



Republic of the Philippines
Supreme Court
Manila

EN BANC

SUBIC BAY METROPOLITAN
AUTHORITY, ET AL.,
Petitioners,

G.R. No. 230566

Present:

- versus -

BERSAMIN, *CJ*,
CARPIO,
PERALTA,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
REYES, JR., A.B,
GESMUNDO,
REYES, JR., J.C.,
HERNANDO, and
CARANDANG, *JJ*.

Promulgated:

COMMISSION ON AUDIT,
Respondent.

January 22, 2019

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DECISION

GESMUNDO, J.:

This is a petition for certiorari under Rule 64 of the Rules of Court seeking to annul and set aside the December 29, 2015 Decision¹ and the December 21, 2016 Resolution² of the Commission on Audit (COA) in Decision No. 2015-437. The COA affirmed the April 7, 2014 Decision³ of the COA Regional Office No. III (COA-Region III) in COA RO3 Decision No.

¹ *Rollo*, pp. 36-39; concurred by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia.

² *Id.* at 40.

³ *Id.* at 59-63; penned by Regional Director Ma. Mileguas M. Leyno.

2014-28. In turn, the COA-Region III affirmed the March 26, 2012 Notice of Disallowance⁴ (*ND*) under Special Audit ND No. 2012-001(2011) regarding the payment in the amount of ₱2,420,603.99 for the procurement of special and field uniforms of the employees of the Subic Bay Metropolitan Authority (*SBMA*).

The Antecedents

In 2009, SBMA procured special and field uniforms for its employees through regular public bidding, and the winning bidder with the lowest price was Topnotch Apparel Corporation (*Topnotch Apparel*). However, SBMA claimed that the quality and craftsmanship of the uniforms of the employees were compromised due to the current procurement laws.⁵

Thus, in a memorandum dated December 10, 2009, Lolita S. Mallari, then Human Resource Management Officer of the SBMA, provided several recommendations to the SBMA Administrator and CEO regarding the acquisition of special and field uniforms for the SBMA employees under the supervision of a Uniform Committee, to wit:

II. Special Uniform/Field Uniform

Special Uniform refers to the uniform of employees performing special task, e.g. Nurses, medical technologies, law enforcers, [firefighters]. On the other hand, Field uniform refers to those worn by our ground and maintenance staff, and members of the green brigade.

After a series of meetings conducted by the Uniform Committee, it was agreed that departments/officer[s] with special or field uniforms will be allowed to procure their uniforms on their own following a set of guidelines or procedures, in the flowchart form, hereto attached as Annex A. For uniformity purposes, each department with special or field uniform will also be provided with a template contract.

To avoid a repeat of the problems that occurred in CY 2007, no uniform allowances shall be released to the department managers. The budget allocated for CY 2009 uniform shall, with the approval of the Administrator, be placed in a Trust Fund. Payment to the supplier will only be made upon delivery and acceptance of uniforms. Likewise, unlike in CY 2007, only department managers will be allowed to engage the services of, and execute agreements with [bona fide] suppliers.

⁴ Id. at 99-101.

⁵ Id. at 7.

III. Thus, in view of the foregoing, may we request for the Administrator's approval:

1. **To authorize, on exclusive basis, all managers of departments with special field uniforms, to handle and to be on top of the procurement of uniforms for their respective offices. This shall include the signing of contract.**
2. **To authorize the transfer of the budgeted funds for the uniform for CY 2009, to a Trust Fund Account.** Payment will be made directly to the suppliers after the special and field uniforms are delivered, certified completed and accepted in 2010 by the end-user's Department Head.⁶ (emphases supplied)

Then SBMA Administrator and CEO Armand C. Arreza approved the recommendations and a Uniform Committee was constituted. Thereafter, the different department heads of SBMA solicited price quotations for special and field uniforms from SBMA's accredited suppliers. The said department heads then conducted negotiations and contracts for the special and field uniforms, which were awarded to the supplier with the lowest quotation and who met their specification requirements. It was the Uniform Committee that provided for the *pro-forma* contracts and process flowchart for the acquisition of the said uniforms. After the delivery and acceptance of the uniforms, the winning contractors were paid out of the trust fund created for the uniforms.

