



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**FIFTH (5<sup>th</sup>) DIVISION**

**PEOPLE OF THE PHILIPPINES,**

*Plaintiff,*

**Criminal Case No. SB-18-CRM-0407**

*-versus-*

For: Violation of Section 3(e) of R.A. 3019, as amended


**CARLOS SOMBLINGO SALAZAR AND RICARDO S. KHAN, JR.,**

*Accused.*

*Present:*

**Lagos, J.,** Chairperson,  
**Mendoza-Arcega, J.,** and  
**Corpus-Mañalac, J.**

Promulgated:

August 3, 2022 

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**RESOLUTION**

**LAGOS, J.:**

This resolves the *Motion for Reconsideration*<sup>1</sup> filed by accused Salazar assailing the Court's *Decision*,<sup>2</sup> the dispositive portion of which reads as follows:

*WHEREFORE, premises considered, the Court renders judgment, as follows:*

1. *Carlos Somblingo Salazar is **GUILTY BEYOND REASONABLE DOUBT** for violation of Section 3(e) of Republic Act No. 3019, as amended.*

*Accordingly, the Court imposes an indeterminate penalty of **SIX (6) YEARS AND ONE (1) MONTH, as minimum, to EIGHT (8) YEARS, as maximum,** with perpetual disqualification to hold public office. As civil liability, he is ordered to indemnify the NIA the amount of ninety-eight million five hundred forty-six thousand eight hundred eighty-four pesos (PhP98,546,884.00).*

<sup>1</sup> Records, Vol. 3, pp.472-509 (accused Salzar's *Motion for Reconsideration* dated 05 July 2022)

<sup>2</sup> *Id.*, pp.395-455 (Court's *Decision* promulgated on 24 June 2022)

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**SO ORDERED.**

In his motion, accused Salazar argues that the Court erred in convicting him for violation of Section 3(e) of Republic Act No. 3019, as amended, mainly on the ground that he awarded and gave the notice to proceed to A.M. Oreta & Co., Inc. without the National Economic and Development Authority-Investment Coordination Committee (“NEDA-ICC”) approval, and that the acts of awarding the contract and the giving the Notice to Proceed to the contractor were attended with manifest partiality, evident bad faith, and/or gross inexcusable negligence;<sup>3</sup> that there is nothing in Executive Order No. 230 and the Guidelines issued in pursuant thereto, which require NEDA-ICC approval as a prior condition to the bidding of government projects involving P500 million or more.<sup>4</sup>

Accused asserted that the Court “gravely erred in condemning him to pay the civil liability amounting to ninety-eight million five hundred forty-six thousand eight hundred eighty-four pesos (P98,546,884.00) for his alleged failure to demand the return of the advance payment against the performance bond callable on demand posted by the Contractor when the project was awarded to it considering that at the relevant or material periods, he was no longer in government service and that he suffered a fatal [*sic*] stroke in January 2010 which nearly killed him and which rendered him disabled. As such, he could not legally and physically demand the payment against the said performance bond”.<sup>5</sup>

In its *Comment*,<sup>6</sup> the Prosecution maintained that the testimonies from witnesses Tungpalan and Ragodon confirmed that a NEDA-ICC approval was needed for the Libmanan-Cabusao Dam Project. Accused Salazar was fully aware that such approval was required considering that the National Irrigation Authority (“NIA”) Central filed an application for it.<sup>7</sup> Thus, his unwarranted act in issuing the Notice to Proceed without the mandatory NEDA-ICC approval constituted gross inexcusable negligence. As pointed out by the Prosecution, “Rolando G. Tungpalan (Tungpalan), Deputy Director General for Investment Programming for NEDA with the rank of Undersecretary, who was also the ex-officio Chair of the ICC-Technical Board testified that ‘*Under ICC rules, prior to the implementation of the project, ICC approval must be secured. In this case, no such approval was ever obtained prior to project implementation*’.<sup>8</sup> In addition, “William P. Ragodon, the Regional Manager of NIA Region V testified that he was familiar with the project, the same being under his jurisdiction as Regional Manager and presented the proposal for the Libmanan-Cabusao Dam Project to the Regional Development Council

