

Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 114864 December 6, 1996

NATIONAL CENTER FOR MENTAL HEALTH MANAGEMENT, NAMELY DR. BRIGIDA S. BUENASEDA, ISABELO BANEZ, ENGR. CONRADO REY-MATIAS, CORA SOLIS, AND ENYA LOPEZ, petitioners,

vs.

COMMISSION ON AUDIT, respondent.

VITUG, J.:p

The 17th March 1994 decision ¹ of the Commission on Audit ("COA") affirming the Special Audit Office ("SAO") Report ² No. 89-125 and Evaluation Report of 02 August 1993, is assailed by top officials of the National Center for Mental Health Management ("NCMHM"), herein petitioners, in this special civil action for *certiorari*.

An increase in its budgetary allocation of from P145 million in 1987 to P191 million in 1988 enabled petitioner NCMHM, headed by Dr. Brigida Buenaseda, to finally undertake the rehabilitation apparently long overdue, of various facilities in the NCMHM. Included in its improvement efforts were several major repairs of, and renovations on, the center's approximately 120 pavilions and buildings in a vast compound of about 46.7 hectares. A long-term enhancement program to provide a healthy and pleasant environment, considered to be an essential part in the correct treatment of mental illnesses, was also implemented. The task was not easy, the plan was costly, but it had to be done fast if the mental health care services in the country were to be put to a suitable state.

Soon after most of the work was accomplished, the NCMHM Nurses Association lodged with the Office of the Ombudsman a complaint against petitioners for alleged mismanagement of funds. At the same time, the group asked the COA to undertake an audit of the NCMHM. Acting on the request, the COA directed an audit, covering the transactions made in 1988 and the first four (4) months of 1989, to be conducted by a Special Audit Team ("SAT"). On 27 July 1992, the SAT submitted its SAO Report No. 89-125 to then COA Chairman Eufemio Domingo which showed that, from 1988 to April 1989, P13.874 million of NCMHM's Maintenance and Operating Expenses ("MOE") budget had been used for renovation, improvement, sanitation, and other projects. The report was replete with adverse findings and observations against NCMHM, viz:

1. More supplies and proper health care could have been provided to meet the needs of the hospital patients had the Center systematically planned the beautification and sanitation program and economized on expenditures of at least P13.874 million, a big bulk of which are unnecessary, extravagant and/or excessive. While the incurrence of these expenditures made the physical surroundings pleasant, it left some basic hospital needs unattended to or given minimal attention.

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2. The government spent an additional P2.85 million in its purchase of Ferchem brand of sanitation supplies worth P4.8 million thru exclusive distributor. Equivalent products of known quality/preferred brands at lower cost are available in the market. Furthermore, the purchase was covered by split requisitions, purchase orders and payments ranging from P63,000 to P99,000. each.

3. Overpricing of P3.750 million ranging from 23.58% to 342.28% were noted in the purchase of various supplies and equipment.

4. The steel railings installed in the hospital premises was short by 394.47 lineal meters and yet the order was paid in full resulting in an overpayment of P446,957.

5. Services rendered to the in-patients treated do not warrant the purchase of expensive equipment such as a laser and seven units light cure machine worth P995,000 and P245,000, respectively.

6. Prudence was not exercised in the purchase of equipment. Equipment worth P375,719 were either unused or unnecessary. An equipment purchased for P176,855 was used by the contractor for no charge at all.

7. The procurement of beautification and sanitation supplies/materials and the execution of the contracts for the repair/rehabilitation works were tainted with irregularities.³

On the basis of its findings and observations, the SAT made its recommendations which, in material portions, read:

8. Prosecute and charge appropriately, concerned officials responsible in the disbursement of government funds involving the following acts or omissions, if warranted:

8.a Non-adherence to the provisions of COA Circular No. 85-55A and Executive Order No. 301 requiring public bidding in the procurement of supplies and materials; and the conduct of simulated sealed bidding.

8.b Incurrence of unnecessary, extravagant and excessive expenditures in violation of COA Circular No. 85-55A.

