantum of evidence required in each case is different.²⁵

Thus, there is no merit in petitioner's contention that the present case should be dismissed following his release of liability from the cases filed before the OMB covering the same factual milieu.

Petitioner's right to speedy disposition of cases

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.²⁶ "The right requires that proceedings should be conducted according to fixed rules, free from vexatious, capricious, and oppressive delays. The right is violated when unjustified postponements of the proceedings are sought and obtained, or when a long period of time is allowed without justifiable cause or motive to elapse without the parties having their case tried."²⁷ Said constitutional right extends not only to an accused in criminal proceedings but also to all parties in all cases pending before judicial, quasi-judicial and administrative bodies. In short, any party to a case can demand expeditious action from all officials who are tasked with the administration of justice.²⁸

²⁴ *Madera v. Commission on Audit*, G.R. No. 244128, 08 September 2020.

²⁵ *Ramiscal v. Commission on Audit*, 819 Phil. 597, 610-611 (2017).

²⁶ Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

²⁷ *Development Bank of the Philippines v. Commission on Audit*, 808 Phil. 1001, 1015-1016 (2017).

²⁸ *De Castro v. Commission on Audit*, G.R. No. 228595, 22 September 2020.

Yet, as correctly pointed out by COA, there was no showing by petitioner that the supposed delay in the resolution of this case is vexatious, capricious, and oppressive. Other than petitioner's bare assertion of COA taking almost three years to issue the assailed Decision No. 2015-481 and two years to issue the Resolution No. 2018-453, there was no other proof of said violation of his constitutional right as a mere mathematical reckoning of the time involved would not be sufficient.²⁹

*Timeliness of the appeal before
the COA Proper*

The Revised Rules of Procedure of the Commission on Audit³⁰ provides the period for appeals before the COA, hence:

RULE V
Appeal from Auditor to Director

x x x x

SECTION 2. *How Appeal Taken.* — An appeal from an order, decision or ruling by the Auditor may be taken to the Director **within six (6) months after notification** to the party of the report, notice of disallowance and charges, Certificate of Settlement and Balances, order or decision complained of, by filing with the Auditor a Notice of Appeal.

x x x x

RULE VI
Appeal from Director to Commission Proper

x x x x

SECTION 3. *Period of Appeal.* — The appeal shall be taken **within the time remaining of the six (6) months period under Section 2, Rule V**, taking into account the suspension of the running thereof under Section 9 of the same Rule. (Emphases supplied)

As correctly pointed out by the COA Proper, petitioner and his co-appellants failed to appeal within the reglementary period as can be seen in the following timeline:

²⁹ *Id.*

³⁰ 1997 Revised Rules of Procedure of the Commission on Audit, 23 January 1997.

Date of receipt of ND No. 2010-100-007 (2008)	September 27, 2010
Date the appeal was filed before the Regional Director, COA RO No. V	March 25, 2011
Number of days elapsed	178 days
Date of receipt of COA RO No. V Decision No. 2012-L-033	November 13, 2012
Date of original deadline to file a Petition for Review	November 15, 2012
Date of filing of Motion for a 60 days (sic) Extension	November 14, 2012
Date of new deadline for filing a Petition for Review	January 14, 2013 ³¹

Petitioner and his co-appellants filed their petition for review before the COA Proper on 11 February 2013, which was after the new deadline for filing the petition. While such filing is argued to have been within the extended period prayed for in the second motion for extension, they should not have expected for an automatic grant of the extension.

Generally, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. The failure to perfect the appeal renders the assailed judgment final and executory. This is in alignment with the doctrine of finality of judgment or immutability of judgment under which a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.³²

While there are some instances allowing for the relaxation of 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,³³ none of these recognized exceptions are present in this case. Indeed, procedural rules, specifically

³¹ *Rollo*, p. 66.

³² *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222710, 10 September 2019.

³³ *De Castro v. Commission on Audit*, *Supra* note 24; *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, 750 Phil. 258, 274-275 (2015).

those prescribing time within which appeals may be taken have been often decreed as absolutely indispensable to prevent delay and to assist in the speedy and orderly administration of justice. Rules are promulgated for the benefit of all, and the Court is duty-bound to follow them and observe the noble purpose for their issuance.³⁴

At any rate, even if the Court brushes aside the procedural rules surrounding the perfection of its appeal, the case of petitioner will still fail.

