

EN BANC

G.R. No. 246777 – STO. CRISTO CONSTRUCTION, represented by its Proprietor, NOEL J. CRUZ, Petitioner v. COMMISSION ON AUDIT, Respondent.

Promulgated:

March 2, 2021

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CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

The instant disallowance case involves the award of seven (7) government contracts for the rehabilitation and improvement of various roads in Mexico, Pampanga (road projects) by the Department of Public Works and Highways (DPWH) to petitioner Sto. Cristo Construction (petitioner), as contractor, sometime in 2010.

After the road projects' completion later that year, a group of technical inspectors of respondent Commission on Audit (COA) conducted a re-inspection and found that the said projects suffered cost deficiencies stemming from **overestimates in embankment materials** in the total volume of 31,491.60 cubic meters, valued at the aggregate amount of ₱14,926,319.76. This eventually led to the issuance of Notice of Disallowance No. 11-001-101-09/10¹ dated July 11, 2011 (ND) disallowing the aforementioned sum, with a directive against the erring DPWH officials and petitioner to refund said disallowed amount.²

After receipt of the ND,³ petitioner claimed that it was allegedly instructed by certain officials of the DPWH to conduct **rectification works** involving the same road projects.⁴ This was the thrust of petitioner's appeal to the COA-Proper, where it prayed for such works to be recognized as sufficient compliance of its civil obligation under the ND.⁵

¹ *Rollo*, pp. 48-51.

² Id. at 24-25.

³ Id. at 25.

⁴ Id. at 26-27.

⁵ See Appeal Memorandum dated February 5, 2014; id. at 37-43.

In Decision No. 2018-317⁶ dated March 15, 2018, the COA-**Proper affirmed** petitioner's liability for the disallowed amount. Unconvinced with their existence and degree of compliance with COA standards, the tribunal refused to appreciate the alleged rectification works, explaining that:

This 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.⁷ (Emphases and underscoring supplied)

In his petition before the Court, petitioner argues that, in rendering the assailed Decision, the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did not appreciate the alleged rectification works on the basis of *quantum meruit*, primarily maintaining that the COA erred in not giving credence to the acknowledgment made by certain officials of the DPWH-Pampanga 1st District Engineering Office that the said works were indeed undertaken.⁸

As the *ponencia* correctly ruled, no grave abuse of discretion may be attributed to the COA in this case.⁹

Recently, the Court, in *Torreta v. COA (Torreta)*,¹⁰ laid down the following guidelines on civil liability for disallowed government contracts:

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.**

⁶ Id. at 22-28. Signed by COA Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia.

⁷ Id. at 27.

⁸ See id. at 9-12.

⁹ See *ponencia*, p. 12.

¹⁰ See G.R. No. 242925, November 10, 2020.

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. (Emphasis and underscoring supplied)

The foregoing rules were crafted in recognition of “the peculiarity of [disallowance] cases involving government contracts for procurement of goods or services [which] necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, [the Court] deemed [it] fit that x x x recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*.¹¹ According to case law,¹² the principle of *quantum meruit* operates as an **equitable device** to prevent the government’s unjust enrichment at the expense of innocent parties, who are allowed to recover or otherwise retain a reasonable value for the goods delivered or services rendered for the benefit of the State.

As an exceptional rule of equity justifying the retention of public funds, ***quantum meruit* should only operate in cases where the records clearly establish a factual basis for its application.** In this regard, jurisprudence states that the burden to clearly allege and substantiate with convincing evidence lies with the parties asserting a limited or complete lack of liability for audit disallowances. As held in the recent case of *Lazaro v. COA*,¹³ “**It is not th[e] Court’s duty to construe their incomplete submissions and vague narrations to determine merit in their assertions[:]**¹⁴

In asserting limited or complete lack of liability based on the principle of *quantum meruit* and good faith, petitioners, in good diligence, **bear the burden to clearly allege and support the factual basis for their claims.** It is not this Court’s duty to construe their incomplete submissions and vague narrations to determine merit in their assertions.¹⁵ (Emphasis and underscoring supplied)

In my view, petitioner failed to discharge this burden.

As basis to supposedly prove the alleged conduct of rectification works, petitioner cited the Memorandum¹⁶ dated November 13, 2013 (DPWH Memorandum) issued by certain officials of the DPWH-Pampanga 1st District Engineering Office, which reads:

¹¹ See *id.*

¹² See *Sto. Niño Construction v. COA*, G.R. No. 244443 October 15, 2019; *F.L. Hong Architects and Associates v. Armed Forces of the Philippines*, G.R. No. 214245, September 19, 2017; *Department of Public Works and Highways v. Quiwa*, 681 Phil. 485 (2012); *Vigilar v. Aquino*, 654 Phil. 755 (2011); *Department of Health v. C.V. Canchela & Associates*, 511 Phil. 654 (2005); *Melchor v. COA*, 277 Phil. 801 (1991); and *Esiao v. Commission on Audit*, 273 Phil. 97 (1991).

¹³ See G.R. Nos. 213323 & 213324, January 22, 2019.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Rollo*, pp. 33-34.

Submitting is the inspection report conducted by this Office of various projects undertaken by Mr. NOEL J. CRUZ, owner of STO. CRISTO CONSTRUCTION. **In the course of the inspection, it was found out that the rectification works were undertaken outside the approved plan of the projects as reflected in the contract.** According to Mr. Noel J. Cruz, in his sworn statement, copy attached, he was directed and/or instructed by the DPWH Engineers at that time namely Jose G. Datu, District Engineer, Sotero L. Figueroa, Chief Construction Section, to construct embankment work on designated places within the Barangay in coordination with the Barangay Officials and the DPWH Engineers. As such, according to Mr. Cruz, he followed what has been directed to him and was inspected by Engineers Eric D. Dunglao and Angelito G. Magat of the same office. It is informed that the validation was conducted because of the claim of the contractor that he had undertaken rectification works as shown in the attached latest survey conducted at the site witnessed by a representative of this office.¹⁷ (Emphasis supplied)

On its face, it may be readily observed that the DPWH Memorandum does not contain any detail on the scope, manner, quality, and extent of petitioner's alleged rectification works. Neither does the document indicate whether petitioner sufficiently addressed the deficiencies flagged in the ND. Besides, as earlier explained, the COA had already examined the said works but found them unworthy of credit for lack of evidence "showing that [they] have undergone and have been confirmed as sufficiently compliant with COA reevaluation."¹⁸

To add, the other documents presented by petitioner similarly fail to convince. For one, the sworn statement of Noel J. Cruz (Cruz),¹⁹ the owner/proprietor of petitioner, merely contains bare, self-serving assertions, which was neither confirmed nor verified by the DPWH or the COA. The same may also be said of the Letter²⁰ dated November 15, 2013 written by Cruz to the district engineer of DPWH.

While records also disclose a Letter²¹ dated January 9, 2012 (January 9, 2012 letter) written by DPWH-Pampanga District Engineer Jose G. Datu to the COA, which mentions "substantial completion" of corrective measures by petitioner, there is no indication whether the works were made in relation to the excess embankment materials subject of the disallowance.²² On this score, the COA even doubted that the performance of such works were indeed based on the confirmed instructions of the DPWH officials. The COA held that, if the works had indeed sufficiently addressed the deficiencies, the erring DPWH officers should have invoked their performance as a defense in their respective appeals of the ND but did not despite being given the opportunity during the disallowance proceedings.

¹⁷ Id. at 33.

¹⁸ Id. at 27.

¹⁹ Id. at 31-32.

²⁰ Id. at 35-36.

²¹ Id. at 78-79.

²² Id. at 90.

Notably, in the absence of a clear showing of grave abuse of discretion, the COA's factual findings must stand. As a constitutionally-created, specialized agency endowed with broad audit powers, the factual findings of the COA have been accorded not only with respect by the Court but also finality so long as they are not tainted with unfairness or arbitrariness amounting to grave abuse of discretion.²³ Absent any clear showing of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COA, the Court is without *certiorari* jurisdiction to reverse the former's factual findings.²⁴ Furthermore, as the party seeking review of the COA's decision, it is petitioner who bears the burden of proving the factual basis of its *quantum meruit* defense, which, as earlier explained, it failed to do in this case.

At this juncture, it bears pointing out that by raising the alleged rectification works as a defense, petitioner actually misapprehended **the import of the disallowance**.