8.c Splitting of purchase order and payments involving procurement of supplies and materials as well as in the repair projects.

8.d Overpricing in the procurement of supplies and materials.

8.e Non-adherence to the provisions of P.D. No. 1594 requiring public bidding for construction projects.

8.f Alteration of dates of contracts, program of works, quotation, etc. punishable under Article 171(5) of the Revised Penal Code.⁴

The report was transmitted by the COA Chairman to the NCMHM, through Dr. Buenaseda, for its notification and proper guidance.

On 09 June 1993, Dr. Buenaseda, in representation of NCMHM, submitted a position paper to the COA that, among other things, asked for a reevaluation and reconsideration of the audit report with a request that all parties concerned should be made to appear before an impartial COA Review Panel for a hearing.

On 26 July 1993, the scheduled hearing was held. After considering the points raised by petitioners, as well as the rebuttal thereof by the audit team, the Review Panel submitted its Evaluation Report, dated 02 August 1993, approved by COA Chairman Pascacio Banaria, adopting the audit team's rebuttal to be the COA Review Panel's final report on the case.⁵

On 10 August 1993, petitioners brought the SAO Report No. 89-125 and the 02 August 1993 Evaluation Report up for review by the COA *en banc*. Save for a favorable action regarding the alleged shortage of steel railings,⁶ COA, in its now challenged 17th March 1994 decision, denied petitioners' appeal on the strength of its following disquisitions; *viz*:

The first assigned error on ALLEGED OVERPRICING OF VARIOUS ITEMS, refer to the following purchases/or procured items;

1. Steel railings (3,000 lineal meters)

2. Street lights;
3. Wooden benches (843 pcs.), and steel/iron benches (448 pcs.)
4. Sanitation supplies;
5. Concrete benches (217 units);
6. Concrete pipes/wastebaskets (155 pairs);
7. Trash cans (240 pcs.); and
8. Various supplies and tools, etc.

and is reported on pages 55 to 82 of the SAO Report. Respondent-appellant's contention in her Comment to the said SAO Report and in her Position Paper submitted on June 9, 1993, were already amply discussed and considered by the COA Review Panel. Evidently, no additional issues were raised in the appeal, except with respect to the alleged irregularity and immateriality of the evaluation by way of recomputation by the Technical Audit Specialist and the canvass conducted by the Price Evaluation Division, Technical Service Office (TSO), which is *after the fact, i.e.*, after the submission of the SAO Report and after the hearing before the Review Panel. This commission did not find any irregularity in referring technical issues, subject of the Audit Report to experts, like the Technical Audit Analyst, for validation of the said audit findings. The TAS report is material and relevant in the resolution of the issue of overpricing. The cited *Areola v. COA* case (202 SCRA 147) is not applicable to the present case, for the simple reason that the herein respondent-appellant has ample access to source documents and records to satisfy NCMH management or the respondent-appellant that COA guidelines on unnecessary, irregular, excessive, extravagant or unconscionable expenditures have been observed. (Sec. 2(2) Article IX-D, 1987 Constitution; COA Circular 85-55-A, dated September 28, 1985). This is an official duty and function of the procurement or canvass committee of the agency. On this issue of over-pricing, the Commission hereby affirms the aforesaid audit finding.

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The third assigned error on "ALLEGED SPLITTING," pertains to the procurement of sanitation supplies, repairs and maintenance. No additional issue or argument has been raised on appeal respecting this error, except the allegation that the audit report did not state any damage to the Government. This is true, but definitely, there was unwarranted benefit to Rufina Fermin Marketing, Inc., the distributor and dealer of Ferchem Brand of sanitation supplies worth P40 Million

perpetrated thru the manifest partiality and evident bad faith on the part of NCMH Management headed by respondent-appellant. The cited *Mison* case (no citation on the appeal) that COA Circular No. 76-41 "is a prohibition against splitting of requisitions, purchase orders, vouchers, and others" is not applicable herein because the 403 contracts entered into by NCMH and the series or phases of construction works in this case do not fall under this violation. It can be considered as a contract disadvantageous to the Government. This Commission finds no sufficient basis for reversing the finding of "splitting," hence will affirm this audit finding.