*Propriety of issuing the
assailed ND covering the
partial payment of the vessel*

Petitioner insists on the nullity of ND No. 2010-100-007(08) dated 21 September 2010 disallowing the partial payment amounting to Php4,250,000.00 since the PG-CamSur did not make an advance payment on the vessel and properly resorted to limited source bidding. However, even if we are to concede that the partial payment made by the PG-CamSur to Regina Shipping was not an advance payment, considering that the documents evidencing the sale and receipt by the PG-CamSur of the vessel reflect the actual delivery date of the vessel to be on 20 September 2007,³⁵ the ND must still be upheld.

Petitioner failed to show the proper requisites for the use of an alternative mode of procurement. The procurement of services and goods are generally carried out through public bidding, which is a method of government procurement governed by the principles of transparency, competitiveness, simplicity, and accountability. Its aim is to protect public interest by giving the public the best possible advantages through open competition. It also seeks to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.³⁶

There are, however, alternative modes of procurement under RA 9184,³⁷ which are allowed under exceptional cases and under set of conditions in Article XVI thereof, to wit:

³⁴ *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 235832, 03 November 2020.

³⁵ *Rollo*, pp. 99, 118, and 205.

³⁶ *Subic Bay Metropolitan Authority v. Commission on Audit*, G.R. No. 230566, 22 January 2019.

³⁷ Government Procurement Reform Act, Republic Act No. 9184, 10 January 2003.

ARTICLE XVI
Alternative Methods of Procurement

SECTION 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 — a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

(b) *Direct Contracting*, otherwise known as Single Source Procurement — a method of Procurement that 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;

(c) *Repeat Order* — a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

(d) *Shopping* — a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

(e) *Negotiated Procurement* — a method of Procurement that may be resorted to under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.³⁸

Contrary to petitioner's claim of resorting to the use of limited source bidding, the PG-CamSur actually resorted to direct contracting as an alternative mode of procurement as evidenced by the Provincial BAC's

³⁸ *Id.*



Resolution No. 329, Series of 2007³⁹ entitled “RESOLUTION ADOPTING DIRECT CONTRACTING AS THE ALTERNATIVE MODE OF PROCUREMENT FOR THE PROCUREMENT OF ONE (1) VESSEL FROM REGINA SHIPPING LINES, INC. IN THE AMOUNT OF EIGHT MILLION FIVE HUNDRED PESOS (P8,500,000.00).”

The claim of using limited source bidding is also betrayed by the lack of evidence showing a list of suppliers “maintained by the relevant Government authority that has expertise in the type of procurement concerned, which list should have been submitted to, and maintained updated with, the [Government Procurement Policy Board]” as required by the rules.⁴⁰ There was also no enumeration of any kind of pre-selected bidders to which an invitation to bid were supposedly sent.⁴¹ Rather, the evidence submitted by the parties only points to one supplier, which is Regina Shipping. Moreover, some of petitioner’s co-appellants, namely Leticia D. Aliorde, Jaime M. Letada, Jr., and PGSO Prila, admitted to the use of direct contracting.⁴²

Under Section 50 of RA 9184, direct contracting may only be resorted to in any of the following conditions:

- (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 sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

None of the above requisites are extant in this case. The ship or vessel procured is not of a proprietary nature obtained only from a proprietary source. There are no patents, trade secrets or copyright prohibiting other suppliers of a ship. Procuring the vessel from Regina Shipping is also not a condition precedent to hold any contractor to guarantee project performance. Lastly, Regina Shipping is not an exclusive dealer or manufacturer not

³⁹ *Rollo*, pp. 104-105.

⁴⁰ Section 49, Implementing Rules and Regulations (IRR) Part A, hereinafter called "IRR-A." IRR of RA 9184, 23 September 2003.

⁴¹ *Id.*

⁴² *Rollo*, p. 67.



having sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government. Hence, the COA did not act with grave abuse of discretion in sustaining ND No. 2010-100-007(08) dated 21 September 2010 disallowing the partial payment amounting to Php4,250,000.00 as the resort to the alternative mode of direct contracting was unjustified.

*Petitioner remains liable for
the disallowed amount*

The Court, in the recent case of *Torreta v. Commission on Audit*,⁴³ formulated the guidelines for the return of disallowed amounts in cases involving disallowance in government contracts, to wit:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in the 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.
 - b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.
 - c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case-to-case basis.
 - d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.⁴⁴

The above guidelines were a recalibration of the rules of return in *Madera v. Commission on Audit*⁴⁵ after taking into consideration the

⁴³ G.R. No. 242925, 10 November 2020.

