Republic of the Philippines
Supreme Court
Manila

EN BANC

BASES CONVERSION AND DEVELOPMENT AUTHORITY (BCDA), Petitioner,	**G.R. No. 209219**
	Present:
	SERENO, *C.J.*,*
	CARPIO,
	VELASCO, JR.,
	LEONARDO-DE CASTRO,
	BRION,*
	PERALTA,
	BERSAMIN,
- versus -	DEL CASTILLO,
	VILLARAMA, JR.,
	PEREZ,
	MENDOZA,
	REYES,
	PERLAS-BERNABE,
	LEONEN, and
	JARDELEZA,** *JJ.*
COMMISSION ON AUDIT CHAIRPERSON MA. GRACIA M. PULIDO-TAN, COMMISSIONER HEIDI L. MENDOZA and COMMISSIONER ROWENA V. GUANZON, THE COMMISSIONERS, COMMISSION ON AUDIT, Respondents.	Promulgated: December 2, 2014

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* On Official Leave.
** No Part.

DECISION

REYES, *J.*:

This resolves the petition for *certiorari*[1] filed by petitioner Bases Conversion and Development Authority (BCDA) under Rule 64, in relation to Rule 65 of the Rules of Court, seeking to annul Decision No. 2013-109[2] issued by the Commission on Audit (COA) in the case with the subject "*Petition for review of General Narciso L. Abaya (Ret.), President and Chief Executive Officer, Bases Conversion and Development Authority, of COA Adjudication and Settlement Board Decision No. 2009-049 dated May 07, 2009, which denied his appeal from Legal and Adjudication Office Corporate Decision No. 2006-068 dated September 13, 2006, and affirmed Notice of Disallowance No. BCDA-05-001-(02) dated April 12, 2005 amounting to ₱117,760.00.*"

The Antecedents

On July 9, 2001, BCDA and Design Science, Inc. (DSI) executed the document denominated as Contract for Construction Management Services (CMS) for the Two-Storey Philippine Army Officers' Clubhouse Building,[3] by which DSI was engaged as the construction manager for the building project to be erected at Fort Bonifacio in Metro Manila. As construction manager, DSI was to ensure that the project would be completed within the required time frame, budget and quality standard.[4] The agreed consideration for DSI's services was ₱2,350,500.00, subject to the terms and conditions stated in the CMS agreement.[5] The contract was for seven months, with the project slated to be completed by November 1, 2001.[6] Members of the CMS team were to serve for different lengths of time within the project's five-month construction period and two-month post-construction period.[7]

The project was later extended to December 1, 2001, given a time extension of 30-calendar days granted to the project's main contractor, Kanlaon Construction Enterprise Company, Inc. (KCECI).[8] Accordingly, the contract with DSI was also extended for one month. The extension was covered by Supplemental Agreement No. 1[9] signed by BCDA and DSI, and which provided for a corresponding increase of ₱560,320.00 in the original

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1 *Rollo*, pp. 3-22.

2 Issued by Commission on Audit Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon; id. at 24-29.

3 Id. at 39-55.

4 Id. at 95.

5 Id. at 41.

6 Id. at 24.

7 Id. at 98.

8 Id.

9 Id. at 32-35.

contract amount.[10] A consultancy contract review conducted by the COA's Technical Services Office (TSO), however, disclosed that the remuneration cost for the contract extension was higher by ₱101,200.00 or 39.08% than the remuneration cost that was estimated by COA. The difference stemmed from the excess extension of one man-month each for the following DSI personnel: Project Manager, Residential Cost/Quantity/Specs Engineer and Clerk/Encoder.[11] The TSO then recommended that the amount of ₱101,200.00 be deducted from the service fee that was to be paid to DSI.[12]

The Project Manager sought a reconsideration of the TSO's findings by trying to justify the need for an extension of either two man-months or one man-month for identified personnel. The Project Manager, nonetheless, revised the remuneration cost for the extension, reducing it from ₱560,320.00 to ₱456,720.00.[13]

In its re-evaluation,[14] the TSO still declared the reduced amount of ₱456,720.00 higher by ₱117,760.00 or 34.74% than the COA's new estimated remuneration cost of ₱338,960.00. The difference was due to an excess of one man-month each for five personnel, particularly: the Resident Sanitary Engineer, Resident Electrical Engineer, Administrative Assistant/Accountant, Utility Man and Driver. Originally, the services of these persons were to end by the project's fifth month, yet under the revised manning schedule, their services were extended until the seventh month.[15] The TSO emphasized that since Article II of the Supplemental Agreement provided for an extension of only one month, an extension of two man-months for these five personnel was unauthorized.[16]

Given the circumstances, the BCDA Audit Team Leader, State Auditor Corazon Españo, issued on March 11, 2003 Audit Observation Memorandum No. 03-008[17] providing the disallowance of ₱117,760.00. This was affirmed by the COA's Legal and Adjudication Office-Corporate *via* its Notice of Disallowance No. BCDA-05-001-(02)[18] dated April 12, 2005. BCDA moved to reconsider, but its plea was denied.[19] Unyielding, BCDA appealed to the COA Adjudication and Settlement Board (ASB).

