



Republic of the Philippines
Supreme Court
Manila

EN BANC

NILDA LAGUNA SALAZAR,
Petitioner,

G.R. No. 255074

Present:

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

- versus -

**COMMISSION ON AUDIT (COA),
and MA. MILEGUAS M. LEYNO,
in her capacity as Regional Director
of Commission on Audit Region III,**
Respondents.

Promulgated:

May 14, 2024

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DECISION

DIMAAMPAO, J.:

Before the Court is a Petition for *Certiorari*¹ under Rule 64, in relation to Rule 65, of the Rules of Court, seeking to set aside Decision No. 2018-212²

* On official business.

** On leave.

¹ *Rollo*, pp. 3-59.

² *Id.* at 60-71. The Decision No. 2018-212 dated January 31, 2018, which was rendered by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Isabel D. Agito, was attested by Director Nilda B. Plasas.

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and the Resolution³ in Decision No. 2020-386 of respondent Commission on Audit (COA).

The subject controversy involves a Contract Agreement⁴ entered into between the Municipality of Mayantoc, Tarlac (Municipality of Mayantoc) and JQG Construction and Supplies (JQG Construction) for the construction of the Mayantoc Memorial Park in Mayantoc, Tarlac (Project).

Sometime in 2019, the Municipality of Mayantoc advertised an Invitation to Apply for Eligibility and to Bid in relation to the Project. This was posted in a newspaper of provincial circulation, as well as in a conspicuous place at the premises of the municipality for 14 continuous days.⁵

In response to the invitation, three contractors submitted their letters of intent and applications for eligibility. The Abstract of Bids,⁶ which was certified correct by the members of the Bids and Awards Committee of the Municipality of Mayantoc, reflected the names of the bidders/contractors, their respective bid amounts and bonds, and the remarks of the Bids and Awards Committee, as follows:

Name of Bidder/Contractor	Bid Amount	Bidder's Bond
JQG Construction and Supplies	PHP 24,990,264.56	PHP 1,250,000.00
Delos Reyes Construction	PHP 24,999,141.21	PHP 1,250,000.00
DAMICO Builders	PHP 24,998,744.91	PHP 1,250,000.00

On November 19, 2009, the Bids and Awards Committee issued Resolution No. 76,⁷ declaring JQC Construction as the bidder with the lowest calculated responsive bid for the Project following post qualification. By virtue of Resolution No. 43-2009⁸ dated November 20, 2009, the Sangguniang Bayan of the Municipality of Mayantoc ratified the resolution of the Bids and Awards Committee that the public bidding for the Project was conducted in order and pursuant to Republic Act No. 9184.⁹

Then Mayantoc Municipal Mayor Tito G. Razalan (Mayor Razalan) issued on November 20, 2009 the corresponding Notice of Award¹⁰ in favor of JQG Construction. Thereupon, the Municipality of Mayantoc issued a Notice to Proceed,¹¹ informing JQG Construction that the Contract

³ *Id.* at 72–80. The January 31, 2020 Resolution in Decision No. 2020-386, which was signed by Chairperson Michael G. Aguinaldo and Commissioners Jose A. Fabia and Roland C. Pondoc, was attested by Director Nilda N. Plasas.

⁴ *Id.* at 302.

⁵ *Id.* at 297–298.

⁶ *Id.* at 304.

⁷ *Id.* at 297–298.

⁸ *Id.* at 308–310.

⁹ Government Procurement Reform Act (2003).

¹⁰ *Id.* at 300.

¹¹ *Id.* at 301.

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Agreement¹² between them had been approved and that it may commence the construction of the Project.

During the administration of Mayantoc Mayor Iluminado E. Pobre (Mayor Pobre), Audit Team Leader Jean M. Daliva (Daliva) submitted to him Technical Evaluation Report No. 2010-04-042 dated April 12, 2011 in connection with the Project.¹³ In the report, the audit team noted several deficiencies, for which Daliva requested the submission of several documents to facilitate its technical evaluation and inspection. She also requested the concerned official/s identified therein to comment on the observations.¹⁴

In compliance with Daliva's request, Mayor Pobre instructed Engineer Rodolfo F. Corpuz (Engr. Corpuz), the municipal engineer and Bids and Awards Committee Chairperson, to submit the documents requested by the COA.¹⁵

As it happened, a Notice of Suspension¹⁶ was issued to halt the payment due to JQG Construction in the amount of PHP 23,048,230.15 for the construction of the Project in view of the local government unit's submission of incomplete supporting documents. The Notice of Suspension named the persons responsible for the incomplete submission, as follows:

Name	Position/Designation	Nature of Participation in the Transaction
1. Tito G. Razalan ¹⁷	Municipal Mayor	Approving the payment of the disbursements.
2. Nilda L. Salazar	Municipal Treasurer	For paying the disbursements
3. Engr. Rodolfo F. Corpuz	Former Municipal Engineer and Former BAC Chairman	In charge of the project and bidding
4. JQG CONSTRUCTION OR JOSE Q. DE GUZMAN	Contractor/payee	Payee

As it happened, the September 18, 2012 Notice of Disallowance¹⁸ was issued after the lapse of 90 days without the satisfactory justification of and compliance with the deficiencies indicated in the Notice of Suspension. Thusly, the payment of PHP 23,048,230.15 was disallowed on the following grounds:

1. Non-submission of the following documents:

¹² *Id.* at 302.

