

EN BANC

G.R. No. 240632 – LIBRADO C. NAVARRO, Petitioner, v. COMMISSION ON AUDIT, DIRECTOR RONALD A. REY, REGIONAL DIRECTOR, COMMISSION ON AUDIT, REGIONAL OFFICE NO. XIII, CARAGA REGION, BUTUAN CITY, Respondents.

G.R. No. 240759 – CHARLITO R. LEROG, APRODECIO A. ALBA, ROBERTO V. VIDUYA, DAISY A. RONQUILLO, LORNA S. SALGADO, and BELMA K. LOMANTAS, Petitioners, v. COMMISSION ON AUDIT, represented by CHAIRPERSON MICHAEL G. AGUINALDO, COMMISSIONER JOSE A. FABIA, and COMMISSIONER ISABEL D. AGITO, Respondents.

G.R. No. 240803 – RACQUEL L. BAUTISTA, ESTEFA R. MAATA, and LAILA P. MANLUCOB, Petitioners, v. COMMISSION ON AUDIT, represented by CHAIRPERSON MICHAEL G. AGUINALDO, COMMISSIONER JOSE A. FABIA, and COMMISSIONER ISABEL D. AGITO, Respondents.

G.R. No. 241459 – GILBERT P. ABUGAN, Petitioner, v. COMMISSION ON AUDIT, COMMISSION PROPER, THE REGIONAL DIRECTOR COA R.O. XIII, Respondents.

Promulgated:

August 22, 2023

X

CONCURRING OPINION

LEONEN, J.:

I concur. Respondent Commission on Audit committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the Bislig City Government's procurement of the Komatsu Hydraulic Excavator from RDAK Transport Equipment, Inc. (RDAK).

As guardian of public funds, respondent Commission on Audit has broad and exclusive authority "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.”¹ Cognizant of its discretion in the exercise of its constitutional duty and its expertise in the implementation of the laws it has been entrusted, the Court generally sustains respondent’s decisions or resolutions, unless it acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.² Grave abuse of discretion exists “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.”³

Respondent can only disallow, upon audit, expenditures or uses of government funds and property that are deemed irregular, unnecessary, excessive, extravagant, illegal, or unconscionable.⁴ Illegal transactions are those contrary to law, while “irregular expenditures” are defined under respondent’s rules, as follows:

The term “irregular expenditure” signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of disciplines. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.⁵

Here, respondent found the procurement of the Komatsu Hydraulic Excavator both illegal and irregular, since petitioners allegedly failed to offer plausible explanation in awarding the contract to RDAK, which provided the Komatsu Hydraulic Excavator with a bucket capacity of only 0.80 cubic meter, when the technical specification in the Invitation to Bid specified a bucket capacity of 1 to 1.5 cubic meter.⁶

However, respondent did not specifically claim that the Bislig City Government did not comply with the law or the established rules, regulations, procedural guidelines, policies, principles, or practices. On the other hand, the undisputed facts reveal that the Bids and Awards Committee, through the Technical Working Group, conducted a post-qualification evaluation of RDAK and found its bid to be responsive to the bid specifications,⁷ in compliance with Section 34 of Republic Act No. 9184:

¹ CONST., art. IX-D, sec. 2.

² *Miralles v. Commission on Audit*, 818 Phil. 380, 389 (2017) [Per J. Bersamin, *En Banc*]; *Technical Education and Skills Development Authority v. Commission on Audit*, 729 Phil. 60 (2014) [Per J. Carpio, *En Banc*].

³ *Miralles v. Commission on Audit*, 818 Phil. 380, 389–390 (2017) [Per J. Bersamin, *En Banc*].

⁴ *Id.* at 392.

⁵ COA Circular No. 2012-003 (2012), Item no. 3.1.

⁶ *Ponencia*, p. 6.

⁷ *Id.* at 4.

Section 34. *Objective and Process of Post-qualification.* – Post-qualification is the stage where the bidder with the Lowest Calculated Bid, in the case of Goods and Infrastructure Projects, or the Highest Rated Bid, in the case of Consulting Services, undergoes verification and validation whether he has passed all the requirements and conditions as specified in the Bidding Documents.

If the bidder with the Lowest Calculated Bid or Highest Rated Bid passes all the criteria for post-qualification, his Bid shall be considered the “Lowest Calculated Responsive Bid,” in the case of Goods and Infrastructure or the “Highest Rated Responsive Bid,” in the case of Consulting Services. However, if a bidder fails to meet any of the requirements or conditions, he shall be “post-disqualified” and the BAC shall conduct the post-qualification on the bidder with the second Lowest Calculate Bid or Highest Rated Bid. If the bidder with the second Lowest Calculated Bid or Highest Rated Bid is post-disqualified, the same procedure shall be repeated until the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid is finally determined.

In all cases, the contract shall be awarded only to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.⁸

Per inspection of the delivered Komatsu Hydraulic Excavator on December 8, 2011 and Inspection Report for Equipment and Facilities dated March 7, 2012 of State Auditor Santiago O. Burdeos (State Auditor Burdeos), the Komatsu Hydraulic Excavator conformed with the specifications in the Purchase Order.⁹ Even the reconstituted Regional Technical Audit Team’s June 7, 2017 Inspection Report shows that the actual bucket capacity of the Komatsu Hydraulic Excavator is 0.80 cubic meter with “an additional 30% of its capacity if the excavated materials will not be scraped to level the top edge of the bucket.”¹⁰

The consistent findings of the: (1) Technical Working Group, which is the pool of technical, financial, and/or legal experts to assist in the procurement process;¹¹ (2) State Auditor Burdeos, who did the actual inspection of the Komatsu Hydraulic Excavator; and (3) reconstituted Regional Technical Audit Team in its June 7, 2017 Inspection Report of 0.80 cubic meter with “an additional 30% of its capacity” reveal that the Komatsu Hydraulic Excavator’s bucket capacity complied with the technical specification in the Invitation to Bid. These should have been given greater weight by respondent.

