



Republic of the Philippines
Supreme Court
 Manila

EN BANC

PELAGIO T. RICALDE,
 OLIVER B. BUTALID, EFREN V.
 LEAÑO, BOBBY G.
 FONDEVILLA, and ESTELLA F.
 JIMENEZ,

G.R. No. 253724

Petitioners,

Present:

- versus -

GESMUNDO, C.J.,
 PERLAS-BERNABE, S.A.J.,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 GAERLAN,
 ROSARIO,
 LOPEZ, J.,
 DIMAAMPAO, and
 MARQUEZ, JJ.

COMMISSION ON AUDIT,
 COMMISSIONER MICHAEL G.
 AGUINALDO, COMMISSIONER
 JOSE A. FABIA,
 COMMISSIONER ROLAND C.
 PONDOC, DIRECTOR MA.
 CORAZON S. GOMEZ,
 SUPERVISING AUDITOR
 MANUEL A. BAES, and AUDIT
 TEAM LEADER LIBRADA R.
 SANTELICES,

Promulgated:

Respondents.

February 15, 2022

X-----*Atanillas-Castro*-----X

RESOLUTION

M. LOPEZ, J.:

This Petition for *Certiorari*,¹ filed under Rule 64 in relation to Rule 65 of the Revised Rules of Court, seeks judicial review of the Commission on

¹ Rollo, pp. 3-21.

J

Audit (COA) Proper Decision No. 2020-263² dated January 31, 2020, which affirmed with modification the COA National Government Sector (NGS) – Cluster 8 Decision No. 2014-011³ dated August 11, 2014, as amended by Decision No. 2014-11-A⁴ dated February 2, 2016.

FACTS

The Bureau of Investments (BOI) entered into service agreements⁵ with lawyers, namely: Atty. Dennis R. Gascon (Atty. Gascon), Atty. Francesca R. Custodio-Manzano (Atty. Manzano), and Atty. Madonna N. Clarino (Atty. Clarino). Under their contracts, Atty. Gascon was assigned in the Office of BOI Governor Oliver B. Butalid (Butalid), while Atty. Manzano was assigned in the Office of BOI Governor Pelagio T. Ricalde (Ricalde) to perform the following services:

1. Review documents papers and any proposed rules and regulations which the Board of Governors may find relevant to implement in line with its duties to give meaning to the intent of the Omnibus Investments Code of 1987 (Executive Order [EO] No. 226);
2. Prepare draft scheme of the legal steps or requirements for proposing an investment incentives [*sic*] to investors and entrepreneurs, foreign or local, with desired objective of promoting economic growth in the country; and
3. Render legal opinion on issues presented before the Board of Governors which are deemed complicated and may need extensive study and research.⁶

Atty. Clarino was, on the other hand, assigned in the Office of BOI Executive Director Efren V. Leñaño (Leñaño) to render the following services:

1. Attend and provide technical and logistical support to the Committee hearing on the amendments of EO No. 226 and other bills requiring BOI attendance;
2. Draft measures for legislative action on various trade and investments-related [*sic*] matter;
3. Represent the BOI-DTI before judicial and quasi-judicial bodies before whom the BOI-DTI has commenced action or which an action has been filed against it under the supervision of the Office of the Solicitor General;
4. Attend meetings and render legal support for BOI as required;

² Id. at 25-35.

³ Id. at 78-86.

⁴ See Notice of Finality of Decision No. OCD-2016-001(2014)-A; id. at 91-92.

⁵ Id. at 113-129.

⁶ Id. at 79.

