EN BANC

A.M. No. 17-12-02-SC — RE: CONSULTANCY SERVICES OF HELEN P. MACASAET

Promulgated:

August 29, 2023

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SEPARATE CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

At the outset, I maintain that there are sufficient legal bases to declare valid the eight Contracts of Services (subject contracts) between Ms. Helen P. Macasaet (Ms. Macasaet) and the Court involving the Court's Enterprise Information Systems Plan (EISP), as stated in my Dissenting Opinion to the July 16, 2019 Resolution[1] (assailed Resolution):

> In sum, a careful examination of the records of the instant case, as well as a thorough review of the applicable laws, rules and regulations, would show that, contrary to the findings of the [Office of the Court Attorney (OCAt)] Report and the *ponencia,* the subject contracts are indeed valid.
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> [1] These contracts were sufficiently covered by [Annual Procurement Plans (APPs)] as required under R.A. 9184. [2] The procurement of the subject contracts also followed the requirements under R.A. 9184, its [Implementing Rules and Regulations (IRR)], and the Manual of Procedures regarding the level of participation undertaken by the [Bids and Awards Committee for Consultancy Services (BAC-CS)] in the Negotiated Procurement process, and with respect to the other applicable procedural and documentary requirements.
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> [3] Further, there are no infirmities regarding the consultancy fees granted to Ms. Macasaet. [4] The requirement of issuing [the Certificate of Availability of Funds (CAFs)] had also been sufficiently met. [5] Moreover, there was no splitting of contracts extant in the instant case. [6] Finally, there is no doubt that the Chief Administrative Officer had the authority to sign the subject contracts on behalf of the Court.[2]

Nevertheless, while the *ponencia* maintains that the subject contracts are void, I welcome the *ponencia*'s ruling, as unanimously concurred in by the Court *En Banc*, that the subject contracts were all entered into in good faith[3] and that Ms. Macasaet should be compensated, at least on the basis of *quantum meruit*.[4] It is on these premises that I write this Separate Concurring and Dissenting Opinion.

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1 *Re: Consultancy Services of Helen P. Macasaet*, A.M. No. 17-12-02-SC, July 16, 2019, 909 SCRA 74.

2 Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Re: Consultancy Services of Helen P. Macasaet*, A.M. No. 17-12-02-SC, July 16, 2019, *id.* at 252–253.

3 *Ponencia,* p. 2.

4 *Id.* at 6.

I.

To recall, the assailed Resolution declares the subject contracts void on the following grounds: 1) lack of authority of the government signatory; 2) lack of qualifications of Ms. Macasaet; 3) excessive amount of consultancy fees; 4) incurrence of obligation and the expenditure of public funds without the proper appropriation; and 5) absence of the required CAFs. Despite these findings, the Court may nevertheless recognize — as it now does — certain badges of good faith on the part of the Court officials involved and Ms. Macasaet herself, which are borne out by the records.

On the lack of authority of the government signatory

Even if the subject contracts are categorized as void for having been signed by Atty. Eden Candelaria (Atty. Candelaria) as the former Chief Administrative Officer without the written "full authority" of the Court *En Banc* or the then Chief Justice, it may nevertheless be acknowledged that Atty. Candelaria had ample basis to believe in good faith that the authorization granted to her by the Chief Justice was sufficient authority for her to sign the Contracts of Services. As I had stated in my Dissenting Opinion to the assailed Resolution:

> Indubitably, for the Court to now claim that it is the Court *En Banc* that is the Head of the Procuring Entity and the former Chief Justice was not authorized to enter into the subject contracts — after its silence for the entire duration of the contracts and after the consultant had already completed the services required of her — goes against the principles of fairness and equity.
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> In support of this position, the *ponencia* cited A.M. No. 99-12-08-SC (Revised) dated April 22, 2003 on the Referral of Administrative Matters and Cases to the Divisions of the Court, the Chief Justice, and to the Chairmen of the Divisions for Appropriate Action or Resolution...
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> ....
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> Based on this, the *ponencia* posits that the Chief Justice is not authorized by the Court *En Banc* to independently act on behalf of the Supreme Court to enter into government contracts that are highly technical, proprietary, primarily confidential, or policy[-]determining such as the subject contracts. Thus, according to the *ponencia*, the subject contracts should have been authorized by the Supreme Court *En Banc* which has administrative power over all courts and personnel thereof, and not merely by the former Chief Justice.
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> On this note, however, attention is invited to the latter part of the above-quoted provision, to wit: "(i) [s]uch other matters where the decision, action, or resolution thereon or approval thereof is vested in the Chief Justice ... or those which are traditionally vested in the Chief Justice as head of the Judiciary."

Evidently, the provision relied upon by the *ponencia* itself expressly recognizes the Chief Justice as *the* head of the Judiciary. Thus, contrary to the *ponencia*'s erroneous assertion that the Head of the Procuring Entity is the Supreme Court *En Banc*, there is already an express recognition that the Chief Justice *is* the head of the Judiciary.