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10 Id. at 33.
11 Id. at 25.
12 Id. at 96.
13 Id.
14 Id. at 140-141.
15 Id. at 9.
16 Id. at 141.
17 Id. at 142.
18 Id. at 30-31.
19 Id. at 96.

On May 7, 2009, the ASB rendered Decision No. 2009-049[20] denying BCDA's appeal and thus, affirming the disallowance of ₱117,760.00. Finding an extension of two months for the five personnel improper and unnecessary, the ASB explained in part:

> Clearly, the original CMS contract stipulates a period of seven (7) months [within] which the DSI will render its services, that is, five-month construction phase and two-month post construction phase. Therefore, all services rendered within the seven-month period, whether original or additional, are intended, covered or included in the scope of works in the original contract. It appears, however, that the DSI decided to utilize the services of subject [five (5)] personnel using a five-month period only, leaving the two-month post construction period unused. Since it was DSI that determined its manning requirements and for which BCDA fully concurred in, it is now estopped from justifying that the additional two (2) man-month requirements were beyond the scope of works of the original contract. Moreover, the excess one month services each of the Sanitary Engineer, Electrical Engineer, Administrative Assistant[/]Accountant, Utility man and Driver were obviously unnecessary considering that these positions, under the original manning schedule, were supposedly to expire simultaneously with the construction phase. Put differently, the DSI was given seven (7) months within which its key and support staff are to render services but opted not to consume the full contract term. Services can only be considered beyond the scope of works of the original contract when the same are rendered beyond the period stipulated in the original contract, in this case, beyond the seven-month period.[21]

In affirming the disallowance, the ASB also declared applicable Section 8.1 of the National Economic Development Authority-Implementing Rules and Regulations (NEDA-IRR) governing increase of cost of consulting services. An increase in the cost of consulting services is allowed only when it is due to adjustment of rates, additional works or reasonable delays in project implementation.[22]

BCDA appealed the ASB decision to the COA proper *via* a petition for review, but the COA proper denied the petition in its Decision No. 2013-109.[23] The dispositive portion of its decision reads:

> **WHEREFORE**, premises considered, the petition for review is hereby **DENIED.** Accordingly, ASB Decision No. 2009-049 dated May 7, 2009 affirming ND No. BCDA-05-001-(02), dated April 12, 2005 in the total amount of P117,760.00 is hereby **AFFIRMED.**[24]

Hence, this petition for *certiorari.*

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20 Id. at 95-100.
21 Id. at 98.
22 Id. at 99-100.
23 Id. at 24-29.
24 Id. at 28.

The Present Petition

BCDA raises a lone issue in its petition:

> WHETHER OR NOT THE [COA] GRAVELY ABUSED ITS DISCRETION WHEN IT DECLARED THAT THE [₱]117,760.00 DISBURSEMENTS MADE COVERING THE REMUNERATION PURSUANT TO THE EXTENSION OF THE CMS IS WITHOUT LEGAL BASIS.[25]

Ruling of the Court

The petition is bereft of merit. The Court finds no grave abuse of discretion on the part of the COA in issuing the assailed decision.

At the outset, the Court emphasizes that the present petition is one for *certiorari* filed under Rule 64, in relation to Rule 65 of the Rules of Court. Time and again, the Court has pointed out that the special civil action for *certiorari* is a limited form of review. It should be established that the respondent court or tribunal acted in capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.[26] Grave abuse of discretion, which needs to support petitions for *certiorari*, then has a specific meaning, to wit:

> An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void." From the foregoing definition, it is clear that the special civil action of *certiorari* under Rule 65 can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross. x x x.[27]

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25 Id. at 14.

26 *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, G.R. No. 155306, August 28, 2013, 704 SCRA 24, 38; *Dycoco v. Court of Appeals*, G.R. No. 147257, July 31, 2013, 702 SCRA 566, 580; *Balayan v. Acorda*, 523 Phil. 305, 309 (2006).

27 *Malayang Manggagawa ng Stayfast Phils., Inc. v. National Labor Relations Commission*, id. at 39, citing *Yu v. Judge Reyes-Carpio*, G.R. No. 189207, June 15, 2011, 652 SCRA 341, 348.