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<sup>3</sup> Records, Vol. 3, p. 472 (*Motion for Reconsideration*, par. 2)

<sup>4</sup> *Ibid.*, par. 3

<sup>5</sup> *Id.*

<sup>6</sup> Records, Vol. 3, p. 512

<sup>7</sup> *Id.*, p. 513

<sup>8</sup> *Id.*

(RDC) on May 7, 2008 in Legazpi City, Albay”<sup>9</sup> and that he “affirmed that its chairman, Joey Salceda, indicated that the Libmanan-Cabusao Dam Project needed to undergo the usual approval process such as obtaining an environmental compliance certificate and securing the ICC approval since the project cost more than P500 million”.<sup>10</sup>

The Court resolves to DENY the accused Salazar’s *Motion for Reconsideration* for failure to raise substantial and/or compelling matters to warrant the reconsideration of the Court’s *Decision*.

Contrary to accused’s assertion, the evidence on record leads to the conclusion that a NEDA-ICC approval was required for the Limbmanan-Cabusao Diverson Dam Project for proceed.

As testified by witness Tungpalan,<sup>11</sup> all national government agencies and government corporations are bound by the ICC guidelines and procedures, thus:

J MAÑALAC:

And who are bound by the ICC Guidelines and Procedures?

WITNESS:

All the national government agencies and government corporations are bound by these procedures, Your Honor.

J MAÑALAC:

Which include NIA?

WITNESS:

That’s right, Your Honor.

J MAÑALAC:

Okay, thank you.

This requirement was likewise pointed out in the Minutes of the Full Council Meeting of the RDC 5 held on 07 May 2008;<sup>12</sup> it was very clear that NEDA-ICC approval was required despite the dam project being a priority project of the President:

“The RDC Chair also queried whether the proponent has secured an environment compliance certificate (ECC) from DENR. Mr. Ragodon replied that they have yet applied [*sic*] for an ECC. The RDC Chair

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<sup>9</sup> Records, Vol. 3, p. 514

<sup>10</sup> *Id.*

<sup>11</sup> TSN, dated 07 November 2018, pp. 18-19.

<sup>12</sup> Exhibits “Z<sup>2</sup>” to “Z<sup>2</sup>-16”

further reminded the proponent that the project would have to pass through the Investment Coordination Committee (ICC) since the cost of the project is above Php500 Million.” (Emphasis and underscoring supplied)

Witness Ragodon, who was present during the RDC meeting, testified that he forwarded a request for NEDA-ICC approval to NIA top management which was headed by then Administrator accused Salazar:<sup>13</sup>

ATTY. NELBERT T. POCULAN:

Q You also stated that Govt. [sic] Salceda told you that this project that time is subject to the approval of the ICC?

WITNESS

A Yes, in the Regional Council Meeting, he made mentioned that ICC approval is needed because the amount is more than Five Million?

ATTY. NELBERT T. POCULAN:

Q Now, did you do anything in your involvement in this project to secure the approval of the ICC?

WITNESS

A We got to take into the account the role that we have as Regional Manager, Sir

ATTY. NELBERT T. POCULAN:

Q The question is as Regional Manager, did you do anything?

WITNESS

A Yes, Sir

ATTY. NELBERT T. POCULAN:

Q What did you do?

WITNESS

A I forwarded the request to the management?

ATTY. NELBERT T. POCULAN:

Q And who is the management?

WITNESS

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<sup>13</sup> TSN, dated 12 September 2018, pp. 13-17.

A The top management preceded by Administrator Salazar and his Deputy Administrators and Assistant and Department Managers, Sir

ATTY. NELBERT T. POCULAN:

Q And what did the top management do to your request or any action made by the top management?

WITNESS

A The top management because there are two requirements that were being asked, it is not the function of the Regional Office it is the function of the top management, they initiated the move to secure the approval, Sir

ATTY. NELBERT T. POCULAN:

Q Did they ever tell you what happened to that approval of the ICC?

WITNESS

A Sorry, Sir

ATTY. NELBERT T. POCULAN:

Q Did they ever tell you what happened to the application with the ICC?

