



Republic of the Philippines
Supreme Court
Manila

EN BANC

TOMAS N. JOSON III,
Petitioner,

G.R. No. 223762

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,*
LEONARDO-DE CASTRO,*
PERALTA,
BERSAMIN,
DEL CASTILLO,*
PERLAS-BERNABE,*
LEONEN,
JARDELEZA,**
CAGUIOA,
MARTIRES,
TIJAM,
REYES, JR.,
GISMUNDO, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

November 7, 2017

Alto Joseph - Pano

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DECISION

TIJAM, J.:

Challenged in this Petition for *Certiorari*¹ is the Decision² dated January 29, 2015 and Resolution³ dated January 19, 2016 rendered by the Commission on Audit (COA) in Decision No. 2015-019 denying the Petition

* On official leave.

** On leave.

¹Rollo, pp. 3-24.

²Id. at 29-38.

³Id. at 39.

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for Exclusion from Liability⁴ filed by Petitioner Tomas N. Joson III and affirming the Notice of Disallowance ND No. L-09-05-005(2004-2007)⁵.

The undisputed facts of the case are as follows:

In 2007, a Special Audit Team (SAT) of the COA conducted a special audit of selected transactions of the Provincial Government of Nueva Ecija for calendar years 2004-2007. The SAT found an irregular award made by the province for the construction of the Nueva Ecija Friendship Hotel to A.V.T. Construction. Thereafter, the SAT issued Notice of Disallowance ND No. L-09-05-005(2004-2007) disallowing the payments made to A.V.T. Construction in the total amount of Php155,036,681.77 on the following grounds:⁶

1. The construction of the Hotel (Phase-II Hotel and Lobby) with a total contract cost of P75,970,000.00 was awarded to A.V.T. Construction, an ineligible contractor, without complying with the eligibility check process, contrary to the provisions of Section 21.2⁷ and 23⁸ of the

⁴Rollo, pp. 72-80.

⁵Id. at 40-44.

⁶Id. at 29.

⁷21.2 Advertising and Posting of the Invitation to Apply for Eligibility and to Bid

21.2.1. Except as otherwise provided in Sections 21.2.3 and 21.2.4 of this IRR-A and for the procurement of common-use goods and supplies, the Invitation to Apply for Eligibility and to Bid shall be:

a) Advertised at least once in one (1) newspaper of general nationwide circulation which has been regularly published for at least two (2) years before the date of issue of the advertisement;

b) Posted continuously in the website of the procuring entity concerned, if available, the website of the procuring entity's service provider, if any, as provided in Section 8 of this IRR-A, and the G-EPS for seven (7) calendar days starting on date of advertisement, if applicable; and

c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for seven (7) calendar days, if applicable, as certified by the head of the BAC Secretariat of the procuring entity concerned.

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⁸Section 23. Eligibility Requirements for the Procurement of Goods and Infrastructure Projects

23.1. The eligibility requirements or statements shall be submitted to the BAC in the form prescribed in Section 23.6 of this IRR-A and in the Instructions to Bidders, in a sealed eligibility envelope duly marked as such: Provided, however, That the minimum requirements provided for in this IRR-A shall be complied with.

The eligibility envelopes of prospective bidders for the procurement of goods shall be submitted, together with the technical and financial envelopes, on or before the deadline specified in the Instructions to Bidders, and shall be opened on the date of the bid opening to determine eligibility of each of the prospective bidders. The eligibility envelopes of prospective bidders for the procurement of infrastructure projects shall be submitted on or before the deadline specified in the Invitation to Apply for Eligibility and to Bid, and shall be opened before the dates of the pre-bid conference and bid opening to determine eligibility of prospective bidders, who shall then be allowed to acquire or purchase the relevant bidding documents from the procuring entity.

23.2. In relation to Section 25 on submission and receipt of bids, and subject to the provisions of Section 21.3 of this IRR-A, the BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of each prospective bidder's eligibility requirements or statements against a checklist of requirements, using a non-discretionary "pass/fail" criteria, as stated in the Invitation to Apply for Eligibility and to Bid, and

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Implementing Rules and Regulations (IRR) of Republic Act (R.A.) No. 9184;

2. Despite the ineligibility issue, two more contracts costing Php35,037,826.50 and Php40,890,744.57, representing additional works for the Hotel, were awarded to the same contractor by way of alternative method of procurement; and