¹³ *Id.* at 279-287.

¹⁴ *Id.*

¹⁵ *Id.* at 287.

¹⁶ *Id.* at 16-17, 61.

¹⁷ Also "Tito Rafanan" in some parts of the *rollo*.

¹⁸ *Rollo*, pp. 19, 61.

- a. Unit cost breakdown of the temporary facilities and detailed breakdown of equipment cost as mentioned in the Approved Budget for the Contract (ABC);
 - b. Unit cost breakdown of the temporary facilities and detailed breakdown of equipment cost as mentioned in the contractor's bid;
 - c. Copy of the approved Project Evaluation and Review Technique (PERT)/Critical Path Method (CPM) Network Diagram and detailed computations of contract time;
 - d. Copy of the approved Change Order;
 - e. Copy of the approved original plans indicating the affected portion(s) of the project and revised plans and specifications indicating the color-coded changes therein;
 - f. Copy of the agency's report establishing the necessity or justifications for the need of such Change Order (CO)/Extra Work Order (EWO) which shall include the: (1) computation as to the quantities of the additional works involved per item indicating the specific stations where such works are needed; (2) date of inspection conducted and the results thereof; and (3) detailed estimate of the unit cost of such items of work for new unit costs;
 - g. Copy of the approved color-coded Revised PERT/CPM Network Diagram, reflecting the effect of additional/deductive time on the contract period and the corresponding detailed computations for the additional/deductive time for the CO/EWO;
 - h. Embankment Cross Section Drawings including Embankment Volume Computations/Tally Sheets;
 - i. Material and Quality Control Test Results; and
 - j. Statement of Work Accomplishment.
2. Violation of the following provisions of Republic Act (RA) No. 9184 and its Revised Implementing Rules and Regulations (RIRR), to wit:
- a. Section 20.1, RIRR of RA No. 9184

No procurement conference held;
 - b. Section 21.1, RIRR of RA No. 9184

Non-posting of the Invitation to Bid (ITB) in the Philippine Electronic Procurement System (PhilGEPS) website and in conspicuous places of the municipality for seven calendar days, and non-issuance of certification of the BAC Secretariat to that effect;

c. Section 17.4, RIRR of RA No. 9184

Non-payment of bidding documents by the participating bidders;

d. Section 13, RIRR of RA No. 9184

Non-government Organizations (NGOs) and private groups belonging to sectors or discipline relevant to the subject procurement were not invited to observe the bidding process; and

e. Section 39.2 and 62.2.3.3, RIRR of RA No. 9184

The winning bidder paid only 10% performance and warranty securities which was lower than the required 30% of the contract price.

3. The final payment of the contract cost for the Mayantoc Memorial Park Project was not submitted for pre-audit, in violation of COA Circular No. 2009-002 dated May 18, 2009.¹⁹

In the Notice of Disallowance, persons were identified as liable for their individual participation in the transaction, namely:

Name	Position/Designation	Nature of Participation
Tito G. Razalan	Former Mayor	For approving the pertinent Disbursement Vouchers (DV)
Rodolfo Corpuz	BAC Chairman	For declaring JQG Construction and Supplies, as one with the Lowest Calculated and Responsive Bids for the construction of Mayantoc Memorial Park despite the noted deficiencies ²⁰
Nilda L. Salazar	BAC Member	
Florence B. Bueno		
Marilene S. Bedania		
Juan M. Bala		

Aggrieved, petitioner Nilda Salazar (Salazar), along with the other persons held liable, filed their respective appeals before COA Regional Office No. III.²¹

The COA Regional Director’s Ruling

In Decision No. 2014-36,²² the COA Regional Office No. III denied the appeals filed before it and held that although the persons identified as liable submitted documents to refute the Notice of Disallowance, deficiencies were nonetheless found. In addition, the COA regional director noted that the

¹⁹ *Id.* at 61–63, 244–246.
²⁰ *Id.* at 63, 247.
²¹ *Id.*
²² *Id.* at 244–249. The Decision No. 2014-36 dated May 16, 2014 was signed by Regional Director Ma. Mileguas M. Leyno.



irregularity in the Project was also subject of a complaint, which its Fraud Audit Office had cognizance of. The decision was disposed in this wise:

WHEREFORE, the foregoing premises considered, [the] instant appeals are hereby **DENIED**. Accordingly Notice of Disallowance (ND) ND No. 12-001-101(09)(10), dated September 18, 2012, disallowing [PHP] 23,048,230.15 is hereby **AFFIRMED**.²³

Perplexed, Salazar, together with the other persons identified in the Notice of Disallowance, filed a Petition for Review²⁴ before the COA Proper. The case was docketed as COA CP Case No. 2014-316.

