RECENT JURISPRUDENCE

POLITICAL LAW

LUIS RAYMUND VILLAFUERTE, JR. *v.* COMMISSION ON AUDIT

G.R. NO. 246053, 27 APRIL 2021, *EN BANC*, (ZALAMEDA, *J.*)

DOCTRINE OF THE CASE

The Court, in the recent case of Torreta v. Commission on Audit, formulated the guidelines for the return of disallowed amounts in cases involving disallowance in government contracts, to wit:

1. *If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.*

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 the 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.

   b. Pursuant to Section 43 of the Administrative Code of 1987, approving and certifying officers who are clearly shown to have acted with bad faith, malice, or gross negligence, are solidarily liable together with the recipients for the return of the disallowed amount.

   c. The civil liability for the disallowed amount may be reduced by the amounts due to the recipient based on the application of the principle of quantum meruit on a case-to-case basis.

d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.

The above guidelines were a recalibration of the rules of return in Madera v. Commission on Audit after taking into consideration the peculiarity of cases involving government procurement contracts for goods or services.

Villafuerte, Jr.'s actuations were grossly negligent amounting to bad faith when he approved the transaction despite noncompliance with procurement laws and the glaring deficiencies in the requirements needed to process the transaction. Gross inexcusable negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It may become evident through the noncompliance of an approving or authorizing officer of clear and straightforward requirements of laws or rules, which because of their clarity and straightforwardness, only call for one reasonable explanation.

FACTS

The PG-CamSur determined the need for the procurement of a shipping vessel for the promotion of the tourism industry in the province. The Provincial General Services Officer (PGSO) Bernardo A. Prila prepared a purchase request (PR) recommending the purchase of a shipping vessel with a minimum carrying capacity of 82 passengers and an estimated cost of Php8,500,000.00. The PR was signed by PGSO Prila, certified by Provincial Treasurer Mario T. Alicaway, and approved by Luis Raymund Villafuerte, Jr. (Villafuerte, Jr.) as Provincial Governor.

The Provincial Bids and Awards Committee (BAC) issued a Resolution adopting direct contracting as the alternative mode of procurement for the shipping vessel. The PG-CamSur chose the offer made by Regina Shipping Lines, Inc. (Regina Shipping) for the sale of its vessel, MV Princess Elaine, in the amount of Php8,500,000.00. After issuance of a purchase order, the PG-CamSur made a partial payment to Regina Shipping in the amount of Php4,250,000.00.

On post-audit, the Audit Team Leader and Supervising Auditor of Camarines Sur Province (auditors) found that vital documents evidencing the transaction for the sale of the shipping vessel were not attached to the

disbursement voucher. As a result thereof, a Notice of Suspension (NS) was issued requesting the submission of several requirements. Subsequently, a Notice of Disallowance (ND) was issued disallowing the partial payment because of the failure of the PG-CamSur to settle the deficiencies noted, as well as to sufficiently answer the issues in the assailed transaction. The transaction was considered an illegal and irregular transaction because it was an advance payment on the shipping vessel. Furthermore, PG-CamSur failed to provide the necessary documents to warrant the use of direct contracting as the mode of procurement.

Aggrieved by the issuance of the ND, Villafuerte, Jr., among others, filed an appeal with the COA Regional Office (COA RO). The COA RO denied the appeal on November 5, 2012. The COA Proper, on December 29, 2015, dismissed the petition for review filed by Villafuerte, Jr. for being filed out of time. It ruled that while the first motion for extension for 60 days was granted, the second motion for extension they filed was denied. Accordingly, the period to file their petition for review was set until January 14, 2013. However, the petition for review was filed through registered mail only on February 11, 2013 and was received by the COA Proper only on February 27, 2013. The motion for reconsideration was subsequently denied.

Villafuerte, Jr. contends that the present case is the third time he has been vexed over the same allegations of facts and issues on the purchase of MV Princess Elaine. The Ombudsman (OMB) issued a Joint Resolution finding no probable cause against him for violation of Sections 3(e) and (g) of RA 3019. The same Resolution also dismissed the administrative charges against him for said purchase. Also, the OMB rendered a Consolidated Resolution dismissing criminal and administrative charges against him over the alleged advance payment for MV Princess Elaine.