WITNESS

A No, Sir, I don't know what happened because I was already transferred to another office, Sir

Accused Salazar himself was fully aware that a NEDA-ICC approval was required for the project to proceed thus, NIA applied for the same because it made several follow ups for the said approval. Salazar testified<sup>14</sup> that:

PROSECUTOR BOCO:

Q: Do you know why the NEDA-ICC approval was required for this project?

A: Yes, yes.

Q: Why?

A: Because that is based on the norms that should be observed. So, I have to follow what is stated in the normal operating procedure. I have to comply.

Q: Okay, thank you, Sir.

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<sup>14</sup> TSN, dated 02 March 2022, pp. 64-69.

Did the National Irrigation Administration follow-up the status of the approval with the NEDA-ICC?

ATTY. POCULAN:

Did the NIA follow-up the approval of the...,

Kindly repeat, Pañero?

PROSECUTOR BOCO:

Q: Okay. Did the National Irrigation Administration follow-up the status of the project approval with the NEDA-ICC?

ATTY. POCULAN:

Did you follow up the approval with NEDA?

THE WITNESS:

A: Yes, yes, yes.

PROSECUTOR BOCO:

Q: And what was the result of this follow-up, Sir?

A: That's why after series of follow-up and instruction from the higher ups, so everything was complied so the project started.

Q: Everything was complied?

A: Yeah, yeah, as mandated.

Q: Okay. Did you obtain, eventually obtained the NEDA-ICC approval for the project? You said everything was complied?

A: I think because if I remember right, we have series of discussion about that but because of the instruction of the President, being followed-up by Cerge Remonde and the NEDA, we based our moved, based on that.

Q: Based on what, Sir?

THE PRESIDING JUSTICE (AJ ARCEGA):

Q: Mr. Salazar, was there a NEDA approval? NEDA-ICC approval?

A: I cannot recall. I cannot recall but what is..., what I can remember that many are making follow-up about this project, PMS number one and the NEDA. They always visit our office and discussed this and I have also to... (*inaudible*) my (BAC) Bids and Awards Committee...

THE PRESIDING JUSTICE (AJ ARCEGA):

Q: So, you're not aware of the approval from NEDA-ICC?  
You're not aware?

A: I am not aware.

It was never raised during the trial that the NEDA-ICC approval was not required for the dam project. Accused did not even try to establish that NEDA-ICC approval is not a mandatory requirement for the project implementation to proceed. On the contrary, it was asserted that NIA initially applied for the said approval although the same was not yet secured as of the time the Notice to Proceed was issued. Accused Salazar admitted in his testimony that the NIA made follow-ups on the dam project's approval with NEDA-ICC. Hence, accused's arguments in his *Motion for Reconsideration* is purely an afterthought.

The *Decision* clearly explained:<sup>15</sup>

The *2005 Revised ICC Guidelines and Procedure*, provided a threshold amount (Php500 Million) for government projects or programs which will be subject to NEDA-ICC's evaluation with respect to technical, financial, economic, social, environmental, institutional development, feasibility/viability, etc. Such evaluation and approval is required as a pre-condition before a project can proceed. Below are the pertinent provisions of the Guidelines and Procedure:

#### ICC Secretariat

The NEDA Secretariat serves as the Secretariat of the ICC. The ICC Secretariat provides technical staff support to the Technical Board and Cabinet Committee, in coordination with other government agencies. The ICC Secretariat performs the following functions:

- a. Undertake the evaluation of all program/project documents submitted to the ICC with respect to technical, financial, economic, social, environmental, institutional development, feasibility/viability as well as policy aspects, and come up with comments/recommendations for consideration by the ICC:
- b. Review the overall sectoral and spatial context of a specific program/project including the relative priority accorded to the program/project by the proponent;

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#### III. Scope of ICC Review/Decisions

In general, ICC review and approval is undertaken for programs/projects requiring ICC clearance and/or NEDA Board approval as pre-conditions for:

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<sup>15</sup> Records, Vol. 3, pp. 441-442 (*Decision*, pp.47-48)

- d. programming forward budgetary obligation requirements;  
and,
- e. processing any other expenditure decisions the NEDA Board and its Committees may require the ICC to act on.