Notice of Disallowance

On March 26, 2012, the Special Audit Team of the SBMA issued Special Audit ND No. 2012-001-(2011) against several SBMA officers, department heads and suppliers regarding the procurement of special and field uniforms of the SBMA employees. The Special Audit Team stated that the total disallowed amount was ₱2,420,603.99 because several requirements of R.A. No. 9184⁷ and its Implementing Rules and Regulations (*IRR*) were violated, to wit:

1. The uniform requirements of the departments were not included in the 2010 and 2011 Annual Procurement Plans (APP).
2. Management failed to post the procurement and the results of bidding and related information in the PhilGEPs bulletin board.
3. The procurement process in each department was not conducted by a duly created Bids and Awards Committee.

⁶ Id. at 66.

⁷ Otherwise known as the Government Procurement Reform Act of 2003.

4. Uniforms were procured through negotiated procurement without adhering to the set criteria, terms and conditions for the use of Alternative Methods of Procurement.

Absence of the above requirements/documents constituted irregular transactions as defined under COA Circular No. 85-55A and Section 162 of GAAM Volume I. Pursuant to Section 10 of COA Circular No. 2009-006 dated September 15, 2009, irregular disbursement may be disallowed in audit.⁸

Thus, the following SBMA officers and department heads, and suppliers were held liable under the ND:

| Name | Position/Designation | Nature of Participation in the Transaction |
|--------------------------------|--|--|
| Ms. Lolita S. Mallari | Manager, HRM Department | Certified that expense/charges to budget were necessary, lawful and incurred under her direct supervision. Executed contract with supplier in the amount of ₱100,332.00. |
| Capt. Dante A. Romano | Manager, Construction and Maintenance Department | Executed contract with supplier in the amount of ₱1,215,543.00 |
| Gen. Orlando M. Maddela[,] Jr. | Manager, Law Enforcement Department | Executed contract with supplier in the amount of ₱435,032.00 |
| Mr. Perfecto C. Pascual | Manager, Seaport Department | Executed contract with supplier in the amount of ₱140,580.99 |
| Mr. Zharrex R. Santos | OIC-Manager, Airport Department | Executed contract with supplier in the amount of ₱71,736.00 |
| Mr. Ranny D. Magno | Manager, Fire Department | Executed contract with supplier in the amount of ₱427,000.00 |

⁸ Id. at 100.

| | | |
|-------------------------|--|---|
| Ms. Armila Llamas | Manager, Public Relations Department | Executed contract with supplier in the amount of ₱30,380.00 |
| Ms. Paulita R. Yee | OIC-DA for Finance | Approved the obligation of the expenditures/approved the release of payment |
| Mr. Armand C. Arreza | Administrator | Approved payment |
| Mr. Gregg M. Macatuno | General Manager, Baxley Tailor Shop | Received payment in the amount of ₱862,032.00 |
| Mr. Gregorio V. Daya | General Manager, Comercio Enterprise | Received payment in the amount of ₱1,427,859.99 |
| Mr. Rolando D. Mangente | Representative, Topnotch Apparel Corp. | Received payment in the amount of ₱100,332.00 |
| Essential Tailor Shop | Supplier | Received payment in the amount of ₱30,380.00 ⁹ |

Aggrieved, SBMA and its officers, collectively referred as petitioners, filed an appeal before the COA-Region III.

The COA-Region III Ruling

In its decision dated April 7, 2014, the COA-Region III denied the appeal. It held that petitioners neither considered public bidding as the mode for procurement nor secured the recommendation of the Bids and Awards Committee (*BAC*) in resorting to the alternative method of negotiated procurement. The COA-Region III highlighted that the procurement of the uniforms did not comply with the requirements set forth by R.A. No. 9184 and its IRR. It also stated that disallowing the total amount may be drastic and harsh but it has no other option but to apply the law. The COA-Region III further opined that even though the uniform allowances were pooled in trust fund, these are still public funds. The *fallo* of the decision states:

⁹ Id. at 100-101.

WHEREFORE, the foregoing premises considered, instant appeal is hereby **DENIED**. Accordingly, Special Audit Notice of Disallowance (ND) No. 2012-001-(2011) COA Regional Office No. 2011-133 dated March 26, 2012, disallowing ₱2,420,603.99 is hereby **AFFIRMED**.¹⁰

Undaunted, petitioners filed a petition for review before the COA.

