



Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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**DEPARTMENT OF SOCIAL
 WELFARE AND DEVELOPMENT,**
 represented by **DIRECTOR SITTIE
 RAIFAH M. PAMALLOY-HASSAN,**
Petitioner,

G.R. No. 254871

Present:

GESMUNDO, C.J.,
 LEONEN,
 CAGUIOA,
 HERNANDO,
 LAZARO-JAVIER,
 INTING,
 ZALAMEDA,
 LOPEZ, M.,
 GAERLAN,
 ROSARIO,
 LOPEZ, J.,
 DIMAAMPAO,
 MARQUEZ,
 KHO, JR. and
 SINGH, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

December 6, 2022

Antonio T. Reyes X

X -----

DECISION

INTING, J.:

Before the Court is a Petition¹ for *Certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Commission on

¹ *Rollo*, pp. 22-35. In its petition, the Department of Social Welfare and Development (DSWD) erroneously denominated the present action as an *appeal by certiorari under Rule 64 of the Rules of Court*, id. at 22.

M

Audit (COA) Commission Proper (COA Proper) Decision No. 2020-334² dated January 31, 2020 that denied the Department of Social Welfare and Development (DSWD)'s request for reconsideration of COA Legal Retainer Review (LRR) No. 2018-096 dated June 7, 2018.

The Antecedents

Central to the present controversy is DSWD's hiring of Atty. Melanie D. Ortiz-Rosete (Atty. Ortiz-Rosete) as private legal retainer of DSWD Field Office No. 10 (FO). Previously, in 2015 and 2016, upon the Solicitor General's approval and COA's concurrence,³ DSWD already contracted Atty. Ortiz-Rosete to appear as counsel in all civil cases pending before the trial courts and involving the FO or its officials.

DSWD sought to continue its engagement of Atty. Ortiz-Rosete through 2017. Thus, on November 2, 2016, DSWD executed a Contract of Service⁴ (Contract) rehiring Atty. Ortiz-Rosete as the FO's private legal retainer covering the period of January 1, 2017 to December 31, 2017 (2017 Contract).

Subsequently, in a Letter⁵ dated December 5, 2016, the DSWD requested the Solicitor General's approval to renew Atty. Ortiz-Rosete's authority to appear as the FO's counsel. The Solicitor General granted this request on May 22, 2017.⁶ Later on, in a Letter⁷ dated January 5, 2018, DSWD requested for the COA's concurrence in relation to the aforementioned hiring.

Ruling of the COA LRR

The COA LRR denied the request on account of DSWD's belated application for concurrence.⁸ It noted that DSWD requested the COA to concur in the 2017 Contract only on January 5, 2018, or when said agreement had already expired. It explained as follows: *First*, requests of

² Id. at 39-46.

³ Id. at 44.

⁴ Id. at 47-49.

⁵ Id. at 50-51; through Vilma B. Cabrera, Undersecretary, Operations and Programs Group—Protective Programs, DSWD

⁶ Id. at 103-104.

⁷ Id. at 134-135; through Carlo Florendo C. Castro, Director, Legal Service, DSWD

⁸ See Legal Retainer Review No. 2018-096 dated June 7, 2018 and signed by Elizabeth S. Zosa, Assistant Commissioner, COA Legal Services Sector; id. at 159-160.

this nature must be obtained prior to hiring of a private lawyer or, in exceptional cases, the expiration of his contract.⁹ *Second*, COA Circular No. 86-255,¹⁰ as amended, requires the COA's concurrence as a pre-condition to a government agency's hiring of a private legal counsel.¹¹

Seeking compassion and leniency, DSWD moved for reconsideration¹² before the COA Proper. It cited the following reasons to justify Atty. Ortiz-Rosete's rehiring:

