

## EN BANC

[ G.R. No. 182069, July 03, 2012 ]

**ARNOLD D. VICENCIO, PETITIONER, VS. HON. REYNALDO A. VILLAR AND HON. JUANITO G. ESPINO, JR., IN THEIR CAPACITY AS ACTING CHAIRMAN AND COMMISSIONER, RESPECTIVELY, OF THE HON. COMMISSION ON AUDIT, AND ELIZABETH S. ZOSA, RESPONDENTS.**

### D E C I S I O N

**SERENO, J.:**

This is a Petition for Certiorari under Rule 64, in relation to Rule 65 of the Rules of Court, seeking to annul Decision No. 2008-022 dated 15 February 2008 of the Commission on Audit (COA).<sup>[1]</sup>

On 30 October 2003, the City Council or the *Sangguniang Panglungsod* ng Malabon (SPM), presided over by Hon. Benjamin Galauran, then acting Vice-Mayor, adopted and approved City Ordinance No. 15-2003, entitled "An Ordinance Granting Authority to the City Vice-Mayor, Hon. Jay Jay Yambao, to Negotiate and Enter into Contract for Consultancy Services for Consultants in the *Sanggunian* Secretariat Tasked to Function in their Respective Areas of Concern x x x."<sup>[2]</sup>

On 9 December 2003 and 1 March 2004, the City of Malabon, represented by Hon. Galauran, entered into separate Contracts for Consultancy Services with Ms. Jannette O. Vijiga,<sup>[3]</sup> Mr. Meynardo E. Virtucio<sup>[4]</sup> and Mr. Hernando D. Dabalus (2003 Consultancy Contracts).<sup>[5]</sup>

Subsequently, during the May 2004 elections, petitioner was elected City Vice-Mayor of Malabon. By virtue of this office, he also became the Presiding Officer of the SPM and, at the same time, the head of the *Sanggunian* Secretariat.

To complement the manpower requirements of the existing *Sanggunian* Secretariat, petitioner deemed it necessary to hire the services of consultants with the end view of augmenting and upgrading its performance capability for the effective operation of the legislative machinery of the city.

Petitioner thus wrote a letter dated 19 July 2004 to Atty. Danilo T. Diaz , the City Legal Officer of Malabon, inquiring as to whether it was still necessary for the SPM to ratify a newly entered contract of consultancy services between it and the candidate for the consultancy position. The letter states in part:

This is an inquiry regarding the hiring of consultants by virtue of an ordinance giving authority to the City Vice Mayor to enter into consultancy services (Ordinance no. 15-2003).

As you very well know, the services of the consultants hired by the former administration, particularly by the Sangguniang Panglungsod, ended last June 30, 2004. Hence, we are confronted by this inquiry:

Would there still be a need for the Sangguniang Panglungsod to ratify a newly entered contract of consultancy services between the SP and the candidate for said consultancy position?

Kindly render your humble opinion on the matter.<sup>[6]</sup>

Atty. Diaz then responded to the said inquiry through a letter dated 26 July 2004, which categorically stated that ratification was no longer necessary, provided that the services to be contracted were those stipulated in the ordinance. The letter states thus:

In response to your query contained in your letter dated July 19, 2004, regarding the hiring of consultants for the Sanggunian Secretariat by virtue of Ordinance No. 15-2003, giving authority to the City Vice Mayor to enter into consultancy services and whether there is still a need for ratification of said consultancy contract by the Sanggunian, the answer is, such a ratification is no longer necessary provided that the contract of consultancy services to be executed is precisely the services stipulated in said ordinance. In essence, the Ordinance no. 15-2003 already stated what consultancy services should be secured and hence, if the contract for consultancy services to be executed is precisely those as provided in said ordinance, ratification is a mere suplasage.<sup>[7]</sup>

On 21 January 2005, the SPM adopted City Ordinance No. 01-2005 entitled "An Ordinance Appropriating Funds to Cover the Various Expenditures and Activities of the Local Government of Malabon City for the Period from January 01, 2005 to December 31, 2005." The total amount of funds appropriated was P511,070,019 for the spending of the entire city government. Out of this amount, P792,000 was earmarked for consultancy services under the Legislative Secretariat.