In certain cases, as may be defined under these guidelines or by the ICC, programs/projects reviewed by the ICC Secretariat may be submitted to the ICC to note for its information (i.e. ICC notation)

ICC review/decisions cover:

- 1. Programs/projects of national line agencies with total cost of PhP 500 million and above, regardless of financing

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The NEDA/ICC is an inter-agency Committee created under E.O. 230. DENR, DBM and DILG, OP and DOF are represented in NEDA-ICC. While the scope of ICC Review does not explicitly state that NEDA-ICC approval is required before a Notice of Award or Notice to Proceed can be issued by a government agency, it can be concluded that NEDA-ICC's approval is necessary before any project implementation because budgetary obligation requirements must be first reviewed and technical, economic, social and environmental concerns must be first evaluated. In the case at bar, no such evaluation was completed and thus, environmental and local opposition issues arose, thus, requiring the project's suspension and termination.

It is important that government agencies adhere to the ICC guidelines and procedure when implementing large-scale government projects because those are set in place as a safeguard to avoid wasting public (or private) funds and to maximize utilization thereof.

Moreover, issuing the Notice to Proceed with the project's implementation despite the absence of the NEDA-ICC approval and having been fully aware that the same was not yet secured by NIA constituted gross inexcusable negligence on accused Salazar's part. He did not exercise the slightest care when the situation required him to first secure NEDA-ICC clearance, as such he was indifferent to the consequences which arose. At this point, accused Salazar cannot use good faith as a defense claiming that the question of whether the procurement of the NEDA-ICC approval "is a complicated question of law"<sup>16</sup> and that he simply relied on his subordinates' recommendation. If the situation was deemed "complicated" as he claimed it was, then the more reason that he should have exercised a higher degree of prudence in determining whether the NEDA-ICC approval was required for the dam project in the first place. As head of the NIA Administration, he cannot simply rely on his subordinates. As someone who managed the affairs and businesses of the NIA, deciding on whether to apply for a NEDA-ICC approval or to issue a notice to proceed for a project were not simple ministerial matters for which an Administrator can blindly rely on whatever

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<sup>16</sup> Records, Vol. 3, pp 484



his subordinates recommended, especially since in this case, the dam project involved public funds amounting to seven hundred twelve million, three hundred sixty-five thousand and six hundred seven pesos (₱712,365,607.00).

As observed by the Prosecution, while as of date, the NIA and A.M. Oreta “are still trying to figure out how much should be refunded by A.M. Oreta to NIA, or how much should be paid by NIA to A.M. Oreta what is settles is that the gross, inexcusable and negligent act accused Salazar in ordering A.M. Oreta to proceed with the construction of the Libmanan-Cabusao Dam Project, without the required NEDA-ICC approval was the direct and proximate cause of the injury sustained by the government.”<sup>17</sup> Verily, while the ₱712,365,607.00 budget was not entirely disbursed since the dam project was discontinued due to local community protests and environmental issues surrounding it, accused’s gross inexcusable negligence still caused undue injury to the government in the amount of ninety-eight million five hundred forty-six thousand eight hundred eighty-four pesos (₱98,546,884.00) representing the net amount of the 15% downpayment NIA paid to A.M. Oreta upon the project’s implementation; hence, his civil liability.

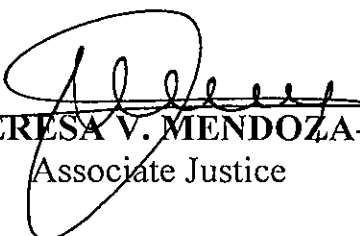
From the foregoing discussion, there is no cogent reason to disturb the findings in the Court’s *Decision* promulgated on 24 June 2022.

**WHEREFORE**, premises considered, the *Motion for Reconsideration* filed by accused Salazar is DENIED for lack of merit.

**SO ORDERED.**

  
**RAFAEL R. LAGOS**  
Chairperson  
Associate Justice

WE CONCUR:

  
**MARIA THERESA V. MENDOZA-ARCEGA**  
Associate Justice

  
**MARYANN E. CORPUS-MAÑALAC**  
Associate Justice

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<sup>17</sup>*Id.*, pp.514-515