More so when, as aptly pointed out by the *ponente*, both respondent’s Regional Technical Audit Team’s June 28, 2012 Evaluation Report and the reconstituted Regional Technical Audit Team’s June 7, 2017 Inspection Report stating that Komatsu Hydraulic Excavator had a bucket capacity of

⁸ Republic Act No. 9184 (2003), sec. 34. Government Procurement Act.

⁹ *Ponencia*, p. 5.

¹⁰ *Id.* at 8.

¹¹ Republic Act No. 9184 (2003), sec. 12.

only 0.80 cubic meter relied only on page 6 of the Komatsu Hydraulic Excavator PC200-8 Manual (Komatsu Manual). It failed to consider page 7 of the Komatsu Manual, which revealed that bucket capacity specifications are either 1.05 cubic meters or 1.17 cubic meters, and are therefore responsive to the minimum specifications required under the Invitation to Bid.¹²

Finally, the Sandiganbayan Decision, which acquitted petitioners of Republic Act No. 3019 in relation to the procurement of the Komatsu Hydraulic Excavator, discussed in detail the correct bucket capacity of the Komatsu Hydraulic Excavator based on the evidence presented during trial, thus:

The prosecution charged the accused Bautista, Abugan, Manlucob, and Mata (TWG members) of manipulating the Post-Qualification Evaluation Report by indicating that the bucket capacity of the Komatsu unit is 1.0 cubic meters when the same is only 0.80 cubic meter. In supporting its conclusion, the prosecution heavily relied on the Evaluation Report dated 28 June 2012 ... submitted by witness Jabutay and Inspection Report for Equipment and Facilities dated 07 June 2017 ... of witness Burdeos, which found that the Komatsu excavator failed to meet the LGU's specific requirement as the bucket capacity of the Komatsu unit is only 0.80. However, a perusal of the totality of evidence shows the contrary.

It bears to note that the prosecution's reliance on the Evaluation Report of Jabutay is misplaced considering his admission during his presentation that his evaluation was limited only to the documents forwarded to him, and that he did not evaluate the actual performance of the unit. Based on the records, it was Burdeos of the TAS who conducted the actual inspection of the delivered excavator twice.

In the Inspection Report for Equipment and Facilities dated 07 March 2012, prosecution witness Burdeos found the subject unit to have conformed with the specifications provided in the Purchase Order which specified the bucket capacity requirement of 1.0 cubic meter. On cross-examination, Burdeos even affirmed that he did not indicate the bucket capacity of 0.80 cubic meter in his 07 March 2012 Inspection Report because he already verified the 1.0 cubic meter bucket capacity during actual inspection. . .

A scrutiny of the Inspection Report dated 07 June 2017 ... likewise being relied upon by the prosecution which supposedly showed a 0.80 bucket capacity even bolsters the fact that the same is equivalent to 1.0 cubic meter or more. The finding in the said Inspection Report states, among others, that "actual testing of the unit disclosed that its bucket capacity of 0.80 cu. m. can excavate/load with an additional thirty percent (30%) of its capacity if the excavated materials will not be scraped to level the top edge of the bucket." During the cross examination of prosecution witness Burdeos, who conducted the re-inspection and signed the said report, he explained that the computation of the bucket size of 0.80 cubic

¹² Ponencia, p. 6.

meter with additional thirty percent (30%) of its capacity during actual excavation would result to 1.04 cubic meters.

.....

Furthermore, Burdeos clarified during his examination that the 0.80 cubic meter as stated in his Report pertains to the bucket size and that the additional thirty percent (30%) indicated in his report pertains to the capacity of the bucket to excavate.

.....

Based on the foregoing testimony and related documents, the bucket capacity including the heaped or additional capacity of the subject hydraulic excavator indeed conformed to the required specification of 1.0 cubic meter to 1.50 cubic meters. The prosecution thus failed to prove that the TWG manipulated the Post-Qualification Evaluation Report to favor RDAK considering that the delivered unit was compliant with all the required specifications. Such negated manifest partiality, evident bad faith, or gross inexcusable negligence.¹³

Since factual findings of the Sandiganbayan are generally conclusive upon the Court,¹⁴ the *ponencia* aptly relied on the Sandiganbayan Decision to support its factual finding of the correct bucket capacity of the Komatsu Hydraulic Excavator. Thus, it could have refrained from discussing struck capacity and heaped capacity, and ruling that the “heaped capacity is the proper method of measuring the bucket capacity of the Komatsu Hydraulic Excavator as it reflects the actual maximum amount that the hydraulic excavator’s bucket can contain”¹⁵ as this discussion can be misconstrued, beyond our jurisdiction to declare not being technical experts on the matter, and as there was no authoritative basis in its conclusion.

ACCORDINGLY, I vote to GRANT the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice

¹³ *Id.* at 16–17.

¹⁴ *People v. Adana*, G.R. No. 250445, March 29, 2022 [Per J. Inting, First Division].

¹⁵ *Ponencia*, p. 15.