

## EN BANC

[ G.R.No. 188818, May 31, 2011 ]

**TOMAS R. OSMENA, IN HIS PERSONAL CAPACITY AND IN HIS CAPACITY AS CITY MAYOR OF CEBU CITY, PETITIONER, VS. THE COMMISSION ON AUDIT, RESPONDENT.**

### D E C I S I O N

**BRION, J.:**

Before the Court is the Petition for Certiorari<sup>[1]</sup> filed by Tomas R. Osmeña, former mayor of the City of Cebu, under Rule 64 of the Rules of Court. The petition seeks the reversal of the May 6, 2008 Decision<sup>[2]</sup> and the June 8, 2009 Resolution<sup>[3]</sup> of the respondent Commission on Audit (COA), which disallowed the damages, attorney's fees and litigation expenses awarded in favor of two construction companies in the collection cases filed against the City of Cebu, and made these charges the personal liability of Osmeña for his failure to comply with the legal requirements for the disbursement of public funds.

### BACKGROUND FACTS

The City of Cebu was to play host to the 1994 *Palarong Pamhansa (Palaro)*. In preparation for the games, the City engaged the services of WT Construction, Inc. (WTCI) and Dakay Construction and Development Company (DCDC) to construct and renovate the Cebu City Sports Complex. Osmeña, then city mayor, was authorized by the *Sangguniang Panlungsod (Sanggunian)* of Cebu to represent the City and to execute the construction contracts.

While the construction was being undertaken, Osmena issued a total of **20 Change/Extra Work Orders** to WTCI, amounting to P35,418,142.42 (about 83% of the original contract price), and to DCDC, amounting to P15,744,525.24 (about 31% of the original contract price). **These Change/Extra Work Orders were not covered by any Supplemental Agreement, nor was there a prior authorization from the Sanggunian.** Nevertheless, the work proceeded on account of the "extreme urgency and need to have a suitable venue for the *Palaro*."

<sup>[4]</sup> The *Palaro* was successfully held at the Cebu City Sports Complex during the first six months of 1994.

Thereafter, WTCI and DCDC demanded payment for the extra work they performed in the construction and renovation of the sports complex. A *Sanggunian* member, Councilor Augustus Young, sponsored a resolution authorizing Osmeña to execute the supplemental agreements with WTCI and DCDC to cover the extra work performed, but the other *Sanggunian* members refused to pass the resolution. Thus, the extra work completed by WTCI and DCDC was not covered by the necessary appropriation to effect payment, prompting them to file two separate collection cases" before the Regional Trial Court (RTC) of Cebu City (Civil Case Nos. CEB-

17004<sup>[5]</sup> and CEB-17155). The RTC found the claims meritorious, and ordered the City to pay for the extra work performed. **The RTC likewise awarded damages, litigation expenses and attorney's fees in the amount of P2,514,255.40 to WTCI<sup>[7]</sup> and P102,015.00 to DCDC.<sup>[8]</sup>** The decisions in favor of WTCI and DCDC were affirmed on appeal, subject to certain modifications as to the amounts due, and have become final. To satisfy the judgment debts, the *Sanggunian* finally passed the required appropriation ordinances.

During post-audit, the City Auditor issued **two notices disallowing the payment of litigation expenses, damages, and attorney's fees to WTCI and DCDC.<sup>[9]</sup>** The City Auditor held Osmeña, the members of the *Sanggunian*, and the City Administrator liable for the P2,514,255.40 and P102,015.00 awarded to WTCI and DCDC, respectively, as damages, attorney's fees, and interest charges. These amounts, the City Auditor concluded, were **unnecessary expenses** for which the public officers should be held liable in their personal capacities pursuant to the law.

Osmeña and the members of the *Sanggunian* sought reconsideration of the disallowance with the COA Regional Office, which, through a 2nd Indorsement dated April 30, 2003,<sup>[10]</sup> modified the City Auditor's Decision by absolving the members of the *sanggunian* from any liability. **It declared that the payment of the amounts awarded as damages and attorney's fees should solely be Osmeña's liability, as it was him who ordered the change or extra work orders without the supplemental agreement required by law, or the prior authorization from the *Sanggunian*.** The *Sanggunian* members cannot be held liable for refusing to enact the necessary ordinance appropriating funds for the judgment award because they are supposed to exercise their own judgment and discretion in the performance of their functions; they cannot be mere "rubber stamps" of the city mayor.

The COA Regional Office's Decision was sustained by the COA's National Director for Legal and Adjudication (Local Sector) in a Decision dated January 16, 2004.<sup>[11]</sup> Osmeña filed an appeal against this Decision.

**On May 6, 2008, the COA issued the assailed Decision which affirmed the notices of disallowance.<sup>[12]</sup>** Osmeña received a copy of the Decision on May 23, 2008. Eighteen days after or on June 10, 2008, Osmeña filed a motion for reconsideration of the May 6, 2008 COA Decision.