1. The DSWD Central Office has only four lawyers x x x they cannot provide all the legal assistance sought by all DSWD FOs;
2. It would be unjust for Atty. Ortiz-Rosete not to be compensated for the services she rendered in 2017;
3. Atty. Ortiz-Rosete's expertise in legal matters pertaining to the DSWD has created trust and confidence between them;
4. The Office of the Solicitor General (OSG) deputized Atty. Ortiz-Rosete as private legal counsel of DSWD FO No. 10 for the period of January 1, 2017 to December 31, 2017 as early as May 22, 2017. Likewise, Director Martha Roxana C. Sese, Cluster 6 – Health and Science, National Government Sector (NGS), this Commission, gave a favorable recommendation on the DSWD's request for concurrence in the Contract of Services of Atty. Ortiz-Rosete; and
5. COA granted concurrence with respect to Atty. Ortiz-Rosete's 2015 and 2016 Contracts of Services, justifying the exceptional reasons for DSWD FO No. 10 to engage her services.¹³

Stated differently, DSWD asserted that Atty. Ortiz-Rosete's rehiring was justified because: (a) the DSWD Central Office's scarce legal manpower could no longer accommodate requests for legal assistance from the FOs; (b) DSWD developed trust and confidence in Atty. Ortiz-Rosete on account of her previous years' service to DSWD; (c) the Solicitor General approved the 2017 Contract; (d) the COA Director already recommended that DSWD's request for concurrence be granted; and (e) the COA already concurred in the 2015 and 2016 Contracts hiring

⁹ Id. at 39.

¹⁰ Entitled, "Inhibition Against Employment by Government Agencies and Instrumentalities, Including Government-Owned and -Controlled Corporations, of Private Lawyers to Handle their Legal Cases," dated April 15, 1986.

¹¹ *Rollo*, pp. 39-40.

¹² See Letter dated July 2, 2018; id. at 186-191.

¹³ Id. at 40-41.

Atty. Ortiz-Rosete. Further, it pointed out that Atty. Ortiz-Rosete already rendered the required services pursuant to her 2017. Thus, she must be compensated for the work she has performed.¹⁴

Ruling of the COA Proper

In the assailed Decision No. 2020-334, the COA Proper denied DSWD's motion and affirmed the COA LRR's ruling.¹⁵ It emphasized that, pursuant to COA Circular No. 86-255, as amended by COA Circular No. 95-011, as well as the Court's pronouncements in *Polloso v. Hon. Gangan*¹⁶ (*Polloso*) and *Phividec Industrial Authority v. Capital Steel Corporation*,¹⁷ the Solicitor General's approval and the COA's concurrence shall first be secured before the DSWD may engage the services of a private legal counsel.¹⁸ Expenditures arising from the hiring of private lawyers without the aforementioned prior written conformities shall be considered as irregular expenditures.¹⁹

While it is true that this procedural rule may be relaxed, it is incumbent upon the party invoking liberality to justify their noncompliance with the rules. In the present case, DSWD admitted that its request for concurrence relative to the 2017 Contract was filed late or when the Contract was already expired. DSWD did not offer any reason justifying specifically its belated filing.²⁰ Thus, the COA Proper found no reason to set aside the procedural requirements of prior approval by the Solicitor General and concurrence by the COA.

To be sure, the explanations provided by DSWD do not relate to its noncompliance with the rules or reasons the noncompliance may be excused. Rather, the averments (*e.g.*, lack of DSWD lawyers/necessity of engaging private lawyers, previous engagements of the same lawyer, previous concurrences by the COA, etc.) pertained to substantial matters cited to support DSWD's request/application. Still, the COA Proper found the reasons insufficient²¹ to warrant the COA's concurrence.

¹⁴ Id. at 190-191.

¹⁵ Id. at 45.

¹⁶ 390 Phil. 1101 (2000).

¹⁷ 460 Phil. 493 (2003).

¹⁸ *Rollo*, p. 42.

¹⁹ Id. at 45, citing *Phividec Industrial Authority v. Capitol Steel Corp.*, *supra* note 17.

²⁰ Id. at 42.