3. The Hotel remains unoperational due to the failure of the contractor to complete the project and the issuance of a Suspension Order effective July 30, 2007 by the project engineer and the provincial engineer duly noted by the former Governor.⁹

The SAT found the members of the Bids and Awards Committee (BAC), the BAC Technical Working Group (TWG), the provincial accountant, the provincial engineer and herein Petitioner in his capacity as

shall be determined as either "eligible" or "ineligible." If a prospective bidder submits the specific eligibility document required, it shall be rated "passed" for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered "failed" for the particular eligibility requirement concerned. If a prospective bidder is rated "passed" for all the eligibility requirements, it shall be considered eligible to participate in the bidding, and the BAC shall mark the set of eligibility documents of the prospective bidder concerned as "eligible." If a prospective bidder is rated "failed" in any of the eligibility requirements, it shall be considered ineligible to participate in the bidding, and the BAC shall mark the set of eligibility documents of the prospective bidder concerned as "ineligible." In either case, the markings shall be countersigned by the BAC chairperson or duly designated authority.

23.3 The BAC shall inform an eligible prospective bidder that it has been found eligible to participate in the bidding. On the other hand, the BAC shall inform an ineligible prospective bidder that it has been found ineligible to participate in the bidding, and the grounds for its ineligibility. Those found ineligible have three (3) calendar days upon receipt of written notice or, if present at the time of opening of eligibility requirements, upon verbal notification, within which to file a request for a reconsideration with the BAC: Provided, however, That the BAC shall decide on the request for reconsideration within seven (7) calendar days from receipt thereof. The BAC may request a prospective bidder to clarify its eligibility documents, if it is deemed necessary. The BAC shall not be allowed to receive, hold and/or open the bids of ineligible prospective bidders: Provided, however, That if an ineligible prospective bidder signifies his intent to file a motion for reconsideration, the BAC shall hold the eligibility documents of the said ineligible prospective bidder until such time that the motion for reconsideration has been resolved. Furthermore, for procurement of goods, the BAC shall hold the bid of the said ineligible prospective bidder unopened and duly sealed until such time that the motion for reconsideration has been resolved.

23.4. Notwithstanding the eligibility of a prospective bidder, the procuring entity concerned reserves the right to review its qualifications at any stage of the procurement process if it has reasonable grounds to believe that a misrepresentation has been made by the said prospective bidder, or that there has been a change in the prospective bidder's capability to undertake the project from the time it submitted its eligibility requirements. Should such review uncover any misrepresentation made in the eligibility requirements, statements or documents, or any changes in the situation of the prospective bidder which will affect the capability of the bidder to undertake the project so that it fails the preset eligibility criteria, the procuring entity shall consider the said prospective bidder as ineligible and shall disqualify it from submitting a bid or from obtaining an award or contract, in accordance with Rules XXI, XXII, and XXIII of this IRR-A.

⁹Id. at 29-30.



provincial governor of Nueva Ecija and as head of the procuring entity, solidarily liable for the disallowed amount. Petitioner was held solidarily liable for entering into the contract with A.V.T. Construction and for approving the payment vouchers to the latter.

Petitioner appealed the disallowance. However, the Director of the Fraud Audit and Investigation Office, Legal Services Sector (LSS) of the COA denied the appeal and affirmed the disallowance in his LSS Decision¹⁰ No. 2009-344 dated November 27, 2009. The dispositive portion thereof reads:

WHEREFORE, premises considered, the instant appeal is denied for lack of merit and ND No. L-09-5-005 (2004-2007) dated May 14, 2009 in the total amount of P155,036,681.77 is hereby affirmed.¹¹

Petitioner then filed a petition for exclusion from liability arguing that he should not be held liable for the disallowed amount since the determination of whether a prospective bidder is eligible or not is the exclusive responsibility of the BAC and if there is indeed a liability, the members of the BAC should be held liable since they are the persons directly responsible for the transaction.

The COA in its Decision No. 2015-019¹² denied the petition. The COA found Petitioner liable for the disallowed amount since he failed to exercise due diligence in the performance of his duty. Had he done so, Petitioner could have discovered the inadequacies of the contract's supporting documents and the winning bidder's ineligibility. Being a signatory in the contracts, Petitioner is presumed to have prior knowledge that the bidding process was tainted with ineligibility. As such, Petitioner cannot seek refuge from the Arias doctrine. The *fallo* thereof reads:

WHEREFORE, in view of the foregoing, the petitions of former Governor Tomas N. Joson III and of Provincial Accountant Romeo T. Del Mundo, both of the Provincial Government of Nueva Ecija, for exclusion from liability under Notice of Disallowance No. L-09-05-005 (2004-2007) dated May 14, 2010 are hereby DENIED. Accordingly, petitioners Joson and Del Mundo, together with the other persons named liable, shall remain solidarily liable for the subject disallowance.¹³

Petitioner filed a motion for reconsideration¹⁴ of the COA decision, but the same was denied by the COA in its Resolution dated January 19, 2016.