Anent the fourth assigned error on "ALLEGED VIOLATION OF REGULATIONS OF PUBLIC BIDDING," respondent-appellant did not present any additional argument on appeal. This commission, therefore, affirms this audit finding on the legal necessity of canvass and public bidding required under Executive Order No. 301 and PD 1594, in case of infrastructure projects, although the funds involved in this case pertain to MOOE.

The fifth assigned error on "ALLEGED UNNECESSARY, EXTRAVAGANT OR EXPENSIVE EXPENDITURES," refer to the procurement and purchase of the following:

1. Curtains;
2. Accordion Dividers;
3. Steel Railings;
4. Street Lights;
5. Steel benches;
6. Wooden benches;
7. Concrete benches;
8. Concrete pipes and wastebaskets;
9. Dental laser equipments and light cure machines; and
10. Incinerator and compactor.

The justification for the procurement and purchase of the above-listed items are specifically enumerated and discussed in the Position Paper of the respondent-appellant, *supra*. Although NCMH management has the absolute and/or sole

discretion on matters affecting the use of its funds for a particular purpose, *i.e.*, MOOE, as specifically stated in its budget, this must yield to the constitutionally mandated power of the Commission to prevent the incurrence of irregular, unnecessary, excessive, extravagant or unconscionable use of public funds. In the light of the operational definition of these expenses and the standard or list of situational cases indicated in COA Circular No. 85-55-A, *supra*, the COA Review Panel has considered the explanations and justifications of respondent-appellant to be untenable. There being no additional issue or argument adduced in the appeal, this Commission hereby affirms this audit finding.

The sixth assigned error on "ALLEGED UNLAWFUL ALTERATION OF DATES" of contracts, program of works, quotation and other documents, due to alleged alterations and superimposition of dates in the covering contracts, program of works, quotations and others, to suit the normal sequence of processing, affect adversely the integrity of the pertinent documents. It is a settled jurisprudence, that the custodian or the person in possession of a spurious/falsified document is presumed to be the falsifier. There being no additional issue or argument adduced on this assigned error, this Commission likewise affirms this particular audit finding.⁷

Unable to accept the decision, petitioners have lodged this petition for *certiorari* in which they impute grave abuse of discretion on the part of the COA. Petitioners also claim a denial of due process. Petitioners, in main, assert that the findings found in both questioned reports are not substantiated by evidence but predicated mainly on suspicion and that the findings and recommendations of the SAT have been made without fully appreciating the circumstances peculiarly attendant to the operation of the center.

Petitioners' averment that there was a denial of due process would indeed appear to stand on shaky ground. At the request of petitioners made shortly after receiving the SAO Report for a reevaluation of the case, COA had the matter taken up anew. Hearings were conducted, and position papers were submitted. The Court need not thus be detained any further on this issue.

On the principal points raised, however, the Court does see merit in the position of petitioners.

Properly invoked is *Arriola vs. COA*⁸ where this Court has ruled that price findings reflected in a report are not, in the absence of the actual canvass sheets and/or price quotations from identified suppliers, valid bases for outright disallowance of agency disbursements for governments projects. There, furthermore, the Court has held:

A more humane procedure, and totally conformable to the due process clause, is for the COA representative to allow the members of the Contracts Committee *mandatory access to the COA source documents/canvass sheets*. . . .

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By having access to source documents, petitioners could then satisfy themselves that COA guidelines/rules on excessive expenditures had been observed. The *transparency* would also erase any suspicion that the rules had been utilized to terrorize and/or work injustice, instead of ensuring a "working partnership" between COA and the government agency, for the conservation and protection of government funds, which is the main rationale for COA audit." (emphasis supplied.)⁹

Petitioners, it would seem, were furnished with copies of COA's canvass only on certain but not on all contested items.