The COA's Ruling

On January 31, 2018, the COA rendered Decision No. 2018-212, denying the Petition for lack of merit. It ruled, among others, that the audit team was deprived from making a complete examination and evaluation of the propriety and cost reasonableness of the subject transaction due to incomplete documentation. As such, a transaction of such nature is irregular.²⁵ Veritably, the Bids and Awards Committee failed to scrutinize or verify the approved budget for the contract and how the costing was derived. Had they performed their task, they would have found the deficiencies in the documents submitted.²⁶ The decision likewise laid emphasis on Section 12 of Republic Act No. 9184, which states that Bids and Awards Committee members have the control of the entire bidding process up to the recommendation of the award, including the duty to ensure that the procuring entity abides by the rules set forth in the law and its implementing rules and regulations. Accordingly, their failure to perform their functions makes them liable for the disallowance.²⁷ The COA adjudicated as follows:

WHEREFORE, premises considered, the Petition for Review is **DENIED**. Accordingly, Commission on Audit Regional Office No. III Decision No. 2014-36 dated May 16, 2014 which affirmed Notice of Disallowance No. 12-001-101(09)(10) dated September 18, 2012 relative to the construction of Mayantoc Memorial Park in the aggregate amount of [PHP] 23,048,230.15, is hereby **AFFIRMED**.²⁸

Unruffled, Salazar sought reconsideration, positing that the grounds relied upon in disallowing the total cost of the project are not attributable to the Bids and Awards Committee of which she was a member. *First*, the determination of the approved budget for the contract is the responsibility of the Sangguniang Bayan and the head of the local government unit. *Second*,

²³ *Id.* at 249.

²⁴ *Id.* at 84–105.

²⁵ *Id.* at 67.

²⁶ *Id.*

²⁷ *Id.* at 67–68.

²⁸ *Id.* at 69.

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the responsibility of submitting the project for pre-audit falls upon the head of the local government unit. *Lastly*, the responsibility of posting the Invitation to Bid in the Philippine Government Electronic Procurement System website lies with the Bids and Awards Secretariat.²⁹ Invoking the principle of unjust enrichment, and assuming that there was a ground to disallow the payments for the Project, the disallowance of the total amount was not proper considering that the Project is currently being used by the public.³⁰

In denying the motion, the COA explicated that while the responsibility of Bids and Awards Committee ceases after the issuance of the Notice of Award, its members are nevertheless bound by Section 12 of Republic Act No. 9184 to ensure compliance with the required posting of the Invitation to Bid. Failure to do so is sufficient to warrant their liability under the Notice of Disallowance.³¹

Here, Salazar failed to exercise due diligence when she and the other Bids and Awards Committee members allowed the procurement without the required posting of the Invitation to Bid in the Philippine Government Electronic Procurement System website.³² The fact that such function was delegated to the Bids and Awards Committee Secretariat did not absolve the Bids and Awards Committee from any responsibility. It has control or supervising authority over matters delegated to its Secretariat and its failure to post the Invitation to Bid in the Philippine Government Electronic Procurement System website is deemed the failure of the Committee.³³ Thusly, the Notice of Disallowance was affirmed with finality.³⁴

Crestfallen, Salazar filed the instant petition for *certiorari* before this Court.

Issues

The Court initially dismissed the Petition for being filed out of time, as well as Salazar's failure to pay the docket and other fees on time and to file the required number of plain copies.³⁵ Eventually, her bid for reconsideration was granted; the Petition was reinstated³⁶ and it now raises the following issues:

²⁹ *Id.* at 73.

³⁰ *Id.* at 73–74.

³¹ *Id.* at 76–77.

³² *Id.* at 78.

³³ *Id.* at 78–79.

³⁴ *Id.* at 79.

³⁵ *Id.* at 312–314. The Notice of the February 2, 2021 Resolution was signed by Clerk of Court Edgar O. Aricheta.

³⁶ *Id.* at 418–422. The Notice of the Resolution dated June 29, 2021 was signed by Clerk of Court Marife M. Lomibao-Cuevas.

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I.

THE COA GRAVELY ABUSED ITS DISCRETION WHEN IT UPHELD PETITIONER'S LIABILITY FOR THE DISALLOWED PROJECT, DESPITE THE CLEAR VIOLATION OF HER RIGHT TO DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

II.

PETITIONER CAN BE HELD LIABLE FOR THE COST OF THE DISALLOWED PROJECT DESPITE THE FACT THAT THE ALLEGED VIOLATION OF [REPUBLIC ACT] NO. 9184 ASCRIBED TO HER, ASSUMING TO BE TRUE, PERTAINS TO THE BAC SECRETARIAT, AND NOT THE BAC ITSELF, OR TO PETITIONER ALONE AS A MERE MEMBER THEREOF.

III.

THE COA GRAVELY ABUSED ITS DISCRETION WHEN IT DISALLOWED THE TOTAL PROJECT COST DESPITE THE FACT THAT THE MAYANTOC MEMORIAL PARK PROJECT WAS COMPLETED, ACCEPTED, AND IS BEING USED BY THE MUNICIPALITY AND THE RESIDENTS THEREOF.³⁷

Foremost, it bears to accentuate that the assailed COA Decision and Resolution had been the subject of a prior petition for *certiorari*, docketed as G.R. No. 255366, and entitled "*Tito G. Razalan v. Commission on Audit represented by the following: Hon. Michael G. Aguinaldo-Chairman, Hon. Jose A. Fabia-Commissioner; et al.*" (Razalan), which was filed before this Court. In the prior petition, petitioner Razalan imputed grave abuse of discretion upon the COA for disallowing the payment of the Project. Invoking *Arias v. Sandiganbayan*,³⁸ he maintained therein that he should not be held liable for the disallowance.

