

Republic of the Philippines
Supreme Court

Manila

EN BANC

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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DELILAH J. ABLONG, CAROLINA
M. SANTOS, ROGELIO B. OLIVA,
JOCELYN D. JUANON,
ETHELRAIDA V. TUMACOLE,
ERLINA V. FLORES, JOSE RENE
A. CEPE, DANTE A. CAPISTRANO,
MARIANO R. FLORES, JR.,
GEORGE N. VALENCIA,
BERNADETTE Y. ARAULA,
FELISA P. TRAYVILLA, GILBERT
NICANOR ATILLO,* ESTRELLA
M. GARCIA,

Petitioners,

- versus -

COMMISSION ON AUDIT,
Respondent.

G.R. No. 233308

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN, and
PADILLA,** JJ.

Promulgated:

August 18, 2020

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DECISION

REYES, J. JR., J.:

Before the Court is a Petition for *Certiorari* assailing Decision No. 2016-160¹ dated July 28 2016 of the Commission on Audit (COA) dismissing the petition for review, seeking the reversal of the letter-reply of

* Also referred to as "Gilert Nicanor Attilo" in some parts of the *rollo*.

** On official leave.

¹ Penned by Chairperson Michael G. Aguinaldo, with Commissioners Jose A. Fabia and Isabel D. Agito, concurring; *rollo*, pp. 26-29.

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the COA Regional Office, for having been belatedly filed, and for being an improper remedy. Also assailed is COA's *En Banc* Resolution² dated April 26, 2017, which denied petitioners' motion for reconsideration.

The Undisputed Facts

In calendar year 2008, the Board of Regents of the Negros Oriental State University (NORSU), Dumaguete City, passed Board Resolution No. 28, Series of 2008, granting Economic Relief Allowance (ERA) in the amount of ₱25,000.00 each to all regular, casual, temporary, or part-time personnel and officials of NORSU. ERA in the amount of ₱30,000.00 each was also given in the two succeeding years: 2009 and 2010.

Petitioners, all teachers of NORSU, received ERA in calendar years 2008 to 2010.

On January 27, 2011, the COA Audit Team issued Notice of Disallowance (ND) Nos. 2011-001-164(2008) to 2011-013-164(2010)³ on the payments of ERA on the grounds that the expenditure did not carry the approval of the President of the Philippines and that the same was illegally debited from tuition fees and other school charges. The NDs and the letter-transmittal therefor were delivered to and received by NORSU Acting Chief Accountant Liwayway G. Alba (Alba) on February 16, 2011.⁴

No appeal was made on the NDs. Thus, on August 31, 2011, a Notice of Finality of Decision (NFD) on ND No. 2011-002-164(2008) was issued.⁵ On November 23, 2011, COA Order of Execution (COE) was issued to enforce the said ND.⁶

On January 18, 2012, petitioner Delilah J. Ablong (Ablong), as a member of the Faculty and Academic Staff Association/All NORSU Faculty Union, wrote a letter⁷ to COA Regional Director Delfin P. Aguilar (COA Regional Director Aguilar) requesting that the COE be reconsidered. She maintained that she and her colleagues were not informed that the grant of ERA by the NORSU Board of Regents was disallowed and learned of the disallowance and the NFD subsequently issued only in November or December 2011 when they were given copies of the NFD by the Office of the Dean of the College of Arts and Sciences of NORSU. She, thus, prayed

² Id. at 41.

³ Annexes "H" to "T"; id. at 99-160.

⁴ Letter-transmittal; id. at 90.

⁵ Id. at 55-58.

⁶ Id. at 62-66.

⁷ Id. at 67.

that she and her colleagues be provided with avenues to remedy the situation instead of being required to refund the amounts received by them.

In a Letter,⁸ dated February 7, 2012, COA Regional Director Aguilar denied Ablong's request stating in essence, that the enforcement of the COE can no longer be deferred because NFDs had already been issued and any appeal from the NDs can no longer be entertained since doing so will violate COA Circular No. 2009-006 on the Rules and Regulations on Settlement of Accounts.

Unyielding, the petitioners filed a Petition for Review⁹ before the COA Proper appealing the denial by COA Regional Director Aguilar of their letter-request. They contended that COA rules of procedure on reglementary period should not have been strictly applied since they were not notified of the NDs and that they should not be required to refund the amounts disallowed as their receipt of ERA was in good faith.

