

EN BANC

[G.R. No. 252367, July 14, 2020]

**RAZUL K. ABPI, PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

R E S O L U T I O N

DELOS SANTOS, J.:

The Case

This Petition for *Certiorari*^[1] under Rule 64 in relation to Rule 65 of the Rules of Court seeks the reversal of the Decision^[2] dated 19 October 2016 and the Resolution^[3] dated 29 January 2020 rendered by the Commission on Audit (COA). The assailed Decision and Resolution sustained the Notices of Disallowances^[4] (NDs) issued to Razul K. Abpi (petitioner) totaling to P846,536,603.80 incurred during his tenure as Caretaker of Department of Public Works and Highways-Autonomous Region in Muslim Mindanao (DPWH-ARMM).

The Facts

Before his retirement in 2012,^[5] petitioner concurrently held the positions of Provincial Engineer of Maguindanao^[6] and DPWH-ARMM Caretaker as of 03 October 2005.^[7]

In 2010, the COA created a Special Audit Team (SAT) to assess the propriety of the accounting and utilization of funds, and the efficiency and effectiveness of project implementation of DPWH-ARMM from January 2008 to December 2009.^[8] The audit concluded that the funds received by DPWH-ARMM were not properly recorded, utilized, and managed in accordance with prevailing law, rules, and regulations. The SAT detailed their findings in Special Audits Office (SAO) Report No. 2010-05^[9] covering transactions involving the procurement of construction materials, construction/rehabilitation of various farm to market roads, utilization of cash advances, and payments to *pakyaw* labor contractors and suppliers/contractors. In view of the numerous anomalies discovered, SAT issued sixteen (16) NDs^[10] where petitioner is included as one of the individuals being held accountable. In the case of petitioner, his inclusion in the NDs resulted from, among others, his role as the approving officer insofar as he: (1) signed disbursement vouchers, purchase orders, requisition and issuance slips in spite of the absence of supporting documents; (2) awarded contracts which were not subjected to public bidding; and (3) certified in certificates of completion to the effect that projects were constructed in accordance with the plans and specifications but in actuality, had evident deficiencies.

On 14 June 2013, petitioner filed an Appeal Memorandum and Motion for Exclusion^[11] with the Office of the SAO Director to assail the audit findings which formed the basis of the 16 NDs. In his defense, petitioner asserted, among others,

that he acted in good faith when he relied on the certifications and recommendations of his subordinates and maintained that the presumption of regularity in the performance of official duties was applicable. Insofar as his signature was found in the questioned documents, he claimed that he was merely performing a ministerial duty which should not make him personally liable.^[12]

On 23 May 2013, the SAO denied petitioner's appeal in SAO Decision No. 2013-00.^[13] In so ruling, Director Susan P. Garcia reiterated the findings in SAO Report No. 2010-05 and detailed petitioner's participation in each ND for which he was being held accountable. It was ruled that petitioner's participation in the questioned transactions could not be considered ministerial, considering that the deficiencies in the documents were clearly apparent. As the designated Caretaker of DPWH-ARMM, he was primarily responsible under Section 102 of Presidential Decree No. 1445^[14] for all funds and property of DPWH-ARMM.

On 04 July 2013, petitioner filed a Petition for Review with Motion for Exclusion from the Persons Liable^[15] with the COA Commission Proper.

Ruling by the Commission Proper

On 19 October 2016, the COA rendered COA Decision No. 2016-297^[16] (assailed Decision), the dispositive portion of which reads:

WHEREFORE, premises considered, the petition for review with motion for exclusion of Mr. Razul K. Abpi, Caretaker, Department of Public Works and Highways-Autonomous Region in Muslim Mindanao, is hereby **DISMISSED** for having been filed out of time. Accordingly, Special Audit Office (SAO) Decision No. 2013-001 dated May 23, 2013, which affirmed SAO Notice of Disallowance Nos. DPWH-11-001-101-(09), 11-006-101-(09), 11-016-101-(09), DPWH-11-002 to 005-101-(08 & 09), 11-009 to 010-101-(08 & 09), 11-013-101-(08 & 09), 11-015-101-(08 & 09), and DPWH-11-007 to 008-101-(08), 11-011 to 012-101-(08), and 11-014-101-(08), all dated August 26, 2011, in the total amount of P846,536,603.80, is **FINAL and EXECUTORY**.^[17]

The assailed Decision dismissed the petition for review for being belatedly filed. This notwithstanding, the COA held that the appeal would still be denied for lack of legal and factual basis. In a *Separate Opinion*^[18] penned by COA Chairperson Michael Aguinaldo, despite the denial of the petition for review, he averred that the amount of disallowance may be reduced by the reasonable value of any materials actually delivered, or work actually completed which actually benefitted the government as held in *Melchor v. Commission on Audit*.^[19]

On 28 February 2018, a Notice of Finality of Decision (NFD) No. 2018-038^[20] was issued stating that the assailed Decision had become final and executory.

