

EN BANC

[G.R. No. 245400, November 12, 2019]

**JANICE DAY E. ALEJANDRINO AND MIRIAM M. PASETES
PETITIONERS, VS. COMMISSION ON AUDIT, LEILA S. PARAS, IN
HER CAPACITY AS COA DIRECTOR CGS-4; CECILIA N. CHAN, IN
HER CAPACITY AS COA AUDIT TEAM LEADER; AND MANUELA E.
DELA PAZ, IN HER CAPACITY AS COA SUPERVISING AUDITOR,
RESPONDENTS.**

DECISION

CARANDANG, J.:

Challenged in this Petition for *Certiorari*^[1] under Rule 64 of the Revised Rules of Civil Procedure are the Decision^[2] dated December 13, 2017 and the Resolution^[3] dated September 27, 2018 of the Commission on Audit (COA) in Decision No. 2017-409. The COA affirmed Notice of Disallowance^[4] No. 12-004-(2011) dated August 9, 2012 issued by the COA Audit Team Leader and held the corporate officers of the Philippine National Construction Corporation (PNCC), including herein petitioners, liable to pay P911,580.96 representing the salaries of lawyers hired by PNCC without the written conformity and concurrence of the Office of the Government Corporate Counsel (OGCC) and the COA.

Facts of the Case

Petitioners Janice Day E. Alejandrino (Alejandrino) and Miriam M. Pasetes (Pasetes) are former executive officers of PNCC, originally named Construction and Development Corporation of the Philippines (CDCP). Alejandrino was Senior Vice-President/Head, Human Resources and Administration, while Pasetes was Vice-President/Acting Treasurer.

Sometime in 2011, PNCC engaged the legal services of four private lawyers, namely, Attys. Eusebio P. Dulatas, Henry Salazar, Stephen Ivan Salinas as members of the PNCC Corporate Legal Division, and Atty. Alex Almario as Corporate Secretary.^[5] Consequently, salaries were paid to them.

On September 24, 2012, the COA Audit Team issued Notice of Disallowance^[6] No. 12-004-(2011) dated August 9, 2012 addressed to Atty. Luis F. Sison, President and Chief Executive Officer of PNCC, stating that the amount of P911,580.96, representing the salaries of the four lawyers, is disallowed in audit because their hiring was without the written conformity and acquiescence of the OGCC as well as the written concurrence of the COA, in violation of the provisions of COA Circular No. 95-011^[7] and Office of the President Memorandum Circular (OP-MC) No. 9.^[8] The six corporate officers of PNCC and the four lawyer-payees were held liable and were directed to settle the amount disallowed:

Name	Position/Designation	Participation
Rainer B. Butalid	Chairman	Authorized/approved the payment
Luis F. Sison	President and Chief Executive Officer	Signed the contract and authorized/approved the payment
Janice Day E. Alejandrino	Senior Vice-President/Head, Human Resources and Administration	Approved the payment, facilitated and coordinated the timely acquisition, development, and administration of human resources and managed the delivery of personnel services to ensure work excellence and productivity
Miriam M. Pasetes	Vice-President/Acting Treasurer	Authorized/approved the payment, certified and approved the check voucher, and certified the availability of funds
Susan R. Vales	Assistant Vice-President/Head, Controllership Division	Approved the payment, and certified and approved the check voucher
Anatalia C. Cardova	Head, Funds Management Department	Certified that fund is available
Alex G Almario	Senior Adviser to the Office of the Chairman	Payee
Eusebio P. Dulatas, Jr.	Head, Corporate Legal	Payee
Henry B. Salazar	Legal Officer	Payee
Stephen Ivan M. Salinas	Legal Officer	Payee

They filed an Appeal Memorandum^[9] with the COA Director for Corporate Government Sector (COA-CGS) - Cluster 4 assailing the Notice of Disallowance. They argued that the COA Audit Team Leader, Cecilia Chan, erred when it assumed that PNCC is under the full audit authority of COA. They asserted that since PNCC is a corporation created in accordance with the general corporation law, it remains a private corporation notwithstanding that majority of its stocks are owned by the National Government by virtue of the debt-to-equity conversion. They asserted that PNCC is a government-acquired asset corporation and not a government-owned and controlled corporation, thus, the COA acted with grave abuse of discretion in disallowing in audit the payment of salaries to three lawyers of the PNCC Corporate Legal Division and one lawyer as corporate secretary. They maintain that the hiring of said lawyers and the payment of salaries under the service contracts was within the power and authority of the management of PNCC.