The COA Proper Disposition

On July 28, 2016, the COA rendered the assailed Decision dismissing the petition for review upon a finding that the six-month period to appeal an ND under Section 48, Presidential Decree (P.D.) No. 1445¹⁰ and Section 33, Chapter 5(B)(1) of Administrative Code of 1987 has already expired. The petitioners having failed to appeal the NDs, necessarily, NFDs were issued which, in turn, led to the ministerial duty of the Regional Director of issuing COE. Further, it ruled that the petitioners' filing of a petition for review is improper ratiocinating that the proper subject of an appeal before the same is a decision rendered by the Director on the ND itself before it becomes final and executory, and not a letter-reply from a Regional Director enforcing COEs. The decretal portion of the disposition reads:

WHEREFORE, premises considered, the petition for review of the letter of the Regional Director, COA Regional Office No. VII, filed by Ms. Delilah J. Ablong, et al., all of the Negros Oriental State University (NORSU), Dumaguete City, is hereby DISMISSED for not being a proper remedy under the COA rules,(sic) and in view of the final and executory nature of the decision being appealed from. Accordingly, Commission on Audit Order of Execution dated November 23, 2011 for Notice of Disallowance Nos. 2011-001-164(2008) to 2011-017-164(2010), on the grant of economic relief allowance to NORSU employees for calendar years 2008 to 2010, in the total amount of ₱20,237,850.00, shall be enforced.¹¹

⁸ See letter; id. at 68.

⁹ Annex "D"; id. at 42-52.

¹⁰ Government Auditing Code of the Philippines, approved on June 11, 1978.

¹¹ *Rollo*, p. 28.

The petitioners moved for, but failed to obtain, a reconsideration.¹² Undaunted, they filed the instant Petition for *Certiorari*.

The Issue

THE COMMISSION PROPER COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION, WHEN IT UPHELD THE NOTICES OF FINALITY OF DECISION (NFDS) AND THE COA ORDERS OF EXECUTION (COES) DESPITE: (1) LACK OF ACTUAL SERVICE OF THE NOTICE OF DISALLOWANCES TO PETITIONERS; AND (2) GOOD FAITH ON THE PART OF THE PETITIONERS IN RECEIVING THE ECONOMIC RELIEF ALLOWANCE.¹³

In support of their claim of grave abuse, the petitioners assert two arguments: denial of due process and good faith. They argue that they were denied due process in that they were not informed by NORSU's Acting Chief Accountant that NDs were issued on the ERA. According to them, the request of then NORSU President Dr. Henry A. Sojor that copies of the NDs be furnished to the individuals determined to be liable was even denied by the Supervising Auditor. They, thus, insist that they should not be faulted for failing to timely appeal the NDs as they were, in the first place, unaware of the same. As for the claim of good faith, they contend that, even if the NDs were sustained, they should not be held accountable for the disallowed amounts because they were not part of the decision-making process to grant the ERA and they received it on the assumption that NORSU Board of Regents' grant of the same was in accord with law and they have, in the first place, no authority to review and pass upon the resolutions of the said Board.

For its part, COA counters that the Audit Team is not required to furnish copies of the NDs to the petitioners considering that, in instances where there are several payees, service to the accountant constitutes service to all payees listed in the payroll under Section 12.1 of COA Circular No. 2009-006. Thus, service of the NDs and the letter-transmittal (which even contained a reminder to the Accountant that the service of the NDs to her constitutes service to all payees listed in the payroll), to NORSU Acting Chief Accountant Alba was sufficient. Thus, it insists that the petitioners were not denied of due process. As for the petitioners' claim of good faith, COA asseverates that, even if the petitioners were not involved in the passage of the Board Resolution allowing the grant of ERA, the latter are still bound to return the amounts illegally expended because every person who received the same are jointly and severally liable for the full amount

¹² Supra note 2.

¹³ Petition; *rollo*, p. 10.