This interpretation is not novel as the sitting Chief Justice has been generally and traditionally regarded as the Head of the Procuring Entity. Even the Supreme Court *En Banc* made this recognition in its Resolution dated December 4, 2012 in A.M. No. 12-9-4-SC...

....

Even at present, the bidding documents released by the [Supreme Court Bids and Awards Committee (BAC)] refers to the Chief Justice as the Head of the Procuring Entity. Accordingly, that the Chief Justice *is* the Head of the Procuring Entity is, as it should be, indisputable. To insist otherwise is totally nonsensical.

The *ponencia* further stated that assuming *arguendo* that the former Chief Justice had the authority to delegate the power to enter into the subject contracts, there was still no showing that Atty. Candelaria was authorized in writing by the former Chief Justice to act as signatory of the Court in entering into the Contracts of Services with Ms. Macasaet. The *ponencia* found that the series of Joint Memoranda prepared and signed by [Atty. Michael B. Ocampo (Atty. Ocampo) of the Office of the Chief Justice (OCJ)] and [Mr. Edilberto A. Davis (Mr. Davis) of the Management Information Systems Office (MISO)] cannot be considered as a delegation by the former Chief Justice of full authority to Atty. Candelaria to act and sign on behalf of the Supreme Court. Although the former Chief Justice signed the Joint Memoranda to signify her approval, it did not contain any express delegation of authority to Atty. Candelaria to sign the Contract of Services with Ms. Macasaet.

Such view is wholly mistaken. The records would show **that aside from an implied authority and designation to act as signatory, Atty. Candelaria was, in fact, also given an express written authority as required by law**.

....

As the Deputy Clerk of Court and Chief Administrative Officer, [Atty. Candelaria] is likewise authorized to sign Contracts for Infrastructure Projects recommended by the BAC. Aside from these is the all-encompassing duty to do related tasks that may from time to time be assigned by the Chief Justice, Associate Justices, or the Clerk of Court.

With respect to the subject contracts, Atty. Candelaria explained that the former Chief Justice, as Head of the Procuring Entity, already approved the award of the subject contracts to Ms. Macasaet and that the said contracts were already prepared by the OCJ indicating the Deputy Clerk of Court and the Chief Administrative Office as the Court's representatives. If this is not an implied authority and designation to act as a signatory for and in behalf of the Court, then what is?

> More importantly, aside from the abovementioned implied authority and designation to act as signatory, it is undisputed that she was also given the written authority required by law. An action slip was issued to Atty. Candelaria by Atty. Ocampo of the OCJ stating that the former Chief Justice is authorizing Atty. Candelaria to sign the contract of services of Ms. Macasaet.[5] (Emphasis supplied)

The abovementioned findings abundantly show the badges of good faith on the part of Atty. Candelaria. There can be no doubt that she acted with an honest belief that she had been duly authorized to sign the subject contracts.

On the lack of qualifications of Ms. Macasaet

As for the ruling that the procurement of the services of Ms. Macasaet was also in violation of the provisions of Republic Act No. (R.A.) 9184, among the findings of the assailed Resolution are: i) that Ms. Macasaet was not qualified to be considered a Highly Technical Consultant in relation to the implementation of the Updated EISP Project, and ii) that the nature of the work involved in the subject contracts is not highly technical.

In this regard, I had occasion to make the following discussion in my Dissenting Opinion as regards the inaccuracy of such classification:

> Jurisprudence holds that the nature of the functions attaching to an office or a position ultimately determines whether such position is policy-determining, primarily confidential, or highly technical. In the instant case, the functions pertaining to Ms. Macasaet under the subject contracts do not merely refer to conducting an in-depth, critical, exhaustive, and comprehensive review and assessment of the EISP project and other related [information and communication technologies (ICT)] and computerization projects. Part of Ms. Macasaet's functions under the subject contracts was the making of actual recommendations for the updating of this complex and multifaceted technological system.
>
> **The highly technical nature of the review and updating of the EISP project was, in fact, recognized and underscored by the Court *En Banc* itself** when, in its June 23, 2009 Resolution in A.M. No. 08-11-09-SC, the Court *En Banc* described the EISP as a comprehensive framework of several ICT initiatives, involving the development of new information systems and provision of state-of-the-art [information technology (IT)] equipment. It must be stressed that the project pertains **not only to the Court alone, but to the entire judiciary**, composed of all the courts and its adjunct offices around the Philippines. The Court *En Banc* explained that:
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> > The EISP is intended to serve as the framework of ICT initiatives of the Judiciary for the next five years (Yr. 2010-2014). It contains the present ICT needs of the Judiciary and proposed solutions *vis-à-vis* the [organization's] mandate,

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5 Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Re: Consultancy Services of Helen P. Macasaet*, A.M. No. 17-12-02-SC, July 16, 2019, *supra* note 1, at 245–251.