There appears to be no grave abuse of discretion by the COA in its disposition of BCDA's appeal from the ASB decision. In its revised manning schedule[28] following the one-month extension given to KCECI for project completion, DSI presented an extension of two man-months each for five employees identified as the Resident Sanitary Engineer, Resident Electrical Engineer, Administrative Assistant, Utility Man and Driver. The two man-month extension for these five personnel was clearly not in accord with Article II of the subject Supplemental Agreement, which contemplated a mere one man-month extension for DSI's services as it provided:

ARTICLE II
CONSIDERATION

> 2.1 BCDA shall pay the CONSTRUCTION [MANAGER] the additional amount of **Pesos: Five Hundred Sixty Thousand Three Hundred Twenty and 00/100 (₱ 560,320.00)** for the additional Services for a period of **one (1) month**, inclusive of reimbursable costs.[29] (Underscoring ours and emphasis in the original)

The Court highlights the fact that the project was originally slated to be completed within seven months. Under the main CMS contract, DSI's service as construction manager was to coincide with this period. Per its original plan, DSI intended to retain the five subject personnel's services only until the end of the project's construction phase in month five. They were then no longer needed during the project's post-construction phase.

The project was later extended by only one month. In the revised manning schedule prepared by DSI, it however claimed to need the five subject personnel's services for two months more, or until months six and seven of the revised schedule totaling eight (8) months. As the COA correctly pointed out, no additional compensation should be allowed for the excess of one man-month each of the five personnel because all services rendered within the original period were already intended, covered or included in the scope of works in the original contract.[30] These were then already compensated under the contract dated July 9, 2001. The Court sustains the observations and conclusions of the COA, particularly:

> This Commission also agrees with the ASB that the excess one (1) month services for each of the positions under contention were unnecessary considering that these positions, under the original manning schedule, were supposed to expire simultaneously with the construction phase. It must be emphasized that the main contract was extended only for a period of one (1) month. The services of the construction manager under the original contract were for seven (7) months consisting of five (5) months for the construction phase and two (2) months for the post

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28 *Rollo*, p. 9.
29 Id. at 34.
30 Id. at 27.

> construction phase. In the original contract, where the construction phase calls for a period of five (5) months, the contested positions were accorded less than five (5) months each. It is therefore not right that a one (1)-month extension of the main contract would require an additional two (2) months service for the positions in question.[31]

BCDA's argument that the disallowed five man-months were not part of the original scope of works fails to persuade. It offered no clear and sufficient explanation as to how and why the five members of the CMS team needed to extend working for two more months than originally intended, when the project itself was extended for only a month. Given such failure, the Court finds no cogent reason to disturb the COA's finding that the services of the five personnel were not needed for the extra one month. Considering that BCDA and DSI's supplemental agreement only provided for a one-month project extension, there was in truth no basis, factual or legal, for the disallowed amounts.

The COA's disallowance was also justified under the NEDA-IRR on the Procurement of Consulting Services for Government Projects. Section 8.1 thereof is explicit:

> 8.1 Cost of Consulting Services
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> No increase in cost shall be allowed beyond and above the contract amount indicated in the agreement for consulting services except for the following:
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> a. Adjustment in rates in accordance with Section 6.9 (Escalation);
> b. Additional Works not covered under the scope of works contained in the consulting services agreement; and
> c. Additional costs that may be incurred due to reasonable delays (greater than 15% of approved contract duration) in project implementation due to acts undeniably attributable to government and/or force majeure as determined by the Head of agency.
>
> x x x x

Article 3, Section 3.2.2.1 (j) of the main CMS agreement further provides:

> j. In case **additional or special Services as required other than those enumerated in the [Terms of Reference], or of those identified under Article 2 hereof**, due to circumstances arising beyond the control of the CONSTRUCTION MANAGER and which could have not been reasonably foreseen or for any additional or extension of Services or

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31 Id.

> modification as agreed between the Parties and resulting from BCDA's specific requests which shall cause amendments to the Services, the CONSTRUCTION MANAGER and BCDA shall agree on the requisite additional remuneration under a separate supplemental agreement in accordance with existing laws.[32] (Emphasis ours)

DSI's case did not fall under any of these exceptions under the NEDA-IRR and the main CMS agreement that could justify an increase in remuneration. The original contract between BCDA and DSI clearly limited the services that may be allowed *via* a supplemental agreement to be signed by the parties. The Court reiterates the BCDA's failure to sufficiently establish that the subject five man-month extensions were not yet covered by the original scope of work. It was also not adequately explained why the services of the five employees became necessary during the post construction phase when under the original manning schedule, they were to serve only until the termination of the project's construction phase.

Given the foregoing, COA Decision No. 2013-109 is sustained. As the Court stressed in *Veloso v. Commission on Audit*:[33]

> It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x.[34] (Citations omitted)

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

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32 Id. at 43.
33 G.R. No. 193677, September 6, 2011, 656 SCRA 767.
34 Id. 777.

WE CONCUR:

(On official leave)
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

(On official leave)
ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
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.

ANTONIO T. CARPIO
Acting Chief Justice