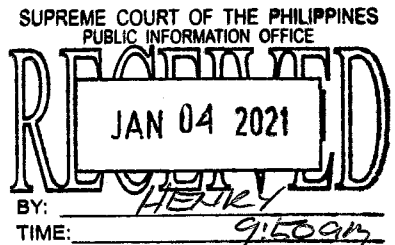




Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE



Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated **OCTOBER 6, 2020**, which reads as follows:*

“G.R. No. 229559 – (*Ferdstar Builders Contractors, petitioner v. Commission on Audit, respondent*). – Before this Court is a Petition¹ for *Certiorari* filed under Rule 64, in relation to Rule 65, of the Rules of Court seeking to nullify and set aside Decision No. 2015-062² dated March 9, 2015 and the Resolution³ dated October 26, 2016 of the Commission on Audit (COA). The challenged Decision dismissed petitioner’s appeal for having been filed out of time, while the assailed Resolution denied petitioner’s motion for reconsideration.

Facts

On November 8, 2010, then Secretary of the Department of Public Works and Highways (DPWH), Rogelio L. Singson, wrote to the then Chairman of the COA, Reynaldo Villar, requesting for the creation of a Special Audit Team (SAT) to conduct audit of various projects implemented in Region 3.⁴ Accordingly, SATs were created under COA Regional Office Order No. 2011-23. SAT 1, with Team Leader Josefina Y. Guevarra, was assigned to audit projects implemented in Pampanga.⁵

Among the projects evaluated by SAT 1 were projects awarded to and undertaken by Ferdstar Builders Contractors (petitioner), a sole proprietorship owned and managed by Ferdinand L. Beltran, to wit:

- a) Rehabilitation of Manila North Road San Simon-Minalin Section, Km 58+000 to Km 60+000, with a contract amount of ₱9,550,132.75;⁶

¹ *Rollo*, pp. 3-45. With application for issuance of restraining order and writ of preliminary injunction.

² *Id.* at 50-54; signed by Commissioners Heidi L. Mendoza and Jose A. Fabia.

³ *Id.* at 55.

⁴ *Id.* at 56, 59, 62, 65, 69.

⁵ *Id.* at 59, 62, 65, 69.

⁶ *Id.* at 56.

- b) Rehabilitation/improvement of Sta. Barbara Barangay Road, Bacolor, Pampanga, with a contract amount of ₱14,283,800.00;⁷
- c) Rehabilitation/improvement of Abacan River Control (Culubasa and Anao Section) in Mexico, Pampanga, with a contract amount of ₱23,883,007.00;⁸
- d) Armouring/rehabilitation of Gugu Creek in Bacolor, Pampanga, with a contract amount of ₱9,550,132.75;⁹ and
- e) Rehabilitation/improvement of Abacan River Control (Culubasa Section) in Mexico, Pampanga, with a contract amount of ₱9,553,500.00.¹⁰

Subsequently, SAT 1 issued the corresponding audit observation memoranda that ultimately led to the issuance of the following Notices of Disallowance (ND):

Special Audit ND Nos.	Project and Ground for the Disallowance	Amount
11-001-151 (2009) dated 10/25/2011 ¹¹	Rehabilitation of Manila North Road San Simon-Minalin Section, Km 58+000 to Km 60+000 with exception, San Simon, Pampanga (Two sections of the project were constructed outside the contract limits.) ¹²	P2,286,063.54 ¹³
11-007-101 (2010) dated 10/25/2011 ¹⁴	Rehabilitation/Improvement of Sta. Barbara Barangay Road, Bacolor, Pampanga (The project was evaluated to be excessive.) ¹⁵	P1,050,071.36 ¹⁶

7 Id. at 59.
 8 Id. at 62.
 9 Id. at 65.
 10 Id. at 69.
 11 Id. at 50, 56.
 12 Id.
 13 Id.
 14 Id. at 51 and 59.
 15 Id.
 16 Id.