²¹ Id. at 43.

The COA Proper also ruled that the payment of Atty. Ortiz-Rosete's compensation shall be the responsibility of the DSWD officials who approved/authorized the Contract on account of their clear violation of rules and regulations. According to the COA Proper, the ruling is supported by the Court's pronouncement in *Polloso*,²² as well as Section 103²³ of Presidential Decree No. 1445.

Furthermore, the COA Proper did not find persuasive DSWD's reliance on the COA Director's favorable recommendation relative to the 2017 Contract and the COA's prior year concurrences. *First*, the COA Director's action on its request for concurrence is merely recommendatory. *Second*, the COA's concurrences in 2015 and 2016 do not necessarily mean that all subsequent requests submitted by the COA will be granted automatically.²⁴

Issue

Did the COA Proper commit grave abuse of discretion when it did not concur in the 2017 Contract rehiring Atty. Ortiz-Rosete on account of the lack of the required prior written conformities of the Solicitor General and the COA?

Our Ruling

The Court resolves to dismiss the petition for lack of merit.

I

Preliminarily, the Court addresses matters of procedure concerning the *timeliness* of the present petition's filing and the *sufficiency of the allegations* contained therein.

²² In *Polloso v. Gangan*, supra note 16 at 1112, the Court held, "[w]e do not deny that Atty. Satorre has indeed rendered legal services to the government. However to allow the disbursement of public funds to pay for his services, despite the absence of requisite consent to his hiring from the OSG or OGCC would precisely allow the circumvention of COA Circular No. 86-255. In any event, it is not Atty. Satorre who is liable to return the money already paid him, rather the same shall be the responsibility of the officials concerned x x x."

²³ Section 103 of Presidential Decree No. 1445 provides:

SECTION 103. *General Liability for Unlawful Expenditures.* — Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

²⁴ *Rollo*, p. 44.

First, the following circumstances establish that the present petition was filed on time: (a) DSWD received a copy of the assailed ruling on November 11, 2020; (b) Pursuant to the 30-day reglementary period under Section 3, Rule 64 of the Rules of Court, DSWD had until December 11, 2020 to file its petition. However, right on the deadline, it requested for an additional 30 days;²⁵ (c) The Court granted this request and gave DSWD another 30 days counted from December 11, 2020 within which to file its petition; and (d) The 30th day of the extended period fell on January 10, 2021, a Sunday. DSWD filed the present petition on January 11, 2021, or the immediately succeeding business day.

Second, although timely, it is proper to dismiss the present petition outright for its lack of *bona fide* imputations of grave abuse against the COA Proper.

The Court's review of COA decisions *via* Rule 64 petitions is limited to *jurisdictional errors* or *grave abuse of discretion*.²⁶ In general, the Court shall dismiss the petition outright and uphold the COA's ruling²⁷ unless the petitioner establishes a *prima facie* case of grave abuse in his petition, that is, to specifically identify those acts committed by the COA that had been unauthorized, whimsical, or capricious.²⁸

The grounds cited by DSWD for the allowance of the present petition only allege that: (a) there are exceptional circumstances surrounding the present case, and (b) Atty. Ortiz-Rosete's engagement in 2017 was necessary and indispensable.²⁹ The arguments, at best, point out mere errors of judgment. These are beyond the scope of *certiorari* proceedings.³⁰

²⁵ Id. at 3-4.

²⁶ See *Fontanilla v. The Commissioner Proper, COA*, 787 Phil. 713, 723 (2016).

²⁷ *Zamboanga City Water District v. Commission on Audit*, G.R. No. 218374, December 1, 2020.

²⁸ See *Fortune Life Insurance Company, Inc. v. Commission on Audit*, 752 Phil. 97, 107 (2015).

²⁹ *Rollo*, p. 26.

³⁰ *Zamboanga City Water District v. Commission on Audit*, supra note 27, citing *Ramiscal v. Commission on Audit*, 819 Phil. 597 (2017).