In her Answer,^[10] the Audit Team Leader argued that PNCC is a government agency

and is, therefore, bound to comply with the requirements of COA Circular No. 95-011 and OP-MC No. 9, Series of 1998.^[11]

In a Decision^[12] dated August 29, 2014, the COA-CGS Cluster 4 denied the appeal. The COA-CGS Director held that PNCC is a GOCC subject to COA's audit jurisdiction. The COA-CGS Director further noted that the functions of the hired private lawyers overlapped with the authority of the OGCC, hence, PNCC needs to comply with COA Circular No. 95-011 and OP-MC No. 9.

Petitioners elevated the case to the COA Commission Proper *via* a Petition for Review^[13] reiterating their arguments.

Respondent COA partly granted the Petition for Review in its Decision^[14] dated December 13, 2017, the dispositive portion of which states:

WHEREFORE, premises considered, the Petition for Review of Atty. Henry B. Salazar, et al., all of the Philippine National Construction Corporation (PNCC), is hereby **PARTLY GRANTED**. Accordingly, Commission on Audit Corporate Government Sector-Cluster 4 Decision No. 2014-06 dated August 29, 2014 which affirmed Notice of Disallowance (ND) No. 12-004-(2011) dated August 9, 2012, on the payments made by PNCC to private lawyers under Contracts of Service for calendar year 2011 in the total amount of P911,580.96, is hereby **AFFIRMED**, but the payees are no longer required to refund the amounts they received. The other persons named liable under the ND shall continue to be liable for the total amount of P911,580.96.^[15]

The COA held that PNCC is a GOCC under the direct supervision of the Office of the President. Thus, being a GOCC, PNCC is under the audit jurisdiction of the COA. The COA cited the case of *Feliciano v. Commission on Audit*,^[16] where the Court held that the COA's audit jurisdiction extends not only to government "agencies or instrumentalities," but also to "government-owned and controlled corporations with original charters" as well as "other government-owned or controlled corporations" without original charters. As to the validity of the hiring of lawyers by PNCC under the Contracts of Service, the COA held that the payment of legal services based on individual contracts of service is irregular in the absence of the required written conformity and acquiescence of the Government Corporate Counsel and the written concurrence of the COA.

The COA, however, held that the private lawyers who rendered legal services to PNCC are not required to refund the amounts they received in good faith. However, the officers who failed to secure the written conformity and concurrence of the OGCC and the COA in hiring the lawyers are personally liable.

Petitioners filed a Motion for Partial Reconsideration^[17] claiming that since the lawyers who received their salaries were not required to return the amounts they received, they should also not be required to pay since they were merely performing their functions in good faith and in accordance with the direction set by the PNCC's Board of Directors. They further asserted that the principle of *quantum meruit* should be applied since it cannot be denied that PNCC benefitted from the legal services rendered by the lawyers.

The COA denied the motion in its Resolution^[18] dated September 27, 2018 for lack of merit.

Hence, petitioners Alejandrino and Pasetes are now before Us alleging that the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in holding that:

1. PNCC is a government-owned and controlled corporation and hence falls under COA's audit jurisdiction;
2. PNCC's hiring of lawyers and payment of their salaries are subject to COA audit and the hired lawyers are not organic personnel of PNCC;
3. The principle of *quantum meruit* is not applicable in this case; and
4. The PNCC officers held liable for the disallowed transaction were not in good faith in hiring and paying the lawyers.