¹⁰Id. at 65-71.

¹¹Id. at 70.

¹²Supra note 2.

¹³Id. at 37.

¹⁴Id. at 45-55.

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Hence this Petition raising the following issues:

I. WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT HELD THAT PETITIONER FAILED TO EXERCISE DUE DILIGENCE IN THE PERFORMANCE OF HIS DUTY RELATIVE TO THE AWARD OF THE CONTRACT.

II. WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT COMPLETELY DISREGARDED THE FACT THAT THE PROJECT WAS COMPLETED, ACCEPTED, AND NOW BEING UTILIZED BY THE PROVINCIAL GOVERNMENT.¹⁵

Ultimately, the issue to be resolved in this case is whether the COA gravely abused its discretion in holding petitioner personally liable for the disallowed amount of Php 155,036,681.77.

Petitioner alleged that the COA gravely abused its discretion in holding him personally liable for the disallowed amount. He claimed that the BAC has the responsibility to check and determine the eligibility of the prospective bidders. Thus, petitioner, as head of the procuring entity and the local chief executive, has the right to reasonably rely on the faithful performance by the BAC of its duties. Petitioner further claimed that there was no reason for him to be particularly cautious and probe every step in the bidding process. As head of the procuring entity, he had to rely to a reasonable extent on the good faith of his subordinates in the regular performance of their duties. Finally, petitioner argued that his alleged prior knowledge of the incompleteness of documents and the ineligibility of A.V.T. Construction was merely presumed by the BAC through his signature on the contracts.

On the other hand, respondent argued that petitioner failed to exercise the necessary due diligence in the performance of his duty relative to the award of the contract. Had he done so, petitioner could have discovered the glaring inadequacies of the contract's supporting documents and the winning bidder's ineligibility. Being the signatory in the contracts, he had every opportunity to examine the supporting documents. Thus, petitioner is presumed to have prior knowledge that the bidding process was tainted with irregularity due to non-compliance with the eligibility requirements in R.A. No. 9184. As such, petitioner cannot invoke the doctrine laid down in *Amado C. Arias v. The Sandiganbayan*.¹⁶

¹⁵Id. at 8-9.

¹⁶259 Phil. 794 (1989).

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The petition is granted.

The COA found the petitioner liable under Section 19 of the Manual on Certificate of Settlement and Balances, which provides:

19.1 The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) *the duties, responsibilities or obligations of the officers/persons concerned*; (c) *the extent of their participation or involvement in the disallowed transaction*; and (d) the amount of losses or damages suffered by the government thereby. x x x

x x x x

19.1.2 Public officers who certify to the necessity, legality and availability of funds/budgetary allotments, adequacy of documents, etc. involving the expenditure of funds or uses of government property shall be liable according to their respective certifications.

19.1.3 Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

Related to the foregoing is Section 103 of the Presidential Decree (P.D.) No. 1445 or the Government Auditing Code of the Philippines, which states that:

SECTION 103. *General liability for unlawful expenditures.*— Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

Under this provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present, to wit: (a) there must be an expenditure of government funds or use of government property; (b) the expenditure is in violation of law or regulation; and (c) the official is found directly responsible therefor.¹⁷

Here, petitioner was held liable because he failed to exercise due diligence in the performance of his duty relative to the award of the contract. By his signature in the award of the contract to A.V.T. Construction and the contract itself, the COA held that petitioner is presumed to have prior knowledge that the bidding process was tainted with irregularity due to the ineligibility of A.V.T. Construction. As head of the procuring entity and the

¹⁷*Dr. Salva v. Carague, et. al.*, 540 Phil. 279, 285 (2006).



former governor of Nueva Ecija, the COA maintained that petitioner has a duty to ensure that all the requirements are met and complied with before entering into a contract with A.V.T. Construction.