5. Provide written/verbal advi[c]e/opinion for internal and external clients of the BOI [, i.e.,] internal – administration, industry, promotional concerns/issues, employees, etc.
External – walk-in/phone in/written queries; and [sic]
6. And such other duties to be assigned from time to time.⁷

In consideration of their services, Atty. Gascon and Atty. Manzano received a monthly salary of ₱25,000.00, while Atty. Clarino received a monthly salary of ₱23,001.60.⁸

Upon post-audit, Notice of Disallowances (ND) Nos. 2012-007-101-(11) to 2012-019-101-(11)⁹ dated May 30, 2012, were issued covering the salaries paid to the three lawyers, amounting to an aggregate of ₱797,790.77,¹⁰ on the ground that their engagement did not have the conformity and acquiescence of the Office of the Solicitor General (OSG), and the written concurrence of the COA in violation of COA Circular No. 86-255.¹¹ The following persons were made liable to settle the disallowed transactions: (1) Atty. Gascon,¹² Atty. Manzano,¹³ and Atty. Clarino¹⁴ as payees; (2) Butalid,¹⁵ Ricalde,¹⁶ and Leaño¹⁷ for entering into the service contracts with the lawyers; (3) Estella F. Jimenez (Jimenez),¹⁸ Chief Accountant, for certifying that the supporting documents for the transactions were complete; (4) Reine Corazon S. Hidalgo,¹⁹ Investment Specialist, for certifying on behalf of Jimenez that the supporting documents were complete; (5) Bobby D. Fondevilla (Fondevilla), Director of Finance and Administrative Services Department (FASD), for approving the payments; (6) Susana E. Corpuz, Human Resource Management Officer V, for certifying that the charges to appropriation/allotment were necessary and lawful and that the supporting documents were valid, proper, and legal; and (7) Lydia D. Ordoñez, Budget Officer, for certifying the availability of funds for the transactions.

On October 10, 2012, the BOI appealed the NDs to the COA NGS-Cluster 8 Director.²⁰ The officers argued that COA Circular No. 86-255 was

⁷ Id.

⁸ Id. at 26.

⁹ Id. at 36-61.

¹⁰ Id. at 26.

¹¹ "SUBJECT: Inhibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases," dated April 2, 1986.

¹² For Notice of Disallowance Nos. 2012-007-101(11) to 2012-009-101(11) only; *rollo*, pp. 36-41.

¹³ For Notice of Disallowance Nos. 2012-010-101(11) to 2012-012-101(11), *id.* at 42-47; and 2012-019-101(11), *id.* at 60-61.

¹⁴ For Notices of Disallowance Nos. 2012-013-101(11) to 2012-018-101(11) only; *id.* at 48-59.

¹⁵ For Notice of Disallowance Nos. 2012-007-101(11) to 2012-009-101(11) only; *id.* at 36-41.

¹⁶ For Notice of Disallowance Nos. 2012-010-101(11) to 2012-012-101(11) only; *id.* at 42-47.

¹⁷ For Notice of Disallowance Nos. 2012-013-101(11) to 2012-018-101(11) only; *id.* at 48-59.

¹⁸ Except for Notice of Disallowances Nos. 2012-008-101(11), *id.* at 38-39; 2012-011-101(11), *id.* at 44-45; and 2012-014-101(11), *id.* at 50-51.

¹⁹ For Notice of Disallowance Nos. 2012-008-101(11), *id.* at 38-39; 2012-009-101(11), *id.* at 40-41; 2012-011-101(11) to 2012-014-101(11) *id.* at 44-51 only.

²⁰ *Id.* at 62-73. A Supplemental Appeal was also filed on November 23, 2012, *id.* at 74-77.

not applicable under the circumstances because the lawyers were hired not as legal counsels, but as technical assistants. They also claimed that Atty. Clarino does not fall within the ambit of a private law practitioner as she had never rendered legal services for compensation before her engagement with the BOI.²¹

In its Decision No. 2014-011²² dated August 11, 2014, the COA NGS-Cluster 8 Director ruled that the requirements under COA Circular No. 86-255, as amended, applies to the hiring of private lawyers for a rendition of *any* legal service. Since the questioned service agreements enumerated a scope of work which required performance of legal services, and the required OSG written conformity and acquiescence and COA written concurrence were not obtained, the disallowance of the salaries paid to the three lawyers was upheld:

WHEREFORE, in view of the foregoing premises, the appeal is hereby DENIED DUE COURSE and is accordingly DISMISSED. Accordingly, the subject [NDs] on the payment of salaries to Attys. Manzano, Gascon, and Clarino for CY 2011 in the total amount of ₱774,189.00 is hereby affirmed.²³

On January 4, 2016, a Notice of Finality of Decision (NFD) No. OCD-2016-001(2014)²⁴ was issued, stating that COA NGS-Cluster 8 Decision No. 2014-011 has become final and executory, there being no petition for review filed within the reglementary period.

On February 2, 2016, Decision No. 2014-011-A²⁵ was issued to correct the disallowed amount stated in Decision No. 2014-011 from ₱774,189.00 to ₱797,790.77 as reflected in the NDs. On even date, NFD No. OCD-2016-001(2014)-A²⁶ was issued for the same purpose.

On March 22, 2016, Butalid, Ricalde, and Leaño filed a Petition for Review²⁷ before the COA Proper to question Decision No. 2014-011-A. The COA Proper gave due course to the appeal despite being belatedly filed, noting that Butalid, Ricalde, and Leaño were notified of the adverse decision only when they received the amended decision and NFD on February 18, 2016.²⁸ In its assailed Decision No. 2020-263²⁹ dated January 31, 2020, the COA Proper ruled as follows:

²¹ Id. at 63-65.

²² Id. at 78-86.

²³ Id. at 85.

²⁴ Id. at 88-89.

²⁵ See Notice of Finality of Decision No. OCD-2016-001(2014)-A; id. at 91-92.

²⁶ Id.

²⁷ Id. at 93-112.

²⁸ Id. at 26.

²⁹ Id. at 25-35.

WHEREFORE, premises considered, the Petition for Review of [Butalid, Ricalde, and Leaño,] all of the [BOI], of [COA NGS-Cluster 8] Decision No. 2014-[0]11 dated August 11, 2014, as amended by COANGS-Cluster 8 Decision No. 2014-[0]11-A dated February 2, 2016, is hereby **DENIED**. Accordingly, [ND] Nos. 2012-007-101(11) to 2012-019-101(11), all dated May 30, 2012, on the payment of salaries of three contractual lawyers for calendar year 2011 in the total amount of [₱]797,790.77 are **AFFIRMED with MODIFICATION, in that Attys. [Gascon, Manzano, and Clarino] are excluded from liability under the NDs.**

[NFD] No. OCD-2016-001(2014) dated January 4, 2016, as amended by NFD No. OCD-2016-001 (2014)-A dated February 1, 2016 [*sic*], is **AFFIRMED** insofar as ND Nos. 2012-007-101(11) to 2012-019-101(11), all dated May 30, 2012, with respect to [Fondevilla], x x x for failure to file an appeal within the reglementary period prescribed by the rules of this Commission. As regards the other persons liable who have seasonably filed an appeal, the NFD is **SET ASIDE**.³⁰ (Emphases supplied.)

Hence, this petition raises the same arguments on the inapplicability of COA Circular No. 86-255, alleging that Atty. Gascon and Atty. Manzano were hired as technical assistants and not as lawyers to represent the BOI before any judicial or quasi-judicial body.³¹ As regards Atty. Clarino, the petition points out that she was not hired on a fixed retainer fee, which the Circular prohibits; and that her salary was not unreasonable, it being at par with a BOI Attorney II's salary. In any case, the petition cites the BOI's "dire need"³² of additional technical staff to justify the engagement of the three lawyers' services and to support the invocation of good faith on the part of the approving and certifying officers. The petition also prays that an equitable resolution be extended to Fondevilla, claiming that his failure to seasonably appeal the COA NGS-Cluster 8 decision was due to lack of notice.³³

In its Comment,³⁴ the OSG points out that only Fondevilla and Jimenez actually filed the present petition as only their signatures appear in the petition, as well as in the Certification Against Forum Shopping.³⁵ As such, the OSG argues for the dismissal of the petition since the COA NGS-Cluster 8 decision is already final and immutable with respect to Fondevilla and Jimenez for their failure to appeal to the COA Proper;³⁶ (2) Fondevilla and Jimenez have no authority to file the petition on behalf of Butalid, Ricalde, and Leaño;³⁷ (3) no Motion for Reconsideration (MR) was filed before the COA Proper resort to the Court;³⁸ and (4) the COA Proper correctly sustained

³⁰ Id. at 33-34.

³¹ Id. at 14.

³² Id. at 14-15.

³³ Id. at 17-19.

³⁴ Id. at 142-171.

³⁵ Id. at 160.

³⁶ Id. at 155-160.

³⁷ Id. at 160-161.

³⁸ Id. at 150-153.

the disallowances and the officers' liability because the questioned engagements were done without the written conformity and acquiescence of the OSG, and the written concurrence of the COA in violation of an established regulation.³⁹

Butalid and Ricalde subsequently joined the petition through a Motion with Leave to Intervene,⁴⁰ which the Court granted in a Resolution⁴¹ dated September 14, 2021.

ISSUE

Stripped of the non-essentials, the Court reckons that the only issue for resolution is whether the COA Proper correctly sustained the disallowance of the payments to Atty. Gascon, Atty. Manzano, and Atty. Clarino, including the BOI officers' liability thereon.

RULING

The petition is partly meritorious.

Propriety of the Disallowance

The long-standing rule in our jurisdiction restricts government agencies and instrumentalities in hiring private lawyers to render legal services for them and handle their cases. The regulation was primarily aimed to curtail unnecessary expenditures of public funds on legal services of private lawyers since the law has already designated the OSG to discharge such functions. The rule, however, recognizes exceptional situations which unavoidably call for the services of private lawyers. Thus, over the years, the government has allowed deviation from the general prohibition subject to certain conditions. For one, pursuant to its constitutional mandate to be the guardian of public funds,⁴² the COA issued Circular No. 86-255 dated April 2, 1986 to regulate the government's hiring of private counsels, which was amended/modified by Circular No. 95-011⁴³ dated December 4, 1995 as follows:

x x x [W]here a government agency is provided by law with a legal officer or office who or which can handle its legal requirements or cases in courts, it (agency) may not be allowed to hire the services of private lawyers for a fee, chargeable against public funds, unless exceptional or extraordinary circumstances obtain x x x.

³⁹ Id. at 153-155 and 162-163.

⁴⁰ Id. at 219-224.

⁴¹ Id. at 236-237.

⁴² SEC. 2(1) and (2), Art. IX, 1987 Constitution; See also *Yap v. Commission on Audit*, 633 Phil. 174, 189 (2010).

⁴³ "SUBJECT: Prohibition against employment by government agencies and instrumentalities, including government-owned or controlled corporations, of private lawyers to handle their legal cases."

Accordingly and pursuant to this Commission's exclusive authority to promulgate accounting and auditing rules and regulations, including for the prevention and disallowance of irregular, unnecessary, excessive, extravagant and/or unconscionable expenditure or uses of public funds and property (Sec. 2-2, Art. IX-D, Constitution), **public funds shall not be utilized for payment of the services of a private legal counsel or law firm to represent government agencies in court or to render legal services for them. In the event that such legal services cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the Commission on Audit shall first be secured before the hiring or employment of a private lawyer or law firm.** (Emphases supplied)

Under COA Circular No. 86-255, as amended by COA Circular No. 95-011, the following indispensable conditions must then be satisfied *before* a government agency or instrumentality hires a private lawyer: (1) the hiring must be justified by an exceptional circumstance; (2) the written conformity and acquiescence of the OSG must be secured; and (3) the written concurrence of the COA must also be obtained.⁴⁴

Recently, COA Circular No. 2021-003⁴⁵ dated July 16, 2021, further amended COA Circular No. 86-255 by exempting national government agencies and instrumentalities from the requirement of the COA's prior written concurrence subject to specific conditions,⁴⁶ the existence of which is to be determined by the COA. The dispensation was brought about by the COA's recognition that the purpose of the COA's written concurrence, *i.e.*, "to ensure the reasonableness of the amount of legal fees"⁴⁷ "may be guaranteed by safeguards other than the requisite COA's written concurrence."⁴⁸ On the other hand, the written conformity and acquiescence of the OSG remains to be an indispensable requirement under the new guidelines for purposes of validating the necessity of procuring services of a private lawyer before actually engaging one.⁴⁹