> objectives, and programs through the development of new Information Systems (IS) and provision of additional state-of-the-art IT equipment. It also includes functional and technical requirements of the systems, cost estimates, and a discussion on the implementation plan and change management framework.
>
> Aside from the Court *En Banc* manifestly saying that the project involves an in-depth assessment of "functional and technical requirements of the systems," the fact that the EISP project is a highly technical and policy-determining endeavor, where trust and confidence are significant factors, is further underscored by the Court *En Banc*'s own explanation that the EISP is an initiative that goes into the fulfillment of the judiciary's "mandate, objectives, and programs." Hence, as **the EISP is a priority program of the Court**, being an innovative initiative that would greatly aid the judiciary in achieving its mandate, Ms. Macasaet's functions under the subject contracts to assess and update the EISP clearly entailed work that was highly technical and primarily confidential or policy[-]determining, where trust and confidence is necessarily required.[6] (Emphasis and underscoring in the original)

From the foregoing, it is reasonable to conclude that the BAC-CS, as chaired by then Deputy Court Administrator Raul B. Villanueva, acted with sufficient basis and in good faith when it posited in its May 15, 2014 Memorandum that the subject procurement is highly technical in nature and therefore did not need to pass through the regular process of engaging consultants being conducted by the BAC-CS.[7]

As for the ruling that Ms. Macasaet was not qualified because she had no academic degree in any field directly related to ICT and that her ICT training were only from several short-term courses, the following points raised in my Dissenting Opinion can be used as basis to characterize Ms. Macasaet's hiring as, at the very least, based on a difficult question:

> ... While Ms. Macasaet's educational background indeed shows that she does not hold any degree directly related to ICT, the [Terms of Reference (TOR)] for the Consultancy on the Implementation of the Updated EISP expressly required, among others, that the consultant sought must: (1) have an advanced degree in business management *or* any ICT-related degree; and (2) be a certified customer relationship management system (CRM) specialist and manager. The records show that Ms. Macasaet holds a Master's degree in Business Administration from the Ateneo de Manila University Graduate School of Business and is a certified CRM specialist and manager. In other words, based on her educational background, Ms. Macasaet was qualified for the consultancy under the TOR.
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> Moreover, her lack of academic degree in a field directly related to ICT hardly makes her less of an expert in the field as, in fact, the records show her sterling record in the ICT industry. On this note, the Court quotes

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6 *Id.* at 194–195.

7 *Id.* at 164.

the following statements by Ms. Macasaet, unrebutted by anybody, as regards her qualifications:

> I have industry experience stretching more than 30 years. I am also one of the pioneers in the ICT profession both as an end-user and as a solutions provider; ...
>
> ....
>
> In those jobs, I have successfully delivered some of the most challenging ICT projects such as:
>
> - As CIO-Consultant, I resolved the biggest ICT disaster in Philippine history, the GSIS Database Crash...
>
> ....

More importantly, however, it should be emphasized that **Ms. Macasaet's qualifications were, as they should be, gauged against the TOR for the Consultancy on the Implementation of the Updated EISP.**

In addition to the requirements on an advance degree and CRM specialization, the TOR requires that the consultant: (1) must have at least 10 years of experience in developing, managing, implementing, or consulting on enterprise and management information systems, customer relationship management systems and related ICT projects for the government or private sector (experience as Chief Information Officer of a business/government entity is necessary); (2) must have an experience in implementing enterprise-wide ICT projects, preferably nation-wide in scope; and (3) must have had extensive participation in formulating ICT policy and e-governance framework in the country, whether in an official or advisory capacity. **Based on these required qualifications in the TOR, Atty. Ocampo and Mr. Davis chose Ms. Macasaet as the most qualified among the proposed consultants for the EISP Project,** to wit:

> ....
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> (c) She has had extensive participation in formulating ICT and e-governance policies in the country, having served as the business community's representative to the Information Technology and E-Commerce Council of the Philippines, Chairperson of the ICT Governance Framework Technical Working Group in the National Competitiveness Council, member of the National IT Advisory Council to the Department of Science and Technology-Information and Communication Technology Office, and ICT Governance Co-Chair of the Judicial Reform Initiative of the Management Association of the Philippines.
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> (d) Ms. Macasaet has implemented enterprise- and nationwide ICT projects, including those involving a major commercial bank and lending company (a major

> pawnshop), both of which have units located all over the Philippines. This experience in nationwide ICT projects is very relevant considering the organizational set-up of the judiciary and the locations of its various courts.
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> (e) Finally, Ms. Macasaet['s] previous consultancy resulted in the Updated EISP Work Plan. She is in a position to guide the Court in implementing the Updated EISP Work Plan because of the knowledge that she has acquired (*i.e.*, information on the Court's infrastructure, computerization projects, ICT policies, *etc.*) during her previous consultancy.[8] (Emphasis supplied)

These circumstances are evidently sufficient basis to describe the act of Atty. Ocampo of the OCJ and Mr. Davis of the MISO, in recommending Ms. Macasaet as the most qualified among the other proposed consultants, to be an act in good faith and not motivated by an evil intent.