ISSUES

(1) Should the case be dismissed following Villafuerte, Jr.'s release of liability from cases filed before OMB?
(2) Did Villafuerte, Jr., timely file their petition for review before the COA Proper?
(3) Was Villafuerte, Jr. able to justify the act of direct contracting?
(4) Should Villafurte, Jr. be held personally liable for the Notice of Disallowance?

RULING

(1) **NO.** Well-settled is the rule that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer. According to this "threefold liability rule," a public officer may be held civilly liable to reimburse the injured party if his wrongful acts or omissions result in damages. If the law violated attaches a penal sanction, the erring officer may also be punished criminally. Lastly, such violation may also lead to administrative sanctions if disciplinary measures are warranted based on evaluation of the conduct of the public official. Actions resulting from each of these liabilities may proceed independently of one another, as in fact, the quantum of evidence required in each case is different.

Thus, there is no merit in Villafuerte, Jr.'s contention that the present case should be dismissed following his release of liability from the cases filed before the OMB covering the same factual milieu.

(2) **NO.** According to The Revised Rules of Procedure of the Commission on Audit, 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. With respect to an appeal from Director to Commission Proper, the appeal shall be taken within the time remaining of the six (6) months period.

As correctly pointed out by the COA Proper, Villafuerte, Jr. failed to appeal within the reglementary period as can be seen in the following timeline:

Date of receipt of Notice of Disallowance	September 27, 2010
Date the appeal was filed before the Regional Director (COA RO)	March 25, 2011
Number of days elapsed	178 days
Date of receipt of COA RO Decision	November 13, 2012

Date of original deadline to file a Petition for Review	November 15, 2012
Date of filing of Motion for a 60 days (sic) Extension	November 14, 2012
Date of new deadline for filing a Petition for Review	January 14, 2013

Villafuerte, Jr. filed his petition for review before the COA Proper on February 11, 2013, which was after the new deadline for filing the petition. While such filing is argued to have been within the extended period prayed for in the second motion for extension, they should not have expected for an automatic grant of the extension.

Generally, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional. The failure to perfect the appeal renders the assailed judgment final and executory. This is in alignment with the doctrine of finality of judgment or immutability of judgment.

While there are some instances allowing for the relaxation of procedural rules, 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) 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, none of these recognized exceptions are present in this case.

At any rate, even if the Court brushes aside the procedural rules surrounding the perfection of its appeal, the case of Villafuerte, Jr. will still fail.

(3) **NO.** Under Section 50 of RA 9184, direct contracting may only be resorted to in any of the following conditions: (a) Procurement of Goods of proprietary nature, which can be obtained only from the proprietary source; (b) When the Procurement of critical components from a specific manufacturer, supplier or distributor is a condition precedent to hold a contractor to guarantee its project performance, in accordance with the provisions of his contract; or, (c)

Those sold by an exclusive dealer or manufacturer, which does not have sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government.

None of the above requisites are extant in this case. The ship or vessel procured is not of a proprietary nature obtained only from a proprietary source. There are no patents, trade secrets or copyright prohibiting other suppliers of a ship. Procuring the vessel from Regina Shipping is also not a condition precedent to hold any contractor to guarantee project performance. Lastly, Regina Shipping is not an exclusive dealer or manufacturer not having sub-dealers selling at lower prices and for which no suitable substitute can be obtained at more advantageous terms to the government. Hence, the COA did not act with grave abuse of discretion in sustaining the Notice of Disallowance disallowing the partial payment amounting to Php4,250,000.00 as the resort to the alternative mode of direct contracting was unjustified.

(4) **YES.** The Court, in the recent case of *Torreta v. Commission on Audit*, formulated the guidelines for the return of disallowed amounts in cases involving disallowance in government contracts, to wit:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

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> d. These rules are without prejudice to the application of the more specific provisions of law, COA rules and regulations, and accounting principles depending on the nature of the government contract involved.

