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[G.R. No. 213323, January 22, 2019]

TERESITA S. LAZARO, DENNIS S. LAZARO, MARIETA V. JARA, ANTONIO P. RELOVA, GILBERTO R. MONDEZ, PABLO V. DEL MUNDO, JR., AND ALSANEO F. LAGOS, PETITIONERS, V. COMMISSION ON AUDIT, REGIONAL DIRECTOR OF COA REGIONAL OFFICE NO. IV-A, AND COA AUDIT TEAM LEADER, PROVINCE OF LAGUNA, RESPONDENTS.

[G.R. No. 213324, January 22, 2019]

EVELYN T. VILLANUEVA, PROVINCIAL ACCOUNTANT OF THE PROVINCE OF LAGUNA, PETITIONER, V. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

LEONEN, J.:

These are Petitions for Certiorari[1] under Rule 64 of the Rules of Court, assailing the August 17, 2011 Decision[2] and May 6, 2014 Resolution[3] of the Commission on Audit, which reversed the March 19, 2010 Decision[4] of the Commission on Audit Regional Office No. IV (Regional Office). In its Decision, the Regional Office reversed the Decision of the then Regional Cluster Director of the Commission on Audit, Regional Legal and Adjudication Office, which, in turn, disallowed the Provincial Government of Laguna's purchase of medicines, medical and dental supplies, and equipment (medical items) in the total amount of P118,039,493.46.[5]

As reported in a December 3, 2004 article of the Philippine Daily Inquirer, the Regional Director of the Regional Office created an audit team to conduct a preliminary fact-finding audit and investigation of irregularities in the purchase of medical items.[6]

The audit team issued two (2) Audit Observation Memoranda,[7] which revealed that in the 2004 and 2005 procurement of medical items: (1) no public bidding had been conducted; (2) purchase requests had made reference to brand names; and (3) there had been splitting of purchase requests and purchase orders.[8]

On December 27, 2006, the Regional Cluster Director issued a Notice of Disallowance,[9] which held liable for the 2004 and 2005 procurement of medical items worth P118,039,493.46 the following individuals: (1) Governor Teresita S. Lazaro (Governor Lazaro); (2) Officer-in-Charge Provincial Accountant Evelyn T. Villanueva (Villanueva); (3) Provincial Administrator and Bids and Awards Committee Chairman Dennis S. Lazaro (Dennis Lazaro); (4) Provincial Health Officer II Alsaneo F. Lagos (Lagos); (5) Provincial Budget Officer and Bids and Awards Committee Vice Chairman Marieta V. Jara (Jara); (6) Provincial Attorney Antonio P.

Relova (Relova); (7) Provincial Engineer Gilberto R. Mondez (Mondez); and (8) General Services Office Officer-in-Charge Pablo V. Del Mundo, Jr. (Del Mundo). Relova, Mondez, and Del Mundo are Bids and Awards Committee members.[10]

The Notice of Disallowance indicated that: (1) the medical items were purchased without public bidding; and (2) reference to brand names were made in the procurement documents to justify the resort to exclusive distributorship, contrary to Section 18 of Republic Act No. 9184.[11]

On April 30, 2007, Governor Lazaro filed a Motion for Reconsideration of the Notice of Disallowance. However, it was denied in the Regional Cluster Director's March 25, 2008 Decision.[12]

On May 27, 2008, Governor Lazaro and the rest of the persons held liable filed an Appeal Memorandum to the Notice of Disallowance.[13]

In his March 19, 2010 Decision, the Regional Office granted their appeal. It held:

> While this is the letter of the law, it bears emphasizing that no less than the Supreme Court admits of exceptions to the provisions of law above cited. In affirming the respect accorded to the exercise by administrative agencies of discretion whenever reference to brand names and the consequential resort to negotiated purchase are made, the Court, in the precedent setting pronouncement in National Center for Mental Health (NCMH) vs. COA, G.R. No. 114864, December 6, 1996, 265 SCRA 390, declared in categorical manner that the judgment of the government agency concerned regarding the suitability of the product, given the nature of its services, should be accorded respect even if there could have been substitute items.
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> Equally decisive and of similar tenor is the implication of the Court's declaration in Baylon vs. Ombudsman and Sandiganbayan, G.R. No. 142738, December 14, 2001, wherein the reference to brand names, while supposedly prohibited under the above cited Section 18 of RA No. 9184, was allowed.[14]