On the excessive amount of consultancy fees

As regards the finding that Ms. Macasaet's compensation was unreasonable, one of the grounds relied upon by the assailed Resolution was that the consultancy fees were contrary to the ceiling of compensation provided under Department of Budget and Management (DBM) Circular No. 2000-11. In this regard, I maintain that the concerned Court officials, including Atty. Ocampo and the members of the Procurement Planning Committee (PPC), as headed by Atty. Maria Carina A. Matammu-Cunanan (Atty. Cunanan), had sufficient basis to recommend the approval of the consultancy fees of Ms. Macasaet, to wit:

> It is noteworthy that DBM Circular Letter No. 2000-11 was issued almost three (3) years before the effectivity date of R.A. 9184, which was the basis for the procurement of Ms. Macasaet's Consultancy. **The OCAt should not have relied on DBM Circular Letter No. 2000-11 since it was no longer in line with R.A. 9184, which became effective in 2003, as well as the Procurement Manual on Consulting Services issued under Section 6 of [R.A.] 9184**, ...
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> ....
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> As can be gleaned from above, the [Government Procurement Policy Board (GPPB)] was mandated to prepare the standardized procurement manuals. Thus, on June 14, 2006, the GPPB adopted and approved the Generic Procurement Manuals (including the Manual of Procedures), which states that all government offices are mandated to use the procurement manuals issued by the GPPB as a reference guide in the conduct of its actual procurement operations effective January 2007. Verily, at the time of the procurement of the First Contract of Services with Ms. Macasaet, government offices were already mandated by Section 6 of R.A. 9184 to use the procurement manuals issued by GPPB. In this regard,

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[8] *Id.* at 189–193.

it must be pointed out that the GPPB is chaired by the DBM Secretary himself.

In relation to this, Section 2 of the Manual of Procedures discusses how to compute the cost of consultancy. It states that the following factors should be considered in determining the basic rates: (i) salary history; (ii) industry rates; and (iii) two hundred percent (200%) of the equivalent rate in the Procuring Entity as the floor.

Thus, it is obvious that the 120% ceiling cited by the OCAt based on DBM Circular Letter No. 2000-11 and the Manual of Procedures issued by the GPPB are contradictory to each other. It must also be noted that it was Atty. Ocampo's contention that under the Manual of Procedures, the procurement entity will not just use the 200% salary rate as floor (as opposed to a ceiling), but may also consider the previous salary history of the consultant and industry market rates. Indeed, with respect to the latter, the Manual of Procedures states that "[t]he end-user must estimate the cost of consulting services through cost research in the local market." Since the Manual of Procedures issued by the GPPB is a later rule and it is wholly inconsistent with the earlier rule stated in DBM Circular Letter No. 2000-11, as a rule of construction, DBM Circular Letter No. 2000-11 is deemed repealed by the Manual of Procedures. Moreover, the Manual of Procedures was issued under the statutory authority of R.A. 9184, which cannot be overridden by a mere administrative issuance of the DBM, especially a prior one.

Further, as admitted by the OCAt itself, DBM Circular Letter No. 2000-11 has been revoked by DBM Circular Letter No. 2017-9 under the following terms:

> 1.0 The procurement of consulting services, either through an Individual Consultant or a Consultancy Firm, is covered by the provisions of Republic Act (RA) No. 9184 and its 2016 Revised Implementing Rules and Regulations (IRR).
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> 2.0 As such, agencies shall be guided by the provisions of RA No. 9184, its IRR and the Generic Procurement Manuals, Volume 4 — *Manual of Procedures for the Procurement of Consulting Services*, issued by the Government Procurement Policy Board (GPPB) on June 14, 2006, or its later edition, in the engagement of consultants.
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> 3.0 RA No. 9184 and its IRR, including *the Manual of Procedures for the Procurement of Consulting Services*, contain the step-by-step procedure in the procurement process and the factors to be considered in determining the appropriate "Approved Budget for the Contract" (ABC), and the bases for computing and arriving at the cost of consultancy or consultancy rate, among others.
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> 4.0 In view hereof, National Budget Circular No. 433 dated March 1, 1994 and **Circular Letter No. 2000-11 dated June 1, 2000, which prescribe the**

> **guidelines on the hiring of consultants and in setting the compensation of individual professional consultants, are hereby revoked.**
>
> While acknowledging that DBM Circular Letter No. 2000-11 was revoked, the OCAt's boorish insistence that it still governs the standard compensation of consultants from 2011 until May 16, 2017 when DBM Circular No. 2017-9 was issued is totally unavailing.
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> The *ponencia* maintains that before the revocation of DBM Circular Letter No. 2000-11 by DBM Circular Letter No. 2017-9, the compensation to be paid to individual professional consultants could not exceed the 120% ceiling set by DBM Circular Letter No. 2000-11. While DBM Circular Letter No. 2017-9 refers to the Manual of Procedures to guide agencies in determining consultancy rates, this could not have been applicable before DBM Circular Letter No. 2000-11 was expressly revoked.
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> Regrettably, the *ponencia* fails to appreciate the import and clarification made in DBM Circular Letter No. 2017-9 which plainly and quite categorically states that the provisions of DBM Circular Letter No. 2000-11 were inconsistent with [R.A.] 9184, its IRR, and the Manual of Procedure. To reiterate, DBM Circular Letter No. 2000-11 has already been repealed by [R.A.] 9184. **Needless to say, the DBM itself acknowledged that it is not DBM Circular Letter No. 2000-11 which governs the determination of the cost of consultancy, rather it is governed by R.A. 9184, its IRR, and the Manual of Procedures.**[9] (Emphasis and underscoring in the original)