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received under Section 49, P.D. No. 1177.¹⁴ Further, it points out that the petitioners should be deemed aware of the illegality of the grant of ERA because NORSU's management was already informed of the illegality as early as 2007 by the COA Auditors, through an Audit Observation Memoranda (AOM) and the petitioners have access to the Annual Audit Reports of NORSU where the AOMs are included.¹⁵ Asserting that it did not act with grave abuse of discretion, the COA prays for the dismissal of the petition.

In their Reply,¹⁶ the petitioners aver that their constitutional right to due process must prevail over Section 12.1 of COA Circular No. 2009-006. Moreover, they argue that the AOMs are addressed only to NORSU's administration and they are not given copies of the same or of the Annual Audit Reports; hence, expecting them to sift through the same is a responsibility that is way beyond their mandate as teachers.

The Court's Ruling

We find merit in the petition.

The Court generally observes the policy of sustaining the decisions of the COA on the basis both of the doctrine of separation of powers and of the COA's presumed expertise in the laws entrusted to it to enforce. The Court will not review any errors allegedly committed by the COA in its decisions, unless tainted with grave abuse of discretion. The Constitution itself, as well as the Rules of Court, provide the remedy of a petition for *certiorari* under Rule 64 in relation to Rule 65 in order to restrict the scope of inquiry to errors of jurisdiction or to grave abuse of discretion amounting to lack or excess of jurisdiction committed by the COA. Indeed, it is the Court that determines whether or not there was an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, on the part of the COA, as when the judgment rendered is not based on law and evidence, but on caprice, whim and despotism.¹⁷

Here, there is no dispute that petitioners were not informed that NDs had been issued on the ERA they received from 2008 to 2010. Petitioners learned of the disallowance of the ERA only in November to December 2011 when they were given copies of the NFD by the Office of the Dean of the College of Arts and Sciences of NORSU. Petitioner Ablong, as a member of the Faculty Union, on January 18, 2012, then wrote a letter to

¹⁴ Budget Reform Decree of 1977, which took effect on July 30, 1977.

¹⁵ Comment; *rollo*, pp. 168-180.

¹⁶ Id. at 182-191.

¹⁷ *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019.

COA Regional Director Aguilar requesting that the COE be reconsidered, maintaining that they were not informed of the disallowance of the subject benefits. COA Regional Director Aguilar, however, denied Ablong's request stating that the enforcement of the COE can no longer be deferred because NFDs had already been issued and any appeal from the NDs can no longer be entertained, invoking COA Circular No. 2009-006 on the Rules and Regulations on Settlement of Accounts.

Petitioners thereafter filed a petition for review with the COA Proper appealing the denial of their letter-request. This was dismissed by the COA on July 28, 2016, finding that the six-month period to appeal an ND under Section 38, P.D. No. 1445 and Section 33, Chapter 5(B)(1) of Administrative Code of 1987 has already expired. The COA further ruled that petitioners' petition for review was improper as the proper subject of an appeal is a decision on the ND, before it becomes final and executory, and not a letter-reply from a Regional Director enforcing COEs.

Clearly, COA failed to heed Section 10.2 of COA Circular No. 2009-006 which categorically requires service of the ND to all the persons liable, *viz.*:

10.2 The ND shall be addressed to the agency head and the accountant; served on the persons liable; and shall indicate the transactions and amount disallowed, reasons for the disallowance, the laws/rules/regulations violated, and persons liable. It shall be signed by both the Audit Team Leader and the Supervising Auditor.
x x x (Emphasis and underscoring supplied)

COA's argument that, because there were several payees, it was duty-bound to serve notice only to the accountant since service to the latter constitutes service to all payees under Section 12.1¹⁸ of COA Circular No. 2009-006, fails to sway. It is true that said provision holds that in case there are several payees, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive notice to all payees in the payroll. It bears emphasizing however that while the accountant had the corresponding duty to inform the payees, this did not materialize in this case for, to reiterate, the petitioners were not informed by the Acting Chief Accountant of NORSU of the NDs of their ERAs.

¹⁸ 12.1 A copy of the NS/ND/NC shall be served to each of the persons liable/responsible, by the Auditor, through personal service. If personal service is not practicable, it shall be served by registered mail. In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive notice to all payees in the payroll.

Given the petitioners' allegation that the Supervising Auditor even refused the request of NORSU's former president that copies of the NDs be furnished to the individuals determined to be liable, it is easy to conclude that COA not only did not observe Section 10.2 of COA Circular No. 2009-006, but also the mandate of the due process clause. Such lack of notice to the petitioners amounted to a violation of their fundamental right to due process as the same is considered satisfied only if a party is properly notified of the allegations against him or her and is given an opportunity to defend himself or herself.¹⁹

Due process of law, as guaranteed in Section 1, Article III of the Constitution, is a safeguard against any arbitrariness on the part of the Government, and serves as a protection essential to every inhabitant of the country. Any government act that militates against the ordinary norms of justice or fair play is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself.²⁰

We have held that due process is satisfied if the party who is properly notified of allegations against him or her is given an opportunity to defend himself or herself against those allegations, and such defense was considered by the tribunal in arriving at its own independent conclusions. What is offensive to due process is the denial of the opportunity to be heard.²¹

Here, petitioners were not given any opportunity to be heard and their defenses were not considered in the denial of their petition.

It is true that a Notice of Finality of Decision and an Order of Execution had already been rendered in this case. However, considering the non-observance of petitioners' right to due process, the same should be set aside. It is settled that "[v]iolation of due process rights is a jurisdictional defect" and that "a decision or judgment is fatally defective if rendered in violation of a party-litigant's right to due process."²² Accordingly, the case should be remanded to the COA in order to resolve petitioners' appeal from the NDs on the merits.

WHEREFORE, the Petition is **GRANTED**. The Decision No. 2016-160 dated July 28 2016 and the Resolution dated April 26, 2017 of the Commission on Audit are **REVERSED** and **SET ASIDE**. The case is

¹⁹ *Gutierrez v. Commission on Audit*, 750 Phil. 413, 430 (2015).

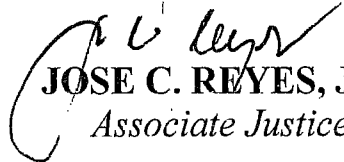
²⁰ *Liwanag v. Commission on Audit*, G.R. No. 218241 August 6, 2019.

²¹ *Pang v. Commission on Audit-Legal Services Sector*, G.R. No. 217538, June 20, 2017 (Minute Resolution).


²² *Arrieta v. Arrieta*, G.R. No. 234808, November 19, 2018.

hereby **REMANDED** to the COA in order to resolve petitioners' appeal from the subject notices of disallowance on the merits.

SO ORDERED.

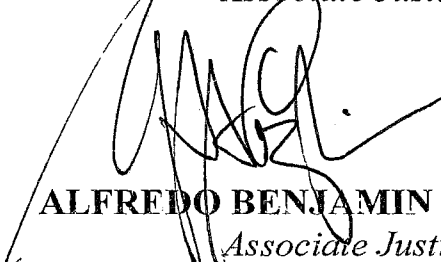

JOSE C. REYES, JR.
Associate Justice

WE CONCUR:

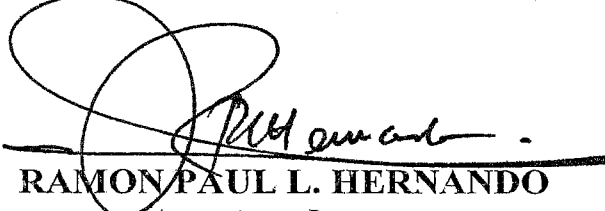

DIOSDADO M. PERALTA
Chief Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

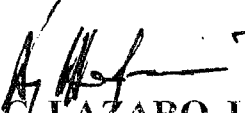

MARVIC M. V. F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

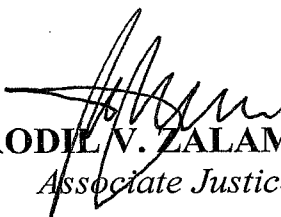

ALEXANDER G. GESMUNDO
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice


ROSMAR D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice

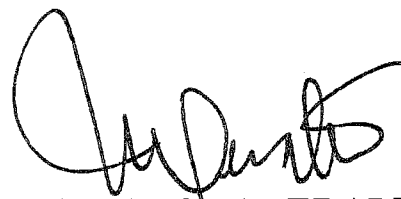

EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


(On Official Leave)
PRISCILLA J. BALTAZAR-PADILLA
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.


DIOSDADO M. PERALTA
Chief Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court

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