The SAT Report, which mentioned the corresponding price per canvass of the subject items,¹⁰ contained the following tabulation:

Discussion

as to IUEE in % of Over

Finding No. pricing base

Items Quantity Purchase *Per Canvass* Overpricing on Canvass

1.b Steel Railing 1,960.63 P2,230,457.79 P504,303.95 P1,726,153.84 342.28%

(at P1,133)

Street Lights 162 units 1,157,582.34 393,660.00 763,922.34 194.06%

1.d Steel Benches 448 pcs. 659,456.00 229,017.60 430,430.40 187.95%

1.e Plant Wooden

Fence 843 pcs. 547,064.85 271,117.23 2675,947.62 101.78%

1.g Concrete

Benches 217 pcs. 321,811.00 260,400.00 61,411.00 23.58%

1.l Trash Cans 240 pcs. 170,400.00 115,200.00 55,200.00 47.92%

1.h Concrete

Pipes &

Wastebaskets 155 pcs. 258,385.00 163,445.95 94,939.05 58.09%

Totals P5,345,156.98 P1,937,144.73 P3,408,012.25 175.93%

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SAT's findings of overpricing were subsequently referred for evaluation to the COA's Technical Audit Analyst/Civil Engineer of the Technical Services Office which, in turn,

relied on a cost comparison based on unit cost furnished by the Price Evaluation Division of the Technical Services Office. The result of the recomputation on the supposed overpricing on six ¹¹ out of the eight items evaluated showed the following figures; viz:

	% of	Items	Quantity	Purchase	Unit Cost	Evaluation	Overpricing	Overpricing
Steel Railings	1,958.58	P2,230,752.79	460.56	P906,475.36	P1,323,982.43	146.06%		
Street Lights	162 units	1,156,582.34	6,688.25	1,083,496.50	74,085.84	6.84%		
Steel Benches	448 pcs.	659,456.00	1,044.30	467,846.40	191,609.60	40.95		
Plant Wooden Fence	843 pcs.	547,064.85	314.83	265,401.69	281,663.16	106.12%		
Concrete Benches	217 pcs.	321,811.00	1,125.70	244,276.90	77,534.10	31.74%		
Trash Cans	240 pcs.	170,460.00						
Concrete Pipes	155 pcs.	170,500.00	900.00	139,500.00	31,000.00	22.22%		
Waste Basket	155 pcs.	87,885.00						
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Total	P5,345,216.98							
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Add: Result of Canvass by the Price Evaluation Division	341,747.50.							
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	P2,321,622.63 ¹²							

It would be difficult to concede to the quoted summary of overpricing made by the Technical Audit Analyst to be a final basis for an out-and-out rejection of agency disbursements/cost estimates in the absence of actual advance sheets and/or price quotations from identified suppliers.

With regard to the transaction involving the acquisition of sanitation supplies worth P4.8 million from Rufina Fermin Marketing, Inc., the COA concluded that the requisitions, purchase orders and payments were split into several parcels and amounts ranging from P63,000.00 to P90,000.00 in order to make them fall within the "signing authority" of the Chief of the center pursuant to DOH Circular No. 40. ¹³ The COA, however, viewed this issue of "splitting" from an angle that there was unwarranted benefit extended to Rufina Fermin Marketing, Inc., and perpetrated through manifest partiality and evident bad faith on the part of petitioners; viz:

The third assigned error on "ALLEGED SPLITTING," pertains to the procurement of sanitation supplies, repairs and maintenance. No additional issue or argument has been raised on appeal respecting this error, except the allegation that the audit report did not state any damage to the Government. This is true, but definitely, there was unwarranted benefit to Rufina Fermin Marketing, Inc., the distributor and dealer of Ferchem Brand of sanitation supplies worth P40 Million perpetrated thru the manifest partiality and evident bad faith on the part of

