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[G.R. No. 157838, February 07, 2012]

CANDELARIO L. VERZOSA, JR. (IN HIS FORMER CAPACITY AS EXECUTIVE DIRECTOR OF THE COOPERATIVE DEVELOPMENT AUTHORITY), PETITIONER, VS. GUILLERMO N. CARAGUE (IN HIS OFFICIAL CAPACITY AS CHAIRMAN OF THE COMMISSION ON AUDIT), RAUL C. FLORES, CELSO D. GANGAN, SOFRONIO B. URSAL AND COMMISSION ON AUDIT, RESPONDENTS.

R E S O L U T I O N

VILLARAMA, JR., J.:

This resolves the motion for reconsideration of our Decision[1] dated March 8, 2011 affirming COA Decision Nos. 98-424 and 2003-061 dated October 21, 1998 and March 18, 2003, respectively. We upheld the COA's ruling that petitioner is personally and solidarily liable for the amount of P881,819.00 under Notice of Disallowance No. 93-0016-101.

In compliance with our Resolution dated February 8, 2011, counsel for petitioner filed a Notice, Manifestation and Apology confirming the demise of petitioner on June 24, 2010 and explaining the reason for the delay in informing this Court.

The motion for reconsideration filed by petitioner's counsel, son of petitioner, is anchored on the following grounds:

1) There is no finding of fact in this Court's decision which supports the serious finding that petitioner acted in bad faith when he prevailed upon the DAP-TEC to modify the initial result of the technical evaluation of the computers by imposing an irrelevant grading system intended to favor one of the bidders;
2) Assuming without admitting there was an attempt to alter the results of the bidding, petitioner was not directly responsible for it since it was a certain Rey Evangelista whose act in itself did not constitute bad faith as to be interpreted as deliberately favoring TETRA;
3) The mere fact that petitioner was the signatory in the vouchers and other documents for the processing of the purchase after the winning bidder had been chosen does not by itself constitute bad faith, malice or negligence. His participation as final recommending/approving authority in the said purchase was merely ministerial;
4) Records of this case show that the COA decisions did not hold petitioner solely liable for the disallowed amount of

P881,819.00; there were others adjudged solidarily liable with petitioner for the reimbursement of said amount;

5) The decision in *Arriola v. Commission on Audit*[2] should have been applied in this case. The TSO canvass coupled with confirmatory telephone canvass should be re-examined given the admission made by the COA Auditor in her 1st Indorsement dated June 6, 1994 and as held in the Dissenting Opinion of Justice Ma. Lourdes P.A. Sereno; and
6) The Court should consider the bases of comparison which is made against a clone generic brand (and its reference price values), in light of compliance with intellectual property laws on software piracy and hardware imitations.[3]

On September 15, 2011, the Office of the Solicitor General (OSG) filed its Comment reiterating its position that petitioner should not have been made liable for the disallowed amount since there was no substantial evidence of his direct responsibility. It contends that the decision should not have ordered petitioner to reimburse the disallowed amount on account of "overpricing of purchased equipment" because he did not have any participation in the bidding that was conducted by the PBAC, nor did he have any participation in influencing Mr. A. Quintos, Jr., the DAP-TEC evaluator, to change the evaluation results. As to the acts cited by the COA in holding petitioner liable for the disallowed amount, these cannot be the "clear showing of bad faith, malice or gross negligence" required by law to hold public officers liable for acts done in the performance of his official duties. There was no contrary evidence presented by the COA to overcome the presumption of regularity in the performance of official duty. The OSG also cites the discussion in the dissenting opinion of Justice Sereno that the standards set in *Arriola* should have been observed by the COA, *i.e.,* it should have compared the same brand of equipment (with the same features and specifications) with the items CDA purchased to determine if there was indeed overpricing.