The above guidelines were a recalibration of the rules of return in *Madera v. Commission on Audit* after taking into consideration the peculiarity of cases involving government procurement contracts for goods or services.

Villafuerte, Jr.'s actuations were grossly negligent amounting to bad faith when he approved the transaction despite noncompliance with procurement laws and the glaring deficiencies in the requirements needed to process the transaction. Gross inexcusable negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. It may become evident through the noncompliance of an approving or authorizing officer of clear and straightforward requirements of laws or rules, which because of their clarity and straightforwardness, only call for one reasonable explanation.

No badge of good faith can also be appreciated in Villafuerte, Jr.'s favor despite his claim of application of the doctrine in *Arias v. Sandiganbayan* considering the blatant disregard of procurement laws and rules he himself invoked. The flagrant deficiencies in the requirements and the patent disregard of the general rule for competitive bidding constitutes extraordinary circumstances that should have prompted him to look more closely at the legal and documentary requirements for the transaction. Instead, he readily approved the transaction without so much as an inquiry on the use of an alternative mode of procurement and without demanding for the completeness of the documentary requirements. The sheer number of missing supporting documents should have alerted him to require further verification from his subordinates.

Undoubtedly, there is a clear showing of gross negligence on the part of Villafuerte, Jr. for his failure to exercise the slightest care and with a conscious

indifference in the discharge of his duties coupled with the lack of any badge of good faith available to his case. Hence, his solidary liability for the disallowed amount should remain.

The principle of quantum meruit cannot likewise apply in this case to reduce their liability.

In *Lazaro v. Commission on Audit*, the Court held that when asserting limited or absence of liability based on the principles of quantum meruit and good faith, petitioners, in good diligence, must clearly allege and support the factual basis for their claims. It is not the Court's burden to construe incomplete submissions and vague narrations of petitioners to determine if their assertions have merit.

In the case at bar, there was no sufficient proof adduced to show how the purchase of MV Princess Elaine actually redounded to the benefit of the PG-CamSur allowing for the application of the principle of quantum meruit to reduce the liability of the persons named in the assailed ND. Coupled with the finality of the Decision rendered by the COA RO V for failure to timely file an appeal, as well as the finding of gross negligence, the Court saw no reason to reverse or modify the assailed Decision and Resolution without disregarding the doctrine of immutability of judgment.

DEVELOPMENT BANK OF THE PHILIPPINES VS. COMMISSION ON AUDIT

G.R. NO. 247787, 02 MARCH 2021, *EN BANC*, (M.V. LOPEZ, *J.*)

DOCTRINE OF THE CASE

The doctrine of immutability of a final judgment places emphasis on the fact that no other action can be taken on a Decision except to order its execution. Meaning, the Courts cannot modify a judgment to correct perceived errors of law or fact. There are, however, exceptions to the rule, such as the correction of clerical errors, nunc pro tunc entries, void judgments, and supervening events. Absent any exception, the rule stands that every litigation must come to an end at the risk of occasional errors.

Here, the COA lifted the notice of disallowance on February 1, 2012 and the DBP received the copy of the said Decision on February 6, 2012 and it has 30 days or until March 7, 2012 to move for a reconsideration or file a petition to the Supreme Court. Pagaragan's letters which were treated by COA as motion for reconsideration were filed only on March 27, 2012 which was well beyond the 30-day reglementary period. Hence, the COA has no jurisdiction to entertain Pagaragan's letters given that the Decision dated February 1, 2012 has become final and executory absent a timely motion for reconsideration or appeal.

FACTS

In 2006, the Board of Directors of the Development Bank of the Philippines (DBP) granted salary increases to its eight senior officers pursuant to its 1999 compensation plan. Later, the supervising auditor disallowed the amount because the DBP's compensation plan lacked prior approval from the Office of the President. On appeal of the notice of disallowance, the Commission on Audit (COA) Cluster Director denied the same.

As a result, the DBP filed a petition for review before the COA and invoked the memorandum where former President Macapagal-Arroyo approved the implementation of its compensation plan from 1999 onward. The COA granted the petition and lifted the notice of disallowance in a Decision dated February 1, 2012 (subject decision).

