EN BANC

[G.R. No. 227227, February 09, 2021]

CRESENCIO D. ARCENA, IN HIS CAPACITY AS THE PRESIDENT OF BERLYN CONSTRUCTION AND DEVELOPMENT CORPORATION, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

LOPEZ, M., J.:

Petitioner Cresencio D. Arcena (Arcena) assails the following Decisions of the Commission on Audit (COA) in this Petition for *Certiorari*,[1] under Rule 64, in relation to Rule 65 of the Revised Rules of Court: (1) Decision No. 2015-289[2] dated November 24, 2015; and (2) Decision No. 2016-197[3] dated August 12, 2016, which sustained the notice of disallowance (ND) issued against him as payee and president of Berlyn Construction and Development Corporation (Berlyn Construction).

Facts of the Case

From 1995 to 1996, the Philippine Marine Corps (PMAR) implemented various infrastructure projects for the relocation and replication of the Philippine Marine Headquarters in Fort Bonifacio, Makati City to the Marine Base in Ternate, Cavite (MBT projects) with a total funding of P69,983,830.00.[4] In response to a request of the Office of the Ombudsman (Ombudsman), an audit was conducted on the MBT projects, as they were also subject of investigation by the Ombudsman.[5] The audit team, in its Report on the Special Audit/Investigation of the 1995-1996 Marine Base Ternate Projects,[6] found that funds spent for the construction of the projects exceeded the actual as-built plans by 2.33%, equivalent to P1,590,173.66.

ND No. PMAR-MBT-2008-01,[7] dated November 25, 2008 was then issued, which held Arcena - as proprietor of Berlyn Construction - liable as payee-contractor in the MBT projects. On appeal, the COA-Fraud and Audit Investigation Office (FAIO) rendered Decision No. 2010-002,[8] dated August 26, 2010, which denied Arcena's appeal and affirmed the ND. Aggrieved, Arcena filed a Petition for Review[9] with the COA Proper on February 28, 2011.[10]

The petition was dismissed by the COA Proper, in its Decision[11] dated November 24, 2015, for being filed out of time. The COA Proper, noting that Arcena did not indicate the exact date of receipt of the ND, held that the petition for review should have been filed within the remaining time from the six-month period, less the allowable interruptions under the rules, counted from receipt of the ND, thus:

> After a careful evaluation of the records, this Commission finds that the instant petition was filed out of time. Section 3, Rule VII of the 2009 Revised Rules of Procedure of the COA (RRPC), provides that a petition for review shall be taken within the time remaining of the six month period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision. Likewise, Section 5, Rule VII thereof requires that the petition shall state the specific dates to show that it was filed within the reglementary period.
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> **In the instant case, the exact date in February 2009 that the ND was received by the petitioner cannot be verified, and petitioner failed to state in the petition the actual date of receipt of the ND. Nevertheless, assuming the ND was received on the last day of February - <u>the date most favorable to the petitioner</u>**, he consumed 26 days to file his appeal from the ND on March 26, 2009. Upon receipt of the FAIO decision on August 26, 2010, he only had 154 days within which to file an appeal from the said decision or until January 27, 2011.
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> However, the instant petition was filed before the Commission Proper on March 3, 2011, which is 35 days beyond the six months [sic] reglementary period, as prescribed under Section 3, Rule VII of the 2009 RRPC.
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> Hence, the appellate jurisdiction of this Commission does not attach, the petition being filed out of time.[12] (Emphasis and underscoring supplied; citations omitted.)

Arcena moved for reconsideration, claiming that he received the FAJO Decision dated August 26, 2010 on October 4, 2011.[13] The motion, however, was denied for Arcena's failure to show that he received the challenged Decision on October 4, 2011, and that he timely filed his petition for review.[14]

Arcena filed the present petition imputing grave abuse of discretion against the COA, when it failed to take into consideration valid and meritorious grounds alleged in his petition for review, Arcena alleges that the MBT projects were already settled accounts, which could not be opened or revised without violating Section 52 of Presidential Decree (PD) No. 1445.[15] The audit team's use of Sub-Allotment Advices (SAAs) as basis for the COA Cost Estimate is incorrect and not in accord with the COA standards. Finally, the COA failed to prove that Arcena is liable for the alleged variance in audit.[16]

The Comment[17] filed by the COA through the Office of the Solicitor General reiterates the finality of the ND and stresses that Arcena did not assail the propriety of the dismissal of his appeal for being filed out of time. As to the merits, the COA asserts that Section 52 of PD No. 1445 does not apply in this case. The COA's computation in audit has legal basis to bind Arcena.

Issues

Whether the COA gravely abused its discretion in - *first*, dismissing Arcena's petition

for review due to timeliness; and, *second*, not ruling on the merits of Arcena's petition for review.

Ruling of the Court

The Petition lacks merit.

Arcena's Petition for Review before the COA Proper was filed out of time.

The procedure of appeal before the COA is governed by the 2009 Revised Rules of Procedure of the COA as follows:

RULE V
PROCEEDINGS BEFORE THE DIRECTOR

> SEC. 4. *When Appeal Taken*. - An Appeal must be filed within six (6) months after receipt of the decision appealed from.
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> SEC. 5. *Interruption of Time to Appeal*. - The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

RULE VII
PETITION FOR REVIEW TO THE COMMISSION PROPER

> SEC. 3. *Period to Appeal*. - The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the ruling period under Section 5 of the same Rule in case of appeals from the Director's decision, x x x.
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> x x x x
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> SEC 5. *Contents of Petition*. - The petition for review shall contain a concise statement of the facts and issues involved and the grounds relied upon for the review, and shall be accompanied by a certified true copy of the decision appealed from, together with certified true copies of such relevant portions of the record as are referred to therein and other supporting papers. The petition shall state the specific dates to show that it was filed within the reglementary period.

