

EN BANC

[G.R. No. 209714, June 21, 2016]

**RAPHAEL C. FONTANILLA, PETITIONER, VS. THE COMMISSIONER
PROPER, COMMISSION ON AUDIT, RESPONDENT.**

DECISION

BRION, J.:

We resolve the petition for review on *certiorari*^[1] filed by Dr. Raphael C. Fontanilla (*Dr. Fontanilla*) to assail the September 18, 2013 ruling^[2] of the Commission on Audit (COA) Proper in Decision No. 2013-137. This COA decision affirmed the June 25, 2009 decision^[3] of the Adjudication and Settlement Board (ASB).

Antecedents

Dr. Fontanilla is the Schools Division Superintendent of the Department of Education (*DepEd*) in South Cotabato.^[4] Under his supervision was Ms. Luna V. Falcis, the Division's designated Special Disbursing Officer (Clerk II).^[5] Falcis had the duty, among others, to encash checks for the DepEd's expenses and activities.^[6]

On August 30, 2007, Falcis, together with a co-worker, went to the Land Bank of the Philippines, Koronadal City Branch, to encash a check for **Php313,024.50**.^[7] After completing the transaction, they took a public utility tricycle in going back to their office. On their way, three men blocked their path and at gunpoint grabbed the envelope containing the money. The robbers then sped away in a motorcycle.^[8]

Falcis reported the incident to the police. In their investigation report, the police remarked that Falcis regularly goes to the bank without a security escort, which emboldened the suspects to commit the robbery.^[9]

After the robbery was reported to the COA Resident Auditor of the DepEd South Cotabato Division,^[10] Falcis filed with the COA Audit Team Leader (ATL) a request for relief from money accountability (*request for relief*).^[11]

The ATL investigated the incident and found that Falcis failed to exert extra care and due diligence in handling the encashment; she did not request a security escort and the use of a government vehicle. The ATL forwarded its findings to the Regional Legal and Adjudication Office (*COA Regional Office*) for further study.^[12]

The COA Regional Office concurred with the ATL findings and elevated Falcis's request for relief to the Adjudication and Settlement Board (ASB) of the COA National Office, for final disposition.^[13]

The ASB's Findings

The ASB denied Falcis's request for relief based on the finding that she had been negligent, thus, liable for the amount of money lost.^[14] The ASB cited Section 105 (2) of Presidential Decree No. 1445 or the *Government Auditing Code of the Philippines (Audit Code)*, which states:

Section 105. Measure of liability of accountable officers.

x x x

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

The ASB also ruled that Dr. Fontanilla is jointly and solidarity liable with Falcis under Section 104 of the Audit Code which makes the head of the agency accountable because he did not exert the required diligence:

Section 104. Records and reports required by primarily responsible officers. The head of any agency or instrumentality of the national government or any government-owned or -controlled corporation and any other self-governing board or commission of the government shall exercise the **diligence of a good father of a family** in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, **otherwise he shall be jointly and solidarily liable with the person primarily accountable** therefor...
[emphasis ours]

In the words of the ASB, *Dr. Fontanilla did not make any effort to correct the situation by closely supervising Falcis, providing the needed guidelines, transport, and escort for the lowly clerk to handle big amounts of money*, thus failing to meet the standards required under Section 104. The dispositive portion of the ASB's decision reads:

WHEREFORE, in view of the foregoing, and considering the recommendation of the COA officials concerned, the instant request for relief from money accountability is hereby DENIED for lack of merit. **Ms. Falcis and the Schools Division Superintendent at the time of the robbery, Dr. Raphael C. Fontanilla, are jointly and solidarily liable for the amount lost.**^[15] [emphasis ours]

Falcis moved for the reconsideration of the ruling.^[16] Dr. Fontanilla, on the other hand, moved for intervention, exclusion, and reconsideration.^[17]

In his motion, Dr. Fontanilla claimed that he was *denied due process*. He explained that there was *no notice*, he was *not ordered to participate in the proceedings nor was he given a chance to present his side*. He asserted that, effectively, the COA did not acquire jurisdiction over his person; thus, any adjudication against him must necessarily be without any legal force.^[18]

Dr. Fontanilla stressed that he was never a party to the case. He was informed of his

liability only when Falcis gave him a photocopy of the decision. He thus prayed that he should be allowed to intervene to explain his side.^[19]

In sum, Dr. Fontanilla asked the ASB to reconsider its decision and declare void the finding of his liability *until such time that he is allowed to defend himself at a hearing as contemplated by the principles of due process*.^[20]

The COA Proper's Decision

The COA treated Dr. Fontanilla's motion for intervention, exclusion, and reconsideration as an appeal from the ASB's decision.^[21]

The COA held that Dr. Fontanilla had not been denied administrative due process; Dr. Fontanilla was properly given the chance to be heard (and was thus accorded due process) when the COA entertained his motion/appeal; the COA, on the other hand, also had the opportunity to correct the ASB's decision.^[22]

On the issue of negligence, the COA held that Dr. Fontanilla failed to observe the diligence of a good father of a family. He is presumed to be knowledgeable of the transactions made by his subordinates. It is highly improbable that a large amount of money could be withdrawn without his knowledge. The COA opined that although robbery can ordinarily be considered a *force majeure*, its happening can be prevented by complying with the minimum requirements of prudence.^[23]

In sum, the COA found that Falcis and Dr. Fontanilla did not exercise precautionary measures necessary to safeguard the money withdrawn from the bank.^[24] The dispositive portion of the COA decision reads:

WHEREFORE, in view of the foregoing, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, ASB Decision No. 2009-075 dated June 25, 2006, is hereby **AFFIRMED**.^[25]

The Petition

Dr. Fontanilla now assails the COA decision on the sole ground that he has been denied due process.^[26] He underscores that the COA proceedings stemmed from Falcis's (and not his) request for relief. He explains that in the entire length of the proceedings, he was not given the opportunity to explain his side.

