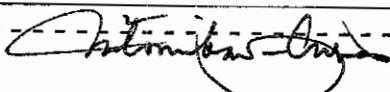


EN BANC

G.R. No. 222810 — FORMER MUNICIPAL MAYOR CLARITO A. POBLETE, MUNICIPAL BUDGET OFFICER MA. DOLORES JEANETH BAWALAN, and MUNICIPAL ACCOUNTANT NEPHTALI V. SALAZAR, *petitioners, versus* COMMISSION ON AUDIT, *respondent*.

Promulgated:

July 11, 2023

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CONCURRING AND DISSENTING OPINION

CAGUIOA, J.:

I concur with the *ponencia* insofar as it finds the propriety of the disallowance for violation of Section 350 of the Local Government Code of 1991¹ (LGC) and Sections 46,² 47,³ and 48⁴ of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code of 1987.⁵

However, I disagree with the ruling that holds that the principle of *quantum meruit* does not apply here.

Brief review of the facts

The Commission on Audit (COA) issued 12 Notices of Disallowance (NDs) amounting to ₱2,891,558.31 to Former Municipal Mayor Clarito A. Poblete of Silang, Cavite, Municipal Budget Officer Ma. Dolores Jeaneth

¹ Republic Act No. 7160, October 10, 1991.

² Section 46. *Appropriation Before Entering into Contract*. – (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and

(2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

³ Section 47. *Certificate Showing Appropriation to Meet Contract*. – Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

⁴ Section 48. *Void Contract and Liability of Officer*. – Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

⁵ Executive Order No. 292, July 25, 1987.



Bawalan, and Municipal Accountant Nephtali V. Salazar (petitioners). The disallowances stemmed from the fact that the Municipality of Silang (Municipality) had undertaken various projects in 2004, 2006, and 2007, which were funded and paid for by the Municipality from its 2010 budget. These local projects covered the concreting of roads at various barangays in the Municipality,⁶ rehabilitation of canal,⁷ improvement of road right of way,⁸ payment of additional materials in Silang Jamboree,⁹ payment for the materials used in the fabrication of long tables,¹⁰ and payment for the installation of additional lights for election day at various schools in the Municipality.¹¹ **All these local projects had been successfully completed and done in accordance with the plans and specifications.**¹²

According to the COA auditors, petitioners violated Section 350 of the LGC which states that all lawful expenditures and obligations incurred during a fiscal year shall be taken up in the accounts of that year.

The COA Regional Office affirmed the NDs, stating that the contracts for the projects were void for being entered into without the necessary appropriation and certificate of availability of funds. On appeal, the COA Proper ruled that the petition was filed out of time due to petitioners' failure to pay the required filing fees within the prescribed period. The COA Proper denied the motion for reconsideration.

On procedural grounds, the *ponencia* finds that the belated payment of filing fees rendered the appeal unseasonable. Thus, the COA Proper did not gravely abuse its discretion in dismissing petitioners' appeal on account of this procedural lapse.¹³

On substantive grounds, the *ponencia* rules that the Municipality violated Section 350 of the LGC by paying for projects from 2004, 2006, and 2007 using appropriations from the 2010 budget. The Municipality also violated Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code of 1987 — the contracts entered into without proper appropriation certification are void, and the officers responsible for them will be held liable for any damages resulting from the transaction. The *ponencia* then notes that the *quantum meruit* principle cannot be applied in this case because there was no prior appropriation for the projects.¹⁴

⁶ *Rollo*, pp. 84-88, ND No. 11-001-101-(10), ND No. 11-002-101-(10), ND No. 11-003-101-(10), ND No. 11-004-101-(10), and ND No. 11-005-101-(10).

⁷ *Id.* at 89 and 92, ND No. 11-006-101-(10) and ND No. 11-009-101-(10).

⁸ *Id.* at 90-91, ND No. 11-007-101-(10) and ND No. 11-008-101-(10).

⁹ *Id.* at 93, ND No. 11-010-101-(10).

¹⁰ *Id.* at 94, ND No. 11-011-101-(10).

¹¹ *Id.* at 95, ND No. 11-012-101-(10).

¹² *Id.* at 75 and 214; emphasis and underscoring supplied.

¹³ *Ponencia*, pp. 6-9.

¹⁴ *Id.* at 9-11.

*Principle of quantum meruit
applicable in this case*

As stated at the outset, I disagree with the ruling that petitioners' invocation of the *quantum meruit* principle should not be favored. I am of the view that such principle should be considered in this case.