In this case, Arcena failed to indicate the date of his receipt of the ND. This failure alone should have warranted the dismissal of the appeal.[18] Under the rules, it is required that the petition must state the specific dates to show that it was filed within the prescribed period.[19] It must be remembered that a party desiring to appeal an ND must do so strictly in accordance with the COA's Rules of Procedure.

Lest it be forgotten, the right to appeal is neither a natural right not a component of due process. Rather, it is a mere statutory privilege, that must be exercised only in the manner and in accordance with the provisions of the law.[20]

At any rate, Arcena's position, that he had until February 26, 2011 to file his appeal to the COA Proper,[21] is misplaced. Contrary to his position, he did not have the whole six months or 180 days from the receipt of the FAIO Decision to file his appeal to the COA Proper. Consistent with the above-cited rules on appeal, the period from the receipt of the ND, assumed to be the last day of February 2009, up to the time Arcena filed his appeal on March 26, 2009 (26 days) forms part of the six-month or 180-day period to appeal to the COA Proper. The filing of the appeal interrupted the running of the period to file an appeal to the COA Proper, and resumed to run upon Arcena's receipt to the FAIO Decision on August 26, 2010. Arcena was left with only 154 days from August 26, 2010, or until January 27, 2011, within which to file his Petition for Review with the COA Proper. Consequently, Arcena's Petition for Review, whether filed on February 28, 2011 as alleged in the petition or on March 3, 2011 as held by the COA Proper, was filed out of time.[22] The Decision sought to be appealed has become final and immutable.

On reconsideration, sensing his erroneous computation of the period, Arcena modified his claim that he received the FAIO Decision only on October 4, 2010, not on August 26, 2010. However, he failed to prove this new allegation. Besides, he is estopped to prove otherwise. His declaration in his Petition for Review that he received FAIO Decision on August 26, 2010 constitutes an express admission which is conclusive against him. Arcena may only be relieved of the effects of his admission if he can show that the admission was made through palpable mistake, [23] which can be easily verified from the stipulated facts and from other incontrovertible pieces of evidence admitted by the other party. Inevitably, Arcena's motion for reconsideration must be denied.

Undeterred, Arcena asserts that "*a judicious scrutiny of the instant case would show that suspension of the technical rules of procedure is warranted in view of the erroneous application of legal principles, including the misappreciation of the x x x [COA Proper's] own rules and regulations, and the substantial merits of the case*." [24] We are not convinced.

This Court had, in the past, relaxed the strict application of the rules of procedure. But this was done only in exceptional circumstances, for the most compelling reason, when stubborn obedience to the rules would defeat rather than serve the ends of justice.[25] Procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.[26] We stress that every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Here, we find no compelling reason to relax the rules. Arcena did not offer any cogent explanation to persuade this Court that a rigid application of the rules would betray the better interest of justice. All throughout the proceedings, Arcena failed to indicate the date of his receipt of the ND, in utter disregard of Section 5, Rule VII of the COA 2009 Revised Rules of Procedure, which specifically mandates that "*[t]he*

petition for review shall state the specific dates to show that it was filed within the reglementary period." We need not overemphasize that procedural rules are essential in the administration of justice.[27] They do not exist for the convenience of the litigants, but are established primarily to provide order to, and enhance the efficiency of our judicial system.[28] In view of Arcena's belated appeal and the consequent finality of the questioned ND and COA rulings, this Court can no longer exercise its jurisdiction.

Even on the merits, however, the petition must still be dismissed.

I. Section 52 of PD No. 1445 does not apply to transactions in the MBT Projects since the accounts are not yet settled.

Arcena maintains that the transactions in issue are already settled accounts and can no longer be opened or revised. He relies on two reports as proof that the MBT transactions are settled accounts. First, a Disposition Form,[29] dated January 6, 1999, stating that sometime in 1997, the Program Evaluation and Management Review/Analysis Division conducted an audit on all BCDA-funded projects including the MBT infrastructure projects, and recommended that the complaint against the persons subject of investigation be dropped and considered closed for insufficiency of evidence. Second, a Final Report,[30] dated February 9, 1999, which declared that the "*case be considered CLOSED/TERMINATED, without prejudice to its reopening should the COA audit findings merit further investigations thereof*."[31] We note, however, that these reports were not rendered by the COA or any of its authorized representatives. The first one was issued by the Office of Ethical Standards and Public Accountability of the Armed Forces of the Philippines, and the second one was signed by the Head of the Fact-Finding Group, concurred in by the Director of the Fact-Finding Investigation Corruption Prevention and Public Assistance Bureau, and approved by the Deputy Ombudsman for the Military. Moreover, the termination of the latter case was without prejudice to its reopening when audit findings warrant added inquiry. It is noteworthy that the Fact-Finding Group declared in its Report that "*[i]n the absence of proper recording, valuation and audit of the funds utilized for the above projects, it would be premature to conclude that irregularities/anomalies were committed in its execution*."[32]

Apropos is Section 52 of PD No. 1445, or the "Government Auditing Code of the Philippines," which provides:

> **SEC. 52.** *Opening and revision of settled accounts*.
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> 1. At any time before the expiration of three years after the settlement of any account by an auditor, the Commission may *motu propio* review and revise the account or settlement and certify a new balance. For that purpose, it may require any account, vouchers, or other papers