On 1 February 2005, petitioner, representing the City Government of Malabon City, entered into Contracts for Consultancy Services with Ms. Jennifer S. Catindig<sup>[8]</sup> and Atty. Rodolfo C. delos Santos (2005 Consultancy Contracts).<sup>[9]</sup> On 11 February 2005, another Contract for Consultancy Services was entered into between Mr. Marvin T. Amiana<sup>[10]</sup> and the city government.

After the signing of their respective contracts, the three consultants rendered consultancy services to the SPM. Thereafter, they were correspondingly paid for their services pursuant to the contracts therefor.

On 19 December 2005, Audit Observation Memorandum (AOM) No. 2005-12-019<sup>[11]</sup> was issued by Ms. Atenie F. Padilla, Supervising Auditor of the City Auditor's Office,

Malabon City, disallowing the amount of three hundred eighty-four thousand nine hundred eighty pesos (P384,980) for being an improper disbursement. The AOM disclosed the following pertinent findings:

- City Ordinance No. 15-2003 dated October 30, 2003 was used as basis of authority in hiring consultants. Analysis of the said City Ordinance revealed that it specifically authorized the former Vice-Mayor, Hon. Mark Allan Jay G. Yambao to enter into a contract for consultancy services in the Sangguniang Secretariat covering the period June to December 2003 only. Said ordinance does not give authority to the incumbent City Vice-Mayor Arnold D. Vicencio to hire consultants for CY 2005.
- Progress accomplishment report for the month, to determine the services rendered were not attached to the disbursement vouchers.
- No information as to what method had been made by BAC in the hiring of individual consultants whether through the selection from several registered professionals who offered consulting services or through direct hiring without the intervention of the BAC.
- Copies of the approved contracts together with supporting documents were not submitted to the City Auditor's Office within five (5) days from execution of the contract for review and evaluation contrary to COA Circular No. 76-34 dated July 15, 1976, thus the City Auditor's Office was precluded to conduct timely review/evaluation to inform management of whatever deficiencies noted so that immediate remedial measures could be properly taken.<sup>[12]</sup>

On 12 May 2006, respondent Elizabeth S. Zosa issued Notice of Disallowance (ND) No. 06-009-101 (05)<sup>[13]</sup> containing the result of the evaluation conducted on the AOM issued by Ms. Padilla. The persons held liable for the disallowed amount relative to the hiring of the three consultants were the following: (1) petitioner, in his capacity as City Vice-Mayor, for certifying that the expenses/cash advances were necessary, lawful and incurred under his direct supervision and for approving the transaction; (2) Mr. Eustaquio M. Angeles, in his capacity as Officer-in-Charge, City Accountant, for certifying to the completeness and propriety of the supporting documents of the expenditures; and (3) Ms. Catindig, Atty. Delos Santos, and Mr. Amiana, as payees. The above-named persons were further directed to settle the said disallowance immediately. Pursuant to Sections 48, 50 and 51 of Presidential Decree No. (P.D.) 1445, the parties found liable had a period of six months within which to file an appeal. The disallowance was anchored on the following findings:

- There was no authority for the incumbent City Vice-Mayor Arnold D. Vicencio to hire consultants for CY 2005. City Ordinance No. 15-2003 dated October 30, 2003 which was used as basis of authority to hire consultants specifically authorized the former Vice-Mayor, Hon. Mark Allan Jay G. Yambao to enter into a contract for consultancy services in

the Sangguniang Secretariat covering the period June to December 2003 only.

- There were no Progress Accomplishment Reports for the month, to determine the services rendered.

- No information as to what method had been made by BAC in the hiring of individual consultants whether through the selection from several registered professionals who offered consulting services or through direct hiring without the intervention of the BAC.<sup>[14]</sup>

On 22 June 2006, the SPM wrote a letter<sup>[15]</sup> informing Ms. Padilla that the three consultants hired by petitioner rendered services covering the period January to December 2005. In its view, the hiring of these consultants and the services they rendered were in good faith.