In its August 17, 2011 Decision, the Commission on Audit, upon automatic review, disapproved the Regional Office March 19, 2010 Decision. In affirming the Notice of Disallowance, it held that the disallowance was proper, and that petitioners should be held liable for P118,039,493.46.[15]

On July 28, 2014, petitioners Governor Lazaro, Dennis Lazaro, Jara, Relova, Mondez, Del Mundo, and Lagos (petitioners Governor Lazaro, et al.) filed a Petition for Certiorari[16] before this Court, docketed as G.R. No. 213323. Petitioner Villanueva filed another Petition for Certiorari, which was docketed as G.R. No. 213324.[17]

In its August 5, 2014 Resolution, this Court consolidated the two (2) Petitions.[18]

On November 19, 2014, respondents Commission on Audit, the Regional Director of the Regional Office No. IV-A, and the Audit Team Leader of the Commission on Audit, Province of Laguna filed their Consolidated Comment.[19] Petitioners filed their Reply on February 9, 2015.[20] Petitioners Villanueva and Governor Lazaro, et

al. filed their Memoranda on June 11, 2015[21] and June 26, 2015,[22] respectively. The Office of the Solicitor General adopted its Consolidated Comment as its Memorandum.[23]

In its July 12, 2016 Resolution, this Court denied petitioners' Application for Temporary Restraining Order and Writ of Preliminary Injunction dated April 8, 2016.[24]

Petitioner Villanueva points out that she did not participate in the transactions prior to July 5, 2005, and should not be held liable for them.[25]

Petitioners Governor Lazaro, et al. argue that they had factual basis for resorting to direct contracting on the basis of brand names because: (1) there are exceptions to the prohibition against referring to brand names under Republic Act No. 9184;[26] (2) the Therapeutics Committees of the Province of Laguna's district hospitals issued Certifications/Justifications recommending the brand names selected;[27] and (3) the Certificates of Exclusive Distributorship and Certificates of Product Registration proved that the suppliers selected "were the exclusive distributors"[28] of the procured medical items.[29]

Petitioners Governor Lazaro, et al. further insist that even if the contract was defective, a claim under the defective contract can still be satisfied under the principle of *quantum meruit*. They point out that in *Royal Trust Construction v. Commission on Audit*[30] and *EPG Construction Co. v. Hon. Vigilar*,[31] this Court allowed the payment to the contractor despite perceived infirmities in the contract. The infirmities did not render the contract illegal.[32]

Respondents state that Section 18 of Republic Act No. 9184 expressly prohibits reference to brand names, without any exception or condition.[33] The Certifications/Justifications issued by the Therapeutics Committees were merely recommendatory, whereas the language of Republic Act No. 9184 is mandatory.[34] Further, the Therapeutics Committees did not refer to any clinical study to support their claims in the Certifications/Justifications.[35] They did not prove that there were no substitutes for the procured items that could have been obtained at terms more advantageous to the government.[36]

Respondents argue that the principle of *quantum meruit* does not apply here because petitioners patently violated the legal provisions on competitive public bidding. They insist that petitioner Villanueva is liable, for it is her duty, as Provincial Accountant, to confirm the completeness and propriety of the procurement documents. They further claim that she certified the documents supporting the disbursement vouchers even when they were not proper.[37]

The issues for this Court's resolution are:

First, whether or not the necessary conditions for direct contracting were met in the disallowed transactions;

Second, whether or not the principle of *quantum meruit* applies here; and

Finally, whether or not petitioner Villanueva can be held liable for disallowed transactions in which she has not been shown to have participated.

This Court denies the Petition in G.R. No. 213323 and partially grants the Petition in G.R. No. 213324.

I

Petitioners failed to show that the Commission on Audit committed grave abuse of discretion in disallowing the expenditures covered by the Notice of Disallowance.

The Commission on Audit based its disallowance on: (1) the purchases being accomplished without public bidding, in violation of Section 10 of Republic Act No. 9184; and (2) reference to brand names being made to invoke an exception to the competitive bidding requirement, in violation of Section 18 of Republic Act No. 9184.[38]

Petitioners Governor Lazaro, *et al*. cite *National Center for Mental Health Management v. Commission on Audit*[39] to support their claims. They point out that this Court accorded respect to administrative agencies' exercise of discretion whenever reference to brand names and the consequential resort to negotiated purchases were made.[40] In that case, this Court laid exceptions to the prohibition against references to brand names under Republic Act No. 9184. Further, the Certifications/Justifications of the Therapeutics Committees, which are responsible for determining the drugs to be procured by government hospitals, explained the choice of the brand names.[41]

Petitioners Governor Lazaro, et al. point out that in *National Center for Mental Health Management*, this Court found that while there could have been substitute items, the procuring entity's judgment on the suitability of the brand of the items procured should be accorded respect.[42]

What petitioners Governor Lazaro, et al. fail to mention is that *National Center for Mental Health Management* was decided in 1996, before Republic Act No. 9184 was enacted in 2003. Exceptions to the prohibition against reference to brand names in Republic Act No. 9184 could not have been laid out years before the statute's enactment.

The law is patently clear, with no exceptions: "[r]eference to brand names shall not be allowed."[43] Without basis to claim that it was proper to refer to brand names in their procurement, the claim that this case is an exception to the requirement of competitive bidding has no leg to stand on. Consequently, the transactions were properly disallowed.

II

When asserting their 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 this Court's burden to construe petitioners' incomplete submissions and vague narrations to determine if their assertions have merit.

On the basis of *quantum meruit*, petitioners claim that even if the transactions were properly disallowed, they should not be required to reimburse the disallowed amounts. This is because all the medical items procured were delivered in good condition and distributed to the provincial and health centers. They were used by the intended beneficiaries of the health program. Petitioners cite *Royal Trust*

Construction,[44] *EPG Construction Co.*,[45] *Dr. Eslao v. The Commission on Audit*,[46] and *Melchor v. Commission on Audit*[47] to support their position.

Royal Trust Construction, EPG Construction Co., and *Eslao* are not squarely applicable here. All three (3) cases involved the question of whether payment should be made to the contractor who had already provided the services covered by a disallowed transaction. They did not tackle the liability of public officials responsible for irregular transactions.

Indeed, the principle of *quantum meruit*—that a party is allowed to recover as much as he or she reasonably deserves[48]—is usually invoked with regard to paying a contractor for works rendered. Here, however, the contractors have already been paid, and the question to be resolved is whether the public officers responsible for the irregularity must reimburse the government for it.

Melchor is more relevant than the rest here, as it pertained to the liability of a public officer for disallowed transactions. Nonetheless, it is still not entirely on all fours with this case. *Melchor* involved two (2) amounts that were disallowed: (1) P344,340.88, when the Commission on Audit found that the legal requirements for the contract had not been met; and (2) an additional P172,003.26, supposedly for extra work on the same project, when the Commission on Audit found that there had been no supplemental agreement executed for this additional amount.

In *Melchor*, this Court reversed the disallowance for the amount of P344,340.88, because the requirements for the contract on the project had substantially been complied with as far as that amount was concerned. However, this Court determined it proper to declare the contract for extra works as void since there was no approval by the proper authority on the additional amount. Thus, disallowing the amount of P172,003.26 had basis. Despite the disallowance, this Court held that the petitioner's liability for the entire amount of P172,003.26 should not be considered automatic. This Court recognized that while the principle of *quantum meruit* is generally contemplated for unpaid contractors, it also applied to the public officer in that case. It directed the Commission on Audit to compute the value of the extra works under *quantum meruit*, and hold the public officer liable for the excess or improper payment for the extra works, if any.

Although this Court in *Melchor* recognized the possibility of applying the principle of *quantum meruit* when considering a public officer's liability, it must be stressed that it was not used to completely absolve this liability. Rather, the principle was used to determine whether the contractor had been paid beyond the amount deserved based on *quantum meruit*, such that the public officer there was liable only for the amount that was paid beyond the reasonable amount deserved by the contractor. Even more significant, before it applied the principle of *quantum meruit*, this Court had determined that the requirements for the validity of the main contract of P344,340.88 had already been met. This is not the case here.

Here, no part of the disallowed transaction could be deemed valid. Petitioners plainly violated the law requiring procurement to undergo competitive bidding. In doing so, they also violated the law prohibiting reference to brand names.

Moreover, even if the principle of *quantum meruit* could be applied here, petitioners fail to establish the factual basis for its application. In *Melchor*, to determine a public officer's liability based on *quantum meruit*, the amount of reasonable value of the