Aggrieved, petitioner moved for reconsideration *via* an Omnibus Motion to Lift Finality of Decision, Reconsideration, and Exclusion from Persons Liable.^[21] On 29 January 2020, the COA issued the assailed Resolution^[22] denying the same. The COA maintained that the petition for review was belatedly filed and upheld the audit findings of SAT which it held was sufficient to warrant a conclusion that the transactions subject of the NDs were spurious and irregular. Finally, the COA ruled

that petitioner could not invoke *Arias v. Sandiganbayan*^[23] to anchor his exclusion from liability. Rather than a mere approving authority, petitioner directly participated in the procedure leading to the consummation of the disallowed transactions.

The Issues

- I. Whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it sustained the notices of disallowances based on [an] incomplete audit.
- II. Whether the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed petitioner's liability for the notices of disallowances.

The Court's Ruling

The Petition for *Certiorari* is denied for: (a) being filed out of time; (b) defective verification and certification against forum shopping; and (c) failure to show grave abuse of discretion on the part of the COA.

The Court has time and again ruled that the belated filing of a petition for *certiorari* under Rule 64 is fatal. As explained in *Binga Hydroelectric Plant, Inc. v. Commission on Audit*:^[24]

We have said previously that the belated filing of a petition for certiorari under Rule 64 is fatal. 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. From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice. 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. Where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.^[25]

Section 3, Rule 64 of the Rules of Court provides that the petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

Petitioner reckoned the reglementary period to appeal the assailed Decision to the Court from his receipt of the assailed Resolution on 10 March 2020.^[26] This is erroneous because the 30-day period commenced upon receipt of the assailed Decision and was merely interrupted by the filing of the omnibus motion. Since petitioner received a copy of the assailed Decision on 09 November 2018 and filed an omnibus motion on 19 November 2018, petitioner had 20 days within which to

file a petition for *certiorari*. On 10 March 2020,^[27] petitioner received a copy of the assailed Resolution. Thus, another five (5) days passed, *i.e.*, 15 days remained before the Supreme Court issued Administrative Circular No. 31-2020^[28] on 16 March 2020 providing for an extension of 30 calendar days to be counted from 16 April 2020 for petitions that fall due from 15 March 2020 to 15 April 2020.

Applying the foregoing, the last day of filing of a Petition for *Certiorari* falls on 18 May 2020.^[29] However, petitioner only filed his Petition for *Certiorari* on 26 June 2020^[30] or 39 days after the last day for filing. The records are bereft of any showing that petitioner either filed a motion for extension of time or proffered any compelling reason in the Petition to warrant the relaxation of procedural rules.

Moreover, a *certiorari* petition filed under Rule 64 of the Rules of Court must be verified^[31] and accompanied by a certification against forum-shopping.^[32] Notably, attached to the Petition for *Certiorari* is a Manifestation^[33] by undersigned counsel of petitioner to the effect that the Verification and Certification against Forum-Shopping is a mere photocopy and undertakes to submit the original within three (3) days upon receipt. Records reveal that this has yet to be complied with. While verification is a formal rather than jurisdictional requirement and thus, its absence is not detrimental to a petition; the absence or a defect in the execution of a certification against forum shopping is generally not curable by the submission thereof after the filing of the petition.^[34] Section 5, Rule 64 of the Rules of Court states that the failure of the petitioner to comply with the foregoing requirements shall be sufficient ground for the dismissal of the petition.

Even if the Court were to disregard these procedural infirmities, the Petition would nonetheless be dismissed.

Grave abuse of discretion on the part of the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack or excess of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.^[35] Thus, it is incumbent upon petitioner to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. After a judicious study of the case, the Court finds that petitioner has failed in this regard. As will be further discussed below, the COA acted in accordance with the law, rules, and regulations in denying the Petition for Review and consequently, sustaining the NDs issued against petitioner.

Under Section 4, Rule V^[36] of the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC), an appeal to the Director must be filed within six (6) months after receipt of the decision appealed from. However, this must be read in conjunction with Section 3 of Rule VII of the RRPC which is emphatic that an appeal with the Commission Proper should be filed within the time remaining of the six month reglementary period, thus:

Section 3. Period of 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 running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.