Aggrieved by the disallowance, petitioner appealed it to the Adjudication and Settlement Board (ASB) of the COA. On 12 June 2007, the ASB issued Decision No. 2007-030,<sup>[16]</sup> the dispositive portion of which reads as follows:

Premises considered, the instant appeal of Hon. Arnold Vicencio is hereby denied. Accordingly, Notice of Disallowance No. 06-009-101 (05) dated 12 May 2006 involving the amount of P384,980.00 representing fees to consultants Mr. Marvin T. Amiana, Atty. Rodolfo Delos Santos and Ms. Jennifer Catindig, is hereby affirmed. However, the instant appeal of Mr. Estaquio Angeles is hereby granted. Mr. Angeles is therefore excluded from the persons liable listed under Notice of Disallowance No. 06-009-101 (05).<sup>[17]</sup>

Thereafter, herein petitioner filed a letter dated 7 July 2007,<sup>[18]</sup> addressed to Hon. Guillermo N. Carague, COA Chairperson. The letter prayed for the reversal and setting aside of the earlier Decision of the ASB.

On 15 February 2008, public respondent issued the assailed Order. It appears that the letter of petitioner was treated as an appeal to the Commission Proper of the COA and was subsequently denied. The dispositive portion states:

WHEREFORE, premises considered, the instant motion for reconsideration, which was treated as an appeal, is denied.<sup>[19]</sup>

On 28 March 2008, the instant Petition was filed, raising the following issue:

WHETHER OR NOT PUBLIC RESPONDENT COMMISSION ON AUDIT COMMITTED SERIOUS ERRORS AND GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT AFFIRMED ASB DECISION NO. 2007-030, RELATIVE TO THE

DISALLOWANCE OF DISBURSEMENTS CONCERNING THE SERVICES  
RENDERED BY HIRED CONSULTANTS FOR THE SANGGUNIANG  
PANLUNGSOD NG MALABON.

On 8 April 2008, this Court directed respondents to comment on the Petition. On 28 July 2008, they filed their Comment, in which they averred that Ordinance No. 15-2003 specifically authorized the expenditure of funds for the compensation of consultants only from June to December 2003. Thus, the contracts for consultancy entered into in 2005 were contrary to the ordinance cited and were therefore void for being unauthorized and bereft of any legal basis. There is also no room for interpretation of the ordinance, as the same is clear, and, additionally, actually contains no preamble. Further, respondents argue that to allow the disbursement of public funds to pay for the services of the consultants, despite the absence of authority for the same, would allow a circumvention of the applicable COA rules and circulars.

Petitioner thereafter filed his Reply to the Comment, in compliance with this Court's 12 August 2008 Resolution. In his Reply, he contended that he had the authority to enter into the consultancy contracts pursuant to Ordinance No. 15-2003. As the ordinance was ambiguous, there was a need to interpret its provisions by looking into the intent of the law. He also manifested that the Ombudsman had dismissed the administrative and criminal Complaints for violation of Republic Act No. (R.A.) 6713 and for Usurpation of Authority, previously filed against him over the same transactions. The Ombudsman held that, while Ordinance No. 15-2003 specifically mentions then Vice-Mayor Yambao, the intent in passing the law may not be ignored. It was the intention of the city council to authorize the Office of the Vice-Mayor to enter into consultancy contracts, and not Vice-Mayor Yambao only. Petitioner also argued that the ends of substantial justice and equity would be better served by allowing the disbursement for consultancy services that have already been rendered.

We deny the Petition.

At the outset, we note that the Petition has a procedural flaw that should merit its outright dismissal. Through the Verification and Certification attached to the instant Petition, petitioner states that the contents of the Petition "are true and correct of [his] own personal knowledge and belief and based on authentic records and/or documents."<sup>[20]</sup> Section 4, Rule 7 of the Rules of Court provides that a pleading required to be verified which contains a verification based on "information and belief" or "knowledge, information and belief," shall be treated as an unsigned pleading. A pleading, therefore, in which the verification is based merely on the party's knowledge and belief – as in the instant Petition – produces no legal effect, subject to the discretion of the court to allow the deficiency to be remedied.<sup>[21]</sup>

In any case, we find no grave abuse of discretion on the part of the COA in issuing the assailed Decision.

Petitioner contends that the ordinance authorizes the Office of the Vice-Mayor, and not Vice-Mayor Yambao in particular, to enter into consultancy contracts. Notably, it was even Hon. Vice-Mayor Benjamin C. Galauran, who was acting Vice-Mayor at the time, who entered into the 2003 Consultancy Contracts. Petitioner also argues that