The COA Ruling

In its decision dated December 29, 2015, the COA dismissed the petition because it was filed out of time. It observed that petitioners only had six (6) months or 180 days to file the petition before the COA. As the petition was filed beyond the 180-day period, the COA denied it outright. The dispositive portion of the COA decision reads:

WHEREFORE, premises considered, the petition for review of former Administrator Armand C. Arreza, et al., Subic Bay Metropolitan Authority, Subic [Bay] Freeport Zone, Zambales, is hereby **DISMISSED** for having been filed out of time. Accordingly, COA RO3 Decision No. 2014-28 dated April 7, 2014, affirming Special Audit Notice of Disallowance No. 2012-001-(2011), Commission on Audit Regional Office No. 2011-133 dated March 26, 2012, in the amount of ₱2,420,603.99, is **FINAL AND EXECUTORY**.¹¹

Petitioners filed a motion for reconsideration but it was dismissed by the COA in its resolution dated December 21, 2016.

Hence, this petition stating the following grounds:

I.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT WHIMSICALLY AND CAPRISCIOUSLY SACRIFICED SUBSTANTIVE JUSTICE IN FAVOR OF PROCEDURAL TECHNICALITIES WITH ITS DISMISSAL OF PETITIONERS['] PETITION FOR REVIEW WITHOUT CONSIDERING AT ALL WHETHER OR NOT PETITIONER[S'] ARGUMENTS DESERVE FULL CONSIDERATION ON THE MERITS.

¹⁰ Id. at 62-63.

¹¹ Id. at 38.

II.

IN THE INTEREST OF SUBSTANTIVE JUSTICE, PETITIONERS' PETITION FOR REVIEW SHOULD HAVE BEEN [ACCEPTED] BY RESPONDENT COA CONSIDERING THAT THE ERRORS OF ITS RESIDENT AUDITORS ARE EVIDENT ON ITS FACE AND MORE SO AFTER AN EXAMINATION OF THE DOCUMENTS ON RECORD.

III.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REQUIRING THE SUBJECT TRANSACTION TO FULLY COMPLY WITH R.A. 9184 WHEN THE FUNDS USED TO PROCURE THE UNIFORMS WERE PURELY PRIVATE FUNDS, SINCE THESE CONSTITUTED THE UNIFORM ALLOWANCES OF EACH OF THE SBMA'S FIELD EMPLOYEES.

IV.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN WILLFULLY IGNORING THAT NOT ONLY WAS THE [SUBJECT] TRANSACTION ENTERED INTO IN UTMOST GOOD FAITH, BUT THAT IT WAS PURSUED FOR THE PERSONAL BENEFIT OF SBMA'S EMPLOYEES SO THAT THEY COULD GET THE BEST QUALITY AND VALUE FROM THEIR UNIFORM ALLOWANCE.¹²

Petitioners argue that the 180-day period to file the petition for review before the COA fell on May 31, 2014, a Saturday, hence, it timely filed the petition on the next working day or June 2, 2014; that COA did not even consider the weekends in its computation of time; that on the substantial aspect, their petition has merit; and that they properly complied with the alternative method of procurement because it was approved by the head of the procuring authority and the procurement of the uniforms was justified by the conditions provided by R.A. No. 9184 to promote economy and efficiency.

They also assert that they resorted to the alternative modes of procurement because SBMA experienced, from their previous supplier, that regular bidding procedure compromises the quality of the uniforms of the employees; that the department heads followed the process flow provided by the Uniform Committee and the negotiation with the accredited SBMA suppliers were further subjected to control measures; that the creation of the Uniform Committee is patterned from R.A. No. 9184; and that the funds used

¹² Id. at 11 & 14.

for the uniforms were not public funds because these were kept in a trust fund on behalf of the employees, hence, private in character.

Petitioners also argue that they exercised good faith and transparency in procuring the uniforms of their employees; and that they still acquired the most advantageous price for the government based on R.A. No. 9184.

In its Comment,¹³ the COA countered that when petitioners received the decision of the COA-Region III on April 23, 2014, they only had thirty-seven (37) days or until May 30, 2014, a Friday, to file the petition, hence, since the petition was filed on June 2, 2014, it was filed out of time; that the funds used in the procurement of the uniforms, even though pooled in a trust fund, were still public funds because the grant of clothing allowance was covered by the appropriations for the SBMA and regulated by the budget circulars of the Department of Budget and Management (*DBM*); that the necessity of public bidding cannot be dispensed with; that petitioners failed to comply with the requirements of the alternative method of procurement, particularly, negotiated procurement, in purchasing the uniforms of their employees; and that petitioners were not in good faith.

In their Reply,¹⁴ petitioners reiterated that their petition before the COA was filed on time and that the SBMA finances its operation with its own funds, hence, they may determine the procurement of uniforms for their employees.

The Court's Ruling

The Court finds the petition partially meritorious.

