

EN BANC

[UDK 16666, January 19, 2021]

ISMAEL C. BUGNA, JR., BEVERLY C. MANANGUITE, CARISSA D. GALING, AND JOSEFINA O. PELO, PETITIONERS, VS. COMMISSION ON AUDIT (COA) COMMISSION PROPER AND COA REGIONAL OFFICE NO. VIII, RESPONDENTS.

R E S O L U T I O N

GESMUNDO, J.:

This petition for *certiorari* filed under Rule 64 in relation to Rule 65 of the *Rules of Court* seeks to set aside the Decision^[1] and Resolution^[2] of the Commission on Audit (COA) issued on December 28, 2017 and January 29, 2020, respectively. In both issuances, the COA dismissed the appeal filed by petitioners for being filed out of time.

Antecedents

The present controversy stemmed from the issuance of Resolution No. 53^[3] and Resolution No. 55^[4] by the *Sangguniang Bayan* of Mondragon, Northern Samar on December 10, 2012. Resolution No. 53 authorizes the grant of Economic Crisis Assistance (ECA) allowance while Resolution No. 55 grants the Monetary Augmentation of Municipal Agency (MAMA) allowance to the municipal employees of Mondragon. The *Sangguniang Bayan* of Mondragon also passed on even date, Ordinance No. 07, Series of 2012^[5] to appropriate the amounts of P4,762,788.62 and P644,000.00 from the savings/unexpended allotment and unappropriated balances of the municipality to fund the ECA and the MAMA, respectively.

On February 20, 2014, the Audit Team Leader of the Team 2, Audit Group F-Northern Samar Province issued Notice of Disallowance (ND) No. 14-001-101 (2012)^[6] for the amount of P733,869.00 and ND No. 14-002-101 (2012)^[7] for the amount of P1,513,470.54 representing the ECA granted to the officials and employees for being contrary to Section 12 of Republic Act (R.A.) No. 6758 and Civil Service Commission Resolution No. 02-0790 dated June 5, 2002. A third notice of disallowance, ND No. 14-003-101 (2012),^[8] was also issued on the same date for the amount of P618,800.00 supposedly expended for the MAMA in violation of Sec. 12 of R.A. No. 6758.

Petitioners Ismael C. Bugna, Jr. (Mayor), Beverly C. Mananguite (Municipal Accountant), Carissa D. Galing (Municipal Treasurer) and Josefina O. Pelo (Municipal Budget Officer) (collectively, *petitioners*) filed their Appeal^[9] to lift the notices of disallowance.

The COA Regional Office No. VIII issued a Decision^[10] on July 14, 2015 denying the

appeal for lack of merit. Petitioners subsequently filed a Notice of Appeal^[11] on August 12, 2015 before the COA Proper.

On December 28, 2017, the COA promulgated the assailed Decision denying the appeal for being filed out of time. The COA found that petitioners appealed to the COA Regional Office after 267 days had lapsed from their receipt of the NDs.^[12] The COA noted that petitioners failed to explain why they did not file a timely appeal. At any rate, the COA ruled that the ECA and MAMA had no sufficient basis, hence, they were properly disallowed. The COA disposed:

WHEREFORE, premises considered, the Appeal, treated as a Petition for Review, is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission on Audit Regional Office No. VIII Decision No. 2015-019 dated July 14, 2015, which affirmed Notice of Disallowance Nos. 14-001-101 (2012), 14-002-101 (2012), and 14-003-101 (2012), all dated February 20, 2014, on the payment of Economic Crisis Assistance and Monetary Augmentation of Municipal Agency to the job order, contractual, and permanent or regular personnel of the Municipal Government of Mondragon, Northern Samar; and some employees of national government agencies, in the amounts of P2,247,339.54 and P618,800.00, respectively, or in the aggregate amount of P2,886,139.54, is **FINAL and EXECUTORY**.^[13]

Their motion for reconsideration having been denied,^[14] petitioners filed the instant petition.

Petitioners invoke good faith in approving the disbursements for it has been customary for the municipality to grant ECA and MAMA to its employees, and they have never received any prior disallowance by the COA or the Department of Budget and Management (DBM).^[15] They argue that a finding of illegality of the disbursements does not automatically mean that all of the approving officials failed to exercise ordinary diligence and should thereby be personally liable for the disallowed amounts.^[16]

Did the COA commit grave abuse of discretion in denying the appeal filed by petitioners and in upholding the notices of disallowances issued against the grant of the ECA and MAMA to municipal employees?

Our Ruling

The petition has partial merit.

At the outset, the petition should have been dismissed outright for having been filed out of time. The COA correctly observed that petitioners had not only exhausted the period for filing an appeal but also failed to justify their noncompliance with the reglementary period.

Indeed, the right to appeal is a statutory right and one who seeks to avail of the right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless

delays and for orderly discharge of judicial business.^[17] The perfection of appeal in the manner and within the period set by law is not only mandatory but jurisdictional as well.^[18]

Nonetheless, the Court may set aside technicalities in the exercise of its equity jurisdiction in order to fully serve the demands of substantial justice.^[19] It should be emphasized that the general rule remains that when the COA denies an appeal for being filed out of time, this Court shall not entertain the petition filed under Rule 64 to question the dismissal of the appeal by the COA. An exception is when extraordinary circumstances exist,^[20] such as in this case, where the Court has decided a prior petition questioning the decision of the COA and the later petition is intertwined with it, provided that the latter is resolved in order to be consistent and in conformity with prevailing jurisprudence on disallowance cases, for instance, *Madera v. Commission on Audit (Madera)*.^[21]

Notably, *Madera* involved the NDs issued by the COA against the Municipality of Mondragon, Northern Samar concerning different allowances authorized by separate resolutions and ordinances issued by the *Sangguniang Bayan* in December 2013. Similarly, aside from the ECA and MAMA which are the subject disallowances in the present petition, the COA disallowed the grant of Agricultural Crisis Assistance (ACA) and Mitigation Allowance to Municipal Employees (MAME) for being contrary to Sec. 12 of R.A. No. 6758, Item II of COA Circular No. 2013-003 dated January 30, 2013, and Items 4 and 5 of Sec. I(a) of COA Resolution No. 02-0790 dated June 5, 2002. The petitioners in *Madera*, as in this petition, raised the defense of good faith to absolve them from being liable for the disallowed amounts.

Although the Court upheld the propriety of disallowing the amounts for lack of legal support, the petitioners in *Madera* were excused from returning the same on account of their good faith in certifying the availability of the funds and in approving the disbursements. In determining the liability of approving and certifying officers to return the disallowed amounts by the COA, the Court laid down the following rubrics:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarity liable to return only the net disallowed amount which, x x x, excludes amounts excused under the following

sections 2c and 2d.

- c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
- d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.^[22]

Applying the above standards, the Court noted the following circumstances which led to the conclusion that petitioners were in good faith while performing their functions in relation to the disallowed amounts:

First, a review of the SB Resolutions and Ordinance used as basis for the grant of the subject allowances shows that these were primarily intended as financial assistance to municipal employees in view of the increase of cost on prime commodities, shortage of agricultural products, and the vulnerability of their municipality to calamities and disasters. Notably, these subject allowances were granted after the onslaught of typhoon *Yolanda* which greatly affected the Municipality. While noble intention is not enough to declare the allowances as valid, it nevertheless supports petitioners' claim of good faith. As held in *Escarez v. COA*:

The grant of the FGI to petitioners has a lofty purpose behind it: the alleviation, to any extent possible, of the difficulty in keeping up with the rising cost of living. Indeed, under the circumstances, We find that the FGI was given and received in good faith. The NFA Council approved the grant under the belief, albeit mistaken, that the presidential issuances and the OGCC Opinion provided enough bases to support it; and the NFA officials and employees received the grant with utmost gratefulness.

Second, that these additional allowances had been customarily granted over the years and there was no previous disallowance issued by the COA against these allowances further bolster petitioners' claim of good faith. Indeed, while it is true that this customary scheme does not ripen into valid allowances, it is equally true that in all those years that the additional allowances had been granted, the COA did not issue any ND against these grants, thereby leading petitioners to believe that these allowances were lawful.

Notably, since the issuance of the NDs in 2014, the Municipality has stopped giving these allowances to their employees. However, this is not to say that the presumption of good faith would be *ipso facto* negated if the Municipality had otherwise continued to grant the allowances despite the issuance of NDs. After all, an ND is not immediately final as it may still be reversed by the COA or even the Court. Unless and until an ND becomes final, the continued grant of a benefit or allowance should not