This Court already discussed the general policy of the Court in sustaining the decisions of administrative agencies as in the case of *Filomena G. Delos Santos, et. al., v. Commission on Audit*¹⁸ that:

At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x.¹⁹

However, We are reminded that said general policy should not be applied in a straitjacket as there are instances wherein the decisions of these agencies should be reviewed by this Court. One of those instances is when the administrative agency committed grave abuse of discretion, as in this case. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.²⁰ In this case, the COA committed grave abuse of discretion in holding petitioner liable for the disallowed amount.

Petitioner as the governor of Nueva Ecija and head of the procuring entity pursuant to its duty provided in Section 37.2.1²¹ of the Implementing

¹⁸716 Phil. 322 (2013).

¹⁹Id. at 332-333.

²⁰*Atty. Nacion v. Commission on Audit, et. al.*, 756 Phil. 62, 72 (2015).

²¹37.2.1 Within a period not exceeding seven (7) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the head of the procuring entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, the head of the procuring entity or his duly authorized representative shall immediately issue the Notice of Award to

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Rules and Regulations of R.A. No. 9184, approved the recommendation of the BAC to award the contract to A.V.T. Construction following their evaluation of all the documents submitted by the latter. Corollarily, petitioner awarded the contract to A.V.T. Construction and signed the same in behalf of the local government of Nueva Ecija.

The payments to A.V.T. Construction was disallowed by COA for the reason that the prequalification or eligibility checklist using the “pass/fail” criteria, the Net Financial Contracting Capacity (NFCC), and Technical Eligibility documents are missing.

It is well to note that the missing documents, the eligibility checklist using the pass/fail criteria,²² the NFCC²³ and the technical eligibility

the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid. In the case of GOCCs and GFIs, the period provided herein shall be thirty (30) calendar days. Within the same period provided herein, the BAC shall notify all losing bidders of its decision. (Emphasis Ours)

²²23.2. In relation to Section 25 on submission and receipt of bids, and subject to the provisions of Section 21.3 of this IRR-A, the BAC shall determine if each prospective bidder is eligible to participate in the bidding by examining the completeness of each prospective bidder’s eligibility requirements or statements against a checklist of requirements, using a non-discretionary “pass/fail” criteria, as stated in the Invitation to Apply for Eligibility and to Bid, and shall be determined as either “eligible” or “ineligible.” If a prospective bidder submits the specific eligibility document required, it shall be rated “passed” for that particular requirement. In this regard, failure to submit a requirement, or an incomplete or patently insufficient submission, shall be considered “failed” for the particular eligibility requirement concerned. If a prospective bidder is rated “passed” for all the eligibility requirements, it shall be considered eligible to participate in the bidding, and the BAC shall mark the set of eligibility documents of the prospective bidder concerned as “eligible.” If a prospective bidder is rated “failed” in any of the eligibility requirements, it shall be considered ineligible to participate in the bidding, and the BAC shall mark the set of eligibility documents of the prospective bidder concerned as “ineligible.” In either case, the markings shall be countersigned by the BAC chairperson or duly designated authority.

²³23.6. Eligibility Check for the Procurement of Goods and Infrastructure Projects - The determination of eligibility shall be based on the submission of the following documents to the BAC, utilizing the forms prepared by the BAC and using the criteria stated in Section 23.11 of this IRR-A:

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j) The prospective bidder’s computation for its Net Financial Contracting Capacity (NFCC) which shall be in accordance with Section 23.11 of this IRR-A; or a commitment from a licensed bank to extend to it a credit line if awarded the contract to be bid, or a cash deposit certificate, in an amount not lower than that set by the procuring entity in the Bidding Documents, which shall be at least equal to ten percent (10%) of the approved budget for the contract to be bid.

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Technical Documents

f) Statement of the prospective bidder of all its ongoing and completed government and private contracts within the relevant period, where applicable, including contracts but not yet started, if any. The statement shall state for each contract whether said contract is:

f.1. Ongoing, Completed or Awarded but not yet started: within the relevant period, where applicable. The statement shall include, for each contract, the following:

f.1.2. For the procurement of infrastructure projects:

- (i) the name of the contract;
- (ii) date of award of the contract;
- (iii) contract duration;
- (iv) owner's name and address;
- (v) nature of work;
- (vi) contractor's role (whether sole contractor, subcontractor, or partner in a joint venture);
- (vii) total contract value at award;

documents, pertain to the pre-qualification stage of the bidding process. Under R.A. No. 9184, the determination of whether a prospective bidder is eligible or not falls on the BAC. The BAC sets out to determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184.²⁴

Thus, the presence of the eligibility checklist, the NFCC and the technical eligibility documents are the obligations and duties of the BAC. The absence of such documents are the direct responsibility of the BAC. Petitioner had no hand in the preparation of the same. He cannot therefore be held liable for its absence.