II

At any rate, the Court finds the COA Proper's refusal to concur in the subject Contract to be in accord with the prevailing rules and jurisprudence.

In general, government entities are prohibited from securing the services of a private legal counsel. As the law office of the government, the Office of the Solicitor General is vested with the exclusive authority to represent the Philippine government, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer.³¹

*Prior Written Conformity/
Concurrence Requirement*

By exception, government agencies may be allowed to engage a private lawyer, *provided* that they first comply with applicable rules and regulations. In particular, COA Circular No. 86-255, as amended by COA Circular No. 95-011, sets forth the following categorical requirement:

[P]ublic 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.* (Italics and underscoring supplied.)

The rule is clear: the *prior* written conformity and concurrence of the Solicitor General and COA, respectively, are indispensable. There must be strict compliance: it must be *timely* (*i.e.*, obtained prior to the hiring or employment of private lawyer) and *complete* (*i.e.*, approval/concurrence of both the Solicitor General and COA). Otherwise, the engagement of a private lawyer is deemed unauthorized.³²

³¹ Section 35, Chapter 12, Title III, Book IV of Executive Order No. 292, or the Administrative Code of 1987, approved on July 25, 1987.

³² See Concurring and Dissenting Opinion of Senior Associate Justice Marvic M.V.F. Leonen in *Power Sector Assets and Liabilities Management (PSALM) Corp. v. Commission on Audit*, G.R. No. 247924, November 16, 2021.

In the present case, DSWD's alleged compliance with the rule is not only belated, but also incomplete. Following are the dates critical to DSWD's engagement of Atty. Ortiz-Rosete relative to calendar year 2017:

Event	Date
Execution of Contract	November 2, 2016 ³³
Letter-Request to Solicitor General	December 5, 2016 ³⁴
Solicitor General's Approval	May 22, 2017 ³⁵
Request for COA Concurrence	January 5, 2018 ³⁶

These make certain that there was an absolute lack of compliance on the part of DSWD.

As to timeliness. The attempts to secure the required approvals were *post facto*. DSWD decided to secure the required approvals only after it already finalized its agreement to rehire Atty. Ortiz-Rosete. Its request for COA concurrence was overdue, so much so that the Contract period (*i.e.*, 2017) had already ended by the time DSWD sent out its application to the COA.

It is of no moment that the Solicitor General eventually authorized DSWD to hire a private lawyer. The approval was issued when the Contract was already executory (*i.e.*, May 22, 2017). The Solicitor General cannot be blamed for his delayed action on DSWD's request. If the government agency's request *per se* was already made beyond the time allowed, certainly, there is no reason to expect the approving authority to act on the request in a timely manner.

As to completeness. Even if the Court assumes that the Solicitor General's approval was requested for and secured on time, one approval would have amounted only to a partial compliance. That the COA ultimately withheld its concurrence emphasizes that the required COA approval was never obtained.

³³ *Rollo*, p. 49.

³⁴ *Id.* at 50.

³⁵ *Id.* at 103-104.

³⁶ *Id.* at 134.

Contrary to DSWD's theory, a COA Director's favorable recommendation cannot take the place of a COA concurrence. Only the COA Proper³⁷ is authorized to issue a written concurrence in the hiring of a legal retainer. Certainly, the COA Proper may seek the indorsement or specific action of a subordinate COA official or office in the process of evaluating a request. However, said official/office's advice, at best, is only recommendatory. It is not binding because the COA Proper, by the nature of its authority, may make an independent evaluation of the request.