The DBP received a copy of the COA Decision but did not file any motion for reconsideration or a petition to the Supreme Court. Mario P. Pagaragan (Pagaragan), the Vice President/Officer-in-Charge of DBP's Program Evaluation Department, submitted confidential letters to the COA asking to reconsider the

Decision invoking that Section 261 (g) (2) of the Omnibus Election Code prohibits the grant of salary increase within 45 days before a regular election. As such, President Arroyo's post facto approval of DBP's compensation plan was deemed void as it was made within the 45-day period before the May 10, 2010 elections.

The COA reversed its prior Decision, treating the letter sent by Pagaragan as a motion for reconsideration pursuant to Section 10, Rule X of the 2009 Revised Rules of Procedure of COA. The DBP sought reconsideration on the ground that the subject Decision of COA has become final and executory and that Pagaragan was neither a party to the case nor entitled to any remedy. The COA party granted the motion but sustained the disallowance. Hence, the DBP filed a Petition for *Certiorari* before the Court.

ISSUES

(1) Is Pagaragan a real party in interest or an aggrieved party in the case?
(2) Is the COA guilty of unjustified delay?
(3) Is the COA's Decision dated February 1, 2012 already final and executory?

RULING

(1) **NO.** The Court provided that judicial review may be exercised only when the person challenging the act has the requisite legal standing, which pertains to a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement.

The Court has previously ruled that taxpayers, legislators, or concerned citizens filing suits in tax cases must claim some kind of injury-in-fact and allege that the continuing act has denied them some right or privilege to which they are entitled. In line with this, Rule VII, Sec. 1 of the COA Rules defines an aggrieved party as "the party aggrieved by a decision of the Director or the ASB who may appeal to the Commission Proper." Such presupposes that the movant or appellant is a party to the original proceedings that gave rise to the assailed decision, order or ruling.

Here, the Court ruled that Pagaragan is not a real party in interest or an aggrieved party who is entitled to file a motion for reconsideration. To begin with, the Court also indicated that the allowance or disallowance of the salary increases will not affect Pagaragan in that the lifting of such notice will not prejudice him as the money given to the senior officers did not come from his personal funds but from DBP.

Conversely, if the disallowance is sustained, the senior officers will bear the consequence of returning the remunerations.

More importantly, Pagaragan was not a party to the original proceedings and merely came into the picture when the COA lifted the notice of disallowance. In effect, he is not an aggrieved party who may appeal the COA Decision or Resolution as gleaned from the COA Rules.

(2) **YES.** Sec. 16, Art. III of the 1987 Constitution is clear that all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies. In other words, any party, regardless of the nature of the case, may demand expeditious action on all officials who are tasked with the administration of justice.

The Court noted that the right to a speedy disposition of a case is deemed violated only when vexatious, capricious, and oppressive delays attended the proceedings. As such, several factors must be considered, including the length of the delay, the reasons for the same, the assertion or failure to assert such right, and the prejudice it caused by the delay.

In this case, the COA is guilty of unjustified delay. In relation to the submission of confidential letters in March 2012 to the COA for reconsideration, the latter took more than three years or until April 2015 to act on the letters and reverse its February 1, 2012 Decision. In July 2015, the DBP filed a motion for reconsideration, which took COA almost four years or until June 14, 2019 to resolve the motion. There was no justification for both delays. On its part, the DBP was able to assert the right to speedy disposition of the case. The delay caused by COA prejudiced the rights of DBP as an institution and that of the senior officers whose salary increases are suspended and the possibility of being required to reimburse the amount has been hanging over their head like a sword of Damocles.

(3) **YES.** The doctrine of immutability of a final judgment emphasizes that no other action can be taken on a Decision except to order its execution. Meaning, the Courts cannot modify a judgment to correct perceived errors of law or fact. However, there are exceptions to the rule, such as the correction of clerical errors, *nunc pro tunc* entries, void judgments, and supervening events. Absent any exception, the rule stands that every litigation must come to an end at the risk of occasional errors.