In the Resolution dated November 9, 2021,³⁹ this Court affirmed COA Decision No. 2018-212 with modification. Despite being filed out of time, the higher interest of substantial justice demanded that the case be resolved on the merits. The Court held that the COA was correct in finding petitioner Razalan negligent in the discharge of his functions as the head of the procuring entity and as the head of the agency when he approved the award of and payment for the Project. *For one*, he ignored the conspicuous absence on record of any proof that the Invitation to Bid was posted on the Philippine Government Electronic Procurement System website. *For another*, he still approved the award and payment for the Project despite the absence of the required certification on the completeness of the supporting documents.

³⁷ *Id.* at 25.

³⁸ 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., *En Banc*].

³⁹ *Rollo*, pp. 446-447. The Notice of the Resolution was signed by Clerk of Court Marife M. Lomibao-Cuevas.

The Court further pronounced that petitioner Razalan, together with the Bids and Awards Committee, were jointly and severally liable for the disallowed amount, owing to their bad faith in relation to their approval of the Project. However, considering that the amount due the recipient was still undetermined, the case was remanded to the COA. The COA was ordered to ascertain the amount which the payee/contractor may be allowed to retain commensurate to the actual use and enjoyment derived by the municipality and its constituents from the construction of the Project.⁴⁰

In the case at bench, Salazar anchors her Petition on grounds distinct from the *Razalan* petition. She asseverates that she was denied due process considering that: 1) she was not personally served with the Notice of Suspension as to allow her an opportunity to submit documents and to comment thereon; 2) the COA Regional Office No. III Decision did not adhere to the constitutional requirements of the law; and 3) the Notice of Suspension was issued without authority rendering it and the subsequent Notice of Disallowance was void.⁴¹

In the same vein, Salazar avows that she was denied equal protection of the laws when the municipal accountant was not held responsible in the Notice of Suspension and the contractor was dropped in the Notice of Disallowance.⁴² According to her, the COA erred in finding her liable based on the alleged failure to post the Invitation to Bid in the Philippine Government Electronic Procurement System website as this pertained to the function of the Bids and Awards Secretariat, and not the Bids and Awards Committee itself.⁴³ In any event, the disallowed amount should be substantially reduced based on the principle of unjust enrichment⁴⁴—a matter already resolved in the *Razalan* petition.

By way of Comment⁴⁵ through the Office of the Solicitor General, respondent COA denies having acted with grave abuse of discretion and asserts that: 1) the disallowance is proper; 2) Salazar, as a Bids and Awards Committee member, is liable for the disallowed amount; 3) the COA Audit Team Leader had jurisdiction on the subject Notice of Suspension and Notice of Disallowance; 4) Salazar's rights to due process and equal protection of the laws were not violated; and 5) she failed to exercise the expected due diligence of a Bids and Awards Committee member. In any case, the COA agrees that the amount of the disallowance should be reduced.

The Court's Ruling

⁴⁰ *Id.*

⁴¹ *Id.* at 28–43.

⁴² *Id.* at 43–45.

⁴³ *Id.* at 45–50.

⁴⁴ *Id.* at 50–53.

⁴⁵ *Id.* at 448–493.

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At the vortex of the instant Petition is this pivotal query — *Did the COA correctly disallow the payment to JQG Construction relative to the construction of the Mayantoc Memorial Park?*

This Court answers in the affirmative. Still and all, the exceptional circumstances surrounding the case strongly impel the Court to remand it to the COA for the determination of the adjusted disallowed amount.

The issuance of an audit letter or an Audit Observation Memorandum is an initiatory step in the investigative audit to determine the propriety of disbursements made. If after an in-depth investigation, there is a finding that the transaction should be suspended or disallowed, a Notice of Suspension, Notice of Disallowance or Notice of Charge shall be issued. It is the Notice of Suspension, Notice of Disallowance or Notice of Charge that becomes final and executory, absent any motion for reconsideration or appeal.⁴⁶ Necessarily, the findings and conclusions in the notices may vary from the initial observation contained in the audit letter or Audit Observation Memorandum. In light of the audit investigation, an additional person may be held liable, the amount to be suspended or disallowed may change, or the nature of participation of the persons initially held responsible may be modified.

In the present controversy, Salazar was initially held responsible in the Notice of Suspension as the municipal treasurer “[f]or paying the disbursements.”⁴⁷ However, in the Notice of Disallowance, she was held liable for her role as a Bids and Awards Committee member “[f]or declaring the winning bidder, JQG Construction and Supplies, as the Bidder with the Lowest Calculated and Responsive Bid for the construction of Mayantoc Memorial Park despite the deficiencies noted.”⁴⁸ As enunciated, this modification is a *necessary consequence* of the audit investigation. In fact, other Bids and Awards Committee members not initially named in the Notice of Suspension were similarly identified as liable in the Notice of Disallowance. The variation in Salazar’s nature of participation under the Notice of Suspension and Notice of Disallowance is of no moment; it is not tantamount to either a denial of due process or equal protection of the laws.

In *Saligumba v. Commission on Audit*,⁴⁹ the Court held that “[d]ue process is complied with ‘if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions’.”⁵⁰ The essence of due process is the fair and reasonable opportunity to be heard or to explain one’s side.⁵¹

⁴⁶ See *Cruz v. Commission on Audit*, 788 Phil. 435, 445 (2016) [Per C.J. Sereno, *En Banc*].