Exemptions from the requirement

Notably, one special instance where a government instrumentality may be excused from compliance with the absolute rule requiring the Solicitor General and COA's prior approval/concurrence is when the COA is guilty of *inordinate delay* in acting on the request for concurrence. In the recent case of *Power Sector Assets and Liabilities Management Corp. v. Commission on Audit*,³⁸ the Power Sector Assets and Liabilities Management Corp. (PSALM) engaged the services of external legal advisers "on the privatization of the generation assets and Independent Power Producer x x x contracts of the National Power Corporation x x x."³⁹ Similarly, the COA denied PSALM's request for concurrence after finding that proceeded to hire private lawyers without the COA's prior conformity. However, the Court reversed the COA's ruling upon the following observations:

Here, COA took a whopping four hundred four (404) days from receipt of the request to make an initial evaluation thereof, and thereafter, to request additional documents from PSALM. From the latter's submission of the documents, COA used up another four hundred sixteen (416) days before it finally issued a resolution of denial, citing as ground its lack of prior concurrence which, as shown, was the end result of its own inordinate delay or inaction.

In its Memorandum, COA admits that it could not and does not always observe the sixty (60)-day period under PD 1445 and the 2009

³⁷ Section 1, Rule VIII of the 2009 Revised Rules of Procedure of the Commission on Audit (September 15, 2009) provides, "[t]he Commission Proper shall have original jurisdiction over x x x request for concurrence in the hiring of legal retainers by government agency x x x" On the other hand, Section 3 of the same rule states, "[a] request for concurrence of the Commission in the hiring of legal retainer shall be filed with the Office of the General Counsel who shall evaluate the same and issue the written concurrence or denial thereof *in behalf of the Commission*. A request for reconsideration or appeal therefrom shall be cognizable by the Commission Proper." (Italics supplied.)

³⁸ G.R. No. 247924, November 16, 2021.

³⁹ *Id.*

Revised Rules of Procedure in view of the sheer volume of requests it receives every year given the number of clientele it serves, which is just one of the many functions it performs. It also receives an influx of various requests for money claims, relief of accountability, and appeals.

But we do not find COA's delayed action on the subject request to be reasonable and justified. We also reject COA's reasoning as a justification for delays in other situations. For if we simply accept this reasoning and justify any other delays in past and future cases, either pending or soon to be initiated with this Court, nothing will prevent this *faux pas* from occurring over and over again. For this reason, we now have to intervene by reasonable measures that the law itself has imposed as will be more lengthily discussed below.

COA's inordinate delay on PSALM's request for concurrence amounted to grave abuse of discretion as it violates PSALM's right to a speedy disposition of its case x x x

x x x x

x x x PSALM cannot be faulted when it proceeded to engage the services of the legal advisors even without COA's concurrence. For sure, PSALM could not have ended up in serious breach of its mandate to privatize.⁴⁰

PSALM proceeded to engage private lawyers while their request was pending before the COA. Its request was filed on time, only that COA's action on the request was overdue. In other words, the Court relaxed the concurrence requirement because "it was the [COA], the approving authority itself, that caused unreasonable delay that led to the required written concurrence not being obtained."⁴¹

In contrast, DSWD's glaring misstep here lies in having executed and completed the Contract without even requesting for the COA's conformity. Even its letter-request to the Solicitor General was sent only after it had already finalized the Contract.

Parenthetically, the COA has just recently recognized that the prior written concurrence requirement may have caused unnecessary delays in the hiring of private lawyers by government instrumentalities in need of urgent legal services. To expedite the approval process, the COA promulgated COA Circular No. 2021-003 dated July 16, 2021 exempting

⁴⁰ Id.

⁴¹ See Concurring and Dissenting Opinion of Senior Associate Justice Marvic M.V.F. Leonen in *Power Sector Assets and Liabilities Management (PSALM) Corp. v. Commission on Audit*, supra note 32.

national government agencies and government-owned or -controlled corporations from the prior written COA concurrence requirement *subject to certain conditions*. This circular took effect on August 12, 2021.⁴²

Verily, DSWD raises the defense that the COA concurrences it had obtained for Atty. Ortiz-Rosete's Contracts in 2015 and 2016 dispense with the concurrence requirement for 2017. However, even the new rule cited above does not allow this. To be sure, no law or issuance provides for an exemption for legal services contracts renewed from and concurred in by the COA in previous years. The prior written concurrence requirement remains as the general rule and there is no reason justifying its relaxation in the present case.