Yet, the COA held petitioner liable because of his award of the contract to A.V.T. Construction. The COA relied on *Escara v. People*,²⁵ where this Court held that the doctrine in *Arias vs. Sandiganbayan*²⁶ is unavailing due to Escara's foreknowledge of an infirmity in the contract, thus:

We agree with the Sandiganbayan that *Arias* and *Magsuci* find no application to the instant case, thus:

The above defense of Escara cannot exonerate him from criminal liability. It is true that in the cases of *Arias vs. Sandiganbayan* (180 SCRA 309) and *Magsuci vs. Sandiganbayan* (240 SCRA 13), the Supreme Court rejected the theory of criminal liability where the head of office, in discharging his official duties, relied in good faith on the acts of his subordinate. The High Tribunal ruled that there should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction. In this case, however, accused Escara had foreknowledge of the irregularity attendant in the delivery of the lumber supplied by Guadines. In his letter (Exhibit "I") dated January 23, 1993 addressed to Engineer Bert Nierva, of the Provincial Engineering Office of Quezon, he acknowledged that the materials intended for the construction of the Navotas Bridge had been confiscated by the DENR officials. Such foreknowledge should have put him on alert and prompted him, at the very least, to make inquiries into the transaction and to verify whether Guadines had already rectified or submitted the proper

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- (viii) date of completion or estimated completion time;
 - (ix) total contract value at completion, if applicable;
 - (x) percentages of planned and actual accomplishments, if applicable;
 - (xi) value of outstanding works, if applicable;
 - (xii) the statement shall be supported by the Contractor's Performance Evaluation System (CPES) rating sheets, and/or certificates of completion and owner's acceptance, if applicable.

²⁴*COA v. Link Worth International Inc.*, 600 Phil. 547, 556 (2009).

²⁵501 Phil. 532 (2005).

²⁶259 Phil. 794 (1989).

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legal documents to recover the ownership of the confiscated lumber from the DENR. This he did not do. Instead, he immediately signed the Inspection Report (Exhibits "F" and "38-B") and Disbursement Voucher (Exhibits "D" and "11") and looked the other way, thus, ignoring the fact that the lumber he was authorizing payment for had already been confiscated in favor of the government.²⁷

Here, COA alleged that petitioner is presumed to know the infirmity of the contract. The COA in its Decision dated January 29, 2015 reasoned that:

In this case, Governor Joson himself was the signatory in the contracts executed prior to the approval of payments. He had the opportunity to examine the supporting documents even before entering into the contracts. He should not have approved the award and signed the contracts due to the absence of the eligibility documents. And because he was the one who signed the contract on behalf of the province, he is presumed to have prior knowledge that the bidding process was tainted with irregularity due to the absence of complete documents. Thus, Governor Joson cannot seek protection from the Arias doctrine.²⁸

However, in the landmark case of *Arias v. Sandiganbayan*,²⁹ this Court held that the head of the office or agency can rely to a reasonable extent on the good faith of their subordinates, thus:

We would be setting a bad precedent if a head of office plagued by all too common problems—dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence—is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

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We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures, and questioned persons. It is doubtful if any auditor for a fairly sized office could *personally* do all these things in all vouchers presented for his signature. **The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those prepare bids, purchase supplies, or enter into negotiations.** If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and

²⁷*Escara v. People*, supra note 26, at 542-543.

²⁸*Rollo*, p. 36.

²⁹Supra note 16.

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otherwise *personally* look into the reimbursement voucher's accuracy, propriety, and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction.³⁰ (Emphasis Ours)

In this case, We hold that petitioner can invoke the protective mantle of the doctrine laid down in *Arias*. The COA merely presumed petitioner's foreknowledge of the infirmity of the contract on the latter's signature. Unlike in *Escara* where the latter acknowledged in a letter that the materials intended for the construction of the Navotas Bridge had been confiscated by the Department of Environment and Natural Resources (DENR). Thus, Escara should have inquired into the transaction and to verify the ownership of the lumber materials. In the present case, other than the mere signature of the petitioner, no other evidence was presented by the COA to show that petitioner had actual prior knowledge of the ineligibility of A.V.T. Construction. Nothing appears on record that would prompt petitioner to thoroughly review and go over every document submitted by A.V.T. Construction, considering that they were already evaluated and scrutinized by the BAC.