In this case, petitioners attempt to justify their failure to comply with the requirements under COA Circular No. 86-255, as amended, by asserting the BOI's "dire need" to hire technical assistance from outside the bureau to augment its deficient staff. This general allegation is, however, a factual matter that could have been verified by the OSG had the BOI complied with

⁴⁴ *Alejandrino v. Commission on Audit*, G.R. No. 245400, November 12, 2019; citing *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493, 503 (2003); See also *Polloso v. Gangan*, 390 Phil. 1101, 1108-1109 (2000).

⁴⁵ "SUBJECT: Exempting Government Agencies and Instrumentalities, Including Government-Owned or Controlled Corporations from the Requirement of Written Concurrence from the Commission on Audit on the Engagement of: (1) Lawyers under Contracts of Service or Job Order Contracts; and (2) Legal Consultants, subject to specific conditions."

⁴⁶ See COA Circular No. 2021-003, Item 4.0.

⁴⁷ COA Circular No. 2021-003, Item 1.0, Par. 3.

⁴⁸ COA Circular No. 2021-003, Item 1.0, Par. 6.

⁴⁹ See COA Circular No. 2021-003, Item 1.0, Par. 3.

the requirements under the established rules before it hired private lawyers. At this point, the OSG had already expressed its disapproval of the BOI hirings in arguing for the propriety of the disallowance. Hence, absent any semblance of grave abuse of discretion and also for lack of evidence on record for the Court to make a judicious factual determination, we are constrained to uphold the disallowance.

Furthermore, contrary to petitioners' viewpoint, the prohibition under COA Circular No. 86-255, as amended, does not only cover the engagement of private lawyers on retainer fees for actual case litigations. The amended guidelines in the hiring of private lawyers made no qualification as to what legal service the lawyer is to perform, nor was there any specification as to how his or her services were to be paid. The rules clearly prohibit government agencies and instrumentalities "to hire the services of private lawyers for a fee, chargeable against public funds, unless exceptional or extraordinary circumstances obtain."⁵⁰ In *Polloso v. Gangan*,⁵¹ we settled:

What can be gleaned from a reading of the above circular is that government agencies and instrumentalities are restricted in their hiring of private lawyers **to render legal services or handle their cases. No public funds will be disbursed for the payment to private lawyers unless prior to the hiring of said lawyer, there is a written conformity and acquiescence from the Solicitor General or the Government Counsel.**

Contrary to the view espoused by petitioner, **the prohibition covers the hiring of private lawyers to render any form of legal service. It makes no distinction as to whether or not the legal services to be performed involve an actual legal controversy or court litigation.** Petitioner insists that the prohibition pertains only to "handling of legal cases," perhaps because this is what is stated in the title of the circular. To rely on the title of the circular would go against a basic rule in statutory construction that a particular clause should not be studied as a detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its part. Petitioner, likewise, insists that the service contract in question falls outside the ambit of the circular as what is being curtailed is the payment of retainer fees and not the payment of fees for legal services actually rendered.

X X X X

To give such a technical interpretation to the term "retainer fees" would go against the purpose of the circular and render the same ineffectual. In his resolution, Unit Auditor Alexander Tan expounded on the purpose of the circular, as enunciated therein:

On the claim that COA Circular 86-255 is not applicable in this case because the inhibition provided for in said Circular relates to the handling of legal cases of a

⁵⁰ *Supra* note 42.