All in all, the Court views DSWD's belated attempts to comply as mere afterthoughts to mend the irregular rehiring of Atty. Ortiz-Rosete. It must be stressed that there was a complete absence of the Solicitor General and COA's respective approvals when DSWD entered into the agreement, all throughout the contract period, and even upon and after its expiration. DSWD does not even deny its noncompliance. These considerations make certain that DSWD's execution of the Contract was premature and unauthorized.

Finally, this is not a disallowance case. Thus, the Court's pronouncement shall not include a determination of the validity of payments made to Atty. Ortiz-Rosete under the 2017 Contract or the liability over any such payments.

WHEREFORE, the petition for *certiorari* is **DISMISSED** for lack of merit. The assailed Decision No. 2020-334 dated January 31, 2020 of the Commission on Audit Commission Proper is **AFFIRMED**.

⁴² Section 8.0 of COA Circular 2021-003 provides that "[t]his Circular shall take effect 15 days from publication in a paper of general circulation." In turn, the circular was published in *The Philippine Star* on July 28, 2021. Available at <https://www.coa.gov.ph/wpfd_file/coa-circular-no-2021-003-july-16-2021/> (last accessed: October 13, 2022).

SO ORDERED.



HENRI JEAN PAUL B. INTING
Associate Justice

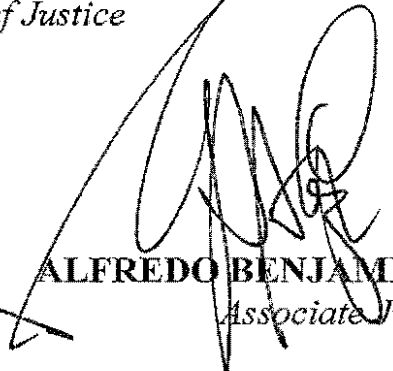
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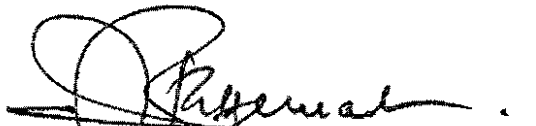
ALEXANDER G. GESMUNDO
Chief Justice




MARVIC M.V.F. LEONEN
Associate Justice



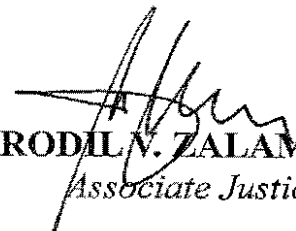
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



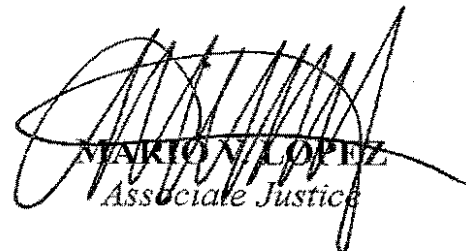
RAMON PAUL L. HERNANDO
Associate Justice



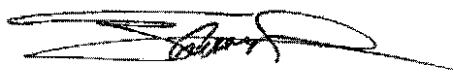
AMY C. LAZARO-JAVIER
Associate Justice




RODIL V. ZALAMEDA
Associate Justice



NARIO V. LOPEZ
Associate Justice

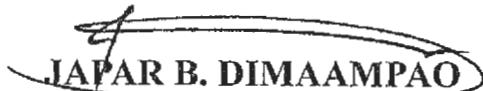


SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

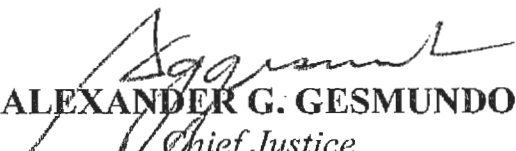

JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice



MARIA FELOMENA D. SINGH
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.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY


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