Respondents filed their Comment asserting that the arguments raised by the petitioner in his motion for reconsideration do not warrant reversal of the decision rendered by this Court. They point out that the bad faith of petitioner was satisfactorily established when he prevailed upon DAP-TEC to modify the initial result of the technical evaluation of the bidders' computer units. As to the contention that petitioner's act of signing the documents for the processing of the purchase was merely a ministerial function, respondents noted that the Certification in the Disbursement Voucher for the payment of the computer states that "***Expenses necessary, lawful and incurred under my direct supervision***." Such certification definitely involves the exercise of discretion and is not a ministerial act. Petitioner recommended to the Chairman of the Board of Administrators of CDA the award of the contract to TETRA upon evaluation by the PBAC which he reconstituted. He cannot therefore escape liability for the disallowed amount together with the other liable parties, namely: Mr. Edwin Canonizado, PBAC Chairman, Ms. Ma. Luz Aggabao, PBAC Vice-Chairman, and PBAC Members Ms. Sylvia Posadas, Ma. Erlinda Dailisan, Mr. Leonilo Cedicol, Ms. Amelia Torrente (IT Consultant) and CDA Board Chairman Ms. Edna E. Aberilla. As to the argument that the COA-TSO canvass was not accurate as it compared generic computers with the computers offered by TETRA, respondent pointed out that aside from having already been passed upon in the decision sought to be reconsidered, the report submitted

by said office disclosed that certain specifications of the reference computers were either similar or better than those of the Trigem brand offered by TETRA at a much lower price. COA Auditor Rubico had allowed a 15% mark up on the prices of the items canvassed by COA-TSO, but still the actual purchase prices were way above the maximum allowable COA reference prices, hence, the disallowance was proper.

We find that the arguments raised in the motion have been adequately discussed and passed upon in our Decision dated March 8, 2011. There are, however, two significant issues that need to be clarified: *first*, whether the COA violated its own rules and jurisprudence in the determination of overpricing; *second,* whether petitioner may be ordered to reimburse the disallowed amount in the purchase of the subject computers.

There was no violation of COA rules

In *Arriola v. COA*,[4] this Court ruled that the disallowance made by the COA was not sufficiently supported by evidence, as it was based on undocumented claims. The documents that were used as basis of the COA Decision were not shown to petitioners therein despite their repeated demands to see them; they were denied access to the actual canvass sheets or price quotations from accredited suppliers. Absent due process and evidence to support COA's disallowance, COA's ruling on petitioners' liability has no basis.

Reiterating the above declaration, *National Center for Mental Health Management v. COA*,[5] likewise ruled that price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowance of agency disbursements for government projects.

The aforesaid jurisprudence became the basis of COA Memorandum No. 97-012 dated March 31, 1997 which contained guidelines on evidence to support audit findings of over-pricing. In the interest of fairness, transparency and due process, it was provided that copies of the documents establishing the audit findings of over-pricing are to be made available to the management of the audited agency.

The memorandum laid down the following specific guidelines:

> 3.1 When the price/prices of a transaction under audit is found beyond the allowable ten percent (10%) above the prices indicated in reference price lists referred to in pa[r]. 2.1 as market price indicators, the auditor shall secure additional evidence to firm-up the initial audit finding to a reliable degree of certainty.
> 3.2 To firm-up the findings to a reliable degree of certainty, initial findings of over-pricing based on market price indicators mentioned in pa[r]. 2.1 above *have to be supported with canvass sheets and/or price quotations indicating:*
> a) the *identities/names of the suppliers or sellers*;
> b) the availability of stock sufficient in quantity to meet the requirements of the procuring agency;
> c) the specifications of the items which should match those involved in the finding of over-pricing; and

d) the purchase/contract terms and conditions which should be the same as those of the questioned transaction.

x x x x (Italics supplied.)

