

## EN BANC

[ G.R. No. 193706, March 12, 2013 ]

**EBRENCIO F. INDOYON, JR., MUNICIPAL TREASURER, SURIGAO DEL SUR, PETITIONER, LINGIG, VS. COURT OF APPEALS, TWENTY SECOND DIVISION, CAGAYAN DE ORO CITY, RESPONDENT.**

### DECISION

**SERENO, C.J.:**

This is a Petition for Certiorari filed under Rule 65 of the Revised Rules of Court asking this Court to determine once again whether the Court of Appeals, Cagayan de Oro City (CA) committed grave abuse of discretion in dismissing petitioner's Rule 43 Petition for Review on Certiorari. The Petition assails the 05 June 2009 and 16 July 2010 Resolutions in CA-G.R. SP No. 02855-MIN of the CA.<sup>[1]</sup>

### FACTS

Petitioner Ebrencio F. Indoyon, Jr., was the municipal treasurer of the Municipality of Lingig, Surigao del Sur, with Salary Grade 24.<sup>[2]</sup> On 8 August 2005, upon examination of his cash and accounts covering the period 22 June 2005 to 8 August 2005, the Commission on Audit (COA) — through State Auditor III Lino A. Baustista (Auditor Bautista) — discovered that petitioner had incurred a cash shortage in the amount of P1,222,648.42.<sup>[3]</sup>

In an undated letter to petitioner, Auditor Bautista demanded the immediate production of the missing funds and the submission of a written explanation of the shortage.<sup>[4]</sup>

On 19 September 2005, petitioner replied with a letter addressed to the provincial auditor of Surigao del Sur, admitting therein that the former had personally used the amount of P652,000 to put up a project to supplement his income, and that he had allowed other municipal officials and employees to use as cash advances his collections as municipal treasurer.<sup>[5]</sup>

On 15 March 2006, a Formal Charge for Violation of COA Rules and Regulations was filed against petitioner before the Bureau of Local Government Finance, Department of Finance (BLGF-DOF), CARAGA Administrative Region, Butuan City. The case was docketed as ADM Case No. BLGF-08-0108.<sup>[6]</sup>

Meanwhile, a letter-complaint dated 6 December 2006 was sent by the Regional Legal and Adjudication-Commission on Audit to the Deputy Ombudsman, Office of the Ombudsman-Mindanao (Ombudsman). It recommended the filing of a criminal case for malversation and an administrative case for dishonesty and grave

misconduct against petitioner.<sup>[7]</sup>

In its Decision dated 2 October 2008, the BLGF-DOF found petitioner guilty of "simple neglect of duty." The dispositive portion of the Decision reads:

PREMISES CONSIDERED, [r]espondent Indoyon is hereby found guilty of **Simple Neglect of Duty**. Considering the evidence that Respondent has taken undue advantage of his position, the penalty imposed is the maximum period which is **six (6) months suspension** from the service without pay. Let copies hereof be furnished the parties concerned and this Bureau advised accordingly.

Let the copies hereof be furnished the parties concerned and this Bureau advised accordingly.

SO ORDERED.<sup>[8]</sup> (Emphasis supplied)

On 27 November 2008, petitioner filed a Request for Reconsideration of the BLGF-DOF Decision seeking a modification of the administrative penalty by the reduction thereof from suspension to the imposition of a fine.<sup>[9]</sup> The request was partially granted in a Resolution dated 2 February 2009. Thus, instead of a six-month suspension, a fine in an amount equivalent to the six-month salary of petitioner was imposed on him.<sup>[10]</sup>

Meanwhile, on 30 April 2008, the Ombudsman rendered a Decision in Case No. OMB-M-A-07-024-A finding petitioner guilty of serious dishonesty and grave misconduct and imposing upon him the penalty of dismissal from the service.<sup>[11]</sup> On 13 March 2009, he filed a Motion for Reconsideration of the Decision, alleging that the jurisdiction over the same administrative Complaint filed before the Ombudsman had first been acquired by the BLGF-DOF.<sup>[12]</sup> Petitioner alleged that the two administrative cases were one and the same because of their identity of issues, facts and parties. The Ombudsman, however, maintained that the two cases were not identical and accordingly denied petitioner's Motion for Reconsideration.<sup>[13]</sup>

To enjoin the implementation of the Ombudsman's Decision, petitioner filed a Petition for Review on Certiorari under Rule 43 with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction before the CA. The case was docketed as CA-G.R. SP No. 02855-MIN.<sup>[14]</sup> In a Resolution dated 5 June 2009, the Petition was dismissed on the ground that it suffered not just one technical infirmity, but several technical infirmities that violated various circulars and issuances of this Court.<sup>[15]</sup>

Petitioner's Motion for Reconsideration,<sup>[16]</sup> praying for the relaxation of the procedural rules in the interest of substantial justice, was denied by the CA in a Resolution dated 16 July 2010.<sup>[17]</sup>

In the meantime, on 24 February 2010, the BLGF-DOF sent a letter to the ICO-Regional Director, BLGF-DOF, Caraga, directing the implementation of the

Ombudsman's Decision dated 30 April 2008 dismissing petitioner from the service.  
[18]

Hence this Petition.

The Solicitor General filed his Comment on 21 February 2011 and petitioner his Reply on 29 March 2011.

### **ISSUE**

The issue for resolution is whether the CA committed grave abuse of discretion in dismissing petitioner's Rule 43 Petition for Review on Certiorari on the ground of noncompliance with the Rules of Court and Supreme Court circulars.

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

The Petition is dismissed for being devoid of merit.

#### ***Discussion***

This Petition invokes the liberality of the Court and considerations of substantial justice in seeking to overturn the Resolutions of the CA. For noncompliance with the Rules of Court and Supreme Court circulars, the Petition filed by petitioner with the CA was properly dismissed. And yet, in the instant Petition, he once again ignores the Rules of Court and a circular issued by this Court.

Under Section 1, Rule 45 of the Rules of Court, the proper remedy to question the CA's judgment, final order or resolution, as in the present case, is a petition for review on certiorari. The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.

By filing a special civil action for *certiorari* under Rule 65, petitioner therefore clearly availed himself of the wrong remedy. Under Supreme Court Circular 2-90,<sup>[19]</sup> an appeal taken to this Court or to the CA by a wrong or an inappropriate mode merits outright dismissal.<sup>[20]</sup> On this score alone, the instant Petition may be dismissed.

In *Ybanez v. Court of Appeals*,<sup>[21]</sup> we have said that the Court cannot tolerate this ignorance of the law on appeals. It has in fact reproached litigants who have sought to delegate to this Court the task of determining under which rule their petitions should fall. In the cited case, we emphasized that paragraph 4(e) of Supreme Court Circular 2-90 specifically warns litigants' counsels to follow to the letter the requisites prescribed by law on appeals. This provision reads:

Duty of counsel. — It is therefore incumbent upon every attorney who would seek review of a judgment or order promulgated against his client to make sure of the nature of the errors he proposes to assign, whether these be of fact or law; then upon such basis to ascertain carefully which Court has appellate jurisdiction; and finally, to follow scrupulously the

requisites for appeal prescribed by law, ever aware that any error or imprecision in compliance may well be fatal to his client's cause.

The inexcusability of this disregard for the rules becomes even more glaring, considering that petitioner has previously shown grave indifference to technical rules before the CA. As already explained above, the assailed CA Resolution properly dismissed his Petition for failure to comply with procedural rules. He should have learned his lesson from that experience instead of repeating the same disregard for the rules before this Court.

We reiterate that under Supreme Court Circular 2-90, the filing of an improper remedy of special civil action for *certiorari* under Rule 65, when the proper remedy should have been to file a petition for review on certiorari under Rule 45, merits the outright dismissal of a Petition such as this one.

We remind petitioner, as we have consistently reminded countless other litigants, that the invocation of substantial justice is not a magic potion that will automatically compel this Court to set aside technical rules.<sup>[22]</sup> This principle is especially true when a litigant, as in the present case, shows a predilection for utterly disregarding the Rules.

In any event, even if we were to be liberal and overlook our own Circular 2-90, we rule that there was no grave abuse of discretion on the part of the CA in dismissing, for technical infirmities, the Petition for Review on Certiorari filed by petitioner under Rule 43.

At the outset, we emphasize that a writ of certiorari is an extraordinary prerogative writ that is never demandable as a matter of right.<sup>[23]</sup> To warrant the issuance thereof, the abuse of discretion must have been so gross or grave, as when there was such capricious and whimsical exercise of judgment equivalent to lack of jurisdiction; or the exercise of power was done in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility. The abuse must have been committed in a manner so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.<sup>[24]</sup>

Applying the above definition to the instant case, we find that there is no basis to ask this Court to hold the CA guilty of grave abuse of discretion when the latter was simply implementing the rules that we ourselves have set forth in several circulars. We quote hereunder the pertinent part of the assailed CA Resolution:

However, the Petition suffers from several infirmities rendering the Petition fatally defective.

First, no Affidavit of Service was attached to the Petition, in violation of Supreme Court Revised Circular Nos. 1-88 and 19-91, and of Section 13 of Rule 13 of the Rules of Court. They respectively read: