

EN BANC

[G.R. No. 246053, April 27, 2021]

**LUIS RAYMUND F. VILLAFUERTE, JR., PETITIONER, VS.
COMMISSION ON AUDIT, RESPONDENT.**

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. 2015-481^[1] dated 29 December 2015 and the 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 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 2009^[6] 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]

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]

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-033^[12] 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.

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]

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 QUESTION THE TIMELINESS OF THE *PETITION FOR REVIEW*.

III

THE PROCEEDINGS BEFORE PUBLIC RESPONDENT COA OUGHT TO BE