⁵¹ 390 Phil. 1101, 1109-1111 (2000).

government agency and that the contractor was not hired in that capacity but to handle legal matters [*sic*] involving right-of-way, it is maintained that the contracted service falls within the scope of the inhibition which clearly includes “the hiring or employing private lawyers or law practitioners to render legal services for them and/or to handle their legal cases. . .” Moreover, **it is important to mention that the intention of said Circular is to curb the observed and persistent violation of existing laws and regulations, including CSC MC # 5 series of 1985 pertaining to the employment of private lawyers on a contractual basis in government agencies which involves the disbursement of public funds by subjecting the same to the conformity and concurrence requirements of said Circular. Being so, the manner of agreed payment or consideration, whether termed as a fixed retainer basis or a fixed contract price patterned after existing salary scale of existing and comparable positions in NPC-VRC is immaterial as both still involve the outlay of public funds and also the contractual employment/hiring of a private lawyer.**

x x x x

It bears repeating that the purpose of the circular is to curtail the unauthorized and unnecessary disbursement of public funds to private lawyers for services rendered to the government. This is in line with the [COA’s] constitutional mandate to 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. x x x.

Hence, as the hiring of Atty. Satorre was clearly done without the prior conformity and acquiescence of the [OSG] or the Government Corporate Counsel, as well as the written concurrence of the [COA], the payment of fees to Atty. Satorre was correctly disallowed in audit by the COA.

Thus[,] being said, it is no longer necessary to delve into whether or not the hiring of Atty. Satorre is in accord with the rules of the Civil Service Commission.⁵² (Citations omitted and emphases supplied)

The Court has invariably sustained this ruling, and we have no reason to dispose this case distinctly.

*Approving and Certifying Officers’
liability on the disallowance*

⁵² Id.

Section 38(1)⁵³ and 39,⁵⁴ Chapter 9, Book I of Executive Order No. 292⁵⁵ or the Administrative Code of 1987 require a clear showing of bad faith, malice, or gross negligence attending the performance of official duties and functions to hold an approving and certifying officer civilly liable. Once bad faith, malice, or gross negligence is established, the liability of approving/certifying officers to return disallowed amounts is not individual, but solidary with all persons taking part in the transaction, including every person receiving such payment⁵⁶ in accordance with Section 43, Chapter 5, Book VI of the Administrative Code, *viz.*:

SEC. 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and **every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.**

x x x x (Emphasis supplied.)

Such solidary liability is justified since the payees could not have received the disallowed amounts if it was not for the officer's errant discharge of his or her official duties or functions.⁵⁷ Parenthetically, when the payees are excused to return the disallowed amount in recognized situations, such as when it was genuinely given in consideration of services rendered or it constitutes payment on the basis of *quantum meruit*, the officers' liability to return must necessarily be extinguished. Indeed, a payment made in consideration of actual services rendered from which the government benefitted, albeit irregular or unlawful for some reason, cannot be considered as an undue leakage from the public coffers to still require its return from the payees, much more from the public officers. Otherwise, the government will be unjustly enriched as it will be allowed to reap the benefits of the payees' services at the expense of another.

Verily, in *Madera v. Commission on Audit*,⁵⁸ we introduced the concept of "net disallowed amount" to clarify the nature and extent of the approving

⁵³ SEC. 38. Liability of Superior Officers. — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

x x x x

⁵⁴ SEC. 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

⁵⁵ Entitled, "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987,'" approved on July 25, 1987.

⁵⁶ See *Abellanosa v. Commission on Audit*, G.R. No. 185806, November 17, 2020.

⁵⁷ *Id.*

⁵⁸ G.R. No. 244128, September 8, 2020.

and/or certifying officers' liability in a disallowed transaction *vis-à-vis* that of the payees'. We ruled:

With the liability for unlawful expenditures properly understood, x x x **any amounts allowed to be retained by payees shall reduce the solidary liability of officers** found to have acted in bad faith, malice, and gross negligence. In this regard, [Justice Estela Perlas-Bernabe] coins the term "**net disallowed amount**" to refer to the **total disallowed amount minus the amounts excused to be returned by the payees**. Likewise, [Justice Marvic Leonen] is of the same view that **the officers held liable [to] have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability.**⁵⁹ (Citations omitted and emphases supplied.)