The fact that petitioner is the head of the procuring entity and the governor of Nueva Ecija does not automatically make him the party ultimately liable for the disallowed amount. He cannot be held liable simply because he was the final approving authority of the transaction in question and that the employees/officers who processed the same were under his supervision.³¹

As this Court held in the case of *Ramon Albert v. Celso D. Gangan, et. al.*:³²

We have consistently held that every person who signs or initials documents in the course of transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at a stage where he had no participation. His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence. The fact that such officer signs or initials a voucher as it is going the rounds does not necessarily follow that the said person becomes part of a conspiracy in an illegal

³⁰Id. at 801-802.

³¹*Dr. Salva v. Carague*, supra note 17 at 286 (2006).

³²406 Phil. 231 (2001).

scheme. The guilt beyond reasonable doubt of each supposed conspirator must be established.³³ (Emphasis Ours)

Petitioner, being the head of the procuring entity in addition to his duties as the governor of Nueva Ecija, is responsible for the whole province. With the amount of paperwork that normally passes through in his office and the numerous documents he has to sign, it would be counterproductive to require petitioner to specifically and meticulously examine each and every document that passes his office. Thus, petitioner has the right to rely to a reasonable extent on the good faith of his subordinates.

Mere signature of the petitioner in the award of the contract and the contract itself without anything more cannot be considered as a presumption of liability. It should be recalled that mere signature does not result to a liability of the official involved without any showing of irregularity on the document's face such that a detailed examination would be warranted.³⁴ Liability depends upon the wrong committed and not solely by reason of being the head of a government agency.³⁵

The COA further held that petitioner failed to exercise due diligence because under Section 37.2.3 of the Implementing Rules of R.A. No. 9184, the eligibility requirements are part of the contract. In failing to examine the supporting documents of the contract before he signed the same, petitioner can be held equally liable with the BAC.

Under the Implementing Rules and Regulations of R.A. No. 9184 in Section 37.2.3, the following shall form part of the contract:

- 37.2.3. The following documents shall form part of the contract:
- a) Contract Agreement;
 - b) Conditions of Contract;
 - c) Drawings/Plans, if applicable;
 - d) Specifications, if applicable;
 - e) Invitation to Apply for Eligibility and to Bid;
 - f) **Bidding Documents**;
 - g) Addenda and/or Supplemental/Bid Bulletins, if any;
 - h) Bid form including all the documents/statements contained in the winning bidder's two bidding envelopes, as annexes;
 - i) **Eligibility requirements, documents and/or statements**;
 - i) Performance Security;
 - k) Credit Line issued by a licensed bank in accordance with the provisions of this IRR-A, if applicable;
 - l) Notice of Award of Contract and winning bidder's "Conforme" thereto; and

³³Id. at 243.

³⁴*Governor Enrique T. Garcia, Jr. v. Office of the Ombudsman, et. al.*, 747 Phil. 445 (2014).

³⁵Supra note 32.

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m) Other contract documents that may be required by existing laws and/or the procuring entity concerned. (Emphasis Ours)

However, the said provision does not provide that the head of the procuring entity, in this case, petitioner Governor Joson III, must ensure that each of the above-mentioned documents should be present in the contract before he signs the same on behalf of the local government of Nueva Ecija. What the provision merely provides is that the said documents form part of the contract. The said provision does not mention any direct responsibility on the part of the head of the procuring entity to ensure that the said documents are attached in the contract before signing the same. In fact, in Section 37.2.4³⁶ of the IRR, there is no mention of eligibility documents to facilitate the approval of the contract by the head of the procuring entity.

Assuming that petitioner Joson III committed a mistake in not ensuring that the eligibility documents were attached to the contract, it is settled that mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith.³⁷ In this case, there is no showing that petitioner Joson III was motivated by malice or gross negligence amounting to bad faith in failing to ensure that the eligibility documents of A.V.T. Construction were not attached to the contract. In fact, there was even no evidence that petitioner was aware that A.V.T. Construction was ineligible due to the absence of the pre-qualification or eligibility checklist using the “pass/fail” criteria, the NFCC and the Technical eligibility documents. Good faith is always presumed. Here, the COA failed to overcome the presumption of good faith.