Dr. Fontanilla traces the steps that led to the COA's finding that he is solidarity liable for the loss of government fund:

1. Falcis filed the request for relief with the ATL on **August 31, 2007**. As Falcis's superior, he "noted" the request for relief.
2. The ATL took cognizance of the request for relief. The ATL did not require him to comment.
3. On **November 26, 2007**, the ATL forwarded the request for relief to the COA Regional Office for further study. The ATL did not rule on his liability nor

mention his participation in the incident.

4. On **June 10, 2008**, the COA Regional Office affirmed the ATL's findings. The COA Regional Office did not require him to comment. Again; the decision was silent on his liability.
5. The COA Regional Office elevated the request for relief to the ASB - COA National Office. The ASB denied it on **June 25, 2013**. Notably, the ASB, without requiring him to comment or explain his side, held him jointly and solidarity liable with Falcis. This was the *first time* that the COA touched on his liability. In fact, this was the *first time* the COA mentioned him at all.
6. He learned of his liability through Falcis when the latter gave him a photocopy of the ASB decision. He did not receive an *official copy* of the ASB decision.
7. He then filed his motion for intervention, exclusion, and reconsideration.
8. The COA denied his motion (that it be treated as an appeal) and affirmed the ASB decision finding him liable.^[27]

Based on this recital, Dr. Fontanilla insists that he was not given the chance to explain his side during the entire fact-finding process. From August 31, 2007 (the date of filing of the *request for relief*) to September 18, 2013 (the date of the COA proper decision) - *a span of almost six years* -the COA did not inform him of the possibility that he could be held solidarity liable. He therefore did not have the chance to defend himself against any liability.

From the ASB decision, he filed his *motion for intervention* (to allow him to participate in the proceedings), for *exclusion* (to forestall the imposition of liability until he is allowed to defend himself), and for *reconsideration* (of the ASB - COA decisions for denial of due process).^[28]

Finally, Dr. Fontanilla argues that the fact that the COA entertained his motion/appeal did not cure the lack of due process. He explains that he merely asked the COA to first allow him to present his side before it rules on his liability; he did not ask the COA to rule on the merits based solely on his motion to intervene. That he filed (and the COA *entertained*) the motion for intervention, exclusion, and reconsideration did not mean that he had been given the opportunity to be heard. On the contrary, the COA did not hear him out on the merits of his defense before finding him liable.^[29]

Dr. Fontanilla thus prays that we annul and set aside the COA decision.

The COA's Comment

The COA, through the Office of the Solicitor General, argues that Dr. Fontanilla availed of the wrong remedy. Sections 1 and 2, Rule 64, in relation to Section 1, Rule 65 of the Rules of Court, provide that decisions and resolutions of the COA are reviewable by this Court, not via an appeal by *certiorari* under Rule 45, but through a petition for *certiorari* under Rule 65.^[30]

In any case, the COA submits that had the petition been filed under Rule 65, it would still fail considering that Dr. Fontanilla does not allege any grave abuse of discretion on the part of the COA.^[31]

On the issue of due process, the COA submits that Dr. Fontanilla's motion for intervention, exclusion, and reconsideration effectively cured the alleged denial of due process.^[32]

Issues

The petition raises the following issues:

1. Did Dr. Fontanilla avail of the wrong remedy? If so, is there basis to liberally apply the Rules of Court?
2. Was Dr. Fontanilla denied due process?

Our Ruling

We grant the petition.

Dr. Fontanilla availed of the wrong remedy but, in a proper case, the Court can liberally apply the Rules of Court.

Dr. Fontanilla did not use the correct remedy when he filed an appeal by *certiorari* under Rule 45 of the Rules of Court.

Article IX-A, Section 7 of the Constitution provides that decisions, orders, or rulings of the COA may be brought to this Court on *certiorari* by the aggrieved party. This is echoed by Section 2, Rule 64, of the Rules of Court, which states that a judgment or final order or resolution of the COA may be brought by the aggrieved party to this Court on *certiorari* under Rule 65.^[33]

Based on these rules, we could have dismissed the petition outright.

The gravity, however, of Dr. Fontanilla's claim of violation of his right to due process compelled us to examine the merit of his petition; the Court itself would compound the violation of Dr. Fontanilla's right to due process if indeed such violation took place and we would brush it aside because of a technical procedural reason. Under the scales of justice, technical procedural rules pale in comparison and are outweighed by substantive violations affecting the bill of rights.

In our examination of the petition and the records, we found that although the petition does not expressly use the technical terms "*grave abuse of discretion*" and "*errors of jurisdiction*" Dr. Fontanilla's claim that the COA did not give him the chance to explain his side, *if true*, would characterize the COA's act as grave abuse of discretion.^[34] Thus, requiring the COA to comment was the more appropriate course of action to take, rather than to summarily deny the petition.^[35]

Having said these, we stress that the Constitution and the Rules of Court limit the permissible scope of inquiry in Rules 64 and 65 *certiorari* petitions only to *errors of*