Timely petition; relaxation of procedural rules

Section 48 of Presidential Decree (*P.D.*) No. 1445,¹⁵ states the period within which a party may appeal the decision of an auditor of any government agency, including a notice of disallowance, to wit:

SECTION 48. *Appeal from decision of auditors.* — Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within **six months** from receipt of a

¹³ Id. at 129-149.

¹⁴ Id. at 159-166.

¹⁵ Otherwise known as the Government Auditing Code of the Philippines.

copy of the decision appeal in writing to the Commission. (emphasis supplied)

In this case, petitioners explained that they received the ND on April 9, 2012 and they had 180 days to appeal. Then, on August 31, 2012, they filed an appeal before the COA-Region III. On April 23, 2014, petitioner received the decision of the COA-Region III denying their appeal, thus, they still had 38 days, or until May 31, 2014, to file a petition for review before the COA. As May 31, 2014 fell on a Saturday, petitioners filed their petition on the next working day, or on June 2, 2014. Thus, petitioners claim that their petition before the COA was filed on time.

On the other hand, the COA simply denied the petition because it was allegedly filed beyond the 180-day period. It did not give any explanation on its failure to consider the weekends in the counting of the period. Section 1, Rule 22 of the Rules of Court states that “[i]f the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.” Accordingly, the computation of time under the Rules of Court may be applicable under P.D. No. 1445 because its pertinent provisions may be applied by analogy or in a suppletory manner, in the interest of expeditious justice and whenever practical and convenient.¹⁶

Even if the COA’s argument – that when petitioners received the COA-Region III decision on April 23, 2014, they only had 37 days to file the petition, hence, the last day to file fell on May 30, 2014, a Friday – is given weight, the Court finds that genuine reasons exist to provide a liberal application of the procedural rules in this case.

Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, the Court has recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.¹⁷

¹⁶ See *Pyro Copper Mining Corporation v. Mines Adjudication Board-DENR, et al.*, 611 Phil. 583, 603, 607 (2009); See Section 4, Rule 1 of the Rules of Court: In what case not applicable. — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

¹⁷ *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).

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In this case, petitioners resorted to the alternative method of procurement to acquire the most advantageous price and quality for the uniform of their employees. SBMA had a terrible experience in procuring their employees' uniform in the past, thus, they subsequently considered other viable options in good faith. Hence, the Court is of the view that the case of petitioners should be adjudicated on the merits in order to determine whether they may be held liable for the chosen procurement method.

*Requisites of negotiated
procurement were not proven*

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability.¹⁸ By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.¹⁹

Alternative methods of procurement, however, are allowed under R.A. No. 9184, which would enable dispensing with the requirement of open, public and competitive bidding, but only in highly exceptional cases and under the conditions set forth in Article XVI thereof,²⁰ to wit:

SECTION 48. Alternative Methods. — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

(a) *Limited Source Bidding, otherwise known as Selective Bidding* — a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

(b) *Direct Contracting, otherwise known as Single Source Procurement* — a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma voice together with the

¹⁸ *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 555 (2009).

¹⁹ *Lagoc v. Malaga, et al.*, 738 Phil. 623, 630 (2014).

²⁰ *De Guzman v. Office of the Ombudsman, et al.*, G.R. No. 229256, November 22, 2017.

conditions of sale, which offer may be accepted immediately or after some negotiations;

(c) *Repeat Order* — a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

(d) *Shopping* — a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

(e) *Negotiated Procurement* — a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.²¹

In this case, petitioners admit that they did not conduct public bidding to procure the uniforms of their employees. However, they argue that they properly used the alternative modes of procurement to obtain the uniforms with the most advantageous price for the government through negotiation with accredited SBMA suppliers subject to the control measures provided for by the uniform committee. They further assert that they negotiated with the accredited SBMA suppliers to obtain the uniforms with the most advantageous price for the government.

The Court is not convinced.

As public bidding is the general rule and alternative methods of procurement are mere exceptions, it was incumbent upon petitioners to prove the definite and particular alternative method of procurement they availed of under Section 48 of R.A. No. 9184. At best, petitioners assert that they resorted to the alternative mode of negotiated procurement to purchase the said uniforms.

In negotiated procurement, the procuring entity directly negotiates a contract with a technically, legally, and financially capable supplier,

²¹ R.A. No. 9184, Article XVI.