NCMH Management headed by respondent-appellant. The cited *Mison* case (no citation on the appeal) that COA Circular No 76-41 "is a prohibition against splitting of requisitions, purchase orders, vouchers, and others" is not applicable herein because the 403 contracts entered into by NCMH and the series or phases of construction works in this case do not fall under this violation. It can be considered as a contract disadvantageous to the Government. This Commission finds no sufficient basis for reversing the finding of "splitting," hence will affirm this audit finding.¹⁴

Public respondent discarded rather hastily, if not unfairly, the factors that were actually taken into account by petitioners before the purchases were effected; hence: *First*, the chemicals ordered by NCMHM were water-based which had been tested to be not only more effective than the kerosene-based chemicals, but most importantly (considering the mental condition of its patients), to be non-toxic and harmless even if taken internally; *second*, all previous purchases of the chemicals had received the approval of the Review and Evaluation Committee of the Department of Health; *third*, the price paid by NCMHM had remained constant since 1984; *four*, there had been no suitable substitute with the same quality in the local market; and, *fifth*, the chemicals (Ferchem) used by NCMHM had passed the tests conducted by the National Institute of Science and Technology Administration ("NISTA"). It might additionally be pointed out that the purchase of sanitation supplies for the year 1988 not only covered varied items but also made at obviously different times.

Looking into the supposed violation by petitioners of the applicable regulations on public biddings, Executive Order 301¹⁵ sets the parameters for decentralization of negotiated contracts and broadly enumerates the exceptions from the requirement of public bidding; to wit:

- a. Whenever the supplies are urgently needed to meet an emergency which may involve the loss of, or danger to, life and/or property;
- b. Whenever the supplies are to be used in connection with a project or activity which cannot be delayed without causing detriment to the public service;
- c. Whenever the materials are sold by an exclusive distributor or manufacturer who does not have subdealers selling at lower prices and for which no suitable substitute can be obtained elsewhere at more advantageous terms to the government;
- d. Whenever the supplies under procurement have been unsuccessfully placed on bid for at least two consecutive times, either due to lack of bidders or the offers received in each instance were exorbitant or non-conforming to specifications;

e. In cases where it is apparent that the requisition of the needed supplies through negotiated purchase is most advantageous to the government to be determined by the Department Head concerned; and

f. Whenever the purchase is made from an agency of the government.

While the items for renovation and improvement of the center, on the surface, might seem not too urgent in nature, petitioners, however, did plausibly come out with the fact that the questioned transactions were indeed long overdue. The delay made it most compelling to fast track what had been felt to be essential in providing due and proper treatment and care for the center's patients.

The sanitation supplies from Ferchem, Inc., were sold by an exclusive distributor, and while there could have been substitute items, the judgment of the NCMHM, however, on the suitability of the product, given the nature of its services, should be accorded respect.

Expenditures on such other items¹⁶ as P5.26 million for furnishing the hospital with curtains, P1.837 million for garden soil, P1.150 million for repairs of street light, a laser dental equipment, together with light cure machines, for a total price of P1,240,000.00, an incinerator for P99,000.00 and vibration compacts for P176,055.00, are reported to be unnecessary, and extravagant. The charge is not consistent with COA Circular No. 88-55-A, dated 08 September 1985, which defines the terms "unnecessary"¹⁷ and "extravagant"¹⁸ to pertain —

. . . to expenditures which could not pass the test of prudence or the obligation of a good father of a family, thereby non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This could also include incurrence of expenditure not dictated by the demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrust of the agency incurring the expenditure must be considered in determining whether or not the expenditure is necessary (COA Cir. 88-55A,*supra*).

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The term "extravagant expenditures" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, wasteful, grossly excessive, and injudicious (COA Cir. 88-55A,*supra*).