⁴⁷ *Rollo*, p. 17.

⁴⁸ *Id.* at 247.

⁴⁹ 882 Phil. 665 (2020) [Per C.J. Peralta, First Division].

⁵⁰ *Id.* at 678–679.

⁵¹ See *Favila v. Commission on Audit*, G.R. No. 251824, February 6, 2023 [Per J. Hernando, *En Banc*].

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Here, Salazar *actively* participated in the proceedings before the COA. She appealed the Notice of Disallowance to the COA regional director and filed her Petition for Review with the COA Proper. Clearly, she was afforded the opportunity to present her side in *every stage* of the proceedings. Despite the variance in the Notice of Suspension and the Notice of Disallowance, she was nevertheless afforded all opportunity before COA Regional Office No. III and the COA Proper to state her case against any liability as a member of the Bids and Awards Committee. By virtue of her active participation in the proceedings, any defect in the Notice of Suspension and the Notice of Disallowance had effectively been waived.

Moreover, contrary to Salazar's avowals, the COA Regional Office No. III Decision complies with the requirements of procedural due process.⁵² Along with the other persons held liable, she was able to appeal the Notice of Disallowance and submit documents in support of her position. However, as found by the COA regional office and as scrutinized by the Technical and Information Technology Services, these *remained non-compliant* with the requirements under the Notice of Suspension and the Notice of Disallowance.

A reading of the COA Regional Office No. III decision readily reveals that the basis for the denial of Salazar's appeal was the non-compliance with the documents submitted with the requirements under the Notice of Suspension and Notice of Disallowance. Thus, she erred in arguing that the COA regional director relied upon the Fraud Audit Office report in its decision. In fact, the discussion on the Fraud Audit Office report is a mere surplusage, which does not add any value to the rationale of the decision. Its inclusion or omission does not render the decision defective.

Clutching at straws, Salazar harps on the supposed nullity of the Notice of Suspension for having been issued without authority, which inevitably affects the consequent Notice of Disallowance. She contends that both the Audit Team Leader and Supervising Auditor must sign the Notice of Suspension; otherwise, the same is void and without effect.

It is worth mentioning that incipiently both the Notice of Suspension and the Notice of Disallowance were not annexed to the instant Petition,

⁵² Based on *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642-644 (1940) [Per J. Laurel, *En Banc*]. Administrative due process requires that:

1. The party should be allowed to present his or her own case and submit supporting evidence;
2. The deciding tribunal must consider the party's evidence;
3. There is evidence to support the tribunal's decision;
4. The evidence supporting the tribunal's decision must be substantial or such "relevant evidence as a reasonable mind might accept as adequate to support a conclusion;"
5. The tribunal's decision was based on the evidence presented or the records of the case disclosed to the parties;
6. The tribunal's decision must be based on the judge's independent consideration of the facts and law governing the case; and
7. The tribunal's decision must be rendered such that the issues of the case and the reasons for the decisions are known to the parties.

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thereby depriving the Court of any opportunity to peruse these documents. While Salazar manifested to submit additional documents,⁵³ still, it took her more than two years to accomplish the same. Nevertheless, even if the Court were to gloss over her belated submission, *her argument still does not hold sway*.

The Notice of Suspension was not issued without authority simply because it was signed by the Supervising Auditor alone without that of the Audit Team Leader. The issuance of Notice of Suspension, as well as other post audit functions of the COA, does not depend on the availability of the Supervising Auditor⁵⁴ or, as in this case, the Audit Team Leader. These audit functions are not halted or suspended simply because an officer or a member of the COA's audit team has resigned or has not been appointed in the meantime — or as in this case, went on sick leave. Indeed, the COA was able to satisfactorily explain the absence of the Audit Team Leader's signature in the Notice of Suspension.

All told, Salazar was not denied due process in the proceedings before the COA Regional Office No. III and the COA Proper.

Having settled the foregoing threshold issue, the next question leaps to the eye: *Is Salazar liable for the disallowed amount?*

Along this grain, the Court reiterates the conclusion reached in *Razalan*— “Razalan, together with the [Bids and Awards Committee], are jointly and severally liable for the disallowed amount...”⁵⁵

Under Republic Act No. 9184, the Bids and Awards Committee shall ensure that the procuring entity abides by the standards set forth by the procurement law. Section 12 reads:

SECTION. 12. *Functions of the BAC.* – The BAC shall have the following functions: advertise and/or post the invitation to bid, conduct pre-procurement and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, recommend award of contracts to the Head of the Procuring Entity or his duly authorized representative: *Provided*, That in the event the Head of the Procuring Entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Article XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group from a pool of technical, financial and/or legal experts to assist in the procurement process.

⁵³ *Rollo*, pp. 5–7.

⁵⁴ *See De Guzman v. Commission on Audit*, 887 Phil. 1067, 1074 (2020) [Per J. Lazaro-Javier, *En Banc*].

⁵⁵ *See Razalan v. Commission on Audit*, G.R. No. 255366, November 9, 2021 [Unsigned Resolution, *En Banc*].