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contractor or consultant.²² Section 53 of the IRR of R.A. No. 9184 lays down the specific grounds when a negotiated procurement may be availed of; while Section 54 of the same IRR provides the additional requirements that must be complied with. In this case, the procurement refers to goods, specifically, uniforms and no public bidding was conducted, hence, the negotiated procurement would be justified under the following circumstances:

SECTION 53. *Negotiated Procurement.*

Negotiated Procurement is a method of *procurement of goods, infrastructure projects and consulting services*, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x x

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP;

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

x x x x

SECTION 54. *Terms and Conditions for the Use of Alternative Methods.* —

x x x x

d) For item (b) of Section 53 of the Act and this IRR-A, the negotiation shall be made with a previous supplier, contractor or consultant of good standing of the procuring entity concerned, or a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred. *The award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity.*

²² *Office of the Ombudsman v. De Guzman*, G.R. No. 197886, October 4, 2017.

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e) For item (c) of Section 53 of the Act and this IRR-A, the contract may be negotiated starting with the second lowest calculated bidder for the project under consideration at the bidder's original bid price. If negotiation fails, then negotiation shall be done with the third lowest calculated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest bidder. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of the procuring entities concerned, within their respective limits of approving authority.²³

The Court finds that petitioners failed to comply with the requisites of a negotiated procurement under the above-cited rules. As properly discussed by the COA, petitioners failed to prove that the existence of the circumstances under Section 53(b), IRR of R.A. No. 9184 are present to justify the negotiated procurement of specialized and field uniforms of SBMA employees.²⁴ Indeed, petitioners did not establish that (1) there is imminent danger to life or property during a state of calamity; or (2) or that time is of the essence arising from natural or man-made calamities; or (3) other causes, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.²⁵ Verily, there is no existing calamity or other cause where immediate action is necessary. Petitioners simply undertook the procurement of the uniforms because they were unsatisfied with the products of the previous supplier.

Likewise, under Section 53(c), IRR of R.A. No. 9184, there is no take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws. Neither was there a need for immediate action necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In other words, no take-over of contract materialized and the contract with its previous supplier, Topnotch Apparel, was neither rescinded nor terminated. The SBMA merely initiated a new procurement process for the acquisition of the uniforms of its employees because it was unsatisfied with the previous supplier and there was an appropriation for the said uniforms. Further, the additional requirements under Section 54 of the IRR were also not complied with because petitioners failed to post the procurement and the results of bidding and other related information in the PhilGEPs bulletin board.

Accordingly, the COA correctly argued that there was an irregular expenditure for the negotiated procurement because it was incurred without

²³ Amended Implementing Rules and Regulations of Republic Act No. 9184, August 3, 2009.

²⁴ *Rollo*, p. 145.

²⁵ *Supra* note 21, where it was explained that the phrase "other causes" is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities.

adhering to Sections 53 and 54 of the IRR of R.A. No. 9184.²⁶ Under COA Circular No. 88-55-A, an irregular expenditure is an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. It differs from an *illegal expenditure* since the latter pertains to expenses incurred in violation of the law, whereas an *irregular expenditure* is incurred in violation of applicable rules and regulations other than the law.²⁷

Petitioners' bare assertion that they followed the requirements of the alternative modes of procurement based on good faith and transparency²⁸ is not sufficient to set aside the necessity of a public bidding. Their previous experience regarding the poor quality of the uniforms provided by the winning bidder in the previous public bidding, no matter how terrible and unfortunate, is not a valid and legal ground to disregard and set aside the provisions of the law and its rules in the subsequent procurement of uniforms. Indeed, the exceptional recourse to any of the alternative methods of procurement must be justified based on the specific provisions of R.A. No. 9184 and its IRR.²⁹

The trust fund is a public fund

Petitioners insist that the procurement of the employees' uniform was not an irregular expenditure because it was sourced from a trust fund pooled from the uniform allowance, which is private in nature.

The Court disagrees.

As discussed by the COA, under R.A. No. 9524, or the General Appropriations Act for Fiscal Year 2009, the appropriation for the uniform allowance of government employees specifically states that it shall be provided for by the department, bureau, office, or agency concerned:

SECTION 48. *Uniform or Clothing Allowance.* — **The appropriations provided for each department, bureau, office or agency** may be used for uniform or clothing allowance of employees at not more than Four Thousand Pesos (P4,000.00) each per annum which may be given in cash or in kind, subject to the rules and regulations prescribed under Budget Circular Nos. 2003-8 and 2003-8A. In case of deficiency, or in the absence

²⁶ *Rollo*, p. 145.

²⁷ *Id.* at 146.

²⁸ *Id.* at 16.

²⁹ COA Circular No. 88-55-A, 3.1 (1985).

of appropriation for the purpose, the requirements may be charged against savings in the appropriations of agencies. (emphasis supplied)

Accordingly, the appropriation for the uniform allowance of the SBMA employees is provided for by the SBMA. Further, the alleged trust fund for the uniform allowance is not owned or controlled by SBMA employees. The latter have no power to decide on how to spend the said uniform allowance; instead, only the department heads of the SBMA have the discretion to utilize it. The employees do not have beneficial ownership over the uniform allowance; they are merely the end-users. Manifestly, as long as the appropriation for the uniform allowance stays in the coffers of SBMA and was not disbursed to its employees, it remains as public fund.

Likewise, R.A. No. 9184 “[applies] to the Procurement of Infrastructure Projects, Goods and Consulting Services, **regardless of source of funds**, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units.”³⁰ Thus, even though the uniform allowance of the SBMA employees were pooled in a trust fund, it is still considered as public funds and must comply with R.A. No. 9184 and its IRR.

Petitioners exercised good faith

In their final argument, petitioners invoke good faith in the procurement of the special and field uniforms of their employees. The department heads meticulously followed the procedure provided by the Uniform Committee and they acquired the most advantageous price and quality for the uniform of their employees. Petitioners also allege that they simply used a different mode of procurement because they believed in good faith, based on their past experience, that public bidding compromised the quality of the complex and numerous uniforms for the SBMA employees. Thus, they should not be held personally liable under the ND.

The Court agrees.

³⁰ R.A. No. 9184, Section 4. *Scope and Application*. — This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is signatory shall be observed.

Good faith is a state of mind denoting “honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.”³¹

In *Joson III v. COA*,³² there was a ND issued against the petitioner, as head of the agency, because the required public bidding documents, such as the eligibility checklist using the pass/fail criteria, the net financial contracting capacity, and the technical eligibility documents, were missing. The Court reversed the ND and held that:

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.** 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.**³³ (emphases supplied)

Recently, in *Development Bank of the Philippines v. Commission on Audit*³⁴ (*DBP v. COA*), the Court discussed the different rulings regarding the appreciation of the defense of good faith with respect to notices of disallowance, to wit:

In *Zamboanga City Water District v. COA*, the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, to wit:

Further, a thorough [reading] of Mendoza and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In *de Jesus v. Commission on Audit*, the Court absolved the petitioner therein from refunding the disallowed amount on the basis

³¹ *Maritime Industry Authority v. COA*, 750 Phil. 288, 337 (2015), citing *Philippine Economic Zone Authority (PEZA) v. Commission on Audit, et al.*, 690 Phil. 104, 115 (2012).

³² G.R. No. 223762, November 7, 2017.

³³ *Id.*

³⁴ G.R. No. 221706, March 13, 2018.

of good faith, pursuant to *de Jesus* and the *Interim Board of Directors, Catbalogan Water District v. Commission on Audit*. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*, the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.

In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.

Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.

x x x x

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.

A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith. (citations and emphases omitted)

In *Mendoza v. COA*, the Court held that the lack of a similar ruling disallowing a certain expenditure is a basis of good faith. At the time that the disallowed disbursement was made, there was yet to be a jurisprudence or ruling that the benefits which may be received by members of the commission were limited to those enumerated under the law.

By the same token, in *SSS v. COA*, the Court pronounced that good faith may be appreciated because the approving officers did not have knowledge of any circumstance or information which would render the disallowed expenditure illegal or unconscientious. The Board members therein could also not be deemed grossly negligent as they believed they could disburse the said amounts on the basis of the provisions of the R.A. No. 8282 to create their own budget.

On the other hand, in *Silang v. COA*, the Court ordered the approving officers to refund the disbursed CNA incentives because they were found to be in bad faith as the disallowed incentives were negotiated by the collective bargaining representative in spite of non-accreditation with the CSC.

In *MWSS v. COA*, the Court affirmed the disallowance of the grant of mid-year financial, *bigay-pala* bonus, productivity bonus and year-end financial assistance to MWSS officials and employees. It also ruled therein that the MWSS Board members did not act in good faith and may be held liable for refund because they approved the said benefits even though these patently contravened R.A. No. 6758, which clearly and unequivocally stated that governing boards of the GOCCs can no longer fix compensation and allowances of their officials or employees.³⁵ (citations omitted)

Hence, in *DBP v. COA*, the Court ruled that good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: **(1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.**³⁶

In this case, the Court finds that petitioners exercised good faith. As to the first requisite, petitioners acted in good faith when they disbursed public funds to procure the uniforms of their employees. They merely wanted to address their problem regarding their previous procurement of uniforms because the lowest bidder considerably compromised the quality of the said uniforms. Also, SBMA has as many as twenty-six (26) different uniforms,

³⁵ *Id.*

³⁶ *Id.*

thus, they resorted to a Uniform Committee to devise a procurement method specifically for the varied uniforms of their employees.

