

## EN BANC

[ G.R. No. 213525, January 27, 2015 ]

**FORTUNE LIFE INSURANCE COMPANY, INC., PETITIONER, VS. COMMISSION ON AUDIT (COA) PROPER; COA REGIONAL OFFICE NO. VI-WESTERN VISAYAS; AUDIT GROUP LGS-B, PROVINCE OF ANTIQUE; AND PROVINCIAL GOVERNMENT OF ANTIQUE, RESPONDENTS.**

### RESOLUTION

**BERSAMIN, J.:**

Petitioner Fortune Life Insurance Company, Inc. seeks the reconsideration<sup>[1]</sup> of the resolution promulgated on August 19, 2014,<sup>[2]</sup> whereby the Court dismissed its petition for *certiorari* under Rule 64 in relation to Rule 65 of the *Rules of Court* due to its non-compliance with the provisions of Rule 64, particularly for: (a) the late filing of the petition; (b) the non-submission of the proof of service and verified declaration; and (c) the failure to show grave abuse of discretion on the part of the respondents.<sup>[3]</sup>

#### Antecedents

Respondent Provincial Government of Antique (LGU) and the petitioner executed a memorandum of agreement concerning the life insurance coverage of qualified *barangay* secretaries, treasurers and *tanod*, the former obligating P4,393,593.60 for the premium payment, and subsequently submitting the corresponding disbursement voucher to COA-Antique for pre-audit.<sup>[4]</sup> The latter office disallowed the payment for lack of legal basis under Republic Act No. 7160 (*Local Government Code*). Respondent LGU appealed but its appeal was denied.

Consequently, the petitioner filed its petition for money claim in the COA.<sup>[5]</sup> On November 15, 2012, the COA issued its decision denying the petition,<sup>[6]</sup> holding that under Section 447 and Section 458 of the *Local Government Code* only municipal or city governments are expressly vested with the power to secure group insurance coverage for *barangay* workers; and noting the LGU's failure to comply with the requirement of publication under Section 21 of Republic Act No. 9184 (*Government Procurement Reform Act*).

The petitioner received a copy of the COA decision on December 14, 2012,<sup>[7]</sup> and filed its motion for reconsideration on January 14, 2013.<sup>[8]</sup> However, the COA denied the motion,<sup>[9]</sup> the denial being received by the petitioner on July 14, 2014.<sup>[10]</sup>

Hence, the petitioner filed the petition for *certiorari* on August 12, 2014, but the petition for *certiorari* was dismissed as earlier stated through the resolution

promulgated on August 19, 2014 for (a) the late filing of the petition; (b) the non-submission of the proof of service and verified declaration; and (c) the failure to show grave abuse of discretion on the part of the respondents.

### **Issues**

In its motion for reconsideration, the petitioner submits that it filed the petition for *certiorari* within the reglementary period following the fresh period rule enunciated in *Neypes v. Court of Appeals*,<sup>[11]</sup> and that the petition for certiorari included an affidavit of service in compliance with Section 3, Rule 13 of the *Rules of Court*. It admits having overlooked the submission of a verified declaration; and prays that the declaration attached to the motion for reconsideration be admitted by virtue of its substantial compliance with the Efficient Use of Paper Rule<sup>[12]</sup> by previously submitting a compact disc (CD) containing the petition for *certiorari* and its annexes. It disagrees with the Court, insisting that it showed and proved grave abuse of discretion on the part of the COA in issuing the assailed decision.

### **Ruling**

We deny the motion for reconsideration for being without merit.

#### **I**

#### **Petitioner did not comply with the rule on proof of service**

The petitioner claims that the affidavit of service attached to the petition for *certiorari* complied with the requirement on proof of service.

The claim is unwarranted. The petitioner obviously ignores that Section 13, Rule 13 of the *Rules of Court* concerns two types of proof of service, namely: the affidavit and the registry receipt, *viz*:

Section 13. *Proof of Service*. – x x x. If service is made by registered mail, proof shall be made by such **affidavit and the registry receipt** issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Section 13 thus requires that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing *and* the registry receipt, both of which must be appended to the paper being served. A compliance with the rule is mandatory, such that there is no proof of service if either or both are not submitted.<sup>[13]</sup>

Here, the petition for *certiorari* only carried the affidavit of service executed by one Marcelino T. Pascua, Jr., who declared that he had served copies of the petition by registered mail “under Registry Receipt Nos. 70449, 70453, 70458, 70498 and 70524 attached to the appropriate spaces found on pages 64-65 of the petition.”<sup>[14]</sup> The petition only bore, however, the cut *print-outs* of what *appeared to be* the

registry receipt numbers of the registered matters, not the registry receipts themselves. The rule requires to be appended the registry receipts, not their reproductions. Hence, the cut print-outs did not substantially comply with the rule. This was the reason why the Court held in the resolution of August 19, 2014 that the petitioner did not comply with the requirement of proof of service.<sup>[15]</sup>

## **II**

### ***Fresh Period Rule under Neypes*** **did not apply to the petition for *certiorari*** **under Rule 64 of the *Rules of Court***

The petitioner posits that the *fresh period* rule applies because its Rule 64 petition is akin to a petition for review brought under Rule 42 of the Rules of Court; hence, conformably with the *fresh period rule*, the period to file a Rule 64 petition should also be reckoned from the receipt of the order denying the motion for reconsideration or the motion for new trial.<sup>[16]</sup>

The petitioner's position cannot be sustained.

There is no parity between the petition for review under Rule 42 and the petition for *certiorari* under Rule 64.

As to the nature of the procedures, Rule 42 governs an appeal from the judgment or final order rendered by the Regional Trial Court in the exercise of its appellate jurisdiction. Such appeal is on a question of fact, or of law, or of mixed question of fact and law, and is given due course only upon a *prima facie* showing that the Regional Trial Court committed an error of fact or law warranting the reversal or modification of the challenged judgment or final order.<sup>[17]</sup> In contrast, the petition for *certiorari* under Rule 64 is similar to the petition for *certiorari* under Rule 65, and assails a judgment or final order of the Commission on Elections (COMELEC), or the Commission on Audit (COA). The petition is not designed to correct only errors of jurisdiction, not errors of judgment.<sup>[18]</sup> Questions of fact cannot be raised except to determine whether the COMELEC or the COA were guilty of grave abuse of discretion amounting to lack or excess of jurisdiction.

The reglementary periods under Rule 42 and Rule 64 are different. In the former, the aggrieved party is allowed 15 days to file the petition for review from receipt of the assailed decision or final order, or from receipt of the denial of a motion for new trial or reconsideration.<sup>[19]</sup> In the latter, the petition is filed within 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, if allowed under the procedural rules of the Commission concerned, interrupts the period; hence, should the motion be denied, the aggrieved party may file the petition within the remaining period, which shall not be less than five days in any event, reckoned from the notice of denial.<sup>[20]</sup>

The petitioner filed its motion for reconsideration on January 14, 2013, which was 31 days after receiving the assailed decision of the COA on December 14, 2012.<sup>[21]</sup> Pursuant to Section 3 of Rule 64, it had only five days from receipt of the denial of its motion for reconsideration to file the petition. Considering that it received the notice of the denial on July 14, 2014, it had only until July 19, 2014 to file the