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In proper cases, the BAC shall also recommend to the Head of the Procuring Entity the use of Alternative Methods of Procurement as provided for in Article XVI hereof.

The BAC shall be responsible for ensuring that the Procuring Entity abides by the standards set forth by this Act and the IRR, and it shall prepare a procurement monitoring report that shall be approved and submitted by the Head of the Procuring Entity to the GPPB on a semestral basis. The contents and coverage of this report shall be provided in the IRR.

The functions of the Bids and Awards Committee are echoed in Sections 12.1. and 12.2 of the Revised Implementing Rules and Regulations, and even in the earlier implementing rules and regulations of Republic Act No. 9184. Section 12.1 provides that among the functions of the Bids and Awards Committee is to “advertise and/or post the invitation to bid/request for expressions of interest.” Meanwhile, Section 14.1(f) likewise makes it a function of the Bids and Awards Committee Secretariat to “[a]dvertise and/or post bidding opportunities, including [b]idding [d]ocuments, and notices of awards.” The function of advertising and posting the Invitation to Bid palpably belongs to the Bids and Awards Committee and the Bids and Awards Committee Secretariat.

Parenthetically, Section 21⁵⁶ of Republic Act No. 9184 provides for the advertising procedure for the Invitation to Bid. Section 21.2 of its revised implementing rules reads:

21.2. *Advertising and Posting of the Invitation to Bid/Request for Expression of Interest*

21.2.1. Except as otherwise provided in Sections 21.2.2 and 54.2 of this IRR and for the procurement of common-use goods and supplies, the Invitation to Bid/Request for Expression of Interest shall be:

- a) Advertised at least once in one (1) **newspaper of general nationwide circulation** which has been regularly published for at least two (2) years before the date of issue of the advertisement;
- b) Posted continuously in the **PhilGEPS website**, the website of the procuring entity concerned, if available, and the website prescribed by the foreign government/foreign or international financing institution, if applicable, for seven (7) calendar days starting on date of advertisement; and

⁵⁶ SECTION. 21. *Advertising and Contents of the Invitation to Bid.* – In line with the principle of transparency and competitiveness, all Invitations to Bid contracts under competitive bidding shall be advertised by the Procuring Entity in such manner and for such length of time as may be necessary under the circumstances, in order to ensure the widest possible dissemination thereof, such as, but not limited to, posting in the Procuring Entity's premises, in newspapers of general circulation, the G-EPS and the website of the Procuring Entity, if available. The details and mechanics of implementation shall be provided in the IRR to be promulgated under this Act...

- c) Posted at any conspicuous place reserved for this purpose in the premises of the procuring entity concerned for seven (7) calendar days, if applicable, as certified by the head of the BAC Secretariat of the procuring entity concerned.⁵⁷ (Emphasis supplied)

The *posting of the Invitation to Bid on the Philippine Government Electronic Procurement System website is not an empty requirement*. Pursuant to the government's mandate to streamline the procurement process, it was introduced with the objective of promoting transparency and efficiency and was created to serve as the primary source of information on all government procurement.⁵⁸ The purpose therefor is to ensure the widest possible dissemination in keeping with the principles of transparency and competitiveness.⁵⁹ Absent justifiable reasons, the posting of the Invitation to Bid in the procuring entity's premises and advertisement thereof in newspapers of general nationwide circulation cannot cure the absence of posting on the Philippine Government Electronic Procurement System website.⁶⁰

Here, the posting requirements of the law were not complied with. The Invitation to Bid was not posted in the Philippine Government Electronic Procurement System website. Moreover, the Bids and Awards Committee Secretariat only advertised the Invitation to Bid in a newspaper of *provincial* circulation.⁶¹ Even if the Court were to give credence to Salazar's musings that the local government unit is exempted from posting on the Philippine Government Electronic Procurement System website, the Project remains susceptible to disallowance for failure to comply with the procurement law. Republic Act No. 9184 requires the Invitation to Bid to be advertised in a newspaper of general *nationwide* circulation or a newspaper that is published *nationally*. Plain as day, the Bids and Awards Committee and the Bids and Awards Committee Secretariat fell short of the publication requirement when it not only failed to post the Invitation to Bid in the Philippine Government Electronic Procurement System website but likewise advertised the same in a newspaper of *provincial* circulation.

The fact that actual posting of the Invitation to Bid in the Philippine Government Electronic Procurement System website is tasked upon the Bids and Awards Committee Secretariat does not absolve the Bids and Awards Committee, its chairperson, or its members of any responsibility or liability. If at all, both the Bids and Awards Committee Secretariat and the Bids and

⁵⁷ GPPB Resolution No. 03-2009 (2009), Approving the Revised Implementing Rules and Regulations of Republic Act No. 9184 (2002).

⁵⁸ Government Procurement Policy Board, Revised Implementing Rules and Regulations of Republic Act No. 9184, otherwise known as the Government Procurement Act, Republic Act No. 9184, Rule III, sec. 8.1.1 (2009).

⁵⁹ See *Public Estates Authority v. Bolinao Security and Investigation Services, Inc.*, 509 Phil. 157, 173 (2005) [Per J. Carpio Morales, Third Division].

⁶⁰ See *Guia, Jr. v. Commission on Audit*, G.R. No. 247867, March 1, 2022 [Unsigned Resolution, *En Banc*].