Conspicuously, **the COA does not deny that petitioners still secured the most advantageous price for the government.** Likewise, there was neither allegation of overpricing nor poor quality of uniforms from the chosen method of procurement. Verily, the ND simply made the petitioners personally liable based on the rigid implementation of the law and rules, to wit:

The amount of ₱2,420,603.99 was disallowed in audit because the procurements were consummated even without the following requirements under RA 9184 and its Revised Implementing Rules and Regulation (IRR):

1. The uniform requirements of the departments were not included in the 2010 and 2011 Annual Procurement Plans (APP).
2. Management failed to post the procurement and the results of bidding and related information in the PhilGEPs bulletin board.
3. The procurement process in each department was not conducted by a duly created Bids and Awards Committee.
4. Uniforms were procured through negotiated procurement without adhering to the set criteria, terms and conditions for the use of Alternative Methods of Procurement.

Absence of the above requirements/documents constituted irregular transactions as defined under COA Circular No. 85-55A and Section 162 of GAAM Volume I. Pursuant to Section 10 of COA Circular No. 2009-006 dated September 15, 2009, irregular disbursements may be disallowed in audit.³⁷

On the other hand, the COA-Region III echoed that the personal liability of petitioners was based on the stringent application of the law and rules, *viz*:

Disallowing the total amount of the transaction may be drastic and harsh, but this Office has no other option but to apply what is stated in the law (*Dura lex sed lex*). It should be applied exactly the way the legislature has expressed itself clearly in the law. Indeed, "the law may be harsh, but it is still the law."³⁸

Evidently, the COA failed to consider the jurisprudence regarding the application of good faith regarding the ND. While petitioners did not strictly

³⁷ *Rollo*, p. 100.

³⁸ *Id.* at 62.

follow the letter of the IRR of R.A. No. 9184, at the very least, they attempted in good faith to comply with the spirit and policy of R.A. No. 9184. As reflected in the petition, the department heads of the SBMA, through the procedure laid down by the Uniform Committee, secured quotations from the SBMA accredited suppliers and they determined the lowest and most advantageous price and superior quality for the government.³⁹ Again, there was no finding of overpricing or misapplication of funds.

As to the second requisite, petitioners lacked knowledge of facts or circumstances which would render the disbursements illegal. Evidently, the legal issue in this case is novel. There is neither specific law nor jurisprudence that prohibits the pooling of the uniform allowance in a trust fund to procure the numerous and multifaceted uniforms of employees under strict supervision of the Uniform Committee. Manifestly, the COA cannot cite a definite law or regulation that prohibits such alternative method of procurement for employees' uniforms. The Court had to first analyze R.A. No. 9184 and dissect the applicable IRR provisions before it could conclude that the said procurement method is not permitted. Thus, petitioners cannot be faulted for improperly understanding the intricate application of the law in their devised procurement scheme.

Further, Lolita S. Mallari, then Human Resource Management Officer of the SBMA, sought the approval of the SBMA Administrator and CEO regarding the acquisition of special and field uniforms for the SBMA employees. Only after the *imprimatur* was given did the SBMA implement the creation of the Uniform Committee, absent any manifest defect in their chosen procedure.⁴⁰ To reiterate, good faith may be appreciated because the approving officers were without knowledge of any circumstance or information which would render the transaction illegal or unconscientious.⁴¹

Notably, petitioners resorted to their chosen procurement method for the benefit of its employees – to ensure that they will receive the uniform with superior quality based on the budget provided by the government – and not for some selfish or ulterior motive. Evidently, while there may be irregular expenditure because petitioners did not strictly comply with the IRR of R.A. No. 9184, they may not be held personally liable under the ND based on their exercise of good faith.

³⁹ Id. at 20-25.

⁴⁰ Id. at 66.

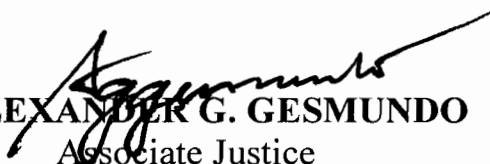
⁴¹ Supra note 32.

While the disbursement of funds for the procurement of the employees' uniforms must be disallowed because it particularly contravenes the provisions of IRR of R.A. No. 9184, the good faith exercised by petitioners exempts them from liability under the ND. The COA committed grave abuse of discretion when it did not properly appreciate the circumstance of good faith on petitioners' part.

In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.⁴²

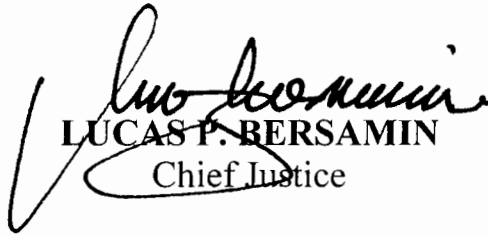
WHEREFORE, the petition is **PARTIALLY GRANTED**. The December 29, 2015 Decision and the December 21, 2016 Resolution of the Commission on Audit in Decision No. 2015-437 are **AFFIRMED** with **MODIFICATION** that the persons identified by the March 26, 2012 Notice of Disallowance under Special Audit ND No. 2012-001(2011) are not required to refund the disallowed amounts therein.

SO ORDERED.



ALEXANDER G. GESMUNDO
Associate Justice

⁴² *Philippine Economic Zone Authority v. Commission on Audit, et al.*, 797 Phil. 117, 142 (2016).

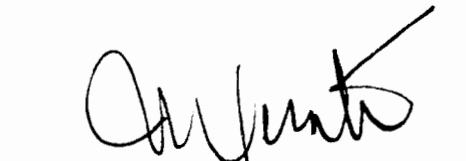
WE CONCUR



LUCAS P. BERSAMIN
Chief Justice




ANTONIO T. CARPIO
Associate Justice



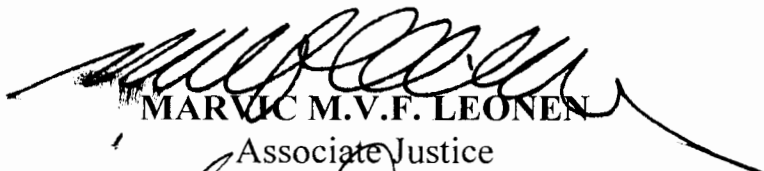
DIOSDADO M. PERALTA
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice



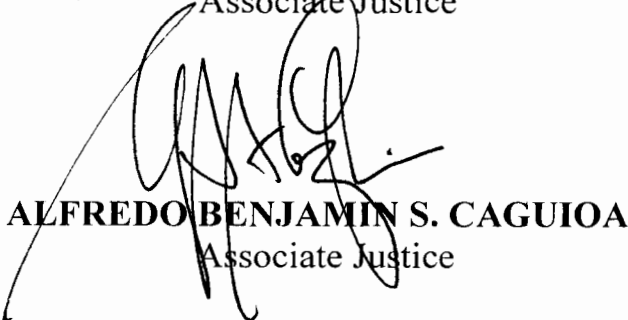
ESTELA M. PERLAS-BERNABE
Associate Justice



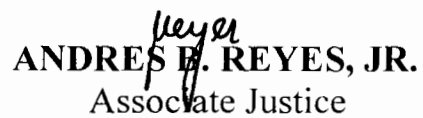
MARVIC M.V.F. LEONEN
Associate Justice



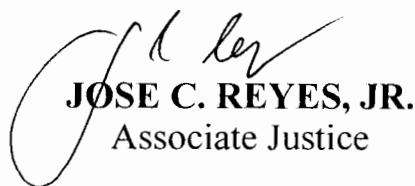
FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ANDRES B. REYES, JR.
Associate Justice



JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice

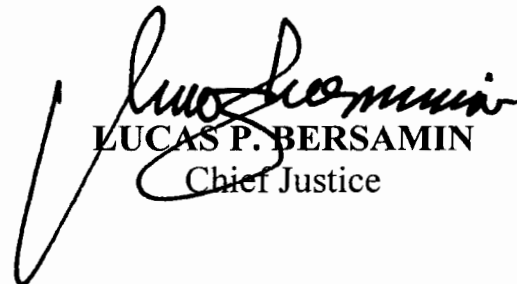


ROSMARI D. CARANDANG
Associate Justice



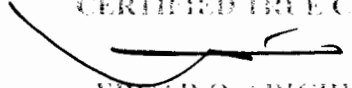
CERTIFICATION

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.



LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY



EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