11-006-101 (2010) dated 10/25/2011 ¹⁷	Rehabilitation/Improvement of Abacan River Control (Culubasa and Anao Section), Mexico, Pampanga (The project was evaluated to be 72.59% completed.) ¹⁸	P6,545,489.60 ¹⁹
11-004-101 (2010) dated 10/25/2011 ²⁰	Armouring/Rehabilitation of Gugu Creek in Bacolor, Pampanga (The project was evaluated to be excessive.) ²¹	P2,051,666.10 ²²
11-002-101 (2009) dated 10/25/2011 ²³	Rehabilitation/Improvement of Abacan River Control (Culubasa Section), Mexico, Pampanga (The project was only 74.46 completed.) ²⁴	P2,439,741.00 ²⁵
	TOTAL	P14,373,031.60 ²⁶

Petitioner was among the parties determined to be liable for the disallowances. Copies of the aforesaid NDs were sent to petitioner *via* registered mail and were received by a certain Bernalyn Lerio (Lerio) on February 16, 2012, as shown by Philippine Postal Corporation (PPC) Registry Return Receipt for Registry Receipt No. 437 addressed to petitioner.²⁷

Records show that those held liable, with the exception of petitioner, filed an appeal from the subject NDs before COA's Regional Office (RO) III. Consequently, COA RO III rendered Decision Nos. 2013-61²⁸ dated June 14, 2013; 2013-69²⁹ and 2013-70,³⁰ both dated June 28, 2013; 2013-72³¹ dated July 1, 2013; and 2013-73³² dated July 2, 2013.

¹⁷ Id. at 51 and 62-63.

¹⁸ Id.

¹⁹ Id.

²⁰ Id. at 51 and 65.

²¹ Id. at 51 and 66.

²² Id.

²³ Id. at 51 and 70.

²⁴ Id.

²⁵ Id.

²⁶ Id. at 51.

²⁷ Id. at 51 and 148-149.

²⁸ Id. at 56-58.

²⁹ Id. at 59-61.

³⁰ Id. at 62-64.

³¹ Id. at 65-68.

³² Id. at 69-71.

With the exception of COA RO III Decision No. 2013-69,³³ all the aforesaid COA RO III Decisions affirmed the NDs issued by the SAT 1.³⁴

In COA RO III Decision No. 2013-69, the Regional Director held in this wise:

WHEREFORE, the foregoing premises considered, ND No. 11-007-101 (2010), disallowing P1,050,071.36 is hereby **MODIFIED**. Accordingly, the original disallowance is reduced to P660,791.96 in conformity with the recommendation of the ATL under her Answer to the Appeal Memorandum.

This decision is not final and shall be subject to automatic review by the Commission Proper pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit.³⁵

Alleging to have only received copies of the COA RO III Decisions and not the NDs, petitioner filed with the COA Proper a petition for review on January 8, 2014, or 692 days from receipt of the subject NDs by Bernalyn Lerio.³⁶

On March 9, 2015, the COA rendered the assailed Decision,³⁷ the dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the herein petition is hereby **DISMISSED** for having been filed out of time. Accordingly, Commission on Audit Regional Office III Decision Nos. 2013-61 dated June 14, 2013; 2013-69 and 2013-070, both dated June 28, 2013; 2013-72 dated July 1, 2013; and 2013-073 dated July 2, 2013, which affirmed Notice of Disallowance Nos. 11-001-151 (2009), 11-002-101 (2009), 11-004-101 (2010), 11-006-101 (2010), 11-007-101 (2010), all dated October 25, 2011, in the total amount of P14,373,031.60, on projects implemented by the Department of Public Works and Highways, Pampanga First District Engineering Office, are final and executory.³⁸

Petitioner sought reconsideration³⁹ but was denied by the COA through the challenged Resolution.⁴⁰

Hence, this petition raising the sole issue of:

³³ Id. at 61.

³⁴ Id. at 58, 64, 68, and 71.

³⁵ Id. at 61.

³⁶ Id. at 51.

³⁷ Id. at 50-54.

³⁸ Id. at 52-53.

³⁹ Id. at 72-77.

⁴⁰ Id. at 69-71.

WHETHER PUBLIC RESPONDENT [COA] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR REVIEW AND HELD THAT THE SAME WAS FILED OUT OF TIME.⁴¹

Petitioner is firm in its stance that it did not actually receive copies of the NDs that were mailed under Registry Receipt No. 437. Inasmuch as it only received copies of the COA RO III Decisions on July 9, 2013, petitioner argues that the six-month period to file an appeal from the NDs, or, in this case, the RO Decisions, should be reckoned from the said date. Thus, petitioner concludes, its petition for review was seasonably filed on 8 January 2014. Invoking the suppletory application of the Rules of Court, petitioner points out that the provisions therein anent service by mail apply in this case because the COA 2009 Revised Rules of Procedure (COA 2009 Rules) did not clearly provide how and when service by registered mail is effected and completed. Under Section 10, Rule 13 of the Rules of Court, service by registered mail is deemed complete only upon actual receipt of the addressee. In petitioner's case, copies of the NDs were not served to petitioner but delivered to Lerio, who is not known/related to or employed by petitioner. This fact was attested to, under oath, by petitioner's longtime liaison officer, Ma. Analiza S. Arceo (Arceo), through her judicial affidavit dated May 21, 2015. Respondent COA has not shown in what capacity or under whose authority Lerio received the mail containing the NDs. Such receipt by Lerio does not amount to proper service to petitioner. Moreover, the merits of petitioner's case warrant the relaxation of procedural rules. Belaboring this, petitioner discussed the alleged errors of the SAT in project cost analysis. The COA gravely abused its discretion when it disregarded petitioner's assertions and strictly applied the COA 2009 Rules.⁴²

