

EN BANC

G.R. No. 246777 – STO. CRISTO CONSTRUCTION, represented by its Proprietor, NOEL J. CRUZ, petitioner, versus COMMISSION ON AUDIT, respondent.

Promulgated:

March 2, 2021

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CONCURRING OPINION

CAGUIOA, J.:

I agree with the *ponencia*'s finding that there was no grave abuse of discretion by the Commission on Audit (COA) which amounted to lack or excess of jurisdiction in issuing the assailed decision. However, I feel the need to point out that there were errors by the COA in this case which may have been considered grave had the surrounding circumstances been different.

To recall, petitioner submitted several documents to support its claim that it conducted rectification works on the subject road projects. First was the Letter¹ dated January 9, 2012 (Letter) written by District Engineer Jose G. Datu (Engr. Datu) of the Department of Public Works and Highways Pampanga 1st District Engineering Office (DPWH-Pampanga 1st DEO), informing the COA that they had instructed the contractors to institute corrective measures on the projects. Engr. Datu's Letter was clearly responding to several Notices of Disallowance (ND), including ND No. 11-001-101-09/10² dated July 11, 2011 (subject ND), involving "x x x discrepancies particularly for item 104-embankment x x x"³ as found by the DPWH Quality Assurance Unit (QAU). There was no other indication therein that the corrective works were for some other defect in the road projects. Notably, the subject ND cited the reason for disallowance as "over estimates in [the] embankment materials (Item 104) x x x."⁴

Another piece of evidence is DPWH-Pampanga 1st DEO's Memorandum⁵ dated November 13, 2013 (Memorandum) signed by Engr. Enrico S. Guilas (Engr. Guilas), Officer-in-Charge of the Office of the District Engineer, DPWH-Pampanga 1st DEO. The Memorandum acknowledged that rectification works were done by petitioner outside of the project timeline. On the face of the Memorandum, it may be gleaned that

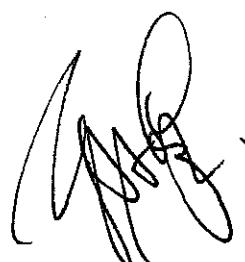
¹ *Rollo*, pp. 78-79.

² *Id.* at 48-51.

³ *Id.* at 78. Underscoring supplied.

⁴ *Id.* at 49. Underscoring supplied.

⁵ *Id.* at 33-34.



Engr. Guilas also submitted an inspection report on the rectification works done. This inspection report, however, is not in the *rollo* of the case.

Aside from the inspection, Mint Surveys with Volume Computation were also done by DPWH-Pampanga 1st DEO on petitioner's rectification works upon the latter's request in its Letter⁶ dated September 9, 2013. The DPWH-Pampanga 1st DEO's Memorandum mentioned these and cited them as attachments, but the mint surveys were likewise not made part of the *rollo* of the case. A read-through of petitioner's Appeal Memorandum⁷ dated February 5, 2014 filed before the COA Regional Office, however, would indicate that these mint surveys were part of petitioner's submissions to the COA.

Despite the foregoing pieces of evidence, the COA only cursorily discussed the rectification works in its assailed decision:

The Commission is not convinced. There is no showing that the alleged rectifications made have undergone and have been confirmed as sufficiently compliant with COA reevaluation. Moreover, if these were in fact requested by DPWH and completed by Mr. Cruz, the DPWH officials and personnel should have invoked these as defenses in their appeal or in their Petition for Review.

Further, great weight is accorded to the findings of QAU, DPWH and COA Technical Inspectors. The fact that both have discovered adverse findings on the reassessment of the projects reinforces the ND. This Commission also finds no reason to question the technical methods used in said reassessment, as the inspecting officers enjoy the presumption of regularity in the performance of their duties.⁸

It is clear from the above that the COA refused to consider petitioner's rectification works in its favor because no reevaluation or reassessment by the COA personnel or Technical Inspectors had been done on said works.⁹ This was stressed as well in the COA's Comment¹⁰ attached to the Petition.

It is peculiar for the COA to make a finding that there was "x x x no showing that the alleged rectifications made have undergone and have been confirmed as sufficiently compliant with COA reevaluation x x x."¹¹ To point out the obvious, the COA is the entity that can make this happen — it can order its Technical Inspectors to again subject the rectification works to a reevaluation. It is also the entity which can come up with a definitive finding of whether the works complied with its reevaluation. And yet, the COA did not do so even when presented with evidence of the said works.

⁶ Id. at 29.

⁷ Id. at 37-44.

⁸ Id. at 27. Emphasis and underscoring supplied.

⁹ Id. at 71. See also *ponencia*, p. 6.

¹⁰ Id. at 64-75.

¹¹ Id. at 27. Underscoring supplied.



Ordinarily, this could constitute grave abuse of discretion amounting to lack or excess of jurisdiction as it violates two components of administrative due process of law: that the tribunal must consider the evidence presented, and that the decision must be rendered in such a manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered.¹²

However, as earlier intimated, the Court observed the existence of circumstances which could sensibly explain the COA's actuations. First, the subject ND did not contemplate the performance of rectification works as a mode of extinguishing petitioner's liability thereunder. The basis of the disallowance was not any defect or deficiency in petitioner's performance of its duties under the construction contracts, but the overestimation of embankment materials which was due to the DPWH-Pampanga 1st DEO's failure to conduct complete detailed engineering prior to implementation of the road projects.

Second, the evidence submitted by petitioner to the Court in order to establish the rectification works was incomplete. As earlier mentioned, the *rollo* of this case points to the existence of mint surveys and inspection reports by the DPWH-Pampanga 1st DEO which were submitted to the COA; but none of these were submitted to the Court. Neither does the *rollo* reveal when exactly the said rectification works were done. The Court cannot thus make a definitive finding of grave abuse of discretion on the part of COA on the basis of petitioner's incomplete submissions.

Nevertheless, it should not escape the Court's attention that DPWH-Pampanga 1st DEO acknowledged the rectification works done by petitioner. Because of this, it is highly likely that petitioner incurred expenses above and beyond what were expected of it under the construction contracts with DPWH-Pampanga 1st DEO. On top of this extra-contract expense, petitioner is now also being expected to refund a portion of the contract price in the amount of the disallowance. Petitioner has effectively rendered uncompensated work to DPWH-Pampanga 1st DEO, despite the fact that the reason for the disallowance was the latter's overestimation of embankment materials, without any fault on the part of petitioner. Needless to state, the decision of the Court in this case should not be construed as precluding petitioner from instituting the proper civil action to correct any possible undue prejudice it may have suffered.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

¹² *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642-644 (1940).