Again, this disquisition is available to justify the act of the concerned Court employees as one done in good faith. To be sure, it cannot be gainsaid that Atty. Ocampo acted in good faith in his reliance on the GPPB Manual of Procedures under the belief that the same had already superseded DBM Circular Letter No. 2000-11.

On the lack of proper appropriation

On the issue on appropriation, the assailed Resolution found that when the second Contract of Services was entered into on May 23, 2014, the APP for 2014 did not include the line item for "Technical and Policy Consultants" for purposes of procurement, and was only included when the APP was subsequently revised on September 23, 2014 in accordance with the Memorandum of PPC.[10] However, as I threshed out in my Dissenting Opinion to the assailed Resolution, there is sufficient ground to believe that there is no lack of support for the second Contract of Services under the 2014 APP:

> ... [I]t must be emphasized that **in the 2014 APP, which was approved by the Court En Banc in A.M. No. 10-1-10-SC, a total of P436,448,080.00 was already specifically allotted for the EISP. Further, in the approved budget under the 2014 APP, funds were allotted for the**

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9 *Id.* at 221–224.

10 *Re: Consultancy Services of Helen P. Macasaet*, A.M. No. 17-12-02-SC, July 16, 2019, *supra* note 1, at 141.

> **further development of infrastructure and application systems under the EISP.**
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> To stress, the engagement of technical and policy consultants was part and parcel of the 2014 APP's allocation for the further development of infrastructure and application systems under the EISP. The very rationale and underlying purpose for the hiring of consultancy services under the subject contracts was precisely the further development of the EISP system. Hence, it cannot be said that the execution of the Second Contract of Services was without any basis in the 2014 APP as it was pursued for the further development of infrastructure and application systems under the EISP — an item provided for in the 2014 APP. Otherwise stated, even without the amended 2014 APP, with the 2014 APP having already provided allotments for the further development of infrastructure and application systems under the EISP, the Second Contract was entered into in accordance with an approved APP.
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> More importantly, even assuming arguendo that the 2014 APP did not cover the Second Contract of Services, the OCAt Report itself readily acknowledged that **in another Resolution dated September 23, 2014 in A.M. No. 10-1-10-SC, the Court En Banc approved an amended procurement plan for 2014 (amended 2014 APP), which provided additional funds for infrastructure and application systems development for the implementation of the EISP**:
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> ....
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> **With the OCAt Report expressly recognizing that an amended 2014 APP sufficiently covered the hiring of consultancy services under the Second Contract of Services,** even assuming *arguendo* that the previously approved 2014 APP failed to cover the Second Contract, it cannot reasonably be said that there is no procurement plan that supports the execution of the Second Contract in violation of R.A. 9184 because **the amended 2014 APP refers and pertains to the entire fiscal year, and not only the period subsequent to its issuance**. It must be noted that under R.A. 9184, the law states that APPs relate to the entire duly approved yearly budget.[11] (Emphasis and underscoring in the original)

Thus, even though the assailed Resolution ruled that "[w]hile it is true that the APP refers to and pertains to the entire fiscal year, and that an APP may be revised in accordance with the guidelines set forth in the IRR, the fact remains that *before* procurement is actually undertaken, such procurement must have been included in the existing APP of the Procuring Entity,"[12] such reasoning does not diminish nor detract from the reality that the concerned Court officials acted under their honest belief that there was sufficient support for the second Contract of Services under the APP.

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[11] Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Re: Consultancy Services of Helen P. Macasaet*, A.M. No. 17-12-02-SC, July 16, 2019, *supra* note 1, at 181–183,

[12] *Re: Consultancy Services of Helen P. Macasaet*, *supra* note 1, at 142.

On the absence of the required CAFs

Lastly, as regards the ruling that no CAF accompanied the third to eighth Contracts of Services, I maintain my position in my Dissenting Opinion to the assailed Resolution that the CAF requirements had been sufficiently met, to wit:

> ...[T]he provision on CAF [in Section 40, Chapter 5, Book VI of the Administrative Code] requires that "[n]o funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability of funds and the allotment to which the expenditure or obligation may be properly charged." Two things are apparent: *first*, there is **no particular form required** to be followed for the issuance of the CAF; and *second*, unlike the Certificate Showing Appropriation which is required to be issued before entering into the contract, no such requirement appears regarding the CAF. On the contrary, a plain reading of Section 40 readily reveals that the certification by the chief accountant as to availability of funds must be **done *before funds are disbursed* and *expenditures or obligations* chargeable against authorized allotments *are incurred or authorized*.**
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> Based on these premises, it appears that the 3rd to 8th Contracts duly complied with the CAF requirement. Below are the pertinent statements made by Atty. Ocampo:
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> > 60. Third, the [OCAt] report failed to state that **every monthly payment to Ms. Macasaet is covered by an Obligation Request, a form that has a certification from the Supreme Court budget officer on the availability of funds. Each monthly payment is also supported by a Disbursement Voucher, where the Supreme Court chief accountant likewise certifies the availability of the funds for the consultancy fees.** (See Annexes S and T for the Obligation Request and Disbursement Voucher covering the August 24 to September 23 monthly fee of Ms. Macasaet. The same forms are used in all other monthly payments.) All other alternative modes of procurement such as shopping, small value procurement, and procurement through the Procurement Service are also certified in the same manner (see sample Obligation Request and Disbursement Voucher attached as Annexes U and V).
> >
> > 61. As a final point, **before any payment was made to Ms. Macasaet, the [OCJ] and the [MISO] certified** that the deliverables under her contract had been submitted and attached supporting documents. The certification and supporting documents **then passed through the [Office of Administrative Services (OAS)], and the finance, budget, and accounting and divisions of the [Fiscal Management and Budget Office or] FMBO, and then through the Internal Audit Division.** (See Annex W for the Action Flow Slip

> for Payment.) The offices, which are in charge of ensuring our compliance with all accounting and auditing rules and are better versed with auditing and accounting guidelines compared to [OCAt], **did not find any irregularity in Ms. Macasaet's contracts and renewals**. No payment[s] were withheld because all required documentation were available to support the payments. All of our financial and auditing units had to do due diligence to ensure that no post-audit findings would be raised by the Commission on Audit. Indeed, [five] years hence since the first contract of Ms. Macasaet was executed, **the COA has yet to issue any adverse observation or notice of disallowance against any of the payments made to Ms. Macasaet on the grounds cited by [OCAt].**[13] (Emphasis and underscoring in the original)

Since the law does not require a specific form for the CAF, the certifications by the Chief Accountant (as to the availability of appropriation and funds) contained in the Obligation Requests and Disbursement Vouchers, which were issued before the payments were made to Ms. Macasaet, should be deemed compliant with the CAF requirement under the Administrative Code. Verily, even the auditing bodies within the Court itself, as well as the COA, had not made any adverse findings on the subject contracts, specifically as to the CAF requirement.

These premises considered, it can be said that the concerned officials from the OCJ, the MISO, the OAS, the PPC, and the FMBO all acted within their authority — or at the very least, in the good faith belief that they were doing so.

II.

While the *ponencia* upholds the assailed Resolution's declaration that the subject contracts are void, it nevertheless orders the OAS to determine, on a *quantum meruit* basis, the total compensation due to Ms. Macasaet on her consultancy services done for the EISP. This is a welcome departure from the assailed Resolution, for to insist on making Ms. Macasaet reimburse the amounts she received as consultancy fees from the subject contracts — after reaping the benefits of her labor — would be the height of unfairness.

Notably, it cannot be disputed that Ms. Macasaet had no participation in the preparation of the subject contracts. As the only non-lawyer among the key parties to the contracts, she relied heavily and in good faith on the officials she was dealing with, who were from no less than the Supreme Court. After all, as a person who is not knowledgeable of the law, she had no reason to question the subject contracts especially since the other contracting party is

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[13] Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Re: Consultancy Services of Helen P. Macasaet*, A.M. No. 17-12-02-SC, July 16, 2019, *supra* note 1, at 237–238.

none other than the highest court of the land. Thus, Ms. Macasaet's claim of good faith deserves serious consideration.

More importantly, the Court should consider that Ms. Macasaet had accomplished her work under the subject contracts and rendered services to the Court from 2013 to 2017. Her efforts and contributions to the EISP and other ICT projects have not been disputed. Arguably, these projects have benefitted and continue to benefit not just the Court but the entire judiciary, considering that these projects also cover all courts in the country.[14]

Despite this, the assailed Resolution still ordered Ms. Macasaet to return what she had received for services she had already rendered in the span of four years. There is no other way to describe this situation than an unjust enrichment. Thus, I commiserate with Ms. Macasaet's emphatic plea in her MR:

> **Her services benefited the Judiciary. The accomplishments of Ms. Macasaet under the EISP project are now operational and being enjoyed by the whole Judiciary nationwide. These can no longer be undone or returned.** In the instant case, the Court is not correct to apply the principle of *status quo ante* when the contract is declared null and void. This is against the fundamental principles of justice, equity, and good conscience especially since **the grounds cited by this Honorable Court for nullifying the Contracts of Services were not her fault. To order the return or refund the consultancy fees without any mention of how to undo the services she delivered and now being enjoyed by the Judiciary is tantamount to judicial acquiescence to unjust enrichment.**[15] (Emphasis supplied)