In its comment,⁴³ the Office of the Solicitor General (OSG), counters that the COA correctly dismissed petitioner's appeal. The registry return receipt showed that copies of the NDs were sent to petitioner and received by Lerio on February 16, 2012, for and in behalf of petitioner. In its attempt to rectify its failure to appeal, petitioner denied knowing Lerio. However, apart from the affidavit of Arceo, no other documents were submitted by petitioner to prove that Lerio is not connected to or employed by petitioner.⁴⁴ Even assuming that petitioner only came to know of the NDs when it received copies of the COA RO III Decisions, its appeal filed on January 8, 2014 was still filed out of time because 183 days had lapsed from July 9, 2013, the date petitioner received the COA RO III Decisions.⁴⁵ Simply stated, the petition for review was filed beyond the six-month or 180-day

⁴¹ Id. at 10.

⁴² Id. at 10-43.

⁴³ Id. at 105-147.

⁴⁴ Id. at 113.

⁴⁵ Id. at 114.

period provided under Section 3, Rule VII of the COA 2009 Rules.⁴⁶ Hence, the NDs subject of petitioner's appeal are already final and executory. Further, petitioner failed to state a reasonable cause justifying its non-compliance with the COA's rule on appeal. Its bare denial of knowing Lerio does not warrant relaxation of procedural rules. As regards the alleged merits of petitioner's appeal, the OSG refuted petitioner's assertions by adopting the reports of the COA Technical Audit Specialist explaining in detail the reasons for the disallowances. In sum, the COA did not commit grave abuse of discretion in denying due course to petitioner's appeal.⁴⁷

The Court's Ruling

The petition fails.

The Constitution⁴⁸ and the Rules of Court limit the permissible scope of inquiry in petitions under Rules 64⁴⁹ and 65 to errors of jurisdiction or grave abuse of discretion. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism. Hence, unless tainted with grave abuse of discretion, the COA's simple errors of judgment cannot be reviewed even by this Court. Rather, the general policy has been to accord weight and respect to the decisions of the COA.⁵⁰

In the case at bench, We find no grave abuse of discretion on the part of the COA in dismissing petitioner's appeal.

Settled is the rule that when a mail matter was sent by registered mail, there arises a disputable presumption that it was received in the regular course of mail.⁵¹ The facts to be proved in order to raise this presumption are: (a) that the letter was properly addressed with postage prepaid; and (b)

⁴⁶ Id.

⁴⁷ Id. at 116-118.

⁴⁸ Under Section 7, Article IX-A, any decision, order, or ruling of the COA may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

⁴⁹ Under Section 2 thereof, a judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65; while under Section 5 of same Rule, findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable.

⁵⁰ *Ramiscal, Jr. v. Commission on Audit*, 819 Phil. 597, 604 (2017).

⁵¹ See *Allied Banking Corporation (now Philippine National Bank) v. De Guzman, Sr.*, G.R. No. 225199, July 9, 2018, 871 SCRA 302, 311, citing Section 3(v), Rule 131, of the 1997 Rules of Court, which reads:

Sec. 3. *Disputable presumptions.* — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(v) That a letter duly directed and mailed was received in the regular course of the mail[.]

that it was mailed.⁵² To prove the fact of mailing, it is important that a party proving the same present sufficient evidence thereof, such as the registry receipt issued by the Bureau of Posts or the registry return card which would have been signed by the petitioner or its authorized representative.⁵³

Here, records establish that copies of the NDs were sent by the COA to the petitioner *via* registered mail under Registry Receipt No. 437 and were received by Lerio on petitioner's behalf, as shown by the PPC Registry Return Receipt for Registry Receipt No. 437. In this light, petitioner's assertion that it did not receive copies of the NDs requires substantiation by competent evidence.⁵⁴ The unsupported affidavit executed by petitioner's alleged liaison officer, Arceo (stating that Lerio is not connected to petitioner), is self-serving and insufficient to overcome the presumption. Besides, the subject Registry Return Receipt states that "[a] registered article **must** be delivered under receipt to (under signature by) the addressee or to his/her authorized representative[.]"⁵⁵ Thus, Lerio, who received the registered mail sent to petitioner, was presumably able to present a written authorization to receive the same and we can assume that copies of the NDs are duly received in the ordinary course of events.⁵⁶ Notably, petitioner never asserted that the NDs were not actually sent by the COA or that they were sent to a wrong address. Further, it is a legal presumption, born of wisdom and experience, that official duty has been regularly performed; that the proceedings of a judicial tribunal are regular and valid, and that judicial acts and duties have been and will be duly and properly performed.⁵⁷ It is incumbent upon petitioner to prove otherwise. This, petitioner failed to do.

Under the 2009 COA Rules, an aggrieved party may appeal a ND to the Director within six months,⁵⁸ or 180 days⁵⁹ from receipt of the ND.⁶⁰ If the appeal is denied, a petition for review may be filed before the COA

⁵² Id.

⁵³ Id. at 311-312, citing *Commissioner of Internal Revenue v. Metro Star Superama, Inc.*, 652 Phil. 172, 181-182 (2010), further citing *Barcelon, Roxas Securities, Inc. (now known as UBP Securities, Inc.) v. Commissioner of Internal Revenue*, 529 Phil. 785, 793-794 (2006).

⁵⁴ *Scenarios, Inc. and/or Bago v. Vinluan*, 587 Phil. 351, 360 (2008).

⁵⁵ *Rollo*, p. 149.

⁵⁶ *Scenarios, Inc. and/or Bago v. Vinluan*, *supra*.

⁵⁷ Id.

⁵⁸ RULE IV, Section 8 (PROCEEDINGS BEFORE THE AUDITOR), 2009 COA Rules.

Section 8. **Finality of the Auditor's Decision.** - Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

See also Section 4, Rule V (PROCEEDINGS BEFORE THE DIRECTOR), 2009 COA RULES *viz.*:

Section 4. **When Appeal Taken** - An Appeal must be filed within six (6) months after receipt of the decision appealed from.

⁵⁹ See *Philippine Health Insurance Corporation v. Commission on Audit, et al.*, G.R. No. 222710, September 10, 2019.

⁶⁰ Corollarily, Section 48 of Presidential Decree No. 1445 or the Government Auditing Code of the Philippines provides:

Section 48. **Appeal from decision of auditors.** — Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may, within six months from receipt of a copy of the decision, appeal in writing to the Commission.

Proper within the time remaining of the six months period,⁶¹ taking into account the suspension of the running thereof under Section 5,⁶² Rule V of said COA Rules. In this case, the COA correctly reckoned the six-month or 180-day period to appeal from February 16, 2012. Clearly, the petition for review filed by petitioner on January 8, 2014, or almost two years after, was filed out of time.

Moreover, even if We reckon the period to appeal from petitioner's receipt of the COA RO III Decisions, *i.e.* on July 9, 2013, still, petitioner's filing of its petition for review with the COA Proper was two days late.⁶³ Apart from the bare invocation of substantial justice, petitioner failed to cite any justifiable reason for such delay. It must be stressed that while procedural rules are liberally construed, the provisions on reglementary periods are strictly applied, indispensable as they are to the prevention of needless delays, and are necessary to the orderly and speedy discharge of judicial business.⁶⁴ The perfection of an appeal in the manner and **within the period** prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable.⁶⁵ Indeed, the right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. One who seeks to avail of the right to appeal must strictly comply with the requirement of the rules. Failure to do so leads to the loss of the right to appeal.⁶⁶

Significantly, Section 51 of Presidential Decree No. 1445⁶⁷ states:

Section 51. Finality of decisions of the Commission or any auditor.
A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and

⁶¹ See Sections 2 and 4, Rule VII (PETITION FOR REVIEW TO THE COMMISSION PROPER), 2009 COA RULES.

Section 2. **How Appeal Taken.** - Appeal shall be taken by filing a Petition For Review in five (5) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director or the [Adjudication and Settlement Board] who rendered the decision. Proof of service thereof shall be attached to the petition together with the proof of payment of the filing fee prescribed under these Rules.

Section 3. **Period of Appeal.** - The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the [Adjudication and Settlement Board].

⁶² Section 5, Rule V (PROCEEDINGS BEFORE THE DIRECTOR), 2009 COA Rules.

Section 5. **Interruption of Time to Appeal.** — The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellants of the Director's decision.

⁶³ The 180th day, January 5, 2014, fell on a Sunday. Hence, the petition for review should have been filed on January 6, 2014.

⁶⁴ *Fernandez v. Honorable Court of Appeals, et al.*, G.R. No. 233460, February 19, 2020, citing *Le Soleil Int'l. Logistics Co., Inc., et al. v. Sanchez, et al.*, 769 Phil. 466, 473 (2015).

⁶⁵ *U-Bix Corporation, et al. v. Hollero*, 763 Phil. 668, 679 (2015).

⁶⁶ *Nueva Ecija II Electric Coop., Inc., et al. v. Mapagu*, 805 Phil. 823, 832 (2017).

⁶⁷ Government Auditing Code of the Philippines

executory.⁶⁸

Petitioner having failed to file its petition for review within six months or 180 days from its receipt of the NDs and/or the subject COA RO III Decisions, the COA did not commit grave abuse of discretion in dismissing petitioner's appeal and declaring as final and executory COA RO III Decision Nos. 2013-61 dated June 14, 2013; 2013-70,⁶⁹ dated June 28, 2013; 2013-72⁷⁰ dated July 1, 2013; and 2013-73⁷¹ dated July 2, 2013.

Nonetheless, We modify the challenged COA Decision insofar as it declared COA RO III Decision No. 2013-69 dated June 28, 2013 as final and executory.

Section 7, Rule V of the 2009 COA Rules provides:

Section 7. Power of Director on Appeal. - The Director may affirm, reverse, modify, or alter the decision of the Auditor. **If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Director's decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the [Commission Proper].** (Emphases and underscoring supplied)

Evidently, here, the dispositive portion of COA RO III Decision No. 2013-69 expressly states that "[said] decision is not final and shall be subject to automatic review by the Commission Proper pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit."⁷²

Anent the alleged merits of petitioner's case, suffice it to state that these involve factual and technical matters, the determination of which this Court cannot do in the present petition for *certiorari*; more so in view of the fact that COA RO Decision No. III is still subject to automatic review of the COA Proper, as discussed above. Besides, the NDs subject of petitioner's appeal were based on the findings of COA SAT 1 and were issued after the concerned parties had submitted their explanations or justifications. Hence, it cannot be said that said NDs are unfounded or tainted with grave abuse of

⁶⁸ RULE IV, Section 8 (PROCEEDINGS BEFORE THE AUDITOR), 2009 COA Rules.

Section 8. **Finality of the Auditor's Decision.** - Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

See also Section 4, Rule V (PROCEEDINGS BEFORE THE DIRECTOR), 2009 COA RULES *viz.*:

Section 4. **When Appeal Taken** - An Appeal must be filed within six (6) months after receipt of the decision appealed from.

⁶⁹ Id. at 62-64.

⁷⁰ Id. at 65-68.


⁷¹ Id. at 69-71.

⁷² *Rollo*, p. 61.

discretion. To stress, in the absence of grave abuse of discretion, questions of fact cannot be raised in a petition for *certiorari*, under Rule 64 of the Rules of Court. The office of the petition for *certiorari* is not to correct simple errors of judgment; any resort to the said petition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues.⁷³

WHEREFORE, the petition is **DISMISSED**. Commission on Audit Decision No. 2015-062 dated March 9, 2015 and the Resolution dated October 26, 2016 are **AFFIRMED with MODIFICATION**. COA RO III Decision No. 2013-69 dated 28 June 2013 is hereby declared not yet final and executory.” Baltazar-Padilla, J., on leave. (22)

By authority of the Court:


EDGAR O. ARICHETA
Clerk of Court

⁷³ *Adelaido Oriundo, et al. v. Commission on Audit*, G.R. No. 211293. June 4, 2019, citing *Reyna v. Commission on Audit*, 657 Phil. 209, 225 (2011).

ATTY. SANTIAGO M. BELTRAN, JR. (reg)
Viray Roncal Beltran Yumul & Viray Law Office
Counsel for Petitioner
3rd Floor, St. Anthony Building B
Mendoza Street, City of San Fernando
Pampanga

JUDICIAL RECORDS OFFICE (x)
JUDGMENT DIVISION (x)
PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
Supreme Court
[For uploading pursuant to A.M. No. 12-7-1-SC]

THE SOLICITOR GENERAL (reg)
Office of the Solicitor General
134 Amorsolo St., Legaspi Village
Makati City

THE CHAIRPERSON (reg)
Commission on Audit
Commonwealth Avenue
Quezon City



G.R. No. 229559
kat 10/6/20 (URes22) 12/7/20