⁶¹ *Rollo*, p. 9.

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Awards Committee are liable for failure to post the Invitation to Bid in the Philippine Government Electronic Procurement System website, with the Bids and Awards Committee Secretariat being primarily liable and the Bids and Awards Committee being subsidiarily liable. The Bids and Awards Committee Secretariat was intended to serve as the main support unit of the Bids and Awards Committee. In sooth, the act of the Bids and Awards Committee Secretariat, as a support unit, is the act of the Bids and Awards Committee, and its failure to post the Invitation to Bid in the Philippine Government Electronic Procurement System website is deemed the failure of the Bids and Awards Committee.

To reverberate, the Bids and Awards Committee has control of the entire bidding process and as such, must ensure that the procuring entity abides by the law. For failure to perform such functions, the Bids and Awards Committee chairperson and its members become liable for disallowance. In case of failure to post in the Philippine Government Electronic Procurement System website or improper publication in the newspaper, both the Bids and Awards Committee Secretariat and the Bids and Awards Committee are liable. As a Bids and Awards Committee member, Salazar was bound, not only to know, but also to ensure compliance by the procuring entity with the prescribed procedure on government procurement. She cannot, therefore, escape liability for her role as a Bids and Awards Committee member in relation to the Project.

Upon this point, the Court ingeminates the ruling laid down in *Razalan* on the propriety of the disallowed amount, *viz.*:

Here, Razalan, together with the BAC, are jointly and severally liable for the disallowed amount, owing to their bad faith in relation to their approval of the Mayantoc Memorial Park Project. Even then, the guidelines on return in *Torreta* state that the civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit*. In this case, the amount due to the recipient is still undetermined for the COA was not able to scrutinize the propriety and reasonableness of the transaction costs due to lack of submitted documents. Thus, the case should be remanded to the COA in order to determine the amount which the payee/contractor may be allowed to retain commensurate to the actual use and enjoyment derived by the Municipality and its constituents from the construction of the Mayantoc Memorial Park Project.

In *Fernandez v. COA*, the Court pronounced that despite violations in the public bidding of the computerization project of the City of Talisay which resulted in its disallowance, personal liability should not attach to the persons named liable under the NDs up to the extent of the benefit that the government of the City of Talisay has actually derived from the project.

It is understood, however, that the remand to COA is without prejudice to the filing of appropriate administrative cases against Razalan

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and the BAC for violations of the procurement law and its implementing rules and regulations.⁶² (Emphasis in the original)

In determining Salazar's liability to return disallowed amounts, the Court turns to the landmark case of *Madera v. Commission on Audit*,⁶³ viz.:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. **If a Notice of Disallowance is upheld**, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the **net disallowed amount** which, as discussed herein, excludes amounts excused under the following Sections 2c and 2d.
 - c. **Recipients** — whether approving or certifying officers or **mere passive recipients** — are **liable to return the disallowed amounts** respectively received by them, **unless they are able to show that the amounts they received were genuinely given in consideration of services rendered**.
 - d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case-to-case basis.⁶⁴ (Emphasis supplied)

Applying *Madera*, Salazar, along with the other persons named liable in the Notice of Disallowance, are solidarily liable to return only the net disallowed amount, that is, the *difference* between the total disallowed amount minus any amount allowed to be retained by the payee/s.

In the case of *Juan v. Commission on Audit*,⁶⁵ the Court explicated on the concept of net disallowed amount:

[I]s rooted from the notion that the responsibility to return disallowed allowances or benefits is a *civil liability* that *ultimately* rests upon the payees who are individually accountable to return so much of the disallowed amount that they received pursuant to the principle of *solutio indebiti*. Hence, when any or all of the payees are actually absolved or excused from

⁶² *Razalan v. Commission on Audit*, G.R. No. 255366, November 9, 2021 [Unsigned Resolution, *En Banc*].

⁶³ 882 Phil. 744 (2020) [Per J. Caguioa, *En Banc*].

⁶⁴ *Id.* at 817–818.

⁶⁵ G.R. Nos. 237835 et al., February 7, 2023 [Per J. Rosario, *En Banc*].

their liability to return, the notion demands that there must also be a corresponding decrease to the civil liability of the approving and certifying officers under Section 43 of Book VI of the 1987 Administrative Code. This corresponding decrease in the solidary liability of approving and certifying officers, in turn, serves two main purposes:

1. It assures that no undue burden is passed on to the approving and certifying officers who, otherwise, will be required to reconstitute amounts that they did not actually receive *on their own and without any other recourse*.
2. It prevents the government from being unjustly enriched as the contrary scenario would allow it to recover more than the loss recognized in its favor.⁶⁶

However, as it happened, only the Bids and Awards Committee chairperson and its members, Salazar included, were held liable in the Notice of Disallowance. While JQG Construction as the contractor of the Project and consequently, the payee therein, was named in the initial Notice of Suspension, it was later dropped from the list of persons/entities identified in the Notice of Disallowance as liable for participating in the contentious transaction.

Now, what happens if the payee/s of the appropriately disallowed transaction is excluded from the Notice of Disallowance?

In sorting out this issue, the Court hews to the 2009 Rules and Regulations on the Settlement of Accounts⁶⁷ of the COA—

CHAPTER I – INTRODUCTION

....