To be sure, Ms. Macasaet's position is not novel. The notion that irregularities in the contracts do not preclude the contractor from receiving payment for services rendered to the government is supported by jurisprudence — and is recognized by the *ponencia*. As summarized in the case of *Geronimo v. COA*[16] (*Geronimo*):

> In *Dr. Eslao v. The Commission on Audit*, the Court ruled that the contractor should be duly compensated notwithstanding the questions which hounded the construction project involved due to the failure to undertake a public bidding. The Court explained that the denial of the contractor's claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*.
>
> Recovery on the basis of *quantum meruit* was also allowed despite the invalidity or absence of a written contract between the contractor and the government agency. This has been settled in the same case of *Dr. Eslao*,

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[14] *See* Motion for Reconsideration of Ms. Macasaet, pp. 6–10. *N.B.* Ms. Macasaet's contributions in the EISP and ICT Projects of the Court have not been disputed by the OCAt Report and the assailed Resolution.

[15] Motion for Reconsideration of Ms. Macasaet, p. 15.

[16] 844 Phil. 651 (2018).

> citing the unpublished case of *Royal Trust Construction v. Commission on Audit*, thus:
>
> ....
>
> The above disquisitions in *Dr. Eslao* and *Royal Trust* have been reiterated in the cases of *Melchor v. Commission on Audit*, *EPG Construction Co. v. Hon. Vigilar*, *Department of Health v. C.V. Canchela & Associates, Architects*, *RG Cabrera Corporation, Inc. v. Department of Public Works and Highways*, and other similar cases.[17]

In this regard, the following pronouncements in *EPG Construction Co. v. Hon. Vigilar*,[18] which was cited in *Geronimo*, is instructive:

> To our mind, **it would be the apex of injustice and highly inequitable for us to defeat petitioners-contractors' right to be duly compensated for actual work performed and services rendered, where both the government and the public have, for years, received and accepted benefits from** said housing project and reaped the fruits of petitioners-contractors' honest toil and labor.
>
> ....
>
> To be sure, **this Court — as the staunch guardian of the citizens' rights and welfare — cannot sanction an injustice so patent on its face, and allow itself to be an instrument in the perpetration thereof.** Justice and equity sternly demand that the State's cloak of invincibility against suit be shred in this particular instance, and that petitioners-contractors be duly compensated — on the basis of *quantum meruit* — for construction done on the public works housing project.[19] (Emphasis and underscoring supplied)

Thus, I welcome the *ponencia*'s order for the OAS to determine Ms. Macasaet's compensation on the basis of *quantum meruit.* However, I maintain that Ms. Macasaet should not be made to return the consultancy fees she had received under the subject contracts, which amounts ought to already be considered as reasonable even under the standards of *quantum meruit.*

At this juncture, I maintain that, contrary to the ruling in the assailed Resolution, the consultancy fees awarded to Ms. Macasaet were not unreasonable.

To recall, the OCAt Report questioned the Memorandum to the Chief Justice dated April 16, 2014 which states that the consultancy fees of Ms. Macasaet were fair and reasonable, considering the scope of her work and comparing it with the cost of similar ICT consultancies that the Court approved in 2012, *i.e.*, consultancy for the review of the terms for Judiciary Case Management System and Enterprise Information System, which cost ₱1.8 million per consultancy. The OCAt questioned the validity of this

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17 *Id.* at 658–659.
18 407 Phil. 53 (2001).
19 *Id.* at 64–66.

comparison, arguing that firms were hired for the two consultancies and not individual consultants; hence, their rates were incomparable with Ms. Macasaet's.[20] *However*, the point of comparison that should be used is the *scope of work* of the two consultancies (costing ₱1.8 million) *vis-à-vis* the scope of Ms. Macasaet's consultancy (costing less, at ₱1.5 million), and using this correct comparison, the consultancies previously contracted by the Court actually cost approximately 300% more *per* TOR compared to what was paid to Ms. Macasaet. Moreover:

> .... the rate of P250,000.00 per month was also lower than Ms. Macasaet's going rate based on her salary history, which is one of the factors considered in determining the cost of consultancy under the Manual of Procedures. According to Ms. Macasaet, she was paid almost P1 million per month as GSIS-CIO consultant. She received P500,000.00 as consulting center director at James Martin & Co., exclusive of car plan, gas allowance, communication allowance and other allowances. As President and COO of MISNet, she also received a monthly salary of P500,000.00 plus allowances.
>
> In addition, not only did Ms. Macasaet agree to a rate lower than her previous consulting fees and salaries, but she also resigned as President of her company, Pentathlon Systems Resources, Inc., and discontinued providing consultancies to other clients in order to avoid conflict of interest, especially when the projects she helped develop for the Court reached the procurement stage where private IT companies were expected to participate. Based on the records, these factors were among those considered in evaluating Ms. Macasaet's consultancy fees.[21]

Likewise, I reiterate that there was no violation of the ceiling provided in DBM Circular Letter No. 2000-11. To recall, under paragraphs 3 and 4 of said Circular on the subject of *Compensation of Contractual Personnel and Individual Professional Consultants*, the ceiling for remuneration is fixed at 120% of the minimum basic salary of his or her equivalent position. Upon this premise, the OCAt adopted the basic monthly salary of the MISO Chief (*i.e.*, ₱73,099.00) in view of the latter's classification as highly technical and policy-determining. After considering the MISO Chief as a comparable position, the OCAt then concluded that the maximum limit of the compensation of the consultant should have been ₱87,718.80, which was exceeded by the subject contracts covering the period of 2013-2016.