**The COA denied Osmeña's motion via a Resolution dated June 8, 2009.<sup>[13]</sup>** The Office of the Mayor of Cebu City received the June 8, 2009 Resolution of the COA on June 29, 2009. A day before, however, Osmeña left for the United States of America for his check-up after his cancer surgery in April 2009 and returned to his office only on July 15, 2009. Thus, it was only on July 27, 2009 that Osmeña filed the present petition for *certiorari* under Rule 64 to assail the COA's Decision of May 6, 2008 and Resolution of June 8, 2009.

### **THE PETITION**

Rule 64 of the Rules of Court governs the procedure for the review of judgments and final orders or resolutions of the Commission on Elections and the COA. Section

3 of the same Rule provides for a 30-day period, counted from the notice of the judgment or final order or resolution sought to be reviewed, to file the petition for *certiorari*. The Rule further states that the filing of a motion for reconsideration of the said judgment or final order or resolution interrupts the 30-day period.

Osmeña filed his motion for reconsideration, of the COA's May 6, 2008 Decision, 18 days from his receipt thereof, leaving him with 12 days to file a Rule 64 petition against the COA ruling. He argues that the remaining period should be counted not from the receipt of the COA's June 8, 2009 Resolution by the Office of the Mayor of Cebu City on June 29, 2009, but from the time he officially reported back to his office on July 15, 2009, after his trip abroad. Since he is being made liable in his *personal capacity*, he reasons that the remaining period should be counted from his *actual knowledge* of the denial of his motion for reconsideration. Corollary, he needed time to hire a private counsel who would review his case and prepare the petition.

Osmeña pleads that his petition be given due course for the resolution of the important issues he raised. The damages and interest charges were awarded on account of the delay in the payment of the extra work done by WTCI and DCDC, which delay Osmeña attributes to the refusal of the *Sanggunian* to appropriate the necessary amounts. Although Osmeña acknowledges the legal necessity for a supplemental agreement for any extra work exceeding 25% of the original contract price, he justifies the immediate execution of the extra work he ordered (notwithstanding the lack of the supplemental agreement) on the basis of the extreme urgency to have the construction and repairs on the sports complex completed in time for the holding of the *Palaro*. He claims that the contractors themselves did not want to embarrass the City and, thus, proceeded to perform the extra work even without the supplemental agreement.

Osmeña also points out that the City was already adjudged liable for the principal sum due for the extra work orders and had already benefitted from the extra work orders by accepting and using the sports complex for the *Palaro*. For these reasons, he claims that all consequences of the liability imposed, including the payment of damages and interest charges, should also be shouldered by the City and not by him.

### **THE COURT'S RULING**

#### ***Relaxation of procedural rules to give effect to a party's right to appeal***

Section 3, Rule 64 of the Rules of Court states:

**SEC. 3. Time to file petition.—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 the period herein fixed. 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.  
[Emphasis ours.]

Several times in the past, we emphasized that 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.<sup>[14]</sup> Where strong considerations of substantive justice are manifest in the petition, this Court may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.<sup>[15]</sup>

Osmeña cites the mandatory medical check-ups he had to undergo in Houston, Texas after his cancer surgery in April 2009 as reason for the delay in filing his petition for *certiorari*. Due to his weakened state of health, he claims that he could not very well be expected to be bothered by the affairs of his office and had to focus only on his medical treatment. He could not require his office to attend to the case as he was being charged in his personal capacity.

We find Osmeña's reasons sufficient to justify a relaxation of the Rules. Although the service of the June 8, 2009 Resolution of the COA was validly made on June 29, 2009 through the notice sent to the Office of the Mayor of Cebu City,<sup>[16]</sup> we consider July 15, 2009 — the date he reported back to office — as the effective date when he was actually notified of the resolution, and the reckoning date of the period to appeal. If we were to rule otherwise, we would be denying Osmeña of his right to appeal the Decision of the COA, despite the merits of his case.

Moreover, a *certiorari* petition filed under Rule 64 of the Rules of Court must be verified, and a verification requires the petitioner to state under oath before an authorized officer that he has read the petition and that the allegations therein are true and correct of his personal knowledge. Given that Osmeña was out of the country to attend to his medical needs, he could not comply with the requirements to perfect his appeal of the Decision of the COA.

While the Court has accepted verifications executed by a petitioner's counsel who personally knows the truth of the facts alleged in the pleading, this was an alternative not available to Osmeña, as he had yet to secure his own counsel. Osmeña could not avail of the services of the City Attorney, as the latter is authorized to represent city officials only in their official capacity.<sup>[17]</sup> The COA pins liability for the amount of damages paid to WTCI and DCDC on Osmeña in his personal capacity, pursuant to Section 103 of Presidential Decree No. 1445 (*PD 1445*).<sup>[18]</sup>

Thus, the reckoning date to count the remaining 12 days to file his Rule 64 petition should be counted from July 15, 2009, the date Osmeña had actual knowledge of the denial of his motion for reconsideration of the Decision of the COA and given the