

## EN BANC

[ G.R. No. 238676, November 19, 2019 ]

**ELAINE E. NAVARRO AND RAUL L. OROZCO, PETITIONERS, VS.  
COMMISSION ON AUDIT CENTRAL OFFICE, COMMISSION ON  
AUDIT REGIONAL OFFICE NO. XIII, RESPONDENTS.**

### DECISION

**REYES, J. JR., J.:**

This petition for *certiorari* under Rule 64 of the Revised Rules of Court seeks to reverse and set aside the November 9, 2016 Decision<sup>[1]</sup> and October 26, 2017 Resolution<sup>[2]</sup> of the Commission on Audit (COA) which affirmed the Notice of Disallowance (ND) No. 09-005-101-(08).<sup>[3]</sup>

*Factual background*

In his October 4, 2007 Letter,<sup>[4]</sup> Representative Francisco T. Matugas (Rep. Matugas) of the First District of Surigao del Norte requested from then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) financial assistance in the amount of P8 Million. The said amount was for the purchase of textbooks and other instructional materials to be used in the primary and secondary schools in Siargao Island. In the same vein, Representative Guillermo A. Romarate, Jr. (Rep. Romarate) of the Second District of Surigao del Norte, in his November 26, 2007 Letter,<sup>[5]</sup> requested P8 Million from President Macapagal-Arroyo for the purchase and procurement of textbooks and other instructional materials. Both letters contained the handwritten approval of then Department of Education (DepEd) Secretary Jesli A. Lapus (Sec. Lapus).

In March and July 2008, the corresponding Sub-Allotment Release Orders were issued for the acquisition of supplementary and reference materials. Thus, in 2008, the DepEd Caraga Regional Office, Butuan City, purchased instructional materials amounting to P18,298,789.50.<sup>[6]</sup>

Thereafter, on February 17, 2009, the COA issued Audit Observation Memorandum (AOM) No. DepEdRO13-2009-003.<sup>[7]</sup> It noted that the procurement of the supplementary and reference materials amounting to P18,298,789.50 was irregular because it was contrary to DECS Order (D.O.) No. 25 series of 1999, and D.O. Nos. 38 and 52 Series of 2007, which imposed a moratorium on the procurement of supplementary and reference materials. Isabelita M. Borres (Borres), Regional Director of the DepEd Caraga Regional Office, replied that Sec. Lapus himself authorized the purchase of the said materials as evidenced by the scribbled notes bearing his initials found on the letters of Rep. Matugas and Rep. Romarate. In addition, she noted that Executive Secretary Eduardo Ermita approved the request of Rep. Matugas for the release of additional funds.<sup>[8]</sup>

On May 18, 2009, the COA issued Notice of Suspension No. 09-003-101-(08)<sup>[9]</sup> reiterating its findings in AOM No. DepEdRO13-2009-003. The P18,298,789.50 was suspended in audit because the DepEd had ordered a moratorium on the procurement of supplementary and reference materials. The COA reminded that the practice of procuring supplementary and reference materials should be stopped until the moratorium is lifted. Eventually, the COA issued ND No. 09-005-101-(08) after the Notice of Suspension had not been settled or acted upon. It ordered Regional Accountant Elaine E. Navarro and Chief Administrative Officer Raul L. Orozco (petitioners), among others, to refund the P18,298,789.50 used in procuring the supplementary and reference materials.

Petitioners appealed the ND to the COA Regional Office No. XIII (COA-RO).

#### *COA-RO Decision*

In its August 23, 2011 Decision,<sup>[10]</sup> the COA-RO partially granted petitioners' appeal. It pointed out that P7,259,676.10 worth of reference or instructional materials were included in the list of materials allowed to be procured under D.O. Nos. 52 series of 2007, 112 series of 2009 and 111 series of 2010. The COA-RO ruled:

In view of the foregoing we hereby grant in part the herein appeal and reduce the audit disallowance under Notice of Disallowance No. 09-005-101 (08) dated October 19, 2009 to P11,039,113.40.

This Decision, however, is not yet final and subject to automatic review by the Commission Proper, Commission on Audit, Commonwealth Avenue, Quezon City, within the remaining of the six (6) months period to appeal, pursuant to Section 7, Rule V of the 2009 COA Revised Rules on Procedures.<sup>[11]</sup>

The COA-RO decision was elevated to the COA for automatic review.

#### *Assailed COA Decision*

In its November 9, 2016 Decision, the COA reversed the COA-RO Decision and reinstated the full amount disallowed in ND No. 09-005-101-(08). It reiterated that existing DepEd issuances clearly prohibit the procurement of books and instructional materials that are not included in the List of Textbooks and Teacher's Manuals attached in D.O. No. 52, series of 2007. The COA observed that the COA-RO erred in reducing the amount disallowed on the basis of D.O. No. 112, series of 2009 because the reference materials were procured prior to the issuance of the said order. It highlighted that the individuals who undertook the procurement activities could not have decided what books to purchase based on a list made on a future date. The COA Decision read:

**WHEREFORE**, premises considered, Commission on Audit Regional Office XIII Decision No. 2011-032 dated August 23, 2011 is hereby **DISAPPROVED** insofar as it had reduced the disallowance by the amount of P7,259,676.10. Accordingly, Notice of Disallowance (ND) No.

09-005-101 (08) dated October 19, 2009 in the amount of P18,298,789.50 is hereby **AFFIRMED**.<sup>[12]</sup>

Petitioners moved for reconsideration but it was denied by the COA in its October 26, 2017 Resolution.

Hence, this present petition raising the following issues:

### **Issues**

#### **I**

WHETHER THE COA COMMISSION PROPER GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IN (SIC) RENDERED A DECISION IN GROSS VIOLATION OF PETITIONERS' RIGHT TO SPEEDY DISPOSITION OF CASES;

#### **II**

WHETHER THE COA COMMISSION PROPER GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IN (SIC) SUSTAINING NOTICE OF DISALLOWANCE NO. 09-005-101-(08) IN TOTAL DISREGARD TO THE DEFENSES RAISED BY PETITIONERS; AND

#### **III**

WHETHER THE COA COMMISSION PROPER GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF ITS JURISDICTION WHEN IT INCLUDED PETITIONERS AS AMONG THOSE RESPONSIBLE FOR THE DISALLOWANCE IN BLATANT DISREGARD TO THE EXTENT OF HER PARTICIPATION TO THE TRANSACTION.<sup>[13]</sup>

Petitioners argue that the COA violated their rights to speedy disposition of cases. They highlight that the proceedings before the COA-RO took more than two years and six months from the issuance of AOM No. DepEdRO13-2009-003 on February 17, 2009. Likewise, petitioners note that it took five years and three months before the COA rendered its November 9, 2016 Decision from the time the COA-RO Decision was elevated for automatic review. Thus, petitioners believe they suffered inordinate delay as the COA resolved their case only after seven years and nine months have lapsed. In addition, they surmise that the procurement of reference materials was valid considering that Sec. Lapus himself authorized it. Finally, they contend that they should be excused from refunding the disallowed amount because of their limited participation in the transaction. Petitioners bewail that they only came into the picture after the procurement had been made and its delivery effected.

In its Comment<sup>[14]</sup> dated August 22, 2018, the COA countered that the petitioners merely alleged a delay in the disposition of the case without showing that it was vexatious, capricious or oppressive. It elucidates that the right to speedy disposition of cases is flexible and due regard must be given to the circumstances. The COA reiterated that the disallowance of the procurement of reference materials was