Contrary to the thrust of Justice Sereno's dissent, the lack of compliance with the above guidelines did not invalidate the audit report for violation of the CDA's right to due process. We categorically ruled in *Nava v. Palattao*[6] that neither *Arriola* nor the COA Memorandum No. 97-012 can be given any retroactive effect. Thus, although *Arriola* was already promulgated at the time, it is not correct to say that the COA in this case violated the afore-quoted guidelines which have not yet been issued *at the time the audit was conducted* in 1993.

As to COA Resolution No. 90-43 dated September 10, 1990, while indeed it authorized the disclosure or identification of the sources of data gathered by the Price Evaluation Division-TSO in the conduct of its data gathering and price monitoring activities, perusal of this resolution failed to indicate that the disclosure of the names and identities of suppliers who provided the data during price monitoring activities of the TSO formed part of the evidentiary process in *audit findings of overpricing* and not merely to guide the agencies on where to procure their supplies. COA Resolution No. 90-43 reads as follows:

WHEREAS, it inheres in its constitutional mandate for this Commission to assist in the development efforts of government by providing audit services with a view to avoiding loss and wastage of public funds and property;

WHEREAS, in pursuance of such mandate, the determination of the reasonableness of price is an essential aspect of the audit of procurement in goods and services;

WHEREAS, towards that end, the Price Evaluation Division (PED) of the Technical Services Office (TSO), this commission, provides the Auditors with reference values which are obtained thru a valid canvass in the open market;

WHEREAS, the price findings of the TSO that result from such audit determination of price reasonableness at times adversely affect auditees **who would request TSO to disclose or identify the sources of these price quotations set by PED so that they can procure their supply needs from said sources;**

WHEREAS, this Commission is cognizant of the national policy of transparency in government operations;

WHEREAS, this Commission perceives no legal impediment to the disclosure or identification of the sources of price data which will ensure economy, efficiency and effectiveness in government procurement;

NOW, THEREFORE, in keeping with the national policy of transparency,

> the commission Proper has resolved, as it does hereby resolve, to authorize the disclosure or identification of the sources of data gathered by the Price Evaluation Division, TSO **in the conduct of its data gathering and monitoring activities**;
>
> Be it further resolved that in order to carry out such policy of disclosure, **the Price Monitor Bulletin, a COA publication, contain not only specific items and prices of goods and services but also the names and identities of responsive suppliers who provided the data during the canvass conducted by the PED, TSO**. (Emphasis and underscoring supplied.)

Accordingly, COA Memorandum No. 97-012 was issued on March 31, 1997 in view of the Commission's recognition that "[t]here is a need to clarify the *role and status of a price reference data*, such as those produced by the Technical Services Office, *in the audit evidence process* with respect to findings of overpricing." It is therefore improper to apply this regulation to the post-audit conducted in the year **1993** on the subject transaction.

Further, it must be noted that petitioner in requesting reconsideration of the audit disallowance, did not make a demand for the production of actual canvass sheets. Neither did he question the correctness of the reference values used by the TSO. Petitioner only pointed out that the date of canvass conducted by the TSO does not coincide with the date of purchase. To this the COA-TSO countered that "there was no showing that the foreign exchange rate changed during the latter part of 1992 that would have significantly increased the prices of computers." Petitioner nonetheless assailed the price comparison of the *branded* computers purchased by the CDA with non-branded computers, which the dissent now deems as a right of preference or an exercise of discretion on the part of CDA.

COA Upheld the Auditor's Position that Brand is Irrelevant on the Basis of Findings of its Technical Personnel

The COA, under the Constitution, is empowered to examine and audit the use of funds by an agency of the national government on a post-audit basis. [7] For this purpose, the Constitution has provided that the COA "shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." [8] As such, CDA's decisions regarding procurement of equipment for its own use, including computers and its accessories, is subject to the COA's auditing rules and regulations for the prevention and disallowance of irregular, unnecessary, excessive and extravagant expenditures. Necessarily, CDA's preferences regarding brand of its equipment have to conform to the criteria set by the COA rules on what is reasonable price for the items purchased.