

EN BANC

[G.R. No. 200628, January 13, 2015]

MARIA THERESA G. GUTIERREZ, PETITIONER, VS. COMMISSION ON AUDIT AND AUDITOR NARCISA DJ JOAQUIN, RESPONDENTS.

DECISION

LEONEN, J.:

A cashier who is found to have been negligent in keeping the funds in his or her custody cannot be relieved from his or her accountability for amounts lost through robbery.

This is a Petition for Certiorari under Rule 65 of the Rules of Court assailing the June 5, 2008 withholding order and the Commission on Audit's January 31, 2012 decision holding Maria Theresa G. Gutierrez (Gutierrez) liable for the P10,105,687.25 that was lost through robbery.

Gutierrez is a Cash Collecting Officer, with the designation of Cashier III at National Food Authority-National Capital Region, National District Office (NFA-NCR, NDO).^[1] On May 30, 2008, she had collections amounting to F9,390,834.00, covered by Official Receipt Nos. 0420975 to 0421246.^[2] On that day, she placed the collections in a wooden cabinet.^[3]

The next day, Gutierrez's collections amounted to P1,505,625.00.^[4] Of that amount, P714,852.75 and an undeposited amount of P0.50 from March 2008 were placed in a wooden cabinet.^[5] The rest was placed in the safety vault.^[6]

The total undeposited collection as of March 31, 2008 was P10,896,459.50. Of that amount, P10,105,687.25 was placed in the "pearless" boxes^[7] in a wooden cabinet and P790,772.25 was placed in the safety vault.^[8]

On June 1, 2008, at about 1:35 a.m., armed men in military uniforms with Philippine National Police-Security Agencies and Guards Supervision Division (PNP-SAGSD) identifications entered the NFA-NCR, NDO.^[9] The armed men disarmed NFA-NCR, NDO's security guards and took Gutierrez's undeposited collections.^[10] Lockheed Detective and Watchman Agency, Inc. was NFA-NCR, NDO's contracted security agency.^[11]

The security guards on duty executed their respective affidavits. Based on their affidavits, armed men entered the NFA-NCR, NDO compound after they had been disarmed, threatened, and tied up.^[12] The security guards immediately reported the incident to the Valenzuela Police Station,^[13] where an investigation report^[14] was issued consistent with the security guards' narrations in their affidavits.^[15]

On June 3, 2008, the Commission on Audit, National Food Authority-NCR, North District Office, Mandalay, Valenzuela City, through State Auditor Narcisa DJ Joaquin (State Auditor Joaquin), issued a demand letter to Gutierrez.^[16] Gutierrez was informed that she must immediately produce the missing funds amounting to P10,105,686.75.^[17] She was also ordered to submit within 72 hours a written explanation why such shortage occurred.^[18]

On June 5, 2008, the Commission on Audit, through State Auditor Joaquin, issued a withholding order, addressed to Roberto S. Musngi (Musngi), Manager of National Food Authority, North District Office.^[19] Musngi was informed that upon examination of Gutierrez's account on June 1, 2008, it was established that there was a P10,105,686.75 shortage in Gutierrez's accountabilities.^[20] Pursuant to Section 37 of Presidential Decree No. 1445, Musngi was directed to withhold Gutierrez's salaries and other emoluments so these could be applied to the satisfaction of the shortage.^[21]

In response to the June 3, 2008 demand letter of the Commission on Audit, Gutierrez executed an affidavit dated June 6, 2008 wherein she narrated that she had been serving as National Food Authority's Cash Collecting Officer since 1985.^[22] Her office was located at the far end of the National Food Authority building.^[23] That was where the "pearless" boxes and the cabinet where she kept her collections could be found.^[24] Quoted below is her explanation for using "pearless" boxes to keep her collections:

6. That because of the volume of money I accept every day, which averages from 4 to 6 million pesos every day depending on the seasons, most of my time inside the office is spent to counting, bundling by different denominations the money. To emphasize the point, the money that I am accepting from remittances and payments are of different denominations, from twenty five centavo (Php0.25) coins to one thousand peso (Php1,000.00) bills. The coins alone would amount in the average of Twelve thousand pesos (Php12,000.00). I could literally say that from the time I timed in the office at about 6:30 a.m. up to the time I timed out at about 6:30 p.m., my only rest from my work is to [be] going to the ladies room and the break during lunch time.