Based on the sworn statement of Cruz, it appears that petitioner undertook the alleged works to rectify a perceived **breach of contract** stemming from a **shortfall in the volume of materials**:

3. That **after finishing the projects** there were inspections made and I was informed that the materials dumped Item 104-Emb[ank]ment **were not sufficient to comply with the intent of the contracts**, and this exceptions were in the re-evaluation report conducted by TAS-COA Regional Office III on the projects, and **Notices of Disallowance were issued because of the shortfalls**;

4. That thereafter, I was instructed by Engr. Jose Datu, District Engineer, DPWH and Engr. Sotero L. Figueroa, Chief Construction Section, **to rectify any shortfall to satisfy the required volume of materials**;

5. That **I followed the instructions and made the necessary rectification and the work done** were inspected by Engineers Eric Dumla and Angelito Magat of DPWH Pampanga 1st District Engineering Office, who found the projects already in order.²⁵ (Emphases and underscoring supplied)

However, contrary to said perception, the underlying cause of the disallowance was not based on any breach in the performance of work but rather the **excessive use of public funds to procure a surplus of embankment materials**. Reference to Audit Observation Memorandum²⁶ (AOM) dated January 13, 2012 issued by the COA shows that the overestimate of embankment materials was the result of the DPWH's failure, as a procuring entity, to conduct a **complete detailed engineering** before

²³ See *Veloso v. Commission on Audit*, 672 Phil. 419, 432 (2011) and *Delos Santos v. Commission on Audit*, 716 Phil. 322, 332-333 (2013).

²⁴ See *id.*

²⁵ *Rollo*, p. 31.

²⁶ *Id.* at 80-82.

awarding the road projects to petitioner. This flaw led to the excessive public funds, as pointed out in the AOM:

Had a complete detailed engineering been conducted, there will be no overestimation of embankment materials in the Program of Work.

Overstatement of embankment materials will result to excessive costings leading to possible loss of government funds if not recovered from the concerned contractors.

x x x

x x x Likewise, the agency officials concerned should see to it that complete detailed engineering are prepared for each project to be implemented, not only for ensuring compliance, but also for validation and monitoring purposes.²⁷ (Emphases and underscoring supplied)

At any rate, even assuming that petitioner did perform rectification works, the same cannot be credited in its favor based on the principle of *quantum meruit*. This is because, as Cruz himself admitted, said works relate only to the satisfaction of petitioner's already existing obligations based on its contracts with the DPWH.

Irrefragably, petitioner was already obligated to accomplish its deliverables in accordance with the quality specifications as per its contractual engagement. However, in willingly conducting the alleged corrective measures, petitioner effectively admitted that it failed in this respect. In the January 9, 2012 letter of Engineer Jose G. Datu of DPWH-Pampanga 1st District Engineering Office, it was even noted that the said projects were still within the warranty period allowing rectification at petitioner's own expense, *viz.:*

This refers to the Notice of Disallowance (ND) with **ND Nos: 11-001-101-09/10** x x x

x x x Based on the report of the QAU findings, this office immediately instructed the concerned contractors to institute corrective measures at their own expense considering that the said projects were still within their warranty period x x x²⁸ (Emphases and underscoring supplied)

To be sure, petitioner's obligation to adequately deliver the projects according to the correct specifications is distinct from the actual cause of the disallowance, *i.e.*, the excessive procurement of overstated embankment materials. As I see it, such excessive procurement bears no relation to petitioner's inadequate performance of works. To allow petitioner to utilize

²⁷ Id. at 82.

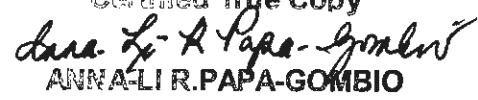
²⁸ Id. at 78-79.

any excess materials and apply them to the rectification works, as well as credit the same to reduce its civil liability under the ND, is tantamount to permitting petitioner to profit from its own fault or wrongdoing.

Thus, even assuming that rectification works were indeed performed, all expenses therefor, including the materials used to rectify its previous work, should be for the sole account of petitioner. Nothing should be credited in petitioner's favor because any rectification was borne from its own mistakes. In the final analysis, it should be remembered that public funds were excessively used for the bloated procurement of excess embankment materials; the Court should not diminish the ability of the government to fully recover these excess amounts for the absurd reason that petitioner corrected its previous errors which it was obligated to perform in the first place.

Accordingly, the petition should be **DISMISSED** and the assailed Decision No. 2018-317 dated March 15, 2018 of the Commission on Audit be **AFFIRMED** in full.


ESTELA M. PERLAS-BERNABE
Senior Associate Justice

Certified True Copy

ANNA-LI R. PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court