The COA Rules of Procedure is explicit that the Commission's Decision or Resolution shall become final and executory after 30 days from notice unless a motion for reconsideration or an appeal to the Supreme Court is filed. This is in line with the 2009 Rules and Regulations on the Settlement of Accounts and P.D. No. 1445.

Here, the COA lifted the notice of disallowance on February 1, 2012 and the DBP received the copy of the said Decision on February 6, 2012 and it has 30 days or until March 7, 2012 to move for a reconsideration or file a petition to the Supreme Court. Pagaragan's letters which were treated by COA as motion for reconsideration were filed only on March 27, 2012 which was well beyond the 30-day reglementary period. Hence, the COA has no jurisdiction to entertain Pagaragan's letters given that the Decision dated February 1, 2012 has become final and executory absent a timely motion for reconsideration or appeal.

EQUITABLE PCI BANK, INC. (NOW BANCO DE ORO UNIBANK, INC.) *v.* SOUTH RICH ACRES, INC., ET AL.

G.R. NO. 202384, 04 MAY 2021, *EN BANC*, (INTING, *J.*)

DOCTRINE OF THE CASE

In police power, while the regulation affects the right of ownership, none of the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. However, when there is already a taking or confiscation of private property for public use, the State is no longer exercising police power, but eminent domain for which just compensation must be paid.

In this case, before the enactment of the city ordinance, SRA and Top Service retained ownership of the parcels of land. There is nothing in the records to show that the subject lots have been donated or conveyed to, or legally acquired by the City of Las Piñas. In fact, the City of Las Piñas did not contest SRA and Top Service's ownership of the parcels of land prior to the city ordinance's enactment.

FACTS

In 1997, the Sangguniang Panlungsod of the City of Las Piñas enacted a City Ordinance, which declared the whole length of Marcos Alvarez Avenue from Congressman Felimon C. Aguilar Avenue to the boundary of the Municipality of Bacoor, Province of Cavite as a public road.

South Rich Acres, Inc. (SRA) and Top Service, Inc. (Top Service) filed a Petition for Declaratory Relief and Damages with a Prayer for Preliminary Injunction with the Regional Trial Court (RTC) against the City of Las Piñas, seeking to annul City Ordinance. SRA alleged to be the present legal owner of the seven parcels of land mentioned in the City Ordinance, having acquired the subject lots from Top Service through a legal assignment. It further alleged that other landowners and developers whose properties would necessarily make access through Marcos Alvarez Avenue had secured a right of way authority and paid compensation to them.

In its Answer, the City of Las Piñas did not deny that the subject lots were private properties. However, it asserted that Marcos Alvarez Avenue was already government property, having been withdrawn from the commerce of man as an open space. Royal Asia Multi-Properties, Inc. (RAMPI) filed a Motion for Leave

of Court to File Answer in Intervention on the ground that it has legal interest in the upholding of the validity and constitutionality of City Ordinance because SRA and Top Service had been unjustifiably demanding payment from them for the use of Marcos Alvarez Avenue. During the proceeding, Equitable PCI Bank, Inc. (EPCIB) substituted RAMPI because all the rights and interests over the Royal South Subdivision had already been transferred, conveyed, and assigned by RAMPI to EPCIB. Likewise, the Register of Deeds of Las Piñas was directed to annotate a notice of *lis pendens* in all the titles of Royal South Subdivision project.

The RTC, first, declared the City Ordinance as invalid and unconstitutional for taking the property without just compensation; and second, denied the claim of SRA and Top Service for damages against EPCIB for lack of merit. It also denied the motion of BDO, formerly EPCIB, to lift or cancel the notice of *lis pendens* on all certificates of title covering the affected subdivision properties

On appeal, the CA affirmed the RTC's decision and found that the lots of SRA and Top Service were neither expropriated nor date in favor of the City of Las Piñas. Hence, there was a violation of the right against confiscation of property without just compensation. The CA also dismissed the invocation of BDO, formerly EPCIB, that the city ordinance is constitutional since it was an exercise of police power which does not require the payment of just compensation. According to the CA, the taking and confiscation of private property for public use is not the use of police power but of eminent domain. As for the *lis pendens,* the CA found the annotation of notice of *lis pendens* improper to all the properties. Only the particular properties may be covered by the notice of *lis pendens* and not all.