....

8. That when the rice crises came up on April 2008, volume of work including the amount of money that comes into my office almost doubled. That because of the heavy operations in our office I had an average collection starting April 2008 of 6 to 9 Million Pesos every day of every denomination, with coins averaging from 12 to 16 thousand pesos that needs to be counted, receipted, bundled, balanced, reported and kept.

9. That it is almost automatic that when I enter my office what comes to my mind is to count the money and bundle them by the hundreds and prepare receipts for the payments and remittances until the time to leave at about 6:30 p.m. I would also cause the deposit of the money collected

the day before to Land Bank. But there were even times that because of the volume of the money, bank representatives could not sort out all the smaller bills (P20s and P50s) being picked up from our office as the Armor van should be in the bank at 3:00 p.m. Thus, there would be arrangements in the bank that the counting would continue inside their office, which oftentimes lasts until late night.

10. That since April 2008 or the start of the heavy operations, I have been putting some of the money in the "pearless" box, because of the volume, which I have to carry and keep safe at the cabinet inside. I have six (6) pearless boxes in the office.

....

13. That since May 30, 2008 is a Friday, banks are closed the following day and the money collected on said date would have remained in my office until the next banking day.

....

18. It was very unfortunate that the money accepted on May 30, 2008 and the collection in the night before the robbery were left in the pearless box inside the cabinet and not inside the vault. But with the volume of money, the vault has not enough space to accommodate all of it.

19. And with the amount of work that I am doing every day from 6:30 in the morning up to 6:30 p.m., more or less, where my only rest is literally going to the ladies room, and with the safe location of my office, it did not come to my mind that this incident would come.

20. That I have nothing to do with what happened in the incident of June 1, 2008 at 1:30 in the morning and I am not in control now to produce those missing funds taken by the robbers.^[25]

On June 10, 2008, Gutierrez requested relief from money accountability for the loss of the collections.^[26] The letter was addressed to State Auditor Joaquin.

In the letter dated June 26, 2008 addressed to State Auditor Joaquin, Gutierrez appealed the withholding order issued on June 5, 2008.^[27] She prayed that her salaries and emoluments be given to her while the robbery incident was still under investigation.^[28] She was a widow who had three (3) dependents and an 85-year-old mother residing with her in need of medical attention.^[29] She had no other source of income to support herself, her dependents, and her mother.^[30]

On June 26, 2008, State Auditor Joaquin denied Gutierrez's appeal of the withholding order.^[31] State Auditor Joaquin informed Gutierrez that there was already a prima facie case for malversation against her under Article 217 of the Revised Penal Code.^[32]

On July 11, 2008, Gutierrez filed a notice of appeal of State Auditor Joaquin's withholding order dated June 5, 2008.^[33]

On July 21, 2008, Atty. Saturnino R. Rola, Jr., Director of the National Food Authority, Enforcement, Investigation and Prosecution Department, submitted a memorandum addressed to the Administrator, Jessup P. Navarro.^[34] He found that the security agency was solidarity liable with security guard Romeo Casta for the amount lost.^[35] He also found that Gutierrez, by keeping her collections in unsecured "pearless" boxes and not in a vault, was grossly negligent in safekeeping her collections.^[36] He recommended that Gutierrez be administratively charged with dishonesty, gross neglect of duty, conduct prejudicial to the best interest of the service, and violation of reasonable office rules and regulations without prejudice to the filing of appropriate criminal charges.^[37] He also recommended the restitution of the amount lost from Lockheed Detective and Watchman Agency, Inc. Further, he recommended the ban of security guard Romeo Casta from deployment in any National Food Authority installations.^[38]

Similar incidents of robbery at different National Food Authority offices involving Lockheed Detective and Watchman Agency, Inc. were reported between 2006 and 2008.^[39]

On September 11, 2008, Commission on Audit Director IV Tito S. Nabua (Director Nabua) issued a decision denying Gutierrez's appeal^[40] and expressing his agreement with the issuance of the withholding order.^[41] The robbery incident was acknowledged in the decision.^[42] However, Gutierrez's alleged act of negligence in the performance of her duties could not be set aside.^[43] Her failure to follow safekeeping procedures showed lack of due care on her part.^[44] Aside from Article 217 of the Revised Penal Code, the liabilities of an accountable officer are found in Section 105 of Presidential Decree No. 1445.^[45]

Gutierrez filed a motion for reconsideration of the September 11, 2008 decision of Director Nabua on the ground that he did not give her a chance to file a memorandum of appeal before submission of the case for resolution.^[46] According to Gutierrez, this was a violation of the rules and of her right to due process.^[47] She also cited reversible error in upholding State Auditor Joaquin's order despite lack of factual and legal bases as ground for her motion.^[48]

On January 31, 2012, the Commission on Audit denied her request for relief from money accountability.^[49] Its ruling is reproduced as follows:

WHEREFORE, premises considered, this Commission **DENIES** the herein request for relief from money accountability, there being positive showing of fault or negligence on the part of Ms. Maria Theresa G. Gutierrez in the safekeeping and custody of subject government funds.

Accordingly, Ms. Gutierrez shall be liable to pay to1 the NFA the missing amount of P10,105,687.25. This is without prejudice to the right of the NFA-NCR, NDO to proceed against Lockheed Detective and Watchman

Agency, Inc. for the indemnification of the loss as security services provider to the NFA-NCR, NDO, Valenzuela City.^[50]

The Commission on Audit found that Gutierrez was negligent in safekeeping her collections.^[51] Placement of collections in a "pearless" box instead of in the safety vault, especially given the volume of collections, constituted gross negligence on her part.^[52] Her 20-year service aggravated her negligence.^[53] It should have made her more "security-conscious."^[54]

The Commission on Audit also found that the security guards' failure to secure National Food Authority's premises was a violation of the contract between National Food Authority and Lockheed Detective and Watchman Agency, Inc.^[55]

We decide whether Gutierrez's due process rights were violated when the Commission on Audit decided her appeal without requiring her to file an appeal memorandum. We also decide whether Gutierrez is liable for the amounts lost through a robbery.

Petitioner emphasizes that she was first assisted by counsel only when she filed a notice of appeal. Respondent auditor had already issued the withholding order dated June 5, 2008 and letter dated June 26, 2008 before petitioner was assisted by counsel.

Petitioner argues that her right to due process was violated when a decision was rendered against her without giving her a chance to file an appeal memorandum in accordance with Section 5 of Rule V of the Revised Rules of Procedure of the Commission on Audit. The appeal memorandum was her chance to raise issues against respondent auditor's orders to prove her case and to submit evidence to support her defense.^[56]

Petitioner's right to due process was further violated when her motion for reconsideration was resolved by the Commission on Audit instead of by Director Nabua. This prevented her from filing a petition for review of Director Nabua's decision before the Commission on Audit.^[57]

Petitioner cites Article IX(A), Section 7 of the Constitution to support her argument that she has a right to present her side in a memorandum.^[58] It provides:

Section 7. Each Commission shall decide by a majority vote of all its Members, any case or matter brought before it within sixty days from the date of its submission for decision or resolution. **A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself.** Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

Petitioner argues that aside from the right to be heard, administrative due process also requires the right to present evidence and for such evidence to be considered