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[G.R. No. 174788, April 11, 2013]

THE SPECIAL AUDIT TEAM, COMMISSION ON AUDIT, PETITIONERS, VS. COURT OF APPEALS AND GOVERNMENT SERVICE INSURANCE SYSTEM, RESPONDENTS.

D E C I S I O N

SERENO, C.J.:

This is a Petition for Certiorari and Prohibition[1] filed on 10 November 2006, seeking to set aside two Resolutions of the Court of Appeals (CA) of CA-G.R. SP No. 90484, dated 9 August 2006[2] and 23 September 2005,[3] respectively, and to prohibit the CA from proceeding with CA-G.R. SP No. 90484.

Respondent Government Service Insurance System (GSIS) filed a Petition for Prohibition with the CA dated 18 July 2005 against petitioner Special Audit Team (SAT) of the Commission on Audit (COA) with a prayer for the issuance of a temporary restraining order (TRO), a writ of preliminary prohibitory injunction, and a writ of prohibition.[4] Subsequently, GSIS also submitted a Manifestation and Motion dated 21 July 2005 detailing the urgency of restraining the SAT.[5] The CA issued a Resolution on 22 July 2005, directing petitioner SAT to submit the latter's comment, to be treated as an answer.[6] Additionally, the CA granted the prayer of GSIS for the issuance of a TRO effective sixty (60) days from notice.

After requiring the submission of memoranda, CA issued the assailed Resolution dated 23 September 2005 in CA-G.R. SP No. 90484, granting the prayer for the issuance of a writ of preliminary injunction upon the posting of an injunction bond.[7] The Office of the Solicitor General (OSG) filed a Motion for Reconsideration (MR) and a Comment on the petition dated 10 October 2005, after it was notified of the case, as the SAT had been represented in the interim by one of the team members instead of the OSG.[8] The MR was denied through a Resolution of the CA on 9 August 2006.[9]

The present Petition seeks to nullify both the 23 September 2005 and the 9 August 2006 CA Resolutions and to prohibit the CA from proceeding to decide the case.

ANTECEDENT FACTS

COA created the SAT under Legal and Adjudication Office (LAO) Order No. 2004-093, which was issued by COA Assistant Commissioner and General Counsel Raquel R. Ramirez-Habitan. Tasked to conduct a special audit of specific GSIS transactions, the SAT had the avowed purpose of conducting a special audit of those transactions for the years 2000 to 2004.[10] Accordingly, the SAT immediately initiated a conference with GSIS management and requested copies of pertinent auditable

documents, which the latter initially agreed to furnish.[11] However, due to the objection of GSIS to the actions of SAT during the conference,[12] the request went unheeded. This prompted the latter to issue a *subpoena duces tecum*.[13]

In response to the *subpoena*, the GSIS, through its President and General Manager Winston F. Garcia, replied that while it did recognize the authority of COA to constitute a team to conduct a special audit, that team should not be the SAT, whose members were biased, partial, and hostile.[14] The then-COA Chairperson Guillermo N. Carague denied the request of GSIS on account of the restructuring of the commission under COA Resolution 2002-005, which formed the basis for the SAT's creation.[15] However, through a subsequent letter of Atty. Claro B. Flores and Atty. Nelo B. Gellaco, the GSIS alleged that the SAT's creation was not supported by COA Resolution 2002-005, which was without force and effect.[16]

The reasoning of both lawyers was based on the theory that the 1987 Constitution did not give COA the power to reorganize itself.[17] Allegedly, the commission only had the power to define the scope of its audit and examination, as well as to promulgate rules concerning pleading and practice.[18] Even if the COA were allowed to reorganize itself, the GSIS claimed that the *subpoena* required a case to have been brought to the commission for resolution.[19]

Thereafter, several GSIS officials sent COA Chairperson Carague a letter emphasizing that the special audit should be conducted by another team and detailing how the SAT, as then constituted, prejudged the legality of several key projects of the GSIS[20] while merely relying on hearsay and inapplicable legal standards.[21]

In its Petition, the SAT claimed that due to the continued refusal of GSIS to cooperate, the team was constrained to employ "alternative audit procedures" by gathering documents from the Office of the Auditor of GSIS, the House of Representatives, and others.[22] Meanwhile, some of the audit observations made by the SAT appeared in the newspaper *Manila Times,*[23] resulting in the refusal of GSIS management to attend the SAT's exit conference.[24]

COURT INTERVENTION

On 15 April 2005, GSIS filed with the COA itself a "Petition/Request to nullify Special Audit Report dated 29 March 2005 on selected transactions of the GSIS for CY 2000 to 2004."[25] The GSIS also filed a Petition for Prohibition dated 18 July 2005[26] before the CA, whose Resolutions therein led to this present Petition.