The purchase of curtains may have amounted to P5.26 million; considering, however, the more than a hundred¹⁹ pavilions and buildings in the center's vast compound, the amount cannot be said to be all that extravagant. Petitioners have explained that the curtains are made of thick fabric in order to guard against patients easily stripping or destroying the materials. The purchase by NCMHM of 462 truckloads of garden soil and filling materials has been made because of the need to fill up the low areas within the compound for the safety of patients and to solve, at the same time, the drainage problem. The repair of street lights, besides being a safety measure, is designed to prevent the escape, as well as the unauthorized movements, of patients from the different wards of the hospital. The purchase of incinerator, vibration compacts and two hundred forty (240) trash cans for the proper disposal of garbage, particularly because the center's patients could be so oblivious to proper sanitation, hardly can be categorized as unnecessary.

Relative to the laser dental and light cure machines, the Dental Service Office personnel of the NCMHM should be the most competent people to determine the types of equipment that are peculiar to their needs, and their discretion should be given due weight and regard in the absence of a clear finding of impropriety. The Purchase Order of the questioned equipment, in fact, was approved by the Department of Health and that the need for its procurement was justified during the budget hearing conducted by the Department of Budget and Management and the Department of Health.

COA Circular 88-55-A states:

2.2 The service mission, size, systems, structure, strategy, skills, style, spirit and financial performance of government agency are the primary considerations in determining whether or not their expenditures are irregular, unnecessary, excessive or extravagant.²⁰

Then COA Chairman Francisco Tantuico, Jr.,²¹ comments:

The terms "irregular," "unnecessary," "excessive," and "extravagant," when used in reference to expenditures of funds or uses of property, are relative. The determination of which expenditure of funds or use of property belongs to this or that type is situational. Circumstances of time and place, behavioral and ecological factors, as well as political, social and economic conditions, would influence any such determination. Viewed from this perspective, transactions under audit are to be judged on the basis of not only the standards of legality but also those of regularity, necessity, reasonableness and moderation.²²

In passing, nothing before us suggests, even remotely, that the disbursements have been made for personal or selfish ends.

WHEREFORE, the instant petition is GRANTED. The decision of respondent Commission on Audit, dated 17 March 1994, is REVERSED and SET ASIDE. No costs.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Hermosisima, Jr., Panganiban and Torres, Jr., JJ., concur.

Footnotes

1 Annex "A," Petition, *Rollo*, pp. 73-78.

2 Annex "B," Petition, *Rollo*, pp. 87-197.

3 *Rollo*, pp. 80-83.

4 *Rollo*, p. 86.

5 Annex "F," Petition, *Rollo*, p. 238.

6 "The second assigned error on the "ALLEGED SHORTAGE OF STEEL RAILINGS" refers to an alleged shortage of 394.47 lineal meters of steel railing contracted to be installed at the Center. This issue was deliberated upon by the COA Review Panel which found no ample basis to disturb this particular audit finding.

7 *Rollo*, pp. 75-77.

8 202 SCRA 147.

9 At pp. 154-155.

10 *Rollo*, p. 141.

11 Steel Railings, Street Lights, Steel Benches, Plant Wooden Fence, Concrete Benches and Concrete Pipes.

12 *Rollo*, p. 258.

13 Under DOH Circular No. 40, the Chief of the hospital is only authorized to approve contracts for supplies and services for an amount not exceeding P100,000.00, otherwise the transaction would require the further approval of the DOH.

14 Memorandum for the Petitioners, p. 15.

15 "Decentralizing Actions On Government Negotiated Contracts, Lease Contracts and Records Disposal."

- 16 1. Curtains;
2. Accordion Dividers;
3. Steel Railings;
4. Street Lights;
5. Steel benches;
6. Wooden benches;
7. Concrete benches;
8. Concrete pipes and wastebaskets;
9. Dental laser equipment and light cure machines; and
10. Incinerator and compactor.

17 Government Accounting and Auditing Manual, Vol. 1, Sec. 163, pp. 67-68.

18 *Ibid.*, Sec. 165, p. 68.

19 120 altogether.

20 Memorandum for the Petitioners, p. 46.

21 In his book, entitled "State Audit Code Philippines Annotated."

22 Francisco Tantuico, Jr., State Audit Code Philippines Annotated, First ed., 1982, pp. 235-236.