As I had explained in detail in my Dissenting Opinion to the assailed Resolution, what governs the determination of the cost of consultancy are R.A. 9184, its IRR, and the Manual of Procedures for the Procurement of Consulting Services, and *not* DBM Circular Letter No. 2000-11, which was already revoked by DBM Circular Letter No. 2017-9.[22]

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20 Dissenting Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Re: Consultancy Services of Helen P. Macasaet*, A.M. No. 17-12-02-SC, July 16, 2019, *supra* note 1, at 217.

21 *Id.* at 218–219.

22 *Id.* at 219–230.

In any case, even if the ceiling were to be applied, I reiterate anew that it was erroneous for the assailed Resolution to rule that the remuneration of Ms. Macasaet should not be more than 120% of the basic minimum monthly salary of the MISO Chief based on its inaccurate conclusion that the position of the MISO Chief is equivalent to the position of Ms. Macasaet under the Contracts of Services. Again, I submit that the position of Ms. Macasaet as an ICT consultant is in no way equivalent to the position of the MISO Chief. The qualifications of Ms. Macasaet as an ICT consultant and that of the MISO Chief, as well as the scope of their work, are entirely different. Stated simply, there exists no equivalent position in the Court for the position of Ms. Macasaet:

> In this connection, the work performed by Ms. Macasaet was not merely to oversee or overview the implementation of the Updated EISP. A perusal of her accomplishment reports per contract would reveal that she did not only perform general IT consultancy which could have been done by the MISO Chief.
>
> Hence, the OCAt's conclusion that Ms. Macasaet's compensation is unreasonable based on the assumption that the basic salary of the MISO Chief is the appropriate government sector benchmark as "equivalent position" plainly rests upon wrong premises.
>
> **As discussed earlier, the scope of work of the ICT Consultant is sufficiently distinct from the functions of the MISO Chief.** The work of the MISO Chief is general in scope, while Ms. Macasaet's work is specific to the development and implementation of the EISP. Moreover, it bears reiterating anew that **the EISP encompasses not merely the ICT system of the Court alone; it involves the development of the complex IT framework and other computerization projects covering the entire judiciary**. To illustrate, the integrated automation program under the EISP encompasses more than 3,500 trial court locations and stands to benefit more than 30,000 court employees. This is in stark contrast with the mandate of the MISO which is limited to providing technological services and managing the computerized monitoring system installed in [the] Supreme Court alone. The review of the IT framework of the entire judiciary is clearly beyond the scope of the MISO's functions.
>
> Additionally, it should be stressed once more that since the EISP encompasses the IT initiatives of the entire judiciary, its review necessarily includes an evaluation of the projects and initiatives of the MISO. Thus, the MISO cannot possibly be tasked to assess and evaluate its own IT projects. Indeed, an independent, highly technical consultant is better equipped to ensure the development of an improved IT system for the judiciary.
>
> Finally, it bears reiterating that, along with Atty. Ocampo, **it was Mr. Davis, then Acting Chief of the MISO, who recommended Ms. Macasaet to be the consultant for the Updated EISP**. Verily, the MISO itself recognized the need to hire a consultant for such undertaking.
>
> **Considering the level of expertise and the magnitude and scope of work required for the review and implementation of the EISP, it is clear that the consultancy position of Ms. Macasaet is the first of its kind and has no equivalent post in the Court.**

> As important, it should be emphasized that R.A. 9184 itself recognizes that the need for consulting services arises precisely from the lack of capacity or capability of the government or its organic personnel to undertake[.][23] (Emphasis supplied)

Given the foregoing, while the *ponencia* maintains that the subject contracts are void, it rightfully held that Ms. Macasaet should still be compensated on the basis of *quantum meruit.* However, as explained above, I submit that the amounts given to Ms. Macasaet under the subject contracts should already be considered as reasonable so as to satisfy the requirements of *quantum meruit.*

To end, I maintain my position that subject contracts between the Court and Ms. Macasaet are valid. Nevertheless, while I dissent from the majority's ruling that the subject contracts are void, I welcome the *ponencia*'s recognition, as unanimously concurred in by the Court *En Banc*, that the Court officials involved in this case, as well as Ms. Macasaet, all acted in good faith in the performance of their duties surrounding the subject contracts. Moreover, even as I maintain that the amounts given to Ms. Macasaet under the subject contracts are reasonable, I likewise welcome the *ponencia*'s directive to the OAS to determine Ms. Macasaet's compensation on the basis of *quantum meruit.*

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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[23] *Id.* at 227–229.