⁴⁴ *Id.*

⁴⁵ *Supra* note 20.



peculiarity of cases involving government procurement contracts for goods or services.

Based on the current jurisprudence, petitioner's solidary liability for the disallowed amount should be sustained. Records clearly show that petitioner's actuations were grossly negligent amounting to bad faith when he approved the transaction despite noncompliance with procurement laws and the glaring deficiencies in the requirements needed to process the transaction. Gross inexcusable negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected.⁴⁶ It may become evident through the noncompliance of an approving or authorizing officer of clear and straightforward requirements of laws or rules, which because of their clarity and straightforwardness, only call for one reasonable explanation.⁴⁷

No badge of good faith can also be appreciated in petitioner's favor despite his claim of application of the doctrine in *Arias v. Sandiganbayan*⁴⁸ considering the blatant disregard of procurement laws and rules he himself invoked. The flagrant deficiencies in the requirements and the patent disregard of the general rule for competitive bidding constitutes extraordinary circumstances that should have prompted him to look more closely at the legal and documentary requirements for the transaction. Instead, petitioner readily approved the transaction without so much as an inquiry on the use of an alternative mode of procurement and without demanding for the completeness of the documentary requirements. The sheer number of missing supporting documents should have alerted petitioner to require further verification from his subordinates.

Verily, the Court, in *Technical Education and Skills Development Authority v. Commission on Audit*,⁴⁹ considered the Director-General's blatant violation of clear provisions of the Constitution, the 2004-2007 General Appropriations Act and COA circulars equivalent to gross negligence amounting to bad faith. Indeed, local government officials are accountable for the proper monitoring and maintenance of the financial affairs of their Local Government Unit and knowledge of basic procurement

⁴⁶ *Constantino v. Sandiganbayan*, 559 Phil. 622, 638 (2007).

⁴⁷ *Madera v. Commission on Audit*, *Supra* note 20; Separate Concurring Opinion of Senior Associate Justice Perlas-Bernabe, p. 7.

⁴⁸ *Supra* note 11.

⁴⁹ 729 Phil. 60 (2014); G.R. No. 204869, 11 March 2014 [Per J. Carpio].



laws and the requirements for a valid transaction forms part of their shared fiscal responsibility, hence:

Section 305. *Fundamental Principles.* — The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:

x x x x

(1) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units. x x x⁵⁰

Undoubtedly, there is a clear showing of gross negligence on the part of petitioner for his failure to exercise the slightest care and with a conscious indifference in the discharge of his duties coupled with the lack of any badge of good faith available to his case. Hence, his solidary liability for the disallowed amount should remain.

The principle of *quantum meruit* cannot likewise apply in this case to reduce the liability of petitioner and his co-appellants. The COA Proper already made a definite finding on the lack of factual basis for its application, to wit:

However, as correctly pointed out by the appellees, the projects involved in *Vigilar* and in the related cases cited therein were tangible infrastructure projects, wherein the contractors' accomplishments, as well as the benefits derived by the public, were verified and proven, and which served as basis for allowing payment by *quantum meruit*. On the contrary, no convincing proof was adduced by the herein appellants that PG-CamSur and the general public actually benefited from the purchase of the shipping vessel. As previously discussed, the certifications submitted by the appellants as proof of the actual physical possession and use of the shipping vessel were tainted with ambiguity and irrelevance, failing to provide even an iota of proof that the shipping vessel was actually used by the provincial government and/or the French Survivor Team. Defeating all the more the appellants' contention that non-payment to [Regina Shipping] would amount to unjust enrichment on the part of the government was the appellees categorical statement in their Answer to the Supplemental Appeal Memorandum that on September 27, 2010, on a visit to Sangay, Camarines Sur where the shipping vessel was docked, it was discovered that the shipping vessel was already out of order.⁵¹

⁵⁰ *Silang v. Commission on Audit*, 769 Phil. 327, 349 (2015).

⁵¹ *Rollo*, p. 143.