In *Torreta v. Commission on Audit*,⁶⁰ we laid down specific guidelines on the return of disallowed amounts in cases involving irregular or illegal government contracts, *viz.*:

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

x x x x

- b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted in 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.

x x x x⁶¹ (Emphases supplied.)

Therefore, notwithstanding affirmance of the disallowance, the approving and certifying officers cannot be made accountable for the refund of the disallowed amount since the COA Proper had already determined the propriety of allowing the payees to retain all the payments made to them for their services. To rule otherwise would pave the iniquitous denouement of enriching the government at the expense of the officers.

Petitioners' failure to file MR and finality of the COA NGS-Cluster 8 decision as regards Fondevilla and Jimenez

⁵⁹ Id.

⁶⁰ G.R. No. 242925, November 10, 2020.

⁶¹ Id.

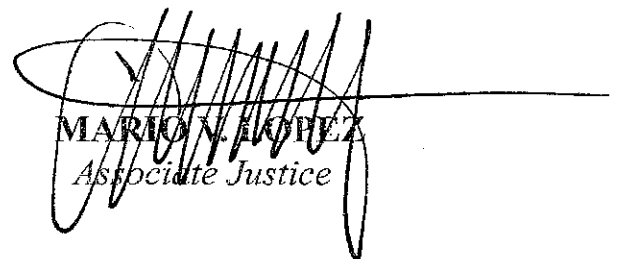
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In view of the foregoing discussion on the merits of the case, we find that petitioners' direct resort to the Court, as well as Fondevilla and Jimenez's failure to appeal to the COA Proper, is not sufficient to warrant the outright dismissal of the present petition. It is settled that the rule on the filing of an MR as a condition for the filing of a petition for *certiorari* admits of exceptions, such as when an MR would be useless as in this case wherein NFDs were already issued, and the issues raised are the same as those raised and passed upon in the COA proceedings.⁶¹ As well, this is not the first time that the Court has allowed the relaxation of the rule on finality of judgments to serve substantial justice, taking into account matters of property and the merits of the case.⁶² It would be improper to blindly yield to procedural rules and leave the approving and certifying officers liable for the disallowed amount when case laws and the governing laws and rules provide otherwise. After all, procedural rules are tools and implements for us to expedite the orderly disposition of cases and are not intended to impede the cause of justice.

Finally, we clarify that this disposition is without prejudice to any appropriate administrative or criminal actions that may be pursued against the responsible officers pursuant to existing laws and jurisprudence on illegal procurements.

FOR THESE REASONS, the Petition for *Certiorari* is **PARTLY GRANTED**. Decision No. 2020-263 dated January 31, 2020 of the Commission on Audit Proper is **AFFIRMED with MODIFICATION** in that the approving and certifying officers need not refund the disallowed amount.

SO ORDERED."



MARIO N. LOPEZ
Associate Justice

⁶¹ See *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019.

⁶² *Id.*

WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

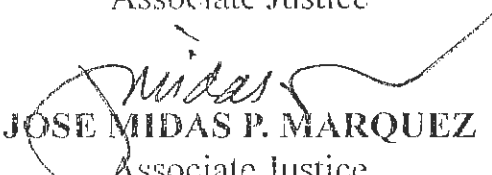

RODIE V. CALAMEDA
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

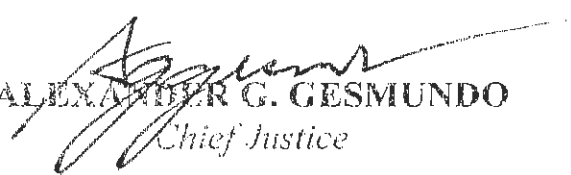

JOSE MIDAS P. MARQUEZ
Associate Justice

CERTIFICATION

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

CERTIFIED TRUE COPY


MARIA LUISA M. SANTILLA
Deputy Clerk of Court and
Executive Officer
OCC-En Banc, Supreme Cour


ALEXANDER G. GESMUNDO
Chief Justice