Petitioners contend that COA has acted without or in excess of its jurisdiction or with grave abuse of discretion in holding that PNCC is a GOCC and is under COA's audit jurisdiction. They cited the case of *Philippine National Construction Corp. v. Pabion*^[19] where the court held that PNCC is a government acquired asset corporation, and therefore not a GOCC.^[20] Petitioners assert that since PNCC is a corporation created in accordance with the general corporation law, it is essentially a private corporation notwithstanding the government's interest therein as a result of the debt-to-equity of its loans with various government financial institution by operation of Letter of Instruction (LOI) No. 1295.^[21] Petitioners further assail the ruling that petitioners and the other PNCC officers are liable for the payment made to lawyers hired by PNCC which were disallowed by the COA.

In the Comment^[22] filed by the respondents through the Office of the Solicitor General (OSG), they asserted that PNCC is a GOCC and is, therefore, subject to COA's audit jurisdiction. The OSG maintains that petitioners' reliance on the case of *Pabion* is misplaced since the said case did not delve on the issue of jurisdiction of COA but resolved the issue of whether the Securities and Exchange Commission may order PNCC to hold a shareholders' meeting for the purpose of electing its board of directors. Moreover, respondents claim that the determining factor for COA's exercise of audit jurisdiction is government ownership and control. According to respondents, since it is beyond dispute that the government owns the controlling or majority shares of the PNCC, it cannot evade COA's audit jurisdiction by simply claiming that it is a private corporation chartered under the general corporation law. Respondents argue that the payment of legal services of the private lawyers engaged by PNCC under Contracts of Service is an irregular expense. On the other hand, respondents, through the OSG contend that PNCC is a GOCC under the direct supervision of the Office of the President. Moreover, respondents assert that PNCC is under the audit jurisdiction of COA since the determining factor is the government ownership or control.

ISSUES

Essentially, the main issues to be resolved in this petition are: 1) whether PNCC is a GOCC under the audit jurisdiction of COA; 2) whether the COA committed grave abuse of discretion in disallowing the payment of salaries of the lawyers whose services were engaged by PNCC; 3) whether petitioners are liable for the disallowed amount; and 4) whether the salaries of lawyers are irregular expense.

The Court's Ruling

To resolve the issue of whether PNCC is a GOCC, We deem it proper to trace back the creation of PNCC as a corporate entity. As already mentioned, PNCC is formerly CDCP, a private construction firm engaged to carry on and conduct general contracting business with any private person or government entity or instrumentality including designing, constructing and enlarging, operating and maintenance of roads.^[23] In the course of its operations, CDCP obtained loans from various Government Financing Institutions (GFIs). On February 23, 1983, President Ferdinand E. Marcos issued a LOI No. 1295, which directed the GFIs to convert all of CDCP's unpaid obligations with these financial institutions into shares of stock. The implementation of the said LOI made the GFIs' majority stockholders of PNCC. By virtue of the debt-to-equity conversion of CDCP loans, CDCP's Articles of Incorporation and By-Laws were later amended to change its corporate name from CDCP to PNCC to emphasize the National Government's shareholdings.

In 1986, then President Corazon C. Aquino, pursuant to the government's privatization program, issued Presidential Proclamation No. 50 creating Asset Privatization Trust (APT), now known as the Privatization and Management Office, as trustee of the equity shares of the GFIs in PNCC. Also, pending its privatization, President Gloria Macapagal Arroyo issued Executive Order No. (EO) 331, placing PNCC under the Department of Trade and Industry.

Petitioners' contention that PNCC remains a private corporation notwithstanding the government's interest therein through the debt-to-equity conversion mandated under LOI No. 1295 does not hold water. The COA CGS Director and the COA Commission Proper correctly ruled that PNCC is a GOCC under the direct supervision of the Office of the President, despite being organized and chartered under the Corporation Code.

Under Administrative Order No. (AO) 59, Section 2(a) and (b), a GOCC is defined as follows:

(a) **Government-owned and/or controlled corporation, hereinafter referred to as GOCC or government corporation, is a corporation which is created by special law or organized under the corporation code in which the government, directly or indirectly, has ownership of the majority of the capital or has voting control;** provided that an acquired asset corporation as defined in the next paragraph shall be not be considered as GOCC or Government corporation;

(b) Acquired asset corporation is a corporation which is under private ownership, the voting or outstanding shares of which (i) were conveyed to the government or to a government agency, instrumentality or