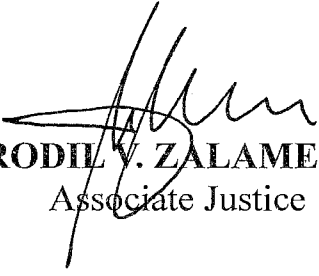


In *Lazaro v. Commission on Audit*,⁵² the Court held that when asserting limited or absence of liability based on the principles of *quantum meruit* and good faith, petitioners, in good diligence, must clearly allege and support the factual basis for their claims. It is not the Court's burden to construe incomplete submissions and vague narrations of petitioners to determine if their assertions have merit.⁵³

In the case at bar, there was no sufficient proof adduced to show how the purchase of MV Princess Elaine actually redounded to the benefit of the PG-CamSur allowing for the application of the principle of *quantum meruit* to reduce the liability of the persons named in the assailed ND. The COA's factual findings on said issue are generally accorded utmost respect by reason of their special knowledge and expertise over matters falling under their jurisdiction.⁵⁴ Besides, petitioner did not anymore raise the issue of the application of *quantum meruit* in his petition before the Court. Coupled with the finality of the Decision No. 2012-L-033 dated 05 November 2012 rendered by the COA RO V for failure of petitioner and his co-appellants to timely file an appeal, as well as the finding of gross negligence on the part of petitioner, the Court sees no reason to reverse or modify the assailed Decision and Resolution without disregarding the doctrine of immutability of judgment.

WHEREFORE, the Petition is hereby **DISMISSED**. The Decision No. 2015-481 dated 29 December 2015 and the Resolution (Decision No. 2018-453) dated 21 December 2018 issued by respondent Commission on Audit affirming Notice of Disallowance (ND) No. 2010-100-007(08) dated 21 September 2010 is **AFFIRMED**.

SO ORDERED.

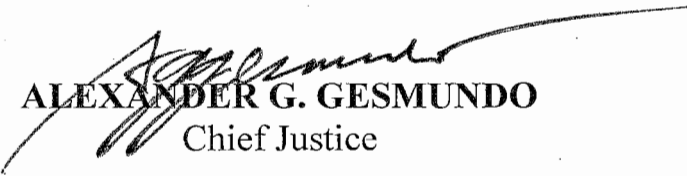

RODIL V. ZALAMEDA
Associate Justice

⁵² G.R. Nos. 213323 & 213324, 22 January 2019.

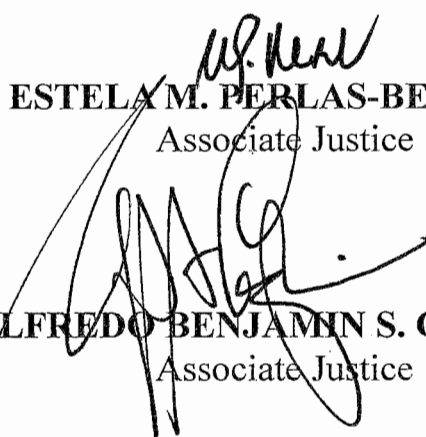
⁵³ *Id.*

⁵⁴ *Theo-Pam Trading Corp. v. Bureau of Plant Industry* G.R. No. 242764, 19 January 2021.

WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice




ESTELA M. PERLAS-BERNABE
Associate Justice



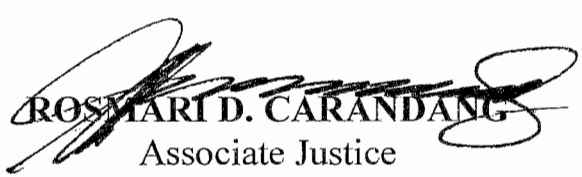
MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice




RAMON PAUL L. HERNANDO
Associate Justice



ROSMARI D. CARANDANG
Associate Justice



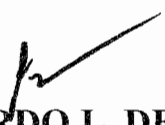
AMY C. LAZARO-JAVIER
Associate Justice




HENRI JEAN PAUL B. INTING
Associate Justice



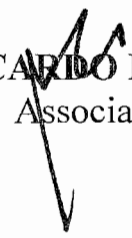
MARIO V. LOPEZ
Associate Justice




EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



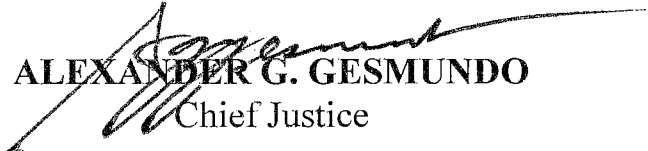
RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to the 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.


ALEXANDER G. GESMUNDO
Chief Justice