



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

*EN BANC*

**ATTY. JOAQUIN DELOS SANTOS, G.R. No. 227467**  
**ENGR. EVELYN M. HATULAN AND**  
**CORNELIO V. TAMAYO,**  
*Petitioners,*

Present:

GESMUNDO, CJ.,  
PERLAS-BERNABE,  
LEONEN,  
CAGUIOA,  
HERNANDO,  
CARANDANG,  
LAZARO-JAVIER,  
INTING,  
ZALAMEDA,  
LOPEZ, M.,  
GAERLAN,  
ROSARIO, and  
LOPEZ, J., JJ.

- versus -

**COMMISSION ON AUDIT,**  
*Respondent.*

Promulgated:

August 3, 2021

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**DECISION**

**ZALAMEDA, J.:**

Before this Court is a Petition for *Certiorari* (Petition)<sup>1</sup> assailing the Commission on Audit (COA) Decision No. 2015-223<sup>2</sup> dated 13 April 2015

<sup>1</sup> *Rollo*, pp. 3-41.

<sup>2</sup> *Id.* at 60-62; penned by Commissioner Heidi L. Mendoza, and concurred in by Commissioner Jose A.



and Notice<sup>3</sup> dated 12 July 2016, which affirmed the Notice of Disallowance (ND) No. 2007-036-101 (04)<sup>4</sup> (subject ND) dated 19 November 2007.

### Antecedents

In a memorandum dated 28 September 2004, issued by Engineer Alexander D. Paltao of the Technical Services COA Regional Office No. IV, and in an audit observation memorandum (AOM) dated 14 October 2004 issued by the Audit Team Leader of the municipality of Cabuyao, Laguna, Mayor Proceso Aguillo (Mayor Aguillo), municipal accountant Atty. Felix L. Galang, Jr. (Atty. Galang), municipal treasurer Elena A. Estalilla (Estalilla), municipal treasurer, building official Engineer Manolito Barundia (Barundia), and all the members of the Bids and Awards Committee (BAC) were requested to submit certain documents to facilitate the COA's investigation, viz.: the approved detailed plan, "approved" statement of work accomplished, copies of contracts and bidding documents. The requested documents pertain to anomalous projects entered into by the municipal government of Cabuyao, Laguna with Golden Deer Enterprises and RDC Construction Development Corporation.<sup>5</sup>

On 26 February 2007, Notice of Suspension (NS) No. 2007-002-101 (2004)<sup>6</sup> was issued, suspending in audit the aforesaid transactions of the municipal government in the total amount of ₱42,594,037.<sup>7</sup>

On 19 November 2007, COA Regional Cluster Director Eden T. Rafanan issued the subject ND, holding Mayor Aguillo, Atty. Galang, Estalilla, Barundia, liable for the disallowed amount. Members of the BAC, including petitioners Atty. Joaquin Delos Santos (Atty. Delos Santos), as the Chairman, Evelyn Hatulan (Hatulan), Cornelio Tamayo (Tamayo; collectively, petitioners), Pastor Canceran (Canceran) and Barundia, as members thereof, as well as Golden Deer Enterprises and RDC Construction were also held liable in the subject ND. Petitioners appeared to have received the ND on 08 January 2008.<sup>8</sup>

Subsequently, COA Regional Director Luz Loreto-Tolentino (Director Loreto-Tolentino) issued a corresponding Notice of Finality of Decision<sup>9</sup>

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Favia.

<sup>3</sup> *Id.* at 71.

<sup>4</sup> *Id.* at 46-48.

<sup>5</sup> *Id.* at 60-61.

<sup>6</sup> *Id.* at 72-73.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 46-48.

<sup>9</sup> *Id.* at 49-50.





(NFD) and COA Order of Execution<sup>10</sup> (COE) both dated 03 September 2012, holding petitioners, among others, liable for the disallowed amount. Petitioners immediately wrote a Letter<sup>11</sup> dated 21 February 2013 to Director Loreto-Tolentino requesting for review of the disallowance, and that they be furnished copies of the documents material to the case. On 04 April 2013, COA Regional Director Nilda Blanco replied to the petitioners' counsel declaring the NFD and COE to be final and executory, and that the Rules and Regulations on Settlement of Accounts and the 2009 Revised Rules of Procedure of the COA are both silent on the power of the regional directors to review the NFD and COE.<sup>12</sup>

Thus, on 17 September 2013, petitioners filed with the COA Proper an urgent motion for the issuance of order to set aside NFD and COE, and to release documents pertinent to ND No. 200-036-101 (04), and to admit appeal (Omnibus Motion).<sup>13</sup> They claimed that they did not receive the subject ND.<sup>14</sup>

In a Decision<sup>15</sup> dated 13 April 2015, the COA denied petitioners' Omnibus Motion and declared the subject ND to be final and executory. The COA ruled that petitioners received the subject ND based on their signatures appearing thereon.

Petitioners filed a Motion for Reconsideration<sup>16</sup> claiming that the ND is defective because it failed to specify the projects and contracts disallowed, and only made references to the AOM and NS previously issued. Additionally, they claim that they are uncertain whether there was a BAC constituted during the term of Mayor Aguillo.<sup>17</sup>

The COA *En Banc* denied the motion for reconsideration, finding that the subject ND had long become final and executory.<sup>18</sup>

Hence this Petition, where petitioners insist they were deprived of their right to due process because they were held liable for the subject ND which they did not receive. They also reiterate their objection to the failure of the ND to specify the projects and contracts it seeks to investigate. They assert that had they truly received the subject ND, they would have immediately reacted to it given the amount disallowed therein.<sup>19</sup>

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<sup>10</sup> *Id.* at 51-52.

<sup>11</sup> *Id.* at 53.

<sup>12</sup> *Id.* at 55-56.

<sup>13</sup> *Id.* at 57-59.

<sup>14</sup> *Id.* at 58.

<sup>15</sup> *Id.* at 60-62.

<sup>16</sup> *Id.* at 64-68.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 71.

<sup>19</sup> *Id.* at 22-40..





Petitioners allege that their signatures in the subject ND are fake and not their real signatures, and as proof thereof, they have attached documents supposedly containing their true signatures. They surmise that their names were being used to conceal the real perpetrators and maintain that Atty. Delos Santos cannot recall whether there was a duly composed BAC during the term of then Mayor Aguillo. According to petitioners, the municipal government of Cabuyao had no records of documents pertaining to the time pertinent to the case. Hence, they conclude that no such BAC was constituted and they were not members of any such committee.<sup>20</sup>

Finally, petitioners assert they should not be held liable because under the AOM and NS, which were the bases of the subject ND, it is the municipal accountant, Atty. Galang, who is required to submit documents pertaining to transactions entered into by the municipal government during Mayor Aguillo's term.<sup>21</sup>

### **COA's Arguments**

COA maintains that petitioners are liable for the subject ND since it has long become final and executory. The COA argues that petitioners have been given various opportunities to comply with its directives when they received the AOM, NS and ND. Having failed to promptly question the adverse findings, petitioners are now barred from appealing the same through the instant Petition.<sup>22</sup>

### **Issue**

This Court is tasked to determine whether the COA committed grave abuse of discretion when it affirmed the subject ND.

### **Ruling of the Court**

The Petition is meritorious.

Owing to its mandate as an independent constitutional commission, this Court's review of decisions of the COA is generally limited to questions

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<sup>20</sup> *Id.* at 24-29.

<sup>21</sup> *Id.* at 32-36.

<sup>22</sup> *Id.* at 134-138.







of jurisdiction and not errors of judgment. Questions of fact cannot be raised except to determine whether the COA is guilty of grave abuse of discretion amounting to lack or excess of jurisdiction.<sup>23</sup> “A finding of grave abuse of discretion against the COA means that the audit commission is guilty of evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence, but on caprice, whim and despotism. As the party alleging grave abuse of discretion, petitioners had the burden to prove that the COA had acted in a capricious, whimsical, arbitrary or despotic manner.”<sup>24</sup>

Relatedly, “it is also a well-entrenched rule that the right to appeal is a statutory right and one who seeks to avail of the right must strictly comply with the requirements set forth under the pertinent law or rules.” Indeed, the Court has been strict in enforcing statutory requirements of appeal to ensure that cases are promptly and orderly adjudicated.<sup>25</sup> Pursuant thereto, this Court does not generally entertain petitions under Rule 64 which originated from the COA’s denial of a late appeal.<sup>26</sup> Nevertheless, this Court, in certain cases, does not also hesitate to relax the aforesaid procedural rules on the basis of exceptional grounds, and in order to avoid commission of injustice.

In this case, in view of several grounds, this Court finds that petitioners should be allowed another opportunity to fully ventilate their defenses before the COA.

*Petitioners failed to establish that their signatures were forged.*

“Forgery is the ‘counterfeiting’ of any writing, consisting in the signing of another’s name with intent to defraud.<sup>27</sup> Since it is not presumed, forgery ‘must be proved with clear, positive and convincing evidence’<sup>28</sup> by the party alleging it.”<sup>29</sup> There are various factors which may have the effect of varying the signature of a person, such as his position while signing, the condition of the surface on which the paper where the questioned signature is written is placed, his state of mind, feelings and nerves, and the kind of pen and/or paper used. The presence of any of these circumstances may cause changes in one’s signature and does not necessarily mean that his

<sup>23</sup> *Fortune Life Insurance Company, Inc. v. Commission on Audit*, 752 Phil. 97 (2015).

<sup>24</sup> *See National Power Corp. v. Commission on Audit*, G.R. No. 242342, 10 March 2020.

<sup>25</sup> *See Bugna, Jr. v. Commission on Audit* (Resolution), UDK No. 16666, 19 January 2021.

<sup>26</sup> *Id.*

<sup>27</sup> *Philippine Savings Bank v. Sakata*, G.R. No. 229450, 17 June 2020, citing *BPI v. Casa Montessori Internazionale*, 474 Phil. 298, 309 (2004).

<sup>28</sup> *Id.*, citing *Gepulle-Garbo v. Spouses Garabato*, 750 Phil. 846, 855 (2015).

<sup>29</sup> *Id.*



signature was forged.<sup>30</sup>

Proving forgery entails a showing of the extent, kind and significance of the variation in the genuine and disputed signatures of the signee. It must be established that the difference in the signatures is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer. It must be shown that the resemblance is a result of a more or less skillful imitation and not merely a habitual and characteristic resemblance which naturally appears in a genuine writing.<sup>31</sup>

In this case, after comparison of petitioners' specimen signatures and those contained in the subject ND, this Court finds that petitioners failed to establish forgery.

For Hatulan, this Court notes that her signature in the subject ND is the same as her specimen signature in her PDS<sup>32</sup> dated 2 May 2001, the document which was closest in time to the subject ND.<sup>33</sup> Further, even in later documents, particularly those in the attachments<sup>34</sup> to the petition, Hatulan's signatures are strikingly similar to that appearing in the subject ND. The same conclusion applies to Tamayo. His specimen signature in his *Panunumpa sa Tungkulin*<sup>35</sup> dated 13 January 2005 does not appear to be substantially different from that in the subject ND.

As to Atty. Delos Santos, although his signature in the subject ND is different from his specimen signatures, this Court finds the same insufficient to prove forgery. He did not present supporting evidence to clearly show that the difference in the appearance of the signature was caused by another individual and not merely a variation of his own handwriting. "Mere variance of the signatures in different documents cannot be considered as conclusive proof that one is forged."<sup>36</sup> Although resort to experts is not mandatory in the examination of alleged forged documents, the opinions of handwriting experts would have been helpful in the court's determination of a document's authenticity.<sup>37</sup> These handwriting experts can help determine fundamental, significant differences in writing characteristics between the questioned and the standard or sample specimen signatures, as well as the movement and manner of execution

<sup>30</sup> See *Jimenez v. Commission on Ecumenical Mission, United Presbyterian Church, USA*, 432 Phil. 895, 908 (2002).

<sup>31</sup> *Coro v. Nasayao*, G.R. No. 235361, 16 October 2019.

<sup>32</sup> *Rollo*, p. 101-101-A.

<sup>33</sup> See *Heirs of Amado Celestial v. Heirs of Editha Celestial*, 455 Phil. 704 (2003).

<sup>34</sup> *Rollo*, pp. 45-114.

<sup>35</sup> *Id.* at 110.

<sup>36</sup> *Enrile v. People* (Joint Resolution), 766 Phil. 75, 284 (2015).

<sup>37</sup> See *Rivera v. Sps. Chua*, 750 Phil. 663, 676 (2015).





strokes.<sup>38</sup>

Interestingly, aside from the supposed differences in the signatures in the subject ND and their alleged specimen signatures, petitioners failed to elucidate the circumstances of the forgery, such as how and who may have been responsible for imitating all of their signatures. For the dearth of such clear and convincing evidence establishing forgery, this Court is constrained to take the document as what it appears to be— showing petitioners' receipt thereof. Nevertheless, despite petitioners' receipt of the subject ND, this Court finds that it did not sufficiently apprise them of the basis for the disallowance.

*The subject ND is an insufficient notice of petitioners' liability.*

The 1997 Rules of Procedure of the COA provide that the auditor's findings must clearly state the basis for its findings, viz.:

SECTION 4. *Report, Certificate of Settlement and Balances, Notice of Disallowances and Charges, Order or Decision of the Auditor.* — The result of the audit work of the Auditor may be in the form of a report, Certificate of Settlement and Balances, notice of disallowances and charges, audit observation, order or decision which **shall clearly and distinctly state his findings of fact, conclusions, recommendations and dispositions. The factual findings shall be adequately established by evidence and the conclusions, recommendations or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles on which the report, Certificate of Settlement and Balances, notice of disallowances and charges and order or decision are based.** (Emphasis supplied)

Indeed, jurisprudence is consistent in holding that the constitutional rule requiring a clear and distinct statement of factual and legal basis of a resolution/decision is an indispensable component of the litigant's right to due process. Failure to state clear basis for its decision constitutes grave abuse of discretion.<sup>39</sup>

In *Fontanilla v. Commissioner Proper*,<sup>40</sup> this Court found that the COA violated the tenets of due process when the Adjudication and Settlement Board of the COA National Office held the supervising officer

<sup>38</sup> *Tortona v. Gregorio*, 823 Phil. 980, 994 (2018), citing *Sps. Ulep v. Court of Appeals*, 509 Phil. 227, 240 (2005).

<sup>39</sup> See *Zamboanga City Water District v. Commission on Audit*, G.R. No. 218374, 01 December 2020.

<sup>40</sup> 787 Phil. 713 (2016).



liable with the erring employee for the stolen cash, without including him as respondent in the proceedings before the audit team leader and subsequently, the appeal before the COA Regional Office. This Court stressed that due process is, at its core, giving a person an opportunity to be heard. There is denial of due process if a person is held liable for a charge, and his liability is confirmed on appeal without having been notified of the accusation, and given the opportunity to explain his case or have the ruling reconsidered. The Court added that therein respondent's subsequent submission of a motion for reconsideration did not cure the COA's denial of due process. Thus, the Court set aside the COA's Decision insofar as it found therein petitioner Fontanilla solidarily liable with his subordinate. However, it directed Fontanilla to file his memorandum containing his evidence, or to call for oral arguments that would allow him to present his evidence, so that the COA can validly rule on the issue of his liability for the stolen money.

In *Ablong v. Commission on Audit (Ablong)*,<sup>41</sup> this Court ruled that the COA committed grave abuse of discretion, and ordered a remand of the case due to its non-observance of due process. This Court noted that the COA failed to give actual notice to the parties liable under the ND because it only gave copies thereof to the accountant who did not inform them of the disallowance of their Economic Relief Allowance. This Court likewise gave credence to therein petitioners' allegation that even the supervising auditor refused their request to be furnished copies of the NDs. In failing to give petitioners copies of the ND, this Court found that the COA not only failed to follow its own rules,<sup>42</sup> but also denied petitioners' right to due process. A remand was therefore ordered to resolve petitioners' appeal from the subject notices of disallowance on the merits.

Further, as in *Ablong*, the COA Proper cursorily denied petitioners' request for documents on the ground of their receipt of the ND. Such reasoning is mistaken. Given the circumstances of this case, it is the service of the NS No. 2007-002-101(2004) dated 26 February 2007, or the earlier AOM No. 2004-009191 dated 14 October 2004, which would have given petitioners a real opportunity to prove the regularity of the municipality's transactions. In other words, since petitioners were being held liable for their failure to submit documents, logic and due process require that there must be actual notice of the documents needed for the lifting of the suspension and reversal of the disallowance.

<sup>41</sup> G.R. No. 233308, 18 August 2020.

<sup>42</sup> The Court found that Commission on Audit failed to observe Section 10.2 of COA Circular No. 2009-006 which provides that:

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





In the instant case, the subject ND merely stated that the reason for its disallowance is because of “suspension maturing into disallowance.”<sup>43</sup> It likewise failed to enumerate the documents subject of the NS and petitioners’ direct responsibility for such documents. Evidently, petitioners were left to speculate on the basis of suspension, or the specific documents necessary in order to explain the municipal government’s transactions with the aforesaid contractors. Moreover, the assailed Decision No. 2015-223 dated 13 April 2015 did not contain any supporting evidentiary or substantive basis for its denial of petitioners’ appeal. Thus, following the rulings in the above-cited case, this Court finds that remand is justified.

*The case presents an exception to the rule on immutability of judgments.*

Certainly, Presidential Decree No. (PD) 1445 and the COA’s Rules of Procedure are clear on the reglementary periods to contest an adverse ruling of the COA Auditor. Section 48 of PD 1445<sup>44</sup> lays down the procedure to appeal notices of disallowance issued by agency auditors, viz:

*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**. (Emphasis ours)

Further, under then applicable 1997 Rules of Procedure of the COA, it is provided that:

#### RULE IV

#### PROCEEDINGS BEFORE THE AUDITOR

SECTION 6. Finality of the Report, Certificate of Settlement and Balances, Order or Decision. — Unless a request for reconsideration in filed or an appeal is taken, the report, Certificate of Settlement and Balances, order or decision of the Auditor shall become final upon the expiration of six (6) months after notice thereof to the parties concerned.

#### RULE V

#### PROCEEDINGS BEFORE THE DIRECTOR

<sup>43</sup> *Rollo*, p. 46.

<sup>44</sup> Entitled “Ordaining and Instituting a Government Auditing Code of the Philippines,” approved on 11 June 1978.



SECTION 2. *How Appeal Taken.* — An appeal from an order, decision or ruling by the Auditor may be taken to the Director within six (6) months after notification to the party of the report, notice of disallowance and charges, Certificate of Settlement and Balances, order or decision complained of, by filing with the Auditor a Notice of Appeal.

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

x x x x

SECTION 9. *Interruption of Time to Appeal.* — The receipt by the Auditor of the Notice of Appeal and/or Motion for Reconsideration shall stop the running of the period of appeal to the Commission Proper (6 months) and shall resume to run upon receipt by the appellant of the Director's final decision.

## RULE VI

### APPEAL FROM DIRECTOR TO COMMISSION PROPER

SECTION 3. *Period of Appeal.* — The appeal shall be taken within the time remaining of the six (6) months period under Section 2, Rule V, taking into account the suspension of the running thereof under Section 9 of the same Rule.

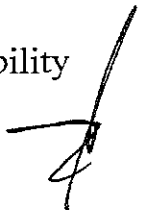
## RULE XII

### Enforcement and Monitoring

Section 1. *Execution of Decision-* Execution shall issue upon a decision that finally disposes of the case. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been fully perfected.

Strictly applying the doctrine of finality and immutability of judgment, it would appear that this Court may no longer modify the subject ND. Verily, since petitioners received the subject ND on 8 January 2008, it is apparent that when they filed their omnibus motion on 17 September 2013 with the COA Proper, the six-month period to appeal has already lapsed.

Nonetheless, like most procedural rules, the doctrine of immutability





of judgment has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. Similarly, while it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations.<sup>45</sup> In view of the most exceptional circumstances, courts may still review the COA's decisions, particularly if the judgment would cause manifest injustice to the parties.

In *Philippine Health Insurance Corporation v. Commission on Audit*,<sup>46</sup> the Court considered as exceptional circumstance the enactment of a remedial legislation reclassifying PhilHealth personnel as public health workers in setting aside an already final decision of the COA. Meanwhile in *Estalilla v. Commission on Audit (Estalilla)*,<sup>47</sup> special considerations were given to the glaring disparity between the petitioner's measly salary as municipal treasurer and the amount of ₱35,591,200.00 she was being required to return. This Court held that a finding of liability in that case would greatly and negatively impact the employee's and her family's life and livelihood.

Likewise, in *Bugna, Jr. v. Commission on Audit*,<sup>48</sup> after finding that petitioners were the same petitioners in *Madera v. Commission on Audit*,<sup>49</sup> who were found to have acted in good faith when they performed their respective functions in relation to the prohibited allowances, this Court exempted the concerned local officials from personal liability on the disallowed amounts.

In this case, aside from the defective notice of disallowance, this Court finds that there are special circumstances similar to *Estalilla* that should have precluded the COA from barring petitioners' appeal and strictly applying the principle on immutability of judgments.

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<sup>45</sup> *Philippine Health Insurance Corp. v. Commission on Audit (Resolution)*, G.R. No. 222710, 10 September 2019.

<sup>46</sup> *Id.*

<sup>47</sup> G.R. No. 217448, 10 September 2019.

<sup>48</sup> *Supra* note 25.

<sup>49</sup> G.R. No. 244128, 08 September 2020.





*Compelling and equitable circumstances justify a relaxation of the principle of immutability of judgment.*

In *Estalilla*, this Court excluded the municipal treasurer from liability under the notice of disallowance in the amount of ₱35,591,200.00 for a wrongful charging of an expense against a different budget allocation. Noting the disparity between the disallowed amount and her salary, the Court opined that holding Estalilla liable would lead to disastrous consequences to her and to her family. The same scenario applies in the instant case. The serious and dire consequences to petitioners' lives and property should have prompted the COA to review the correctness of the allowance instead of stringently insisting that the disallowance has already become final and executory.

Firstly, considering that the disallowance is not based on a supposed positive act of petitioners, but arose from their failure to submit documents, and given the enormous amount of disallowance, this Court finds that the COA should have been circumspect in upholding the subject ND. The circumstances of this case should have impelled it to, at least, grant petitioners, who are also colleagues of Elena Estalilla in the aforesaid case, access to relevant documents concerning the disallowance, such as, but not limited to, the AOM dated 14 October 2004, and NS No. 2007-002-101 (2004) dated 26 February 2007. We should point out, that COA's denial of access to documents was also a pivotal issue in *Estalilla* that compelled the Court to rule that COA committed due process violations against the petitioner therein. We found no reason to have a different conclusion here.

Further, the Court ruled in *Estalilla*:

To begin with, Estalilla's case affected her right to life and property. Judicial notice is taken of the size of her salary as a municipal treasurer in comparison with the disallowed amount of [Php]35,591,200.00. The huge disparity between her salary and the liability was glaring enough. To charge her with the solidary liability would produce very serious and dire consequences on her precious right to life and property. The consequences could impact negatively as well on the rest of her family. What makes the liability even harsher was that she had not personally derived any direct or personal benefit from the disallowed disbursements.<sup>50</sup>

Here, the salaries of Hatulan and Tamayo are made of record<sup>51</sup> and

<sup>50</sup> *Supra* note 47.

<sup>51</sup> *Rollo*, p. 107; In her Personal Data Sheet dated 2 May 2001, Hatulan stated that her monthly salary as Municipal Engineer is ₱19,831, *rollo*, p. 101; while Tamayo indicated his monthly salary in 2003 and 2004 as Administrative Officer are in the amounts of Php14,914 and Php16,237, respectively.





thus recognized by the Court. Indeed, to hold petitioners, especially Hatulan and Tamayo, solidarily liable for the larger amount of ₱42,594,037 given their measly salary would undoubtedly result to their financial ruin.

*The COA should conduct an exhaustive investigation on the transactions covered by the subject ND.*

A notice of suspension is issued on transactions or accounts which could otherwise have been settled except for some requirements, like lack of supporting documents or certain signatures. It is also issued on transactions or accounts the legality/propriety of which the auditor doubts but which he may later allow after satisfactory or valid justification is submitted by the parties concerned. Under Section 82<sup>52</sup> of PD 1445, the suspension shall become a disallowance if the charge of suspension is “not satisfactorily explained within ninety days after receipt or notice by the accountable officer concerned.”<sup>53</sup>

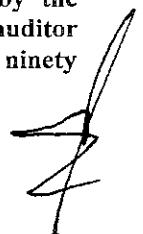
In this case, the COA held petitioners liable for their supposed failure to submit the following documents: (1) approved detailed plan; (2) approved detailed estimate; (3) approved statement of work accomplished; (4) copy of contract; and (5) bidding documents (invitation to bid, notice of award and notice to proceed). After this Court’s review of the pertinent rules on procurement, this Court finds that aside from re-investigating petitioners who were members of the BAC, the COA should also conduct a thorough examination on all the other parties to the procurement process, specifically the procuring entity and contractors identified in the subject ND.

Among the factors to consider in determining the liability of public officers in returning disallowed amounts are said officers’ duties and responsibilities and the extent of their participation in the disallowed transaction. Thus:

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<sup>52</sup> Section 82. *Auditor’s notice to accountable officer of balance shown upon settlement.* The auditor concerned shall, at convenient intervals, send a written notice under a certificate of settlement to each officer whose accounts have been audited and settled in whole or in part by him, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges, or suspensions. The certificate shall be properly itemized and shall state the reasons for disallowance, charge, or suspension of credit. **A charge of suspension which is not satisfactorily explained within ninety days after receipt of the certificate or notice by the accountable officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.** (Emphasis supplied)

<sup>53</sup> See *Rodrigo, Jr. v. Sandiganbayan*, 362 Phil. 646 (1999).





Section 351 of the *Local Government Code* provides that expenditures of funds or use of property in violation of law shall be the personal liability of the official or employee responsible therefor. In that regard, in Section 16 of Circular No. 2009-006, the COA has listed the factors to be considered in determining the liability of public officers for disallowances, namely: (1) the nature of the disallowance/charge; (2) the duties and responsibilities of officers/employees concerned; (3) the extent of their participation in the disallowed/charged transaction; and (4) the amount of damage suffered by or loss to the Government.<sup>54</sup> (Citation omitted)

The BAC is responsible for vetting and recommending the contractor to the procuring entity. The Implementing Rules and Regulations (IRR) Part A of Republic Act No. (RA) 9184 (IRR-A), succinctly provides for the BAC's role in the procurement process, viz:

Section 12. *Functions of the BAC.*

12.1. The BAC shall have the following functions: advertise and/or post the invitation to bid, **conduct pre-procurement** and pre-bid conferences, determine the eligibility of prospective bidders, receive bids, conduct the evaluation of bids, undertake post-qualification proceedings, resolve motions for reconsideration, **recommend award of contracts to the head of the procuring entity or his duly authorized representative**; *Provided, however,* That in the event the head of the procuring entity shall disapprove such recommendation, such disapproval shall be based only on valid, reasonable and justifiable grounds to be expressed in writing, copy furnished the BAC; recommend the imposition of sanctions in accordance with Rule XXIII, and perform such other related functions as may be necessary, including the creation of a Technical Working Group (TWG) from a pool of technical, financial and/or legal experts to assist in the procurement process, particularly in the eligibility screening, evaluation of bids and post-qualification. In proper cases, the BAC shall also recommend to the head of the procuring entity the use of Alternative Methods of Procurement as provided for in Rule XVI hereof.

12.2. The BAC shall be responsible **for ensuring that the procuring entity abides by the standards set forth by the Act and this IRR-A**, and it shall prepare a procurement monitoring report that shall be approved and submitted by the head of the procuring entity to the GPPB on a semestral basis. The procurement monitoring report shall cover all procurement activities specified in the APP, whether ongoing and completed, costing fifty million pesos ([P]50,000,000) and above for goods and infrastructure projects, and five million pesos ([P]5,000,000) and above for consulting services. The report shall cover major activities from the holding of the pre-procurement conference to the issuance of notice of award and the approval of the contract, including the standard and actual time for each major procurement activity. It shall be submitted in printed and electronic format within ten (10) working days after the end of each semester. (Emphasis supplied)

<sup>54</sup> *Estalilla v. Commission on Audit*, supra note 47.





In *Joson III v Commission on Audit*,<sup>55</sup> this Court explained that the role of the BAC is determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid and their submission of the legal, technical and financial documents required under Section 23.6, Rule VIII of the IRR of RA 9184.

Indeed, under the IRR-A of RA 9184, the requirements for eligibility to bid, contract documents, and those pertaining to its implementation, fall within the responsibilities of the procuring entity, viz.:

Section 21. *Advertising and Contents of the Invitation to Bid.* —

21.1. *Contents of the Invitation to Apply for Eligibility and to Bid*

The Invitation to Apply for Eligibility and to Bid shall provide prospective bidders the following information among others:

1. For the procurement of:

a) Goods, the name of the contract to be bid and a brief description of the goods to be procured;

b) Infrastructure projects, the name and location of the contract to be bid, the project background and other relevant information regarding the proposed contract works, including a brief description of the type, size, major items, and other important or relevant features of the works; and

c) Consulting services, the name of the contract to be bid, a general description of the project and other important or relevant information;

2. A general statement on the criteria to be used by the procuring entity for the eligibility check, the short listing of prospective bidders, in the case of the procurement of consulting services, the examination and evaluation of bids, and post-qualification;

3. The date, time and place of the deadline for the submission and receipt of the eligibility requirements, the pre-bid conference if any, the submission and receipt of bids, and the opening of bids;

4. The approved budget for the contract to be bid;

5. The source of funding;

<sup>55</sup> *Joson III v. Commission on Audit*, 820 Phil. 485 (2017); see *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 556 (2009).



6. The period of availability of the bidding documents, the place where the bidding documents may be secured and, where applicable, the price of the bidding documents;

7. The contract duration or delivery schedule;

8. The name, address, telephone number, facsimile number, e-mail and website addresses of the concerned procuring entity, as well as its designated contact person; and

9. Such other necessary information **deemed relevant by the procuring entity.**

### 37.2. *Contract Award*

37.2.1. Within a period not exceeding fifteen (15) calendar days from the determination and declaration by the BAC of the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid, and the recommendation of the award, the head of the procuring entity or his duly authorized representative shall approve or disapprove the said recommendation. In case of approval, **the head of the procuring entity or his duly authorized representative shall immediately issue the Notice of Award to the bidder with the Lowest Calculated Responsive Bid or Highest Rated Responsive Bid.** In the case of GOCCs and GFIs, the period provided herein shall be thirty (30) calendar days. Within the same period provided herein, the BAC shall notify all losing bidders of its decision.

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### 37.5. *Notice to Proceed*

The **concerned procuring entity shall then issue the Notice to Proceed together with a copy or copies of the approved contract** to the successful bidder within seven (7) calendar days from the date of approval of the contract by the appropriate government approving authority. All notices called for by the terms of the contract shall be effective only at the time of receipt thereof by the successful bidder. If an effectivity date is provided in the Notice to Proceed by the procuring entity concerned, all notices called for by the terms of the approved contract shall be effective only from such effectivity date. (Emphasis supplied)

Based from the foregoing, it may be inferred that the documents specified in the subject ND relate to the preparatory, contract award and implementation stages of procurement, which properly pertain to the end-user or procuring entity. As the party requesting procurement, it establishes







the technical specifications and standards for the supplies and services it wishes to avail, and ultimately, agrees and awards a contract to the contractor selected by the BAC. Nonetheless, this Court also acknowledges that petitioners are also members of the municipal government of Cabuyao who may shed light on the procurement process involving Golden Deer Enterprises and RDC Construction. Further, as stated above, the subject ND involves a substantial amount of government funds, specifically ₱42,594,037. Thus, in keeping with the broader interests of justice, and to make sure that both public funds and petitioners' rights are safeguarded, this Court orders the remand of the instant case to the COA for the conduct of an exhaustive investigation on the matter.

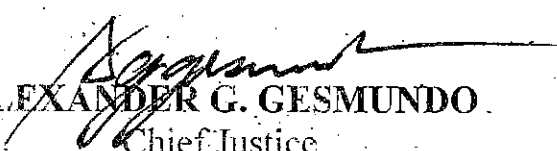
**WHEREFORE**, the instant Petition is **GRANTED**. The Decision No. 2015-223 dated 13 April 2015 and Notice dated 12 July 2016 rendered by the Commission on Audit is **REVERSED** and **SET ASIDE**. Accordingly, the case is **REMANDED** to the Commission on Audit for disposition on the merits.

**SO ORDERED.**

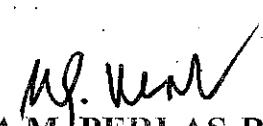
  
**RODIL V. ZALAMEDA**  
Associate Justice

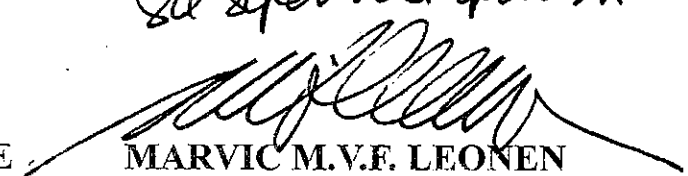


**WE CONCUR:**

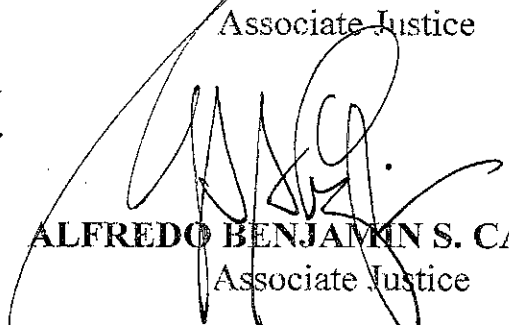
  
**ALEXANDER G. GESMUNDO**  
Chief Justice

*see separate opinion*

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice


*Please See  
Concurring  
Opinion*

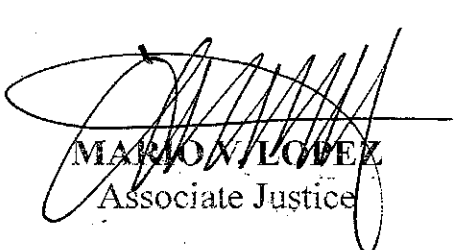
  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice


  
**RAMON PAUL L. HERNANDO**  
Associate Justice


  
**ROSALIND D. CARANDANG**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**MARION LOPEZ**  
Associate Justice

  
**SAMUEL H. GAERLAN**  
Associate Justice

  
**RICARDO R. ROSARIO**  
Associate Justice

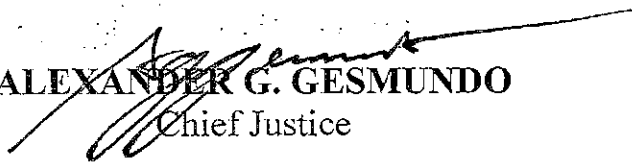
  
**JHOSEP LOPEZ**  
Associate Justice





**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.

  
**ALEXANDER G. GESMUNDO**  
Chief Justice



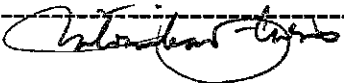


EN BANC

G.R. No. 227467 – ATTY. JOAQUIN DELOS SANTOS, ENGR. EVELYN HATULAN, and CORNELIO TAMAYO, *Petitioners*, v. COMMISSION ON AUDIT, *Respondent*.

Promulgated:

August 3, 2021

X-----  


DISSENTING OPINION

LEONEN, J.:

The Commission on Audit is bound to adhere to the fundamental requirements of due process in its proceedings. An accused should be duly informed of the charges against them and be given an opportunity to defend themselves. Failure to observe their due process rights taints the whole administrative proceedings with invalidity.

Before this Court are Atty. Joaquin Delos Santos; Engr. Evelyn M. Hatulan; and Cornelio V. Tamayo (Delos Santos, et al.), all members of the Bids and Awards Committee who, along with other local public officers<sup>1</sup> of the government of Cabuyao, Laguna, were named accountable to pay ₱42,594,037.69 under Notice of Disallowance No. 2007-036-101(04),<sup>2</sup> owing to a “suspension maturing into disallowance.”

This Notice of Disallowance was issued on November 19, 2007, well after Notice of Suspension No. 2007-002-101 (2004)<sup>3</sup> dated February 26, 2007 had lapsed. It referred to Audit Observation Memorandum No. 2004-009-101, issued on October 14, 2004, and to another Memorandum issued on September 28, 2004, both of which required the submission of pertinent documents on the Cabuyao government’s projects or contracts with Golden Deer Enterprises and RDC Construction Development Corporation.<sup>4</sup>

Delos Santos, et al. contended that they only learned about the Notice of Disallowance in 2013, when they received a Notice of Finality of Decision<sup>5</sup> and an Order of Execution<sup>6</sup> from the Commission on Audit, both dated

<sup>1</sup> *Rollo*, p.7. Proceso Aguillo (mayor), Felix L. Galang, Jr. (municipal accountant), Elena A. Estelilla (municipal treasurer), Engr. Manolito P. Barundia (building official), and Pastor Canceran, Marcelina Marana and Manolita Barundia (members of the Bids and Awards Committee).

<sup>2</sup> *Id.* at 46–48.

<sup>3</sup> *Id.* at 72–73.

<sup>4</sup> *Ponencia*, p. 2.

<sup>5</sup> *Rollo*, pp. 49–50.

<sup>6</sup> *Id.* at 51–52.







September 3, 2012. On February 21, 2013, they requested a review of these issuances and copies of the material documents so they could answer the charges against them.<sup>7</sup>

However, Regional Director Nilda M. Blanco of the Commission on Audit denied their request. She reasoned that the Notice of Disallowance showed that petitioners had received it; that the disallowance became final and executory when no appeal was filed within six months from receipt; and that a review of the issuances was not in the Rules and Regulations on Settlement of Accounts and the 2009 Revised Rules of Procedure of the Commission on Audit.<sup>8</sup>

On September 17, 2013, Delos Santos, et al. filed an Omnibus Motion, praying that the Commission on Audit set aside the Notice of Finality of Decision and the Order of Execution, release the pertinent documents, and admit their appeal. They maintained that they were denied due process for not receiving the Notice of Disallowance.<sup>9</sup>

In an April 13, 2015 Decision,<sup>10</sup> the Commission on Audit denied the Omnibus Motion. It denied Delos Santos, et al.'s claim of not receiving the Notice of Disallowance since their supposed signatures appeared on it. As such, the Commission ruled that the disallowance had become final.<sup>11</sup>

Delos Santos, et al. moved for reconsideration, but were denied on the same ground.<sup>12</sup> Hence, they filed this Petition.

Petitioners assert that the Commission on Audit gravely abused its discretion in upholding the Notice of Finality of Disallowance and the Order of Execution. They maintain that they were denied due process because they did not receive the Notice; that their signatures were forged; and that the Notice itself did not specify the projects or contracts covered. They add that there was no bids and awards committee around that time, and no records were on file with the city hall certifying that the committee existed then.<sup>13</sup>

The majority rejects petitioners' claim that they did not receive the Notice of Disallowance. It adds that they failed to prove by clear and convincing evidence that their signatures had been forged.<sup>14</sup>

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<sup>7</sup> Id. at 53–54.

<sup>8</sup> Id. at 55–56.

<sup>9</sup> Id. at 57–59.

<sup>10</sup> Id. at 60–63.

<sup>11</sup> Id. at 61–62.

<sup>12</sup> Id. at 71.

<sup>13</sup> Id. at 36.

<sup>14</sup> *Ponencia*, p. 6.



Even so, the majority holds that the case should be remanded to the Commission on Audit to conduct an exhaustive investigation on the matter and allow petitioners the opportunity to thoroughly ventilate their defenses.<sup>15</sup> To the majority, the Notice of Disallowance was defective because it did not specify the facts and law on which the Commission on Audit's conclusions were reached. Citing *Estalilla v. Commission on Audit*,<sup>16</sup> it held that the Commission on Audit should not have strictly applied the rule on immutability of judgment given the disparity in petitioners' salaries and the amount to which they are being made accountable.<sup>17</sup>

Finally, the majority finds that there must be an exhaustive investigation on the procurement process involving the two contractors, including the extent of the participation of petitioners and the responsible officers of the procuring entity in the disallowed transaction.<sup>18</sup>

I dissent.

*The Commission on Audit's outright denial of the Omnibus Motion deprived petitioners of their rights to due process, amounting to grave abuse of discretion.*

Due process in administrative proceedings demands that the tribunal properly inform a party of the charges against them, and afford them the opportunity to present their defenses and supporting evidence, which it must consider in making its decision.<sup>19</sup> The essence of due process is the opportunity to be heard.<sup>20</sup>

*In Ledesma v. Court of Appeals:*<sup>21</sup>

Due process is satisfied when a person is notified of the charge against him and given an opportunity to explain or defend himself. In administrative proceedings, the filing of charges and giving reasonable opportunity for the person so charged to answer the accusations against him constitute the minimum requirements of due process. *The essence of due process is simply to be heard, or as applied to administrative proceedings, an opportunity to explain one's side, or an opportunity to seek a reconsideration of the action or ruling complained of.*<sup>22</sup> (Citations omitted)

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<sup>15</sup> Id. at 8.

<sup>16</sup> G.R. No. 217448, September 10, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65721>> [Per J. Bersamin, En Banc].

<sup>17</sup> *Ponencia*, p. 8.

<sup>18</sup> Id.

<sup>19</sup> *Gutierrez v. Commission on Audit*, 750 Phil. 413, 430 (2015) [Per J. Leonen, En Banc].

<sup>20</sup> Id. citing *Ledesma v. Court of Appeals*, 565 Phil. 731-743 (2007) [Per J. Tinga, Second Division].

<sup>21</sup> 565 Phil. 731 (2007) [Per J. Tinga, Second Division].

<sup>22</sup> Id. at 740.

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At its basic, administrative due process is about fairness in the conduct of proceedings.<sup>23</sup> What is offensive to due process is the denial of the opportunity to be heard.<sup>24</sup>

In *Fontanilla v. Commissioner Proper*,<sup>25</sup> this Court held that the petitioner was denied due process when he had not been informed of being possibly liable for the loss of government funds and was not able to explain his side in the entire fact-finding process. The case originated from his subordinate who, after having lost public funds, requested relief from money accountability. The Regional Director denied this request, and upon review, the Adjudication and Settlement Board did the same. Curiously, only at that late stage of review was Fontanilla brought in and held solidarily liable with his subordinate.

In rejecting the Commission on Audit's contention that there was no denial of due process because Fontanilla was able to appeal, this Court held:

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

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

Time and again, we have ruled that the essence of due process is the *opportunity to be heard*. In administrative proceedings, one is heard when he is accorded a *fair and reasonable opportunity* to explain his case or is given the chance to have the ruling complained of reconsidered.<sup>26</sup> (Emphasis supplied, citations omitted)

In *Uy v. Commission on Audit*,<sup>27</sup> this Court found it unfair that the Commission on Audit held the respondent personally liable for the

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<sup>23</sup> *Vivo v. Philippine Amusement and Gaming Corp.*, 721 Phil. 34, 39 (2013) [Per J. Bersamin, En Banc].

<sup>24</sup> *Ablong v. Commission on Audit*, G.R. No. 233308, August 18, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66510>> [Per J. Reyes, Jr., En Banc]; *Busuego v. Court of Appeals*, 364 Phil. 116, 126 (1999) [Per J. Purisima, Third Division].

<sup>25</sup> 787 Phil. 713 (2016) [Per J. Brion, En Banc].

<sup>26</sup> *Id.* at 725–726.

<sup>27</sup> 385 Phil. 324 (2000) [Per J. Puno, En Banc].



petitioners' claims without giving him an opportunity to be heard and to present evidence in his defense. It held:


*Accordingly, the fundamental requirements of procedural due process cannot be violated in proceedings before the COA. In the case at bar, former Governor Paredes was never made a party to nor served a notice of the proceedings before the COA. While administrative agencies exercising quasi-judicial powers are not hidebound by technical procedures, nonetheless, they are not free to disregard the basic demands of due process. Notice to enable the other party to be heard and to present evidence is not a mere technicality or a trivial matter in any administrative proceedings but an indispensable ingredient of due process. It would be unfair for COA to hold former Governor Paredes personally liable for the claims of petitioners amounting to millions of pesos without giving him an opportunity to be heard and present evidence in his defense. Our rulings holding that public officials are personally liable for damages arising from illegal acts done in bad faith are premised on said officials having been sued both in their official and personal capacities.*<sup>28</sup> (Emphasis supplied, citations omitted)

Here, petitioners claim being denied due process as they were not given a copy of the Notice of Disallowance, and the first time they learned of it was when they received the Notice of Finality of Decision and Order of Execution. The Notice did not specify the covered projects or transactions, but merely referred to the Notice of Suspension and two Memoranda, copies of which were likewise not furnished to petitioners.<sup>29</sup> The Commission on Audit, however, brushed aside their claims simply because of the purported signatures appearing beside their names in the Notice.<sup>30</sup>

At the very least, the Commission on Audit should have verified whether the signatures appearing on the Notice were indeed petitioners'. If petitioners' disclaimers were true, then the failure to file an appeal within the prescribed period would not have been their fault. The disallowance, therefore, could not have attained finality.

Parenthetically, the majority has found the Notice of Disallowance itself to be defective for failure to specify the facts and the law on which the charges were made.

Petitioners were also not given a *real* opportunity to present their side.

After receiving the issuances, petitioners immediately sought their review and copies of the documents material to the case. Yet, their request was denied since the disallowance had already become final. 

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<sup>28</sup> Id. at 337.

<sup>29</sup> *Rollo*, pp. 13–14, 33.

<sup>30</sup> Id. at 61.





Petitioners still moved for the Commission on Audit to set aside the issuances, release the documents, and admit their appeal. Yet again, their Omnibus Motion was denied on the ground of the disallowance's finality.

Petitioners were utterly denied due process before being held liable. They were neither afforded the opportunity to defend their interests nor furnished with the material documents they requested, foreclosing their efforts to know the available remedies and adequately prepare for plausible defenses. As *Buscaino v. Commission on Audit*<sup>31</sup> teaches, due process mandates that "every respondent be apprised of the nature and cause of the charge against [them], and the evidence in support thereof be shown or made available to [them] so that [they] can meet the charge with traversing or exculpatory evidence."<sup>32</sup> That was not the case here.

Petitioners' appeal was not even admitted and ruled on its merits. Considering the significant amount involved, the Commission on Audit should have endeavored not only to investigate whether petitioners were indeed served copies of the Notice of Disallowance, but more important, to determine the substantive aspect of their participations in the disallowed transactions and projects.

What made a thorough review more impelling were petitioners' allegations that: (1) the mayor had been excluded by the Regional Director from liability for merely approving the payments and ensuring the completeness of documents with the municipal accountant;<sup>33</sup> (2) no bids and awards committee was constituted at that time;<sup>34</sup> and (3) there were no records on file with the city hall that the committee existed.<sup>35</sup>

Procedural rules cannot outweigh one's constitutionally guaranteed rights.<sup>36</sup> Yet, here, the Commission on Audit *blindly* adhered to the procedural rules when it denied petitioners' appeal on the ground that the Notice of Disallowance had become final.

In *Bangko Sentral ng Pilipinas v. Commission on Audit*,<sup>37</sup> this Court stressed that the Commission on Audit's mandate to examine, audit, and settle government accounts and funds does not give it the authority to disregard the basic requirements of due process. Its action in that case was found to be tainted with grave abuse of discretion. Said this Court:

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<sup>31</sup> 369 Phil. 886 (1999) [Per J. Purisima, En Banc].

<sup>32</sup> *Buscaino v. Commission on Audit*, 369 Phil. 886, 902 (1999) [Per J. Purisima, En Banc].

<sup>33</sup> *Rollo*, pp. 17–18.

<sup>34</sup> *Id.* at 39.

<sup>35</sup> *Id.* at 36.

<sup>36</sup> *Fontanilla v. Commissioner Proper*, 787 Phil. 713 (2016) [Per J. Brion, En Banc].

<sup>37</sup> 818 Phil. 429 (2017) [Per J. Leonen, En Banc].



*It was an error amounting to grave abuse of discretion to hold Yap liable, and Dequita and the other bank officers of the Cotabato Branch jointly and solidarily liable with Yap for the cash shortage without an actual complaint being filed and without giving them the chance to defend themselves. Thus, the assailed Decision violated the basic tenets of due process and must be annulled and set aside.*<sup>38</sup> (Emphasis supplied)

This Court has recognized certain justifications to suspend the rigid application of procedural rules, including the rule on immutability of judgments, such as:

(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) lack of any showing that the review sought is merely frivolous and dilatory; and (f) the other party will not be unjustly prejudiced thereby.<sup>39</sup> (Citations omitted)

In *Lanto v. Commission on Audit*,<sup>40</sup> this Court set aside the Commission on Audit's decision, despite its immutability, insofar as the petitioner's personal liability for the disallowance was concerned. This Court considered his right to property, the existence of compelling circumstances, and the merits of the case as sufficient justifications:

First of all, the adverse result would surely make her personally liable for a substantial sum of monetary liability from which she had not directly benefited, thereby prejudicing her right to property.

Secondly, the petitioner's good faith in certifying to the correctness of the payrolls based on *available* records about Labrador having actually reported to work, and on her absolute lack of knowledge of his having been dismissed and of the pendency of the criminal case in the Sandiganbayan constituted compelling circumstances that justified applying the exception in her favor. . . .

. . . .

And, thirdly, the fact that the petitioner was on foreign assignment when the COA rendered the assailed issuances plausibly explained why she did not seasonably assail or oppose the disallowances. We point out that the insistence of the COA that the POEA had filed in her behalf a motion for reconsideration during her absence from the country on a foreign assignment without the indication that she had expressly authorized the POEA to do so did not suffice to now defeat her right to be heard. Verily, only she could have exercised the right to be heard upon a matter that would subject her under the law to *personal* liability.

In light of the foregoing circumstances, the COA's directive to withhold the petitioner's salary was void and produced no legal effect. As

<sup>38</sup> *Bangko Sentral ng Pilipinas v. Commission on Audit*, 818 Phil. 429, 453 (2017) [Per J. Leonen, En Banc].

<sup>39</sup> *Lanto v. Commission on Audit*, 808 Phil. 1025, 1038 (2017) [Per J. Bersamin, En Banc].

<sup>40</sup> 808 Phil. 1025 (2017) [Per J. Bersamin, En Banc].



such, the assailed COA issuances did not attain finality and immutability as to her.<sup>41</sup> (Citations omitted)


More recently, in *Ablong v. Commission on Audit*,<sup>42</sup> this Court has set aside the Commission on Audit's decision for violating a party's due process rights. We said:

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."<sup>43</sup> (Citations omitted)

Here, the Commission on Audit should have taken cognizance of petitioners' appeal in the interest of substantial justice. Since the sum involved amounts to ₱42,594,037.69, upholding the disallowance without giving petitioners any opportunity to present their defense and adduce evidence has denied them their right to due process.

The right to due process, in demanding fairness, intends liberty from arbitrariness.<sup>44</sup> A decision made in violation of a party's right to due process is gravely defective,<sup>45</sup> making the assailed proceeding wholly void.<sup>46</sup>

**ACCORDINGLY**, I vote to **GRANT** the Petition.

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

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<sup>41</sup> Id. at 1039–1040.

<sup>42</sup> G.R. No. 233308, August 18, 2020, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66510>> [Per J. Reyes Jr., En Banc].

<sup>43</sup> Id.

<sup>44</sup> *Philippine National Construction Corp. v. NLRC*, 354 Phil. 274, 282 (1988) [Per J. Romero, Third Division].

<sup>45</sup> Id. at 280.

<sup>46</sup> *Combate v. San Jose, Jr.*, 220 Phil. 365, 369 (1985) [Per J. Melencio-Herrera, First Division].



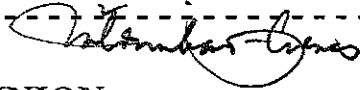
EN BANC

G.R. No. 227467 – ATTY. JOAQUIN DELOS SANTOS, ENGR. EVELYN M. HATULAN and CORNELIO V. TAMAYO, *petitioners*, versus COMMISSION ON AUDIT, *respondent*.

Promulgated:

August 3, 2021

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CONCURRING OPINION

CAGUIOA, J.:

I concur.

As aptly observed in the *ponencia*, a remand of the case to the Commission on Audit (COA) is proper and just despite the finality of the subject Notice of Disallowance (ND), on the following grounds: (a) the ND was an insufficient notice of the petitioners' liability (merely citing as it did a previous "suspension maturing into disallowance" without further details); (b) this case is similar to *Elena A. Estalilla v. COA*,<sup>1</sup> where the Court noted the disparity between the disallowed amount and therein petitioner Elena Estalilla's salary, and the COA's denial of her request for access to documents relating to the disallowance, treating these as exceptions to the rule on immutability of judgments; and (c) the disallowance is not based on a supposed positive act of the petitioners which violated procurement rules, but on their failure to timely submit relevant documents to aid COA's audit.

The *ponencia* further notes that the documents requested by the COA and which petitioners were not able to submit —

**x x x [r]elate to the preparatory, contract award and implementation stages of procurement, which properly pertain to the end-user or procuring entity. As the party requesting procurement, it establishes the technical specifications and standards for the supplies and services it wishes to avail, and ultimately, agrees and awards a contract to the contractor selected by the BAC. Nonetheless, this Court also acknowledges that petitioners are also members of the municipal government of Cabuyao who may shed light on the procurement process involving Golden Deer Enterprises and RDC Construction.<sup>2</sup> (Emphasis supplied)**

As regards the responsibilities of the Bids and Awards Committee (BAC), the *ponencia* also notes that:

<sup>1</sup> G.R. No. 217448, September 10, 2019.

<sup>2</sup> *Ponencia*, p. 17.







The BAC is responsible for vetting and recommending the contractor to the procuring entity. x x x

x x x x

In *Joson v. COA*, this Court explained that the role of the BAC is [to] determine the eligibility of the prospective bidders based on their compliance with the eligibility requirements set forth in the Invitation to Bid and their submission of the legal, technical and financial documents required under Sec. 23.6, Rule VIII of the Implementing Rules and Regulations of R.A. No. 9184.

**Indeed, under the IRR-A of R.A. No. 9184, the requirements for eligibility to bid, contract documents, and those pertaining to its implementation, fall within the responsibilities of the procuring entity[.] x x x<sup>3</sup> (Emphasis supplied and citation omitted)**

I submit that an investigation by the COA of petitioners herein who are members of the BAC is proper not merely because of their capability to “shed light” on the procurement process, but precisely because it is the BAC — among the offices within the procuring entity — which takes a central role in any procurement and would undoubtedly participate in the preparation and issuance of all procurement-related documents.

Section 5 of the 2003 Implementing Rules and Regulations Part A (IRR-A) of Republic Act (R.A.) No. 9184<sup>4</sup> defines the procuring entity and the head of the procuring entity as follows:

x x x x

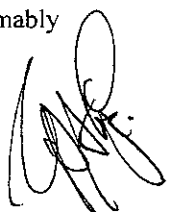
- m) Head of the Procuring Entity. Refers to: (i) the head of the agency or body, or his duly authorized official, for NGAs and the constitutional commissions or offices, and branches of government; (ii) the governing board or its duly authorized official, for GOCCs, GFIs and SUCs; or (iii) the local chief executive, for LGUs: *Provided, however*, That in an agency, department, or office where the procurement is decentralized, the Head of each decentralized unit shall be considered as the head of the procuring entity subject to the limitations and authority delegated by the head of the agency, department, or office.

x x x x

- q) Procuring Entity. Refers to any branch, constitutional commission or office, agency, department, bureau, office, or instrumentality of the Government, including GOCC, GFI, SUC and LGU procuring Goods, Consulting Services and Infrastructure Projects.

<sup>3</sup> Id. at 14-15.

<sup>4</sup> The GOVERNMENT PROCUREMENT REFORM ACT, approved on January 10, 2003. Presumably applicable during the transactions subject of this case, since the disallowance was issued in 2007.





In this case, the procuring entity is the Municipal Government of Cabuyao, Laguna. The BAC, as part of the municipal government, is composed of representatives of the regular offices under the Office of the Local Chief Executive, designated as such by the local chief executive (in this case, the mayor).<sup>5</sup> Within the framework of the municipal government, the BAC is in fact the office which is expected to maintain expertise in procurement laws and rules. As also noted in the *ponencia*, the BAC is “responsible for ensuring that the procuring entity abides by the standards set forth by [R.A. No. 9184] and this IRR-A x x x.”<sup>6</sup> Therefore, when the IRR-A of R.A. No. 9184 states that the “[b]idding [d]ocuments shall be prepared by the procuring entity following the standard forms and manuals prescribed by the [Government Procurement Policy Board],”<sup>7</sup> it is the BAC that is expected to be primarily involved in said preparation.

In fact, the IRR-A gives the BAC the lead role in the conduct of procurement activities, citing the following among its duties: (a) advertising/posting the Invitation to Bid<sup>8</sup> (one of the documents requested by the auditor in this case); (b) issuance of the bidding documents to prospective bidders upon payment of the cost thereof;<sup>9</sup> (c) issuance of Supplemental Bid Bulletins which may involve changes in the bidding documents;<sup>10</sup> and even (d) declaring a failure of bidding and conducting a re-bidding.<sup>11</sup>

Furthermore, Section 14.1 of the 2003 IRR-A of R.A. No. 9184 tasks the BAC Secretariat, which is the main support unit of the BAC, with the following duties:

x x x x

5. Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;

x x x x

<sup>5</sup> Section 11.2.2 of the 2003 IRR-A of R.A. No. 9184 states:

11.2.2. Local Government Units

The BAC shall be composed of one (1) representative each from the regular offices under the Office of the Local Chief Executive such as, but not limited to the following: Office of the Administrator, Budget Office, Legal Office, Engineering Office, General Services Offices. The end user office shall always be represented in the BAC. The Chairman of the BAC shall be at least a third ranking permanent official of the procuring entity. The members of the BAC shall be personnel occupying *plantilla* positions of the procuring entity concerned.

The local chief executive shall designate the members of the BAC. The members shall elect among themselves who shall act as the Chairman and Vice-Chairman. Subsequent iterations of the IRR in 2009 and 2016 retain essentially the same language as the above.

<sup>6</sup> *Ponencia*, p. 15, citing Section 12.2 of the 2003 IRR-A of R.A. No. 9184.

<sup>7</sup> 2003 IRR-A of R.A. No. 9184, Section 17.1.

<sup>8</sup> *Id.*, Section 12.1.

<sup>9</sup> *Id.*, Section 17.5.

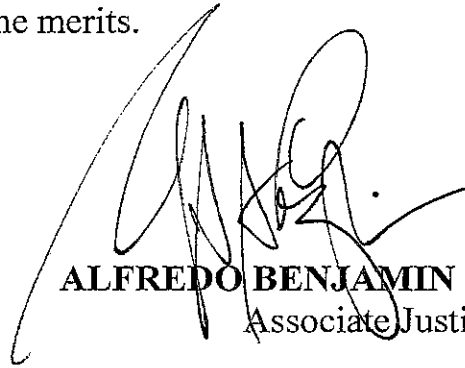
<sup>10</sup> *Id.*, Section 22.5.1.

<sup>11</sup> *Id.*, Sections 35.1 and 35.2.



10. Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public.

Given the foregoing, I agree with the *ponencia* that, in keeping with the broader interests of justice, petitioners-members of the BAC should be allowed an opportunity to ventilate their defenses fully and argue the regularity of the subject procurements. Hence, the case should be remanded to the COA for disposition on the merits.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