PARTIES' CLAIMS

Petitioner SAT anchors its claims on the following grounds:

First, the grant of the preliminary injunction was in grave abuse of discretion because of procedural infirmities in the Petition.[27]

Second, the CA had no jurisdiction to rule on the validity or correctness of the

findings and recommendations of the SAT because of the doctrines of primary jurisdiction and exhaustion of administrative remedies. Additionally, judicial review over the COA is vested exclusively in the Supreme Court.[28]

Third, the SAT's special audit has basis in law.[29]

Respondent GSIS, on the other hand, claims that the need for an injunction was urgent, since the SAT's supervisor had said that notices for disallowance were available at the COA's Records Division.[30] As to the procedural and substantial aspect, GSIS claims the following:

> First, the Petition for Prohibition satisfies the legal and procedural requirements.[31]
>
> Second, the CA has the power to prohibit the conduct of special audit and the issuance of notices of disallowance.[32]
>
> Third, the special audit does not have statutory basis.[33]

In support of the prohibitory writ, GSIS claims that it is only the regular auditor who can conduct such audits and issue disallowances; that it is only the commissioner of COA who can delegate this power; and that GSIS would suffer grave and irreparable injury, should the SAT implement the latter's report.

ISSUES

We categorize the arguments in the following manner:

1. Whether or not prohibition is the correct remedy
2. Whether or not the writ of preliminary injunction was properly issued
3. Whether or not the SAT was validly constituted

RULING

PROHIBITION IS NOT THE CORRECT REMEDY.

There is an appeal or a plain, speedy, and adequate remedy available.

A rule of thumb for every petition brought under Rule 65 is the unavailability of an appeal or any "plain, speedy, and adequate remedy."[34] Certiorari, prohibition, and mandamus are extraordinary remedies that historically require extraordinary facts to be shown[35] in order to correct errors of jurisdiction.[36] The law also dictates the necessary steps before an extraordinary remedy may be issued.[37] To be sure, the availability of other remedies does not always lend itself to the impropriety of a Rule 65 petition.[38] If, for instance, the remedy is insufficient or would be proven useless,[39] then the petition will be given due course.[40]

COA itself has a mechanism for parties who are aggrieved by its actions and are seeking redress directly from the commission itself.

Section 48 of Presidential Decree No. 1445 reads:

> Appeal from decision of auditors. Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

Additionally, Rule V, Section 1 of the 1997 COA Rules provides:

> An aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, notice of disallowances and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit.[41]

Rule VI, Section 1, continues the linear procedure, to wit:

> The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.[42]

This discussion of the different procedures in place clearly shows that an administrative remedy was indeed available. To allow a premature invocation of Rule 65 would subvert these administrative provisions, unless they fall under the established exceptions to the general rule, some of which are as follows:

1) when the question raised is purely legal;

2) when the administrative body is in estoppel;

3) when the act complained of is patently illegal;

4) when there is urgent need for judicial intervention;

5) when the claim involved is small;

6) when irreparable damage will be suffered;

7) when there is no other plain, speedy and adequate remedy;

8) when strong public interest is involved;

9) when the subject of the controversy is private land;

10) in *quo warranto* proceedings.[43]

GSIS claims that its case falls within the exceptions, because (a) the SAT supervisor has threatened to issue notices of disallowance;[44] (b) GSIS did nothing to stop the threatened issuances or the public appearances of the SAT supervisor;[45] (c) the petition/request filed with the COA has not been acted upon as of date;[46] (d) GSIS was denied due process because SAT had acted with partiality and bias;[47] and (e) the special audit was illegal, arbitrary, or oppressive, having been done without or in excess or in grave abuse of discretion.[48]

All of these claims are baseless. First, a threat to issue a notice of disallowance is speculative, absent actual proof. Moreover, even if the threat were real, it would not fall under any of the exceptions, because the COA rules provide an adequate remedy to dispute a notice of disallowance:

> Who May Appeal. - An aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, **notice of disallowances** and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit.factual issues that require some form of proof in order that they may be considered. (Emphasis supplied)[49]

Second, GSIS also mentions the fact that the COA has not acted on the former's petition/request both in the original Petition before the CA[50] and the pleadings before this Court.[51] This inaction is, of course, explainable by the fact that the CA issued a TRO and a writ of preliminary injunction. Moreover, the cited two (2) month delay is not so unreasonable as to require the trampling of procedural rules.

Third, the claim that there was a denial of due process runs counter to the claim that there is a pending petition/request before the COA. The fact that the petition/request was not denied or delayed for reasons within the control of the COA contradicts any claim that there was a due process violation involved.

Fourth, allegations of partiality and bias are questions of fact already before the COA. As the Court has clarified, "[t]here is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts."[52]

> A question of fact exists when the doubt or difference arises as to the truth or falsehood of facts or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, the existence and relevancy of specific surrounding circumstances as well as their relation to each other and to the whole, and the probability of the situation.[53]