Republic of the Philippines
Supreme Court
Manila

EN BANC

EMERITA A. COLLADO, SUPPLY OFFICER III, PHILIPPINE SCIENCE HIGH SCHOOL, DILIMAN CAMPUS, QUEZON CITY, Petitioner,	**G.R. No. 193143**
- versus -	Present: PERALTA, *C.J.*, PERLAS-BERNABE,* LEONEN,* CAGUIOA, GESMUNDO, HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, DELOS SANTOS,* GAERLAN, and ROSARIO, *JJ.*
HON. REYNALDO A. VILLAR, HON. JUANITO G. ESPINO, JR. [COMMISSIONERS, COMMISSION ON AUDIT] and THE DIRECTOR, LEGAL SERVICES SECTOR, ADJUDICATION AND LEGAL SERVICES OFFICE, COMMISSION ON AUDIT, Respondents.	Promulgated: December 1, 2020

x----------x

DECISION

CAGUIOA, *J.:*

The Case

This is a Petition for *Certiorari*[1] (Petition) under Rule 64 in relation to Rule 65 of the Rules of Court (Rules) seeking to set aside the following issuances of the Commission on Audit (COA): (i) COA Decision No. 2008-048[2] dated May 6, 2008 (2008 COA Decision) rendered by the COA Commission Proper (COA-CP), and (ii) the Letter[3] dated July 16, 2010

---

* On official leave.
1 *Rollo*, pp. 3-20.
2 Id. at 24-28.
3 Id. at 29-30.

(questioned Letter) issued by the COA Director of Legal Services Sector-Adjudication and Legal Services (LSS-ALS).

The instant dispute was precipitated by Notices of Disallowance Nos. 98-012-101-(89),[4] 98-015-101-(90),[5] and 98-013-101-(91)[6] (Notices of Disallowance), which uniformly found petitioner Emerita A. Collado (Collado) severally and solidarily liable with several others for erroneously computing liquidated damages arising from the construction of the Philippine Science High School (PSHS)–Mindanao Campus Building Complex. The Notices of Disallowance were eventually upheld by the COA-CP in COA Decision No. 2002-282[7] dated December 17, 2002 (2002 COA Decision) and later affirmed in the 2008 COA Decision.

Meanwhile, the questioned Letter affirmed with finality the LSS-ALS' finding that Collado's Letter[8] dated June 10, 2008 was a prohibited pleading for being a second motion for reconsideration pursuant to Section 13, Rule IX of the 1997 Revised Rules of Procedure of the COA (1997 COA Rules).

The Facts

The material facts are undisputed. As gathered from the records, the antecedents follow.

> On December 27, 1988, a contract was entered into by and between the PSHS, Diliman Campus, Quezon City and N.C. Roxas, Inc., for the construction of the PSHS-Mindanao Campus Building Complex at Mintal, Davao City in the amount of ₱9,064,799.76 which was to be completed within 240 calendar days. Due to certain circumstances beyond its control, the contractor requested an extension of the contract time, which the Department of Science and Technology (DOST)-Wide Infrastructure Committee granted for 50 days from September 12, 1989, the original completion date, to November 1, 1989 but with a notification and reminder to the contractor that even considering the grant of extension, the completion date of the project had elapsed and the same was already subject to liquidated damages.
>
> The then PSHS Auditor, in her letter dated July 23, 1990, informed the Director, Technical Services Office, [the COA], that even with the granting of the extension of the contract time, the contractor had already incurred a negative slippage of 63.58% as of February 15, 1990. However, the DOST-Wide Infrastructure Committee decided to continue with the project as it would entail a longer time to finish the project if they rescind[ed] the contract and conducted another bidding.

---

4 Id. at 47.
5 Id. at 48.
6 Id. at 49-50.
7 Id. at 86-92.
8 Id. at 31-36.

> On July 31, 1990, a Supplemental Contract was entered into by and between the PSHS and N.C. Roxas, Inc. for the completion of the Academic Building (Phase I), and concreting of the [d]riveway[,] etc., to be completed within 45 days, with a contract price of ₱2,333,313.61 under the same terms and conditions as the original contract dated December 27, 1988.
>
> On January 25, 1991, the PSHS Board of Trustees in its Resolution No. 1 terminated the two Contracts (Original and Supplemental) for failure of the contractor to finish the projects.
>
> Upon post-audit, the Auditor discovered that the liquidated damages imposed by PSHS Management on the contractor was only ₱252,114.79 instead of ₱2,400,134.65 or a difference of ₱2,148,019.86. x x x.[9]
>
> x x x Notice of termination dated January 30, 1991, was furnished the Manager, Suretyship Department, Government Service Insurance System (GSIS) Makati, in a letter dated February 5, 1991, of the Director, PSHS, with the request for payment of the amount of ₱906,480.00, under Performance Bond G(13) GIF Bond No. 041917 for the Contract dated December 27, 1988 with contract price of ₱9,064,799.76 and the amount of P233,331.36 under GSIS Performance Bond G(13) GIF Bond of No. 049783 for the Supplemental Contract dated July 31, 1990, with a contract price of ₱2,333,313.61. It appeared, however, in the letter of the General Manager, N.C. Roxas, Inc., dated March 27, 1991 and in the letter of the Director[,] PSHS, dated June 3, 1991, that the amounts under the aforestated GSIS Performance Bonds were already released to N.C. Roxas, Inc.[10]

Consequently, the COA State Auditor IV (COA Auditor)[11] issued the Notices of Disallowance covering the deficiency in the amount of liquidated damages deducted from the payments made to N.C. Roxas, Inc., for being contrary to the formula provided in the Implementing Rules and Regulations (IRR) of Presidential Decree No. (P.D.) 1594.[12] Thus:

Progress Billings	% Accomplished	Liquidated Damages (Actually Deducted)	Liquidated Damages (As Computed)	Difference
1st	7.00%	on schedule	-	-
2nd	10.99%	on schedule	-	-
3rd	25.47%	on schedule	-	-
4th	37.22%	2,130.86	11,736.60	(9,605.74)
5th	45.04%	21,959.78	181,917.30	(159,957.52)
6th	70.20%	148,268.25	381,439.49	(233,171.24)
7th	75.69%	25,397.49	289,283.29	(273,885.80)
8th	80.14%	12,497.65	158,444.10	(145,946.45)
9th	81.74%	2,166.76	152,575.80	(150,409.04)
10th	85.01%	4,143.86	82,156.20	(78,012.34)
11th	87.24%	6,052.80	176,049.00	(169,996.20)
12th	91.04%	9,989.34	170,180.70	(160,191.36)
13th	96.08%	15,535.96	264,073.49	(248,537.53)

9 Id. at 24-25.
10 Id. at 87-88.
11 Maribeth F. De Jesus.
12 PRESCRIBING POLICIES, GUIDELINES, RULES AND REGULATIONS FOR GOVERNMENT INFRASTRUCTURE CONTRACTS, June 11, 1978.

14th	98.09%	3,829.24	123,234.30	(119,405.06)
15th	98.11%	142.80	399,044.39	(398,901.50)
Total		252,114.79	2,400,134.65	**(2,148,019.86)** [13]

Based on the records, N.C. Roxas, Inc. incurred delay starting from the 4th progress billing for a total of 409 days (from November 2, 1989 to December 15, 1990).[14] Thus:

Contract Price (CP)	₱9,064,799.16
Total Amount Payable (based on 98.11% completion rate less ₱2,622.00 due to use of 5/32" instead of 3/16" thickness of truss members)	₱8,893,585.26
Liquidated damages	= 1/10 x 1% (CP – value completed as of expiration of contract time) x days of delay = .001 (9,064,799.16 – 3,196,499.29) x 409 = P2,400,134.85

Thus, due to the insufficient deduction in liquidated damages (*i.e.*, ₱252,114.79 instead of ₱2,400,134.65), there was an overpayment in the progress billings made to N.C. Roxas, Inc. in the amount of ₱2,148,019.86.[15] In effect, because the formula used was different from that mandated in the IRR of P.D. 1594, it would appear that PSHS incurred a total expenditure of ₱8,641,470.47, instead of only ₱6,793,450.41.

For such overpaid amount, the COA Auditor found the following persons solidarily liable: (i) N.C. Roxas, Inc., as payee, (ii) Evelyn B. Rabaca (Rabaca), Accountant III, (iii) Rufina E. Vasquez (Vasquez), Administrative Officer V, for her act of "certifying the expense as necessary, lawful and incurred under [her] direct supervision," and (iv) Collado for her act of "computing the erroneous [liquidated damages] to be imposed."[16]

In a Letter[17] dated September 17, 1998, Collado, together with Vasquez, sought reconsideration of the Notices of Disallowance with the COA Auditor. They explained that the computation of liquidated damages was reached in consultation with the previous auditor and was based on their understanding of the IRR of P.D. 1594.[18] They also claimed that their computations were legal and proper considering that the vouchers of N.C. Roxas, Inc. passed the previous accountant in charge of reviewing the transactions.[19] The said vouchers also passed previous auditors from 1989 to

---

13 *Rollo*, pp. 47-49.
14 Id. at 50.
15 Id.
16 Id. at 47-49.
17 Id. at 52.
18 Id.
19 Id.

1992.[20] At the same time, Collado and Vasquez appealed for "humane consideration" as the PSHS-Mindanao Campus Building Complex has "served the best interest of the scholars."[21]

The records also showed that Collado and Vasquez could no longer recover from the payee as it was discovered that Nicanor C. Roxas, Manager of N.C. Roxas, Inc., died sometime in 1992.[22]

Ruling of the COA Auditor

In a Reply-Letter[23] dated September 24, 1999, the COA Auditor Ma. Eleanor C. A. Calo denied reconsideration of the Notices of Disallowance and affirmed the OCA Auditor's previous findings. The COA Auditor cited Contract Implementation (CI) 7 of the IRR of P.D. No. 1594, to wit:

> After a careful review of the documents submitted and the rules and regulations pertinent on the matter, we believe that the disallowances should be sustained. Applicable to herein request for reconsideration is CI 7 of the Implementing Rules and Regulations of PD 1594 as amended in June 1982, which expressly provided the formula for computing the liquidated damages as follows:
>
> **"CI 7 Liquidated Damages**
>
> Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the Government for liquidated damages, and not by way of penalty, **an amount equal to one tenth of one percent** (0.10%) **of the total contract cost** minus the value of the completed portions of the contract certified by the Government Office concerned as usable as of the expiration of the contract time, **for each calendar day of delay, until the work is completed and accepted [or] taken over by the Government**. x x x"
>
> Based on the aforecited provision of law, it is clear that the formula considered the contract price and the completed portions of the contract. However, **the PSHS management committed error in using the formula 1/10 of 1% of the value of every claim of the contractor only, resulting to insufficient deduction of liquidated damages from the contractor**.
>
> In view of the foregoing, your request for reconsideration is regrettably denied. x x x[24]

Unsatisfied, Collado and Vasquez appealed[25] to the COA National Government Audit Office I (COA-NGAO) pursuant to Rule V of the 1997 COA Rules.

---

20 Id.
21 Id.
22 Id. at 9 and 52.
23 Id. at 53-54.
24 Id. at 54. Underscoring in the original; emphasis supplied.
25 Id. at 56-71.

Ruling of the COA-NGAO

In a Decision[26] dated March 28, 2001, the COA-NGAO, through Marcelino P. Hanopol, Jr., Director IV, sustained the findings of the COA Auditors and affirmed the liability of Collado, *inter alia*, based on Section 103 of P.D. No 1445.[27] However, under the decretal portion of the decision, the COA-NGAO **reduced** the amount of liquidated damages chargeable insofar as it exceeded 15% of the total contract price,[28] as mandated by CI 8.4 of the IRR of P.D. No. 1594:[29]

> Wherefore, in view of the foregoing, the instant appeal of the appellants is denied for lack of merit. **The assailed disallowances are hereby affirmed with a modification that in no case shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price.** Accordingly, the appellee/auditor is directed to compute the correct liquidated damages and make an (*sic*) appropriate adjustments on the Certificate of Settlement and Balances. It is understood, however, that this decision is subject to review and approval of the COA Commission Proper in accordance with Section 6, Rule V of the 1997 Revised Rules of Procedure of the Commission on Audit.
>
> SO ORDERED.[30]

Collado and Vasquez subsequently filed a Motion for Reconsideration[31] dated May 16, 2001, once again disclaiming their liability for the amount corresponding to the under-deducted liquidated damages.[32]

The 2002 COA Decision of the COA-CP

On automatic review,[33] the COA-CP[34] in the 2002 COA Decision denied the Motion for Reconsideration dated May 16, 2001, with modification only as to additional persons liable:

---

26 Id. at 72-80.

27 Sec. 103 of P.D. 1445 states:
SECTION 103. General liability for unlawful expenditures. – Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

28 *Rollo*, p. 79.

29 IRR OF P.D. 1594, CI Contract Implementation, CI 8 Liquidated Damages, par. 5 provides:
CI 8 – LIQUIDATED DAMAGES
x x x x
5. **In no case however, shall the total sum of liquidated damages exceed fifteen percent (15%) of the total contract price**, in which event the contract shall automatically be taken over by the office/agency/corporation concerned or award the same to the qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be set aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause.
x.x x x (Emphasis supplied)

30 *Rollo*, p. 79. Emphasis supplied.

31 Id. at 81-85.

32 Id. at 84.

33 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule V, Sec 6 provides:
SECTION 6. Power of Director on Appeal. — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

34 Composed of Chairman Guillermo N. Carague and Commissioners Raul C. Flores and Emmanuel M. Dalman.

> WHEREFORE, premises considered, the instant request for reconsideration is hereby denied for lack of merit and the instant disallowance is hereby affirmed with a modification to the effect that Ms. Adoracion D. Ambrosio, Mr. Ceferino L. Follosco and Ms. Vicenta F. Reyes are included as severally and solidarily liable with Mr. Nicanor C. Roxas, Manager, N.C. Roxas, Inc. for the disallowance.[35]

Collado and Vasquez then filed a Petition for Review[36] dated February 27, 2003 (Petition for Review) with the COA-CP again. Thereafter, both jointly filed a supplemental letter[37] to the Petition for Review dated August 25, 2003.

The 2008 Decision of the COA-CP

In the 2008 COA Decision, the COA-CP,[38] treating the Petition for Review as a motion for reconsideration of the 2002 COA Decision, affirmed the 2002 COA Decision with finality:

> WHEREFORE, premises considered, and there being no new and material evidence presented to warrant the reversal of the assailed decision, the instant petition for review has to be, as it is hereby denied for lack of merit. Accordingly, COA Decision No. 2002-282 dated December 17, 2002, is affirmed with **FINALITY.**[39]

Unsatisfied, in a Letter[40] dated June 10, 2008, Collado and Vasquez, purporting to question the 2008 COA Decision, again sought reconsideration of the 2002 COA Decision insofar as it found them liable for the under-deduction of liquidated damages.[41]

The LSS-ALS Letter dated March 1, 2010

In a Letter[42] dated March 1, 2010, the LSS-ALS denied due course to the Letter dated June 10, 2008 for being a **second motion for reconsideration** of the 2002 COA Decision — a prohibited pleading under Section 13, Rule IX of the 1997 COA Rules.[43]

Thereafter, in a Letter[44] dated March 17, 2010, Collado, acting alone,[45] disputed the finding of the LSS-ALS that she had filed a second motion for reconsideration, insisting that the Letter dated June 10, 2008 was

---

35 *Rollo*, p. 92.
36 Id. at 93-100.
37 Id. at 101-109.
38 Composed of Acting Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr. (Respondents).
39 *Rollo*, p. 27.
40 Id. at 31-36.
41 Id. at 31.
42 Id. at 37.
43 Id.
44 Id. at 38.
45 Id. at 36. Vasquez retired sometime in 2008 and began residing abroad.

only the **first** motion for reconsideration directed against the **2008** COA Decision and **not** a **second** motion for reconsideration of the **2002** COA Decision.[46]

The LSS-ALS Letter dated July 16, 2010

In the questioned Letter, the LSS-ALS denied petitioner Collado's request for reconsideration, reiterating its finding that the Letter dated June 10, 2008 was a prohibited pleading:

> We wish to point out that under Section 13, Rule IX of the 1997 Revised Rules of COA, now under Section 10 of Rule X of the 2009 COA Revised Rules of Procedure, only one (1) motion for reconsideration of the decision of COA shall be entertained.
>
> Your Petition for Review dated February 27, 2003 of COA Decision No. 2002-282 dated December 17, 2002, the first decision promulgated by the COA Commission Proper (CP) relative to this subject, was treated as a motion for reconsideration of the decision. The ruling of the CP on said first motion for reconsideration is embodied in the above-mentioned COA Resolution No. 2008-048.
>
> Necessarily, the motion for reconsideration of COA Resolution No. 2008-048 is a second motion.
>
> Please be informed further that any decision, order or resolution of the CP must be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof, otherwise, the same will become final and executory.[47]

Aggrieved, Collado resorted to the instant Petition.

On March 14, 2011, after several extensions,[48] the Office of the Solicitor General, representing respondents, filed its Comment[49] dated March 11, 2011, submitting in the main that the Petition was untimely filed.

Collado filed her Reply to the Comment[50] dated September 2, 2011.

Issues

As summarized in the Petition, the following issues confront the Court:

(i) whether respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in treating the

---

46 Id. at 38.
47 Id. at 29-30.
48 Id. at 115-117, 120-122, 127-129, 133-135, 139-141, 146-148, 152-154.
49 Id. at 165-196.
50 Id. at 210-215.

Petition for Review as a first motion for reconsideration; and

(ii) whether respondents committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding Collado severally and solidarily liable for the erroneously computed liquidated damages.

The Court's Ruling

Respondents correctly treated the Petition for Review as a motion for reconsideration.

The Petition was filed out of time.

Applicable to this case is Section 3, Rule 64 of the Rules, which specifically governs the mode of review from judgments, final orders, or resolutions issued by the COA:

> **SEC. 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. (n)

The provision requires a petition for *certiorari* assailing a judgment of the COA to be filed within 30 days from notice thereof, which period shall only be interrupted by the filing of a motion for new trial or reconsideration.[51] And, if such motion is denied, the aggrieved party may only file the petition within the remainder of the 30-day period, which in any event shall not be less than five days from notice of such denial.[52]

The timeliness of the instant Petition therefore hinges on the nature of the Petition for Review.

In their Comment, respondents repeatedly stress that the Petition for Review was already the first motion for reconsideration of the 2002 COA Decision, which effectively converted the Letter dated June 10, 2008 to a **second** motion for reconsideration of the said decision.[53] Respondents therefore assert that upon Collado's receipt of the 2008 COA Decision—which contained the denial of the first motion for reconsideration of the 2002 COA Decision—she should have already filed a petition for *certiorari*

---

51 *Lokin, Jr. v. Commission on Elections*, G.R. No. 193808, June 26, 2012, 674 SCRA 538, 544.
52 Id.
53 *Rollo*, pp. 179-180.

in accordance with Rule 64 of the Rules.[54] Hence, considering that a second motion for reconsideration is expressly prohibited by the 1997 COA Rules, the period for filing under Rule 64 could not have been interrupted by the filing of the Letter dated June 10, 2008; in the meantime, the 2008 COA Decision had already lapsed into finality.[55]

Respondents' contention is well-taken.

Collado's error stems from her apparent reliance on Rule VI of the 1997 COA Rules.[56] However, the plain language thereof indicates that it specifically applies only to appeals from the Director to the COA-CP:

RULE VI

Appeal from Director to Commission Proper

SECTION 1. *Who May Appeal and Where to Appeal.* — The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.

SECTION 2. *How Appeal Taken.* — Appeal shall be taken by filing a petition for review in seven (7) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director. Proof of service of the petition on the Director shall be attached to the petition.

x x x x

Significantly, while Collado properly filed a motion for reconsideration with the COA-NGAO of its Decision dated March 28, 2001, such motion was resolved by the COA-CP on automatic review, following Section 6, Rule V of the 1997 COA Rules, in relation to Sections 12 and 13 of Rule XI:

RULE V

Appeal from Auditor to Director

x x x x

SECTION 6. *Power of Director on Appeal.* — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten

---

54 Id. at 175-176.

55 Id. at 185; *see* 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule IX, Section 12 where it is stated:

SECTION 12. *Finality of Decisions or Resolutions.* — A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution, unless a motion for reconsideration is seasonably made or an appeal to the Supreme Court is filed.

56 Id. at 12.

(10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

x x x x

RULE IX
Adjudication Process

x x x x

SECTION 12. *Finality of Decisions or Resolutions.* — A decision or resolution of the Commission upon any matter within its jurisdiction shall become final and executory after the lapse of thirty (30) days from notice of the decision or resolution, unless a motion for reconsideration is seasonably made or an appeal to the Supreme Court is filed.

SECTION 13. *Motion for Reconsideration.* — A motion for reconsideration may be filed on the grounds that the evidence is insufficient to justify the decision or resolution; or that the said decision, order or ruling is contrary to law. Only one (1) motion for reconsideration of a decision or resolution of the Commission shall be entertained.

x x x x

Unquestionably, the 2002 COA Decision was rendered by the COA-CP. It is therefore of no moment that the Petition for Review was denominated as such given that a "petition for review" under Rule V of the 1997 COA Rules is appropriate only for final decisions or orders issued by the Director.[57] Thus, by filing the Petition for Review with the COA-CP — the very same body that rendered the 2002 COA Decision — Collado was actually seeking a reconsideration of the 2002 COA Decision.

In this regard, in the 2008 COA Decision, the COA-CP was correct in treating the Petition for Review as a first motion for reconsideration, *viz.*:

> WHEREFORE, premises considered, and there being no new and material evidence presented to warrant the reversal of the assailed decision, the instant petition for review has to be, as it is hereby denied for lack of merit. Accordingly, COA Decision No. 2002-282 dated December 17, 2002, is affirmed with **FINALITY**.[58]

At that point, upon the denial of the first motion for reconsideration, Collado should have already filed a petition for *certiorari* with the Court within the period provided in Rule 64 of the Rules.[59] Instead, Collado

---

57 1997 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule V, Section 6 states:
SECTION 6. *Power of Director on Appeal.* — The Director may reverse, modify, alter, or affirm the decision or ruling of the Auditor. However, should the Director render a decision reversing, modifying or altering the decision or ruling of the Auditor, the Director shall, within ten (10) days, certify the case and elevate the entire record to the Commission Proper for review and approval.

58 *Rollo*, p. 27. Emphasis in the original.

59 RULES OF COURT, Rule 64, Sec. 2 provides:
SEC. 2. *Mode of review.* — 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

resorted to filing the Letter dated June 10, 2008, purportedly questioning the 2008 COA Decision, and thereafter filed another Letter dated March 17, 2010.[60]

The records herein indicate that the 2008 COA Decision—the final dispositive act of the COA-CP on the motion for reconsideration of the 2002 COA Decision—was received by Collado on May 15, 2008.[61] Following the last sentence of Section 3, Rule 64 of the Rules, Collado had only five days therefrom, or until May 20, 2008, within which to file the proper petition. Considering therefore that the instant Petition was filed only on August 20, 2010,[62] or more than two years after Collado's receipt of the 2008 COA Decision, the Petition was perforce filed out of time.

Parenthetically, the Court notes that Collado subsequently filed another letter of reconsideration dated March 17, 2010 with the LSS-ALS. The same letter was eventually denied on July 17, 2010 by the LSS-ALS in the questioned Letter, which in turn was received by Collado on July 23, 2010.[63] Regardless of the foregoing, while the Petition seems to assail the questioned Letter,[64] the reckoning point for the 30-day period under Rule 64 should not be counted from receipt of the same as it was merely a reiterative denial of Collado's Letter dated June 10, 2008; to reckon the period from receipt of the questioned Letter—merely because it was the latest issuance of Respondents—would be tantamount to an indefinite extension of the mandatory period under the Rules based on the whim of Collado. To rule otherwise would be to incentivize the indiscriminate filing of "clarificatory" letters instead of pursuing the appropriate remedies available under the law.

Bearing the foregoing in mind, the Court so finds that the Petition was filed outside the period prescribed in Rule 64 of the Rules.

Nevertheless, the Court has recognized that there are instances when a strict application of the rules on timeliness would work against rather than towards substantial justice. In *Riguer v. Mateo*,[65] this Court said:

> The procedural lapses notwithstanding, the Court may still entertain the present appeal. Procedural rules may be disregarded by the Court to serve the ends of substantial justice. Thus, in *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, the Court elucidated:
>
> > Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and

---

on certiorari under Rule 65, except as hereinafter provided; *see* also Section 1, Rule XII, 2009 Revised Rules of Procedure of the Commission on Audit.

60 *Rollo*, p. 38.

61 Id. at 4.

62 Id. at 1.

63 Id. at 4-5.

64 Id. at 3-4.

65 G.R. No. 222538, June 21, 2017, 828 SCRA 109.

> due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.
>
> x x x x
>
> ***Ergo, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction.*** Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration.

The merits of Riguer's petition for review warrant a relaxation of the rules of procedure if only to attain justice swiftly. As would be further discussed, a denial of his petition would only allow Atty. Mateo to collect unconscionable attorney's fees.[66]

Similarly, in *Barnes v. Padilla*,[67] this Court said:

> However, this Court has relaxed this rule in order to serve substantial justice considering (a) ***matters of life, liberty, honor or property***, (b) the existence of special or compelling circumstances, (c) ***the merits of the case***, (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, (e) a lack of any showing that the review sought is merely frivolous and dilatory, and (f) the other party will not be unjustly prejudiced thereby.
>
> Invariably, rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. ***Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.*** Even the Rules of Court reflects this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself had already declared to be final.
>
> In *De Guzman* [*v.*] *Sandiganbayan*, this Court, speaking through the late Justice Ricardo J. Francisco, had occasion to state:
>
> > The Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering justice have always been, as they ought to be guided by the norm that when on the balance, technicalities

---

66 Id. at 118-119. Emphasis and underscoring supplied.

67 G.R. No. 160753, September 30, 2004, 439 SCRA 670.

> take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, "should give way to the realities of the situation."[68]

In the instant case, no less than the property rights of Collado hang in the balance. The Court is convinced that the belated filing of her petition was the result of an honest mistake and not an attempt to frustrate the proceedings of the COA or this Court. Hence, in the higher interest of equity and substantial justice, the Court shall look into the remaining issues of the case.

Respondents correctly applied the formula prescribed in the IRR of P.D. No. 1594.

The Court herein refrains from delving into the factual findings of respondents with respect to the proper computation of the liquidated damages charged against N.C. Roxas, Inc.

It is a long-standing rule that findings of administrative agencies are accorded not only respect but also finality absent unfairness or arbitrariness that would amount to grave abuse of discretion.[69] In *Delos Santos v. Commission on Audit*,[70] the Court explained the rationale behind such rule:

> x x x [T]he [COA] is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.
>
> Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the [COA], not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce.[71]

In the case at bench, it bears noting that the formula and computation initially used by the COA Auditor in arriving at the liquidated damages were consistently upheld on review by the COA-NGAO[72] and the COA-CP.[73] On this score, Rule 64 of the Rules expressly decrees the finality of factual findings made by COA when supported by substantial evidence:

---

68 Id. at 686-687.
69 *Buisan v. Commission on Audit*, G.R. No. 212376, January 31, 2017, 816 SCRA 346, 364.
70 G.R. No. 198457, August 13, 2013, 703 SCRA 501.
71 Id. at 512-513.
72 *Rollo*, p. 79.
73 Id. at 92, 27.

> Section 5. Form and contents of petition. — The petition shall be verified and filed in eighteen (18) legible copies. The petition shall name the aggrieved party as petitioner and shall join as respondents the Commission concerned and the person or persons interested in sustaining the judgment, final order or resolution a quo. The petition shall state the facts with certainty, present clearly the issues involved, set forth the grounds and brief arguments relied upon for review, and pray for judgment annulling or modifying the questioned judgment, final order or resolution. Findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable. x x x

Further to the foregoing, the Court hereby finds that the factual findings of the COA-NGAO are amply supported by the evidence on record, as well as applicable rules and jurisprudence:

> After a circumspect evaluation of the facts of the case and a scrutiny of the accompanying documents, this Office concurs with the action of the Auditor affirming the original disallowance with a modification that the total sum of liquidated damages shall in no case exceed fifteen percent (15%) of the total contract price.
>
> It is an undisputed fact that the contractor failed to satisfactorily complete the work within the specified contract time, plus the time extension duly granted therefor. Verily, the contractor is hereby in default and as stipulated in the contract, the contractor "*shall be liable to the PSHS for liquidated and ascertained damages at the rate of One-Tenth of One Percent (1%) of the Contract Price per calendar day of delay, such damages to be deducted by the PSHS from whatever amount may be due to the CONTRACTOR*" (paragraph 5 of the contract). Since the contract has the force of law between the parties, each is bound to fulfill what has been expressly stipulated therein ([*Barons Marketing Corporation v. Court of Appeals*], 286 SCRA 96).
>
> As gleaned from the basic contract, specifically paragraph 2(q) thereof, the parties had agreed that the "*pertinent provisions of Presidential Decree Number 1594, its Implementing Rules and Regulations and other applicable laws, rules and regulations*" shall be deemed to form and be interpreted and construed as part of the contract. Paragraph CI8.4 of the Implementing Rules and Regulations (IRR) of P.D. 1594 dated July 12, 1995 directs that:
>
> > "4. In no case however, shall the **total sum of liquidated damages exceed fifteen percent (15%) of the total contract price**, in which event the contract shall automatically be taken over by the office/agency/corporation concerned or award the same to the qualified contractor through negotiation and the erring contractor's performance security shall be forfeited. The amount of the forfeited performance security shall be set aside from the amount of the liquidated damages that the contractor shall pay the government under the provisions of this clause."
>
> Although the said IRR of P.D. 1594 was issued in 1995, it is applicable in this 1988 work contract under consideration because "*it is a*

> *settled rule in statutory construction that where a new statute deals only with procedure, it applies to all actions – to those which have accrued or are pending, and to future actions*["](COA Decision No. 95-586 dated November 2, 1995 citing Statutes and Statutory Construction, C. Dellas Sonds, p. 253)
>
> x x x x
>
> x x x As stated above, the liquidated damages shall be One-Tenth of One Percent of the Contract Price per calendar day of delay and not the appellant's allegation that the liquidated damages shall be 1/10 of 1% of the value of every claim. It is a cardinal rule in the interpretation of contracts that if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulation shall control.[74]

Nevertheless, there are circumstances attendant in this case which the Court believes excuse Collado from the civil liability to return the disallowed amounts.

Collado may be excused from the civil liability to return the disallowed amounts under Part 2a of the Rules on Return.

In the recently decided case of *Madera v. COA*[75] (*Madera*), the Court settled once and for all the nature and legal basis of the liability of approving and certifying officers and passive payees for illegal expenditures as well as the proper treatment of such liability in cases where there are badges of good faith attending the erroneous approval of the said expenditures. In *Madera*, the Court noted that the civil liability of officers for acts done in performance of official duties is rooted in Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987, which state:

> SECTION 38. Liability of Superior Officers. — (1) A public officer shall not be **civilly** liable for acts done in the performance of his official duties, ***unless there is a clear showing of bad faith, malice or gross negligence***.
>
> x x x x
>
> (3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.
>
> SECTION 39. Liability of Subordinate Officers. — ***No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties***. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals,

---

74 *Rollo*, pp. 76-78. Emphasis and italics in the original; citations omitted.
75 G.R. No. 244128, September 8, 2020.

> public policy and good customs even if he acted under orders or instructions of his superiors.[76]

Clarifying the import of the foregoing provisions, this Court further said that:

> x x x [T]he civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, ***arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence***.[77]

In the same case, the Court formulated what are now known as the Rules on Return, which harmonize former rulings as regards the return of disallowed amounts. Relevantly to this instant case, Part 2a of the Rules on Return states:

> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> > a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.[78]

The determination of whether good faith and regularity in the performance of official functions may be appreciated in favor of approving/certifying officers will be done by the Court on a case-to-case basis.[79] Towards this end, the Court finds that there are attendant circumstances which support the conclusion that Collado acted in good faith.

First, the Court notes that the disallowance resulted from failure to deduct the correct amount of liquidated damages from progress billings paid to the contractor, N.C. Roxas, Inc. **Nothing in the records would indicate that Collado received any portion of, or benefited from, the disallowed amounts**. Neither is the disallowance made on the basis of a finding that the disbursement was utterly without legal basis, but rather, for only a mistaken understanding of the IRR of P.D. 1594 and the provisions of the contract between PSHS and N.C. Roxas, Inc.

Second, the disallowed amounts were paid out for the 4th to 15th progress billings from December 18, 1989 to January 28, 1991.[80] It was only on September 10, 1998, or approximately eight years later, that the Notices of Disallowance were issued by the COA Auditor. In the meantime, Collado had no notice of any irregularity in the computations.

---

76 Emphasis, underscoring and italics supplied.
77 Id. Emphasis, underscoring and italics supplied.
78 Id.
79 Id.
80 *Rollo*, pp. 47-49.

The foregoing circumstances may be taken as indications of Collado's good faith. While an error was made in the computation of liquidated damages, **nothing in the records would support the conclusion that such an error amounted to bad faith, malice, or even gross negligence**, consequently making Collado liable under Sections 38 and 39, Chapter 9, Book I of the Administrative Code of 1987.

In *Lumayna v. Commission on Audit*,[81] this Court explained:

> Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some ***dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes***. x x x[82]

The foregoing case was also affirmed in *Madera*, where this Court said:

> As can be deduced above, petitioners disbursed the subject allowances in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such reward. Otherwise stated, and to borrow the language of *Lumayna*, these mistakes committed are not actionable, absent a clear showing that such actions were motivated by malice or gross negligence amounting to bad faith. There was no showing of some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will in the grant of these benefits. There was no fraud nor was there a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes.[83]

Certainly, no ill will or self-interest may be attributed to Collado in her erroneous computation of liquidated damages.

There was likewise no gross negligence in Collado's computation of the liquidated damages due. Gross negligence has been defined by the Court as follows:

> Gross neglect of duty or gross negligence "refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that

---

81 G.R. No. 185001, September 25, 2009, 601 SCRA 163.

82 Id. at 182. Emphasis, italics, and underscoring supplied; citations omitted.

83 *Madera v. Commission on Audit*, supra note 75.

> even inattentive and thoughtless men never fail to give to their own property." It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[84]

As Collado explained, she was reassured of the propriety of her computations when the vouchers for N.C. Roxas, Inc. passed the scrutiny of Rabaca, the accountant then in charge of reviewing the transactions, when these were submitted to her for pre-audit.[85] As also previously noted, the vouchers were submitted to the COA auditors for post-audit,[86] but no audit observation memorandum, nor any other kind of notice was given to Collado as to any irregularity thereon prior to the herein subject Notices of Disallowance — issued approximately eight years after the last voucher was issued. Thus, while the computation was erroneous, there were measures taken to ensure that the preparation of the vouchers was in accordance with standard procedure and the applicable rules. This negates any finding of her indifference or flagrant breach of duty which could have been equated to gross negligence.

Given the foregoing, it would be improper, if not totally unjust, to make Collado solidarily liable with the contractor for the disallowed amount.

The government is not without remedy, however, as deficiency, liquidated damages may still be recovered from the payee-contractor, N.C. Roxas, Inc. Lest it be misunderstood, the Court's observation that the COA's Notices of Disallowance were issued eight years after the fact is not meant to inspire the conclusion that the disallowed amount may no longer be recovered from the recipient thereof. Basic is the rule that prescription does not run against the state. In *Ramiscal, Jr. v. Commission on Audit*,[87] the Court held:

> x x x ***The right of the State, through the COA, to recover public funds that have been established to be irregularly and illegally disbursed does not prescribe***.
>
> Article 1108(4) of the Civil Code expressly provides that prescription does not run against the State and its subdivisions. This rule has been consistently adhered to in a long line of cases involving reversion of public lands, where it is often repeated that when the government is the real party-in-interest, and it is proceeding mainly to assert its own right to recover its own property, there can, as a rule, be no defense grounded on laches or prescription. We find that ***this rule applies, regardless of the nature of the government property***. Article 1108 (4) does not distinguish between real or personal properties of the State. There is also no reason why the logic behind the rule's application to reversion cases should not equally apply to the recovery of any form of government property. In fact, in an early case involving a collection suit for unpaid loans between the

---

84 *Office of the Ombudsman v. De Leon*, G.R. No. 154083, February 27, 2013, 692 SCRA 27, 38.
85 *Rollo*, p. 8.
86 Id. at 52.
87 G.R. No. 213716, October 10, 2017, 842 SCRA 317.

> Republic and a private party, the Court, citing Article 1108(4) of the Civil Code, held that the case was brought by the Republic in the exercise of its sovereign functions to protect the interests of the State over a public property.[88]

N.C. Roxas, Inc.'s liability to return the disallowed amount may be enforced based on the principle of *solutio indebiti*. As the Court has explained:

> x x x Article 2154 of the Civil Code explains the principle of *solutio indebiti*. Said provision provides that if something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises. In such a case, a creditor-debtor relationship is created under a quasi-contract whereby the payor becomes the creditor who then has the right to demand the return of payment made by mistake, and the person who has no right to receive such payment becomes obligated to return the same. The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. The principle of *solutio indebiti* applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment; and (2) the payment is made through mistake, and not through liberality or some other cause.[89]

In *Madera,* the Court recognized that the liability to return amounts disallowed by the COA is a civil liability, to which the concept of *solutio indebiti* rightly applies. Evidently, because of the erroneous computation of liquidated damages, the contractor, N.C. Roxas, Inc., through mistake, received more than what was due to it under the contract. There being no binding obligation on the part of PSHS to pay the excess amount, N.C. Roxas, Inc. is therefore bound to return the same.

WHEREFORE, premises considered, the Petition is **GRANTED IN PART**. The Commission on Audit-Commission Proper Decision No. 2008-048 is **AFFIRMED WITH MODIFICATION**. Petitioner Emerita A. Collado is excused from solidary liability to return the total amount of the under-deducted liquidated damages. The Commission on Audit is hereby **DIRECTED** to institute the necessary claims against N.C. Roxas, Inc.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

---

88 Id. at 325. Emphasis, underscoring, and italics supplied; citations omitted.

89 *Siga-an v. Villanueva*, G.R. No. 173227, January 20, 2009, 576 SCRA 696, 708.

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

(On official leave)
MARVIC M.V.F. LEONEN
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI 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

(On official leave)
EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify 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
ANNA-LI R. PAPA-GOMEZ
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court