SECTION 4. DEFINITION OF TERMS...

....

- 4.17 **Liability** – a personal obligation arising from an audit disallowance or charge which may be satisfied through payment or restitution as determined by competent authority or by other modes of extinguishment of obligation as provided by law.

....

⁶⁶ *Id.*

⁶⁷ COA Circular No. 2009-006 was approved on September 15, 2009 by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr. It took effect on October 6, 2009 after publication on September 21, 2009 in the Philippine Star and the Daily Tribune.



- 4.20 **Persons Liable** – the persons **determined to be answerable** for an audit disallowance, charge or decision as provided in these Rules.
-

**CHAPTER III – GUIDELINES IN THE ISSUANCE OF AOM,
NS/ND/NC, NSSDC and SASDC**

....

SECTION 10. NOTICE OF DISALLOWANCE (ND)

....

- 10.2 The ND shall be addressed to the agency head and the accountant; **served on the persons liable**; and shall indicate the transaction and amount disallowed, reasons for the disallowance, the laws/rules/regulations violated, and persons liable. It shall be signed by both the Audit Team Leader and the Supervising Auditor.
- 10.3 The ND shall be issued as often as disallowances are made by the Auditor in order to notify the agency head, the accountant, and the persons liable for the amount disallowed in audit.
- 10.4 The disallowance shall be settled within six (6) months from receipt of the ND **by the persons liable**.
- 10.5 The date of receipt of the ND **by the persons liable** therefor or by their authorized representatives as provided in Section 12 hereof shall be the reckoning date for purposes of counting the 6-month period for appeal.
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**SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/
LIABLE**

....

- 16.3 The **liability of persons determined to be liable under an ND/NC** shall be solidary and the Commission may go **against any person liable** without prejudice to the latter's claim against the rest of the persons liable. (Emphasis supplied)

Quite palpably, JQG Construction does *not* fall under the definition of *Persons Liable*. While it is unquestionable at this point that JQG Construction is indeed the payee of the disallowed transaction, still, the fact remains that it has not been included in the audit investigation.

Retention by passive payees of disallowed amounts received in good faith and on account of their lack of participation in the disbursement is one thing; however, their complete exclusion from the entire audit proceedings is

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another. Regrettably, the Court *cannot* now belatedly rectify the COA's oversight without violating JQG Construction's right to due process.

Thus, JQG Construction, as the payee, cannot be held liable under the Notice of Disallowance. Be that as it may, the Court deems it proper to **remand** the case to the COA for the determination of the **net disallowed amount to which the persons named in Notice of Disallowance are liable to pay**, taking into consideration the reasonable value of the services rendered by JQG Construction.


In the 2020 case of *Torreta v. Commission on Audit*,⁶⁸ this Court decreed that in cases involving unlawful/irregular government contracts, the civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of *quantum meruit* on a case to case basis.⁶⁹

Applying *Torreta*, upon the remand of the case to the COA, if it is found that excessive payments were made to JQG Construction, such excess shall be considered as the net disallowed amount to which Salazar, along with the other persons named liable in the Notice of Disallowance, shall be solidarily liable. Under pain of repetition, JQG Construction, as the payee, can no longer be made liable.

ACCORDINGLY, the Petition for *Certiorari* is **GRANTED IN PART**. The January 31, 2018 Decision No. 2018-212 and the January 31, 2020 Resolution in Decision No. 2020-386 of the Commission on Audit are **AFFIRMED with MODIFICATION**.


The case is **REMANDED** to respondent Commission on Audit for the determination of the disallowed amount, as reduced by the reasonable value of the services rendered by the payee/contractor. Petitioner Nilda G. Salazar, along with the other persons named liable in the Notice of Disallowance, are declared solidarily liable for the adjusted disallowed amount.

SO ORDERED.


JAPAR B. DIMAAMPAO
Associate Justice

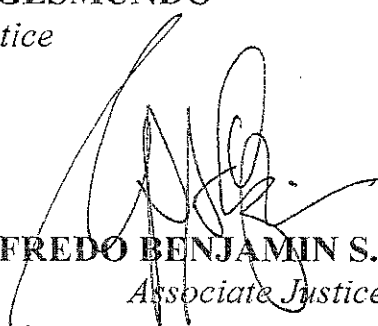
⁶⁸ 889 Phil. 1119 (2020) [Per J. Gaerlan, *En Banc*].

⁶⁹ *Id.* at 1149.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

On official business
MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


On leave
RAMON PAUL L. HERNANDO
Associate Justice



AMY C. LAZARO JAVIER
Associate Justice




HENRI JEAN PAUL B. INTING
Associate Justice



RODIL V. ZALAMEDA
Associate Justice




MARIO V. LOPEZ
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP V. LOPEZ
Associate Justice



JOSE MIDAS P. MARQUEZ
Associate Justice

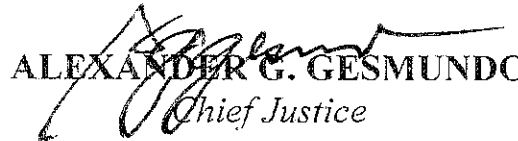


ANTONIO T. KHO, JR.
Associate Justice

On leave
MARIA FILOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 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 this Court.


ALEXANDER G. GESMUNDO
Chief Justice