Further, it would be unjust to let petitioner shoulder the disallowed amount not only because petitioner was not the one directly responsible for the absence of the eligibility documents of A.V.T. Construction, but also because the government had already received and accepted benefits from the utilization of the hotel specially when there is no showing that petitioner was ill-motivated or that he had personally profited from the transaction.³⁸ Here, the Nueva Ecija Friendship Hotel, now named Sierra Madre Suites, is fully functional and in operation. It now operates as one of the provincial

³⁶37.2.4. To facilitate the approval of the contract by the head of the procuring entity, the following supporting documents shall be submitted:

- a) Duly approved program of work or delivery schedule, and Cost Estimates;
- b) Certificate of availability of funds;
- c) Abstract of Bids;
- d) Resolution of the BAC or duly designated procurement office recommending Award;
- e) Approval of award by appropriate government approving authority; and
- f) Other pertinent documents that may be required by existing laws and/or the procuring entity concerned.

³⁷*Araullo, et. al., v. Aquino III, et. al.*, 752 Phil. 716, 779 (2015).

³⁸*Melchor v. Commission on Audit*, 277 Phil. 801 (1991) and *Osmena v. Commission on Audit*, 665 Phil. 116 (2011).

government's economic enterprises.⁴⁰ It is therefore unjust enrichment to the prejudice of the petitioner to make him personally liable for the disallowed amount considering that the hotel is being enjoyed and utilized by the provincial government.

WHEREFORE, the instant Petition for Certiorari is **GRANTED**. The Decision dated January 29, 2015 and Resolution dated January 19, 2016 rendered by the Commission on Audit (COA) in Decision No. 2015-019 are hereby **REVERSED and SET ASIDE** insofar as it held petitioner Tomas N. Joson III solidarily liable for the amount of the disallowance.

SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice

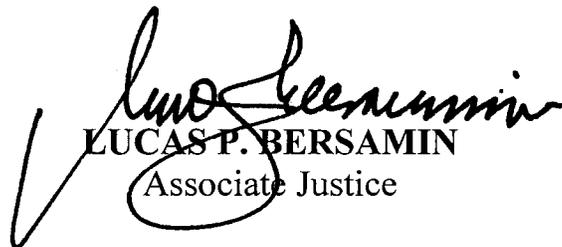
(On official leave)
PRESBITERO J. VELASCO, JR.
Associate Justice

(On official leave)
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice

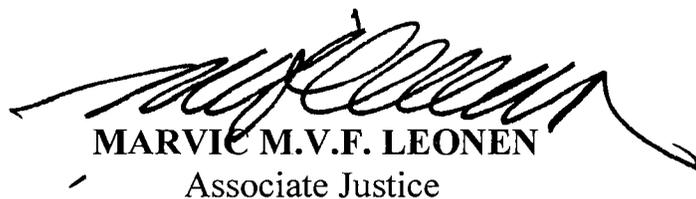
⁴⁰Rollo, pp. 119; 137-145.



LUCAS P. BERSAMIN
Associate Justice

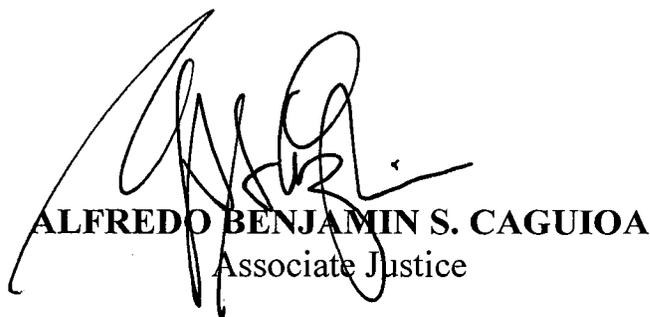
(On official leave)
MARIANO C. DEL CASTILLO
Associate Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice

(On leave)
FRANCIS H. JARDELEZA
Associate Justice

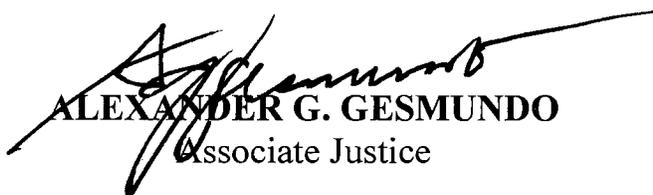


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

Reyes
ANDRES B. REYES JR.
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice

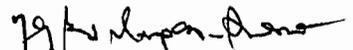
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT