



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

VICTOR M. BARROSO

Petitioner,

G.R. No. 253253

Present:

- versus -

COMMISSION ON AUDIT

Respondent.

GESMUNDO, *Chief Justice*
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.
DE LOS SANTOS,
GAERLAN,
ROSARIO,
LOPEZ, J. JJ.

Promulgated:

April 27, 2021

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DECISION

LAZARO-JAVIER, J.:

The Case

Petitioner Victor M. Barroso, President of Bukidnon State University (BSU),¹ assails the following dispositions of the Commission on Audit (COA) Proper:

- 1) **Decision No. 2015-157²** dated April 6, 2015 finding him solidarily liable with Evelyn S. Mag-abo (Mag-abo) and Wilma L. Gregory (Gregory) to return the amount of ₱574,215.27 which was stolen due to their supposed negligence; and
- 2) **Decision No. 2020-232³** dated January 29, 2020 denying reconsideration of Decision No. 2015-157.

Antecedents

On March 17, 2005, Administrative Officer II Mag-abo was granted a cash advance of ₱574,215.27 for the payment of the salaries of the BSU employees for March 16-31, 2005. On March 28, 2005, about 9 o'clock in the morning, Mag-abo went to Landbank – Malaybalay to encash the payroll check. Since there were several customers at that time, she left the check with the bank verifier and returned to BSU.⁴

Around 11 o'clock in the morning that same day, Mag-abo went back to Landbank – Malaybalay together with four (4) other BSU employees who had business there. After encashing the check, Mag-abo et al. walked back to BSU.

As they passed Caltex gasoline station, an unidentified man grabbed Mag-abo's bag containing the payroll money. The man immediately ran to the other side of the street, boarded a motorcycle, and drove towards the direction of Cagayan de Oro City. The incident was reported to BSU Chief Administrative Officer Gregory who accompanied Mag-abo to the police station to report the incident.⁵

By Audit Observation Memorandum⁶ dated April 1, 2005, COA Audit Team Leader Teresita Quijada informed petitioner of Mag-abo's cash shortage of ₱574,215.27. Quijada also issued a Demand Letter⁷ to Mag-abo

¹ Also appears in the records as Bukidnon State College.

² *Rollo*, p. 17-21.

³ *Id.* at 22-26.

⁴ TR, Comment, p. 2.

⁵ *Id.* at 2-3.

⁶ *Id.* at Annex 2.

⁷ *Id.* at Annex 3.

directing her to produce the unliquidated amount and explain within 72 hours why the cash shortage occurred.

By Letter⁸ dated April 2, 2005, Mag-abo explained the incident to petitioner. In a separate letter to the COA Legal Adjudication Office, Mag-abo, too, requested relief from her cash accountability. Mag-abo's request got denied under Decision No. LAO-N-2006-132. The COA Adjudication and Settlement Board affirmed Mag-abo's liability.⁹

Mag-abo elevated her case to the COA Commission Proper (COA Proper) via a petition for review. But through Decision No. 2014-015,¹⁰ her appeal got denied anew. Aggrieved, Mag-abo moved for reconsideration, attaching the affidavit¹¹ dated March 2014 of retired BSU Accountant Gloria P. Torres (Torres) stating that Mag-abo requested for a security escort and vehicle from her supervisor, but none were provided.

As borne in its assailed Decision 2015-157¹² dated April 6, 2015, the COA Proper denied Mag-abo's motion and held her, petitioner, and Gregory solidarily liable for the stolen amount, owing to their supposed negligence when the loss occurred, thus:

WHEREFORE, premises considered, this instant motion for reconsideration of Ms. Evelyn S. Mag-abo, Administrative Officer II, Bukidnon State University (BSU), Malaybalay City, of Commission of Audit Decision No. 2014-015 dated February 3, 2014 is hereby DENIED for lack of merit. Accordingly, she shall continue to be liable for the loss of the payroll money due to robbery in the total amount of P573,215.27. In addition, Ms. Wilma L. Gregory and Mr. Victor M. Barroso, Supervisor of Cashiering Department and President of BSU, respectively, shall be held solidarily liable with Ms. Mag-abo for their negligence in providing security escort and service vehicle during the time of the loss pursuant to Section 102(1) and Section 104 of PD No. 1445.

The ruling surprised petitioner, considering he was never a party to the case and was never even furnished copy of Torres' affidavit. Thus, petitioner filed his own motion for reconsideration, invoking his right to due process and questioning the basis of his supposed liability.¹³

The COA Proper denied petitioner's motion under Decision No. 2020-232¹⁴ dated January 29, 2020. It ruled that petitioner was not deprived of his right to due process. For although he was not impleaded in the proceedings below, he was able to file a motion for reconsideration anyway right after he was found solidarily liable with Mag-abo and Gregory.¹⁵

⁸ *Id.* at Annex 4

⁹ *Id.* at 3-4.

¹⁰ *Id.* at Annex 5.

¹¹ *Id.* at Annex 8

¹² *Rollo*, p. 17.

¹³ TR, Comment, Annex 6.

¹⁴ *Rollo*, p. 22.

¹⁵ *Id.* at 24-25.

As for petitioner's liability, the COA Proper found that petitioner failed to exercise the diligence expected of a good father since he did not adopt precautionary measures to safeguard the funds of BSU. It was only after the robbery incident that petitioner realized the importance of sound internal control in the custody of the agency's cash.¹⁶

Present Petition

Petitioner now argues that the COA Proper acted with grave abuse of discretion when it found him solidarily liable to return the stolen amount without observing his right to due process of law, and despite the insufficiency of evidence to establish negligence on his part.¹⁷

For one, the proceedings before the COA was against Mag-abo. He was never made a party thereto until it reached the COA Proper and only on reconsideration. Prior to this, he was never asked to participate in the proceedings nor directed to present his case.¹⁸

The basis of the COA Proper for finding him liable was the Affidavit dated March 2014 of Torres which he was never furnished a copy of. Thus, although he was able to file a motion for reconsideration before the COA Proper, he cannot be deemed to have exercised it in a meaningful way as he had no opportunity to scrutinize the evidence against him.¹⁹

For another, the finding of negligence against him had no factual basis.²⁰

In its Comment, the Office of the Solicitor General (OSG) asserts that petitioner is solidarily liable for the stolen amount. It argues that the petition ought to be dismissed outright for petitioner's failure to attach material portions of the records in support of his petition as required under Rule 64, Section 5 of the Rules of Court.²¹ In particular, petitioner did not attach copies of Mag-abo's request for relief before the COA Legal Adjudication Office, the ruling of the COA Adjudication and Settlement Board, Decision No. 2014-015 of the COA Proper, and Torres' Affidavit dated March 2014.²²

¹⁶ *Id.* at 24.

¹⁷ *Id.* at 6-12.

¹⁸ *Id.* at 7.

¹⁹ *Id.* at 7-8.

²⁰ *Id.* at 10-12.

²¹ Section 5. *Form and contents of petition.* — xxx

The petition shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof, together with certified true copies of such material portions of the record as are referred to therein and other documents relevant and pertinent thereto. The requisite number of copies of the petition shall contain plain copies of all documents attached to the original copy of said petition.

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The failure of petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition.

²² TR, Comment, pp. 6-9.

At any rate, the COA Proper did not act with grave abuse of discretion when it held petitioner liable for his failure to implement security measures in relation to the management of BSU's funds. It was only after the robbery incident that BSU officials realized the importance of safeguarding government funds by providing security escort and vehicle to its cashiering personnel.²³

Too, petitioner was not denied due process. For one, he was afforded an opportunity to seek a reconsideration of the ruling complained of. For another, he admitted in his motion for reconsideration before the COA Proper that, although he was not party to the earlier proceedings, he received copies of the COA's rulings regarding Mag-abo's case. This included COA Decision No. 2015-157 which contained a summary of Torres' affidavit.²⁴

Threshold Issue

Did the COA violate petitioner's right to due process?

Ruling

The petition is meritorious.

Preliminary Matters

At the outset, the Court notes that petitioner belatedly initiated the present petition. As petitioner himself admitted, he received Decision No. 2015-157 on June 19, 2015 and moved for its reconsideration on July 2, 2015 or thirteen (13) days from notice. Thereafter, he received copy of the Decision No. 2020-232 denying reconsideration on August 25, 2020. Thus, he had seventeen (17) days or until September 11, 2020 to file a petition for *certiorari* under Rule 64 of the Rules of Court.²⁵ As it was though, petitioner mailed the present petition via **private courier** on September 11, 2020. The Court received the petition only on September 21, 2020 or ten (10) days beyond the sixty (60)-day period.

Rule 13, Section 3 of the Rules of Civil Procedure as amended by A.M. No. 19-10-20-SC²⁶ pertinently states:

Section 3. Manner of filing. – The filing of pleadings and other court submissions shall be made by:

²³ *Id.* at 13-16.

²⁴ *Id.* at 16-18.

²⁵ **Section 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.

²⁶ 2019 Proposed Amendments to the 1997 Rules of Civil Procedure.

- (a) Submitting personally the original thereof, plainly indicated as such, to the court;
- (b) Sending them by registered mail;
- (c) **Sending them by accredited courier**; or
- (d) Transmitting them by electronic mail or other electronic means as may be authorized by the [c]ourt in places where the court is electronically equipped.

In the first case, the clerk of court shall endorse on the pleading the date and hour of filing. In the second and **third cases, the date of the mailing** of motions, pleadings, [and other court submissions, and] payments or deposits, as shown by the post office stamp on the envelope or the registry receipt, **shall be considered as the date of their filing**, payment, or deposit in court. The envelope shall be attached to the record of the case. In the fourth case, the date of electronic transmission shall be considered as the date of filing. (3a) (emphases and underscoring added)

Verily, service and filing of pleadings via private courier should be reckoned from the date of mailing when said private courier is **accredited** by the courts.²⁷ Otherwise, the pre-amendment jurisprudential doctrine would govern, that is, it would be considered similar to filing via ordinary mail where the date of actual receipt is deemed the date of filing, albeit it was posted much earlier.²⁸

The procedure for accreditation is prescribed under Administrative Order 242-A-2020²⁹ which the Court En Banc approved on September 1, 2020. Said Administrative Order took effect on October 1, 2020 or nineteen (19) days **after** the present petition was mailed to the Court on September 11, 2020. Indubitably, the filing of the petition was not in accordance with the aforesaid rule. Thus, the date when the Court received the petition, September 21, 2020, should be considered as the date of filing. The petition was therefore filed ten (10) days late.

At any rate, Rule 13, Section 14 of the 2019 Rules decrees:

Section 14. Conventional service or filing of orders, pleadings and other documents. – Notwithstanding the foregoing, the **following orders, pleadings, and other documents must be served or filed personally or by registered mail when allowed**, and shall not be served or filed electronically, unless express permission is granted by the Court:

- (a) **Initiatory pleadings** and initial responsive pleadings, such as an answer;

²⁷ Section 5. *Modes of Service*. — Pleadings, motions, notices, orders, judgments, and other court submissions shall be served personally or by registered mail, accredited courier, electronic mail, facsimile transmission, other electronic means as may be authorized by the Court, or as provided for in international conventions to which the Philippines is a party.

²⁸ See *Industrial Timber Corp. v. NLRC*, 303 Phil. 621, 626 (1994); *Philippine National Bank v. Commissioner of Internal Revenue*, 678 Phil. 660, 674 (2011).

²⁹ Guidelines on the Accreditation of Courier Service Providers.

- (b) Subpoenae, protection orders, and writs;
- (c) Appendices and exhibits to motions, or other documents that are not readily amenable to electronic scanning may, at the option of the party filing such, be filed and served conventionally; and
- (d) Sealed and confidential documents or records.

As stated, initiatory pleadings such as the present petition for *certiorari* should be filed personally or via registered mail. The provision does not allow its filing via private courier regardless of accreditation. Under such circumstance, the petition should be treated as if filed via ordinary mail.³⁰ Consequently, the date when the Court actually received a copy of the present petition, September 21, 2020, shall be deemed the date of filing, not the date of mailing on September 11, 2020.

Despite these procedural lapses, however, the Court resolves to give due course to the petition in the higher interest of substantial justice. Too, the amendments to the Rules of Civil Procedure took effect on May 1, 2020 only,³¹ thus, creating a gap in jurisprudence pertaining to its interpretation and application. Petitioner's lapses are therefore excusable under the circumstances.

As for petitioner's purported failure to attach the material portions of the records in support of his petition, surely he may not be faulted for this omission considering his claim that he was a non-party to the proceedings before the COA, and that he was found liable, albeit he was not accorded due process.

Petitioner's right to administrative due process was violated

Ang Tibay v. Court of Industrial Relations³² bears the requisites of due process in administrative proceedings, *viz.*:

- 1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof;**
- 2) The tribunal must consider the evidence presented;
- 3) The decision must have something to support itself;
- 4) The evidence must be substantial;
- 5) The decision must be rendered on the **evidence** presented at the hearing, or at least contained in the record and **disclosed to the parties;**

³⁰ See *Philippine Savings Bank v. Papa*, 823 Phil. 725, 734-735 (2018).

³¹ Rule 144, Rules of Court as amended.

³² See 69 Phil. 635, 642-644 (1940).

- 6) The tribunal or any of its judges must act on its or his own independent consideration of the facts and the law of the controversy, and not simply accept the views of a subordinate in arriving at a decision; and
- 7) The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding will know the various issues involved, and the reasons for the decision.

Here, petitioner claims that he was denied the opportunity to be heard since he was only included as a party towards the end of the proceedings before the COA, after the COA Proper denied Mag-abo's motion for reconsideration. More, he was never furnished a copy of Torres' Affidavit dated March 2014 which was allegedly the basis of the adverse ruling against him.

On the other hand, the OSG invokes *Ledesma v. Court of Appeals*³³ wherein the Court pronounced that the essence of due process is simply to be heard or an opportunity to explain one's side, including the opportunity to seek a reconsideration of an action or ruling.

We rule for petitioner.

The mere filing of a motion for reconsideration does not cure due process defects, especially if the said motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits. This was the Court's pronouncement in *Fontanilla v. Commissioner Proper*³⁴ which bears a similar set of facts as here.

In *Fontanilla*, petitioner Dr. Fontanilla was the Division Superintendent of the Department of Education (DepEd) – South Cotabato, with Special Disbursing Officer Luna Falcis (Falcis) under his supervision. On August 30, 2007, Falcis and a co-worker went to Landbank - Koronadal City to encash a ₱313,024.50 check to defray DepEd – South Cotabato's expenses. On their way back to their office, however, three (3) men blocked their path, held them at gunpoint and grabbed the envelope containing the money before speeding away on a motorcycle. The COA Audit Team Leader investigated the incident and found that Falcis failed to observe extra care and due diligence in handling the money. The COA Regional Office sustained these findings. Despite repeated requests, Falcis was not relieved from accountability. Falcis' plea eventually got elevated to the Adjudication Settlement Board which affirmed her liability and held Dr. Fontanilla solidarily liable with her for the stolen amount. Dr. Fontanilla moved to intervene in the proceedings, arguing that his right to due process was

³³ 565 Phil. 731, 740 (2007).

³⁴ 787 Phil. 713 (2016).



violated. He claimed he was not given due notice, nor ordered to participate in the proceedings, or given the chance to present his side. The COA Proper treated Dr. Fontanilla's motion for intervention as an appeal which allegedly equated to an opportunity to be heard, the very process he was supposedly asking for.

The Court reversed the ruling of the COA Proper in *Fontanilla*, thus:

While we have ruled in the past that the filing of a motion for reconsideration cures the defect in procedural due process because the process of reconsideration is itself an opportunity to be heard, this ruling does not embody an absolute rule that applies in all circumstances. *The mere filing of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained.*

In other words, if a person has not been given the opportunity to squarely and intelligently answer the accusations or rebut the evidence presented against him, or raise substantive defenses through the proper pleadings before a quasi-judicial body (like the COA) where he or she stands charged, then a due process problem exists. This problem worsens and the denial of his most basic right continues if, in the first place, he is found liable without having been charged and this finding is confirmed in the appeal or reconsideration process without allowing him to rebut or explain his side on the finding against him.

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Contrary to the COA's posturing, it did not pass upon the merit of Dr. Fontanilla's claim that he was denied due process. Instead of asking Dr. Fontanilla to explain his side (by allowing him to submit his memorandum or calling for an oral argument as provided under Rule X, Section 3 of the COA Rules of Procedure), the COA concluded *right away* that the motion for intervention, exclusion, and reconsideration had effectively cured the alleged denial of due process. The COA failed or simply refused to realize that Dr. Fontanilla filed the motion precisely for the purpose of participating in the proceedings to explain his side.

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In the present case, not only did the COA deny Dr. Fontanilla's plea to be heard, **it proceeded to confirm his liability on reconsideration without hearing his possible defense or defenses.** (emphases added)

Here, petitioner was found liable though he was never charged. The proceedings prior to the COA Proper's reconsideration all pointed to Mag-abo as sole negligent party responsible for the loss of the ₱574,215.27 representing the salaries of BSU personnel. Petitioner only got involved in the proceedings when the COA Proper denied Mag-abo's motion for reconsideration and ordered him to pay the unliquidated amount. Notably, petitioner was brought in as party at a much later stage than Dr. Fontanilla.



Applying *Fontanilla*, petitioner here was similarly deprived of the opportunity to present and submit evidence to establish non-culpability via memorandum or oral arguments before the COA Commission pursuant to Section 3, Rule X of the 2009 Revised Rules of Procedure of the COA.³⁵ Worse, he was deprived of the opportunity to examine the evidence against him, for he was never served a copy of Mag-abo's submissions which formed the very basis of the adverse ruling of the COA Proper.

Though petitioner raised this due process violation issue before the COA Proper, the latter never addressed his concern. It simply ruled that the very pleading which raised due process violation was the very pleading which afforded him due process. **But this cannot be the case.** For a perusal of petitioner's Motion for Reconsideration³⁶ before the COA Proper reveals that he never had the opportunity to thoroughly argue the merits of his case precisely because he was not properly informed of what he was supposed to argue against (*i.e.* the accusations and statements against him in Mag-abo's submissions). Thus, petitioner was constrained to limit the discussion in his motion for reconsideration to the issue of due process. Surely, this cannot be considered the opportunity to be heard within the concept of administrative due process.

Where the denial of the fundamental right of due process is apparent, a decision rendered in disregard of such right is void for lack of jurisdiction. Any judgment or decision rendered notwithstanding such violation may be regarded as a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its ugly head, as here.³⁷

ACCORDINGLY, the petition is **GRANTED**. Decision Nos. 2015-157 and 2020-232 dated April 6, 2015 and January 29, 2020, respectively, of the Commission on Audit - Commission Proper are **NULLIFIED** insofar as they hold petitioner Victor M. Barroso solidarily liable with Evelyn S. Mag-abo and Wilma L. Gregorio to return the amount of ₱574,215.27.

SO ORDERED.

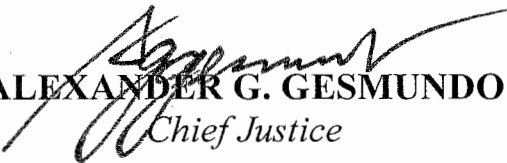

AMY C. LAZARO-JAVIER
Associate Justice

³⁵ Section 3. *Oral Argument*. - Upon motion by a party, or *motu proprio*, the Commission Proper may call for oral arguments of the parties before the Commission Proper en banc subject to such limitation of time and issues as the Commission may prescribe. In lieu of oral arguments, the parties may be allowed to submit their respective memoranda within fifteen (15) days from notice thereof.


³⁶ TR, Comment, Annex 6.

³⁷ *Ombudsman v. Conti*, 806 Phil. 384, 396 (2017).

WE CONCUR:




ALEXANDER G. GESMUNDO
Chief Justice



ESTELA M. PERLAS-BERNABE
Senior Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



ALFREDO BENHAMIN S. CAGUIOA
Associate Justice



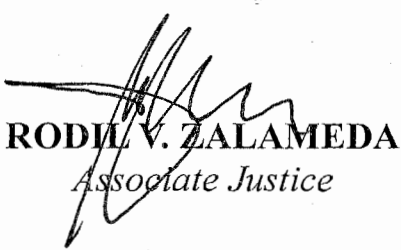
RAMON PAUL L. HERNANDO
Associate Justice



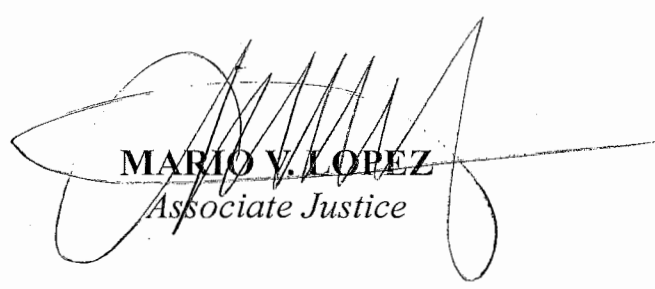
ROSMARID. CARANDANG
Associate Justice



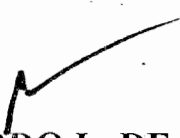
HENRI JEAN PAUL B. INTING
Associate Justice



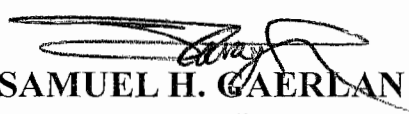
RODIL V. ZALAMEDA
Associate Justice



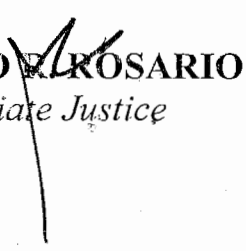
MARIO V. LOPEZ
Associate Justice



EDGARDO L. DE LOS SANTOS
Associate Justice



SAMUEL H. GAERLAN
Associate Justice



RICARDO P. ROSARIO
Associate Justice

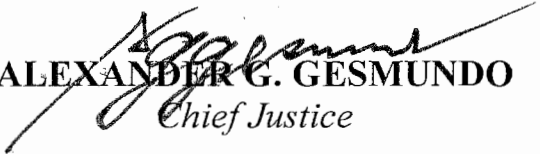


JHOSEP V. LOPEZ
Associate Justice

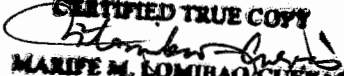


CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice



CERTIFIED TRUE COPY

MARIFE M. LOMIBAO CUEVAS
Clerk of Court
Supreme Court