

EN BANC

[G.R. No. 217448, September 10, 2019]

**ELENA A. ESTALILLA, PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

DECISION

BERSAMIN, C.J.:

A municipal treasurer who merely certifies to the availability of funds is not liable for the disallowance of the disbursement unless she has falsified the certification.

The Case

Petitioner Elena A. Estalilla seeks the review and setting aside of the decision promulgated on December 29, 2014,^[1] whereby the Commission on Audit (COA) dismissed her appeal and held her liable in the amount of P35,591,200.00, thusly:

WHEREFORE, premises considered, the petition for review of Ms. Elena A. Estalilla of the denial of her Omnibus Motion to Lift the Notice of Finality of Decision and COA Order Of Execution and Admit Appeal Memorandum is hereby **DISMISSED**. Accordingly, Notices of Disallowance Nos. 2008-043-101(05) and 2008-044-101(04) dated November 18, 2008 and November 25, 2008, respectively, on the payment of the 2004 garbage collections of the Municipality of Cabuyao, Laguna, charged against the 2005 appropriation, in the total amount of P35,591,200.00, are final and executory.

Antecedents

This case emanated from the *Contract for the Hauling of Garbage* entered into by and between the then Municipality of Cabuyao in the Province of Laguna and J.O. Batallones Trading and Construction on March 18, 2003^[2] and May 1, 2005.^[3] The Sangguniang Bayan of Cabuyao had approved both contracts through *Pambayang Kapasyahan Bilang 048-2004* and *Pambayang Kapasyahan Bilang 067-2005*.^[4]

After audit, the Audit Team Leader (ATL) of the Municipality of Cabuyao issued Audit Observation Memoranda (AOM) dated February 16, 2003 and September 13, 2005 upon discovering that payments totaling P35,591,200.00 for the 2004 garbage collections had been charged against the 2005 appropriation.^[5]

Regional Cluster Director Eden D. Tingson Rafanan later on issued Notice of Disallowance (ND) No. 2008-0430-101(05) dated November 18, 2008 in the amount of P18,676,200.00 and ND No. 2008-044-101(04) dated November 25, 2008 in the

amount of P16,915,000.00 on the ground that the expenditures had been improperly charged against the 2005 annual budget contrary to Section 305(a), Section 305(f) and Section 350 of Republic Act No. 7160 (*The Local Government Code*) in relation to Section 85 of Presidential Decree No. 1445 (*Auditing Code of the Philippines*).^[6]

The following individuals were listed in the NDs to be liable, namely:

Persons liable	Position	Participation
Proceso D. Aguillo	Former Mayor	Approved the payment of P16,915,000.00
Nila G. Aguillo	Former Mayor	Approved the payment of P18,676,200.00
Felix L. Galang	Former Municipal Accountant	Certified the completeness and propriety of supporting documents
Marcelina B. Maraña	Former Municipal Budget Officer	Allowed the payment without appropriation
Elena A. Estalilla	Municipal Treasurer	Certified as to cash availability ^[7]

After the above-named individuals, including Estalilla, failed to appeal the NDs within the six-month period, the COA Regional Office issued Notices of Finality of Decision (NFDs) on March 26, 2012,^[8] and the corresponding COA Orders of Execution (COEs) on April 2, 2012.^[9]

On June 26, 2012, Estalilla filed an *Omnibus Motion to Lift the NFDs and COEs and Admit Appeal Memorandum*,^[10] wherein she denied having received the AOM, but admitted having received the NDs. She thereby also pleaded for compassion, and attributed her inability to timely appeal to her preoccupation with other disallowances issued against her.

Ignoring Estalilla's plea for compassion in view of the substantial amounts involved, the COA Regional Office denied the *Omnibus Motion to Lift the NFDs and COEs and Admit Appeal Memorandum* mainly because of her failure to appeal within the 6-month period provided by Section 2 and Section 4 of the 2009 Revised Rules of Procedure of the COA.^[11]

Undeterred, Estalilla filed a petition for review with the COA proper.

Decision of the COA

The COA promulgated the now assailed decision on December 29, 2014 dismissing Estalilla's appeal for having been filed beyond the 6-month reglementary period. The COA observed therein that Estalilla had not tendered any compelling reasons to warrant relaxing in her favor the doctrine on the immutability of judgment.^[12]

Hence, this petition for *certiorari*.

Issues

Estalilla submits the following issues for our consideration:

I

WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT REFUSED TO GIVE DUE COURSE AND DISMISSED THE PETITION FOR REVIEW

II

WHETHER RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REVIEW DESPITE ITS CLEAR AND EVIDENT MERITS^[13]

Estalilla claims that her failure to file a timely appeal was not motivated by bad faith, inexcusable negligence, or reckless disregard of the relevant rules; that she had lost track of the NDs due to her being too preoccupied with two other NDs issued against her; that she had not been apprised of the AOM; that the disallowed amount of P35,591,200.00 had arisen from a budgetary and accounting error or technicality in which she had had no participation or responsibility; that the irregularity could be traced to the municipal accountant's failure to properly obligate the corresponding appropriation; that her certification had only indicated that there was sufficient cash to cover the proposed disbursement;^[14] that the contracts for the hauling of garbage had been authorized and approved by the *Sangguniang Bayan*; that the contractor had performed its obligation in good faith, and had become entitled to compensation; that charging her for the disallowed amount would unjustly enrich the Government considering that the municipality and its constituents had already benefitted from the garbage hauling services.^[15]

In its comment,^[16] the COA, through the Office of the Solicitor General (OSG), submits that that Estalilla's appeal was belated pursuant to Section 4, Rule V of the 2009 Revised Rules of Procedure of the COA, which required the appeal to be filed within six months from receipt of the decision; that the COA did not gravely abuse its discretion in denying her omnibus motion because the NDs had meanwhile attained finality; and that the 2004 garbage hauling services had been improperly disbursed against the 2005 appropriations.^[17]

In her reply,^[18] Estalilla insists that the merits of her petition warrant setting aside technicalities; that the filing of the motion for reconsideration would be useless considering that the COA had consistently rejected her plea, and had stifled her efforts to strengthen and support her cause;^[19] that her liability for the disallowed amounts was legally unwarranted; that pursuant to Section 351 of the *Local Government Code* and Section 103 of P.D. No. 1445, she could not be held liable for the questioned amounts because she had not been directly responsible therefor;^[20]

that paragraph 16.1, Section 16 of the Rules and Regulations on the Settlement of Accounts (RRSA) provided the guidelines in determining the liability of the officers for disallowances; that certifying to the existence of the appropriation and to the availability of cash were two different conditions pertaining to different offices; that her responsibility for certifying to the availability of funds would come only after the local chief executive, the local budget officer, and the local accountant had signed the appropriate documents; that it was the local budget officer who had certified to the availability of the appropriation; that the actual cash under her custody that had been kept in a single depository account was the basis of her certification; that the COA had on several occasions excluded the local treasurers from liability because their participation in the disallowed disbursements had been limited to their certifications to the effect that funds were available;^[21] that ND No. 2008-044-101(04) dated November 25, 2008 pertained to payments made in FY2004, not in FY2005; and that it was implausible that the local government had paid P35,591,200.00 for the hauling services, but she could not confirm the same because the COA had denied her requests for copies of the disbursement vouchers and allotment and obligation slips (ALOBs).^[22]

As the foregoing indicates, Estalilla raises procedural and substantive issues. Procedurally, the COA assails the propriety of still allowing her petition for *certiorari* to prosper despite her failure to file the requisite, motion for reconsideration in the COA. Substantively, she calls for the determination of whether or not the COA gravely abused its discretion in dismissing her appeal, and in holding her liable for the disallowed amount of P35,591,200.00.

Ruling of the Court

The Court **GRANTS** the petition for *certiorari*.

I

Non-filing of the motion for reconsideration vis-à-vis the COA's decision was justified

The COA, through the OSG, argues that Estalilla's failure to file the motion for reconsideration vis-à-vis the decision manifested her propensity to disregard the rules of procedure, and constitutes a fatal defect that merits the dismissal of her petition.^[23] She submits, however, that filing the motion for reconsideration would have been useless in view of the COA's consistent rejection of her pleas and requests for copies of documents pertinent to her defense.^[24]

Estalilla's submission is warranted.

The rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*. Such requirement is imposed to grant the court or tribunal the opportunity to correct any actual or perceived error attributed to it through the re-examination of the legal and factual circumstances of the case. The rule is not rigid and set in stone, but admits of exceptions, like the following: (1) where the order is a patent nullity, such as when the court *a quo* had no jurisdiction; (2) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed

upon in the lower court; (3) where there is an urgent necessity for the resolution of the question, and any further delay would prejudice the interests of the Government or of the petitioner, or the subject matter of the action is perishable; (4) where a motion for reconsideration would be useless; (5) where the petitioner was deprived of due process, and there is extreme urgency for relief; (6) where, in a criminal case, relief from an order of arrest is urgent, and the granting of such relief by the trial court is improbable; (6) where the proceedings in the lower court are a nullity for lack of due process; (7) where the proceeding was *ex parte*, or the petitioner had no opportunity to object; and (8) where the issue raised is one purely of law, or where public interest is involved.^[25]

The fourth and fifth exceptions are applicable.

To support her claim that the filing of the motion for reconsideration was useless, Estalilla avers that:

32. From the time petitioner set out to have the disallowances overturned or obtain a relief from the liability decreed, respondent has consistently rejected petitioner's plea and stifled other efforts aimed at strengthening and supporting her cause. Respondent's Region IV-A Director Luz Loreto-Tolentino denied petitioner's Omnibus Motion seeking the lifting of the COA Order of Execution, Notice of Finality of Decision, and admission of her Appeal Memorandum on the ground that the disallowances have become final and executory. Long before petitioner received notice of the unfavorable resolution of her motion, respondent's General Counsel rejected petitioner's request for copies of the disbursement vouchers and ALOBS pertaining to the disallowed payments stating that *"the purpose for which the documents are requested will no longer be served"* because of petitioner's failure to perfect an appeal within the prescribed period.

33. Despite the above setbacks, petitioner pursued her cause before respondent, deprived of the information which the requested disbursement vouchers and ALOBS may have provided to bolster her cause. Similarly, however, respondent denied her appeal and flatly refused to consider it on its merits. This pattern of rejections clearly conveyed that no speedy and adequate relief awaits petitioner from a Motion for Reconsideration filed before respondent and resort thereof would be useless.^[26]

Estalilla's averments are valid. The futility of filing a motion for reconsideration against the COA's December 29, 2014 decision is not difficult to discern in the face of the COA's constant rejections of her efforts to defend herself from the disallowances based solely on the lapse of the period to appeal the NDs. Such stance already indicated the COA's inclination to invoke Section 4, Rule V of its Rules on the period to file an appeal in order to deny outright any reconsideration that Estalilla would seek. Any further attempt by her to convince the COA to reconsider her case would have been pointless and wasteful.

Furthermore, we reject the posture of the COA to the effect that Estalilla had been