While the NDs had already attained finality as to petitioners, who failed to pay the filing fees within the reglementary period, the principle of immutability of judgment admits several exceptions: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. The Court has further allowed the relaxation of the rule on finality of judgments in order to serve substantial justice, taking into account: (1) **matters of life, liberty, honor, or property**; (2) **the existence of special or compelling circumstances**; (3) **the merits of the case**; (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) a lack of any showing that the review sought is merely frivolous and dilatory; and (6) the other party will not be unjustly prejudiced thereby.¹⁵

In *Estrella v. COA*,¹⁶ (*Estrella*) the Court noted that the ND had already attained finality as to one of the petitioners therein, who failed to question the disallowance before the COA National Government Section Director, and sought recourse only by joining the motion for reconsideration of the COA Proper's Decision. Despite the procedural lapse, the Court deemed it necessary to apply the Decision in her favor, resulting in her solidary liability limited to returning only the net disallowed amount, if any.

I believe that the principle enunciated in *Estrella* is applicable to the instant controversy, considering that the ends of justice would be subverted if the Court were to uphold the principle of immutability of judgment notwithstanding the applicability of *quantum meruit*.

At the risk of repetition, the principle of *quantum meruit* should be considered in this case, despite the invalidity of the contracts. The pronouncement in the cases below can be reasonably extended to the present case.

In *Geronimo v. COA, et al.*,¹⁷ the Court held that the “[r]ecovery on the basis of *quantum meruit* was also allowed despite the invalidity or absence of a written contract between the contractor and the government agency.”¹⁸

¹⁵ *Estrella v. COA*, G.R. No. 252079, September 14, 2021; emphasis in the original, citations omitted.

¹⁶ *Id.*

¹⁷ 844 Phil. 651 (2018).

¹⁸ *Id.* at 658.



Furthermore, in the oft-cited case of *Dr. Eslao v. The COA*,¹⁹ the Court granted compensation to the contractor for some accomplished work in the project, even if there was failure to go through the required process of public bidding. The Court reasoned that “[t]o deny the payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another.”²⁰

In *EPG Construction Co. v. Hon. Vigilar*,²¹ the Court refused to stamp with legality the Department of Public Works and Highways’ act of evading the payment of contracts that had been completed, and from which the government had already benefited. The Court held:

Although this Court agrees with respondent’s postulation that the “implied contracts,” which covered the additional constructions, are void, in view of violation of applicable laws, auditing rules and lack of legal requirements, we nonetheless find the instant petition laden with merit and uphold, *in the interest of substantial justice*, petitioners-contractors’ right to be compensated for the “additional constructions” on the public works housing project, applying the principle of *quantum meruit*.²² (Emphasis and citation omitted)

Furthermore, it is crucial to note that even in the absence of a certificate of appropriation and availability of funds, the civil liability of the approving and certifying officers involved should be limited to the damage incurred by the government as a result of the transaction. In this case, it is evident that the government could not have been damaged to the extent that it benefited from the projects. Hence, the determination of petitioners’ liability as officers likewise calls for the application of the principle of *quantum meruit*.

In light of the foregoing, I respectfully submit that despite the invalidity of the contracts resulting from the violation of the LGC and the Administrative Code of 1987, the implementation of the local projects had generated benefits that should not be disregarded. Therefore, the principle of *quantum meruit* should be considered, and the case should proceed with the proper determination of the amounts to be returned by petitioners. **The principle of immutability of final judgment ought not countenance unjust enrichment on the part of the government.**

In this regard, the Court, in *Torreta v. COA*,²³ (*Torreta*) laid down specific guidelines on the return of disallowed amounts in cases involving illegal or irregular government contracts, *viz.*:

¹⁹ 273 Phil. 97 (1991).

²⁰ *Id.* at 107.

²¹ 407 Phil. 53 (2001).

²² *Id.* at 61.

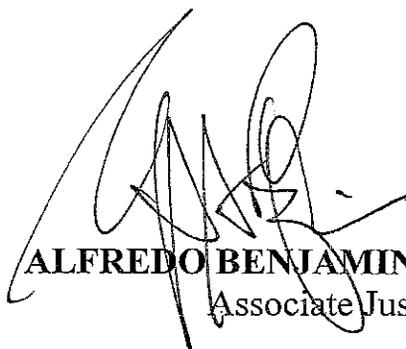
²³ G.R. No. 242925, November 10, 2020.



1. If a [ND] is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a [ND] is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in the regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.
 - c. **The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.**
 - d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.²⁴ (Emphasis supplied, citation omitted)

All told, notwithstanding the propriety of the disallowance, it is improper and unjust under the circumstances to hold petitioners liable for the entire aggregate amount. **It would be the height of injustice to blindly yield to the principle of immutability and leave petitioners solidarily liable for the full disallowed amount without considering the principle of *quantum meruit*.** Applying paragraph 2(c) of the rules in *Toretta*, petitioners' liability for the disallowed amount may be reduced by the amounts due to the recipient.

Based on the foregoing premises, I vote to **PARTLY GRANT** the Petition and that the present case should be **REMANDED** to respondent Commission on Audit for the determination of the amount to which petitioners may be made liable.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

²⁴ Id.