Hence, this petition.

ISSUES

(1) Is the City Ordinance enacted by Sangguniang Panlungsod of the City of Las Piñas constitutional?
(2) Is the cancellation of the Notice of *Lis Pendens* on all the TCTs of the Royal South Subdivision Project of BDO proper?

RULING

(1) **NO.** The Court found the City Ordinance as unconstitutional for being an invalid exercise of police power.

Police power is defined as "the inherent power of the State to regulate or to restrain the use of liberty and property for public welfare." Thus, "under the police power of the State, 'property rights of individuals may be subjected to restraints and burdens in order to fulfill the objectives of the government.'" However, "police power does not involve the taking or confiscation of property, with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting peace and order and of promoting the general welfare; for instance, the confiscation of an illegally possessed article, such as opium and firearms."

On the other hand, eminent domain is defined as "the inherent power of the State to take or appropriate private property for public use." It must be emphasized, however, that as provided under Section 9, Article III of the 1987 Constitution, "private property should not be taken for public use without just compensation." Thus, the exercise of eminent domain requires the payment of just compensation to the owner.

In police power, while the regulation affects the right of ownership, none of the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. However, when there is already a taking or confiscation of private property for public use, the State is no longer exercising police power, but eminent domain for which just compensation must be paid.

In this case, before the enactment of the city ordinance, SRA and Top Service retained ownership of the parcels of land. There is nothing in the records to show that the subject lots have been donated or conveyed to, or legally acquired by the City of Las Piñas. In fact, the City of Las Piñas did not contest SRA and Top Service's ownership of the parcels of land prior to the city ordinance's enactment.

Given the foregoing, the Court found that the declaration of the entirety of Marcos Alvarez Avenue as a public road despite the fact that the subject lots are owned by SRA is an act of unlawful taking of SRA's property. While BDO argued that the enactment of City Ordinance is for the benefit of the public particularly the residents of Las Piñas and Cavite, the constitutional prohibition

on the taking of private property for public use without just compensation prevented the City of Las Piñas from doing so.

(2) **YES.** A litigant may avail himself of the notice of *lis pendens* in any of the following case: (a) an action to recover possession of real estate; (b) an action to quiet title thereto; (c) an action to remove clouds thereon; (d) an action for partition; and (e) any other proceedings of any kind in Court directly affecting the title to the land or the use or occupation thereof or the building thereon.

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SRA's argument that the order of the RTC to annotate the notice of *lis pendens* on BDO's titles has attained finality, and thus, can no longer be cancelled, is erroneous. As expressly provided under Section 77 of PD 1529, before final judgment, the notice of *lis pendens* may be cancelled upon order of the court after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded. On the other hand, after final judgment, the notice of *lis pendens* is rendered functus officio. Thus, under Section 77 of PD 1529, in cases where there is already a final judgment, the notice of *lis pendens* may be cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.

The Court found that the annotation of the notice of *lis pendens* on BDO's titles is improper because the lots owned by BDO are not the properties subject of litigation in this case and the annotation of the notice of *lis pendens* on BDO's titles is not necessary to protect the rights of SRA. As correctly ruled by the CA, the issue involved in this case is the constitutionality of the City Ordinance which declared Marcos Alvarez Avenue as a public road. Thus, the properties in litigation in this case are the subject lots where Marcos Alvarez Avenue is situated and not the lots in the Royal South Subdivision project which are owned by BDO.

EFRAIM C. GENUINO *v.* COMMISSION ON AUDIT (COA)

G.R. NO. 230818, 15 JUNE 2021, *EN BANC*, (DELOS SANTOS, *J.*)

DOCTRINE OF THE CASE

As it stands, since Section 15 of P. D. No. 1869 has yet to be amended, repealed, or declared unconstitutional, the Court held that it is left with no recourse except as to apply the law as presently written, that is, any government audit over PAGCOR should be limited to its 5% franchise tax and 50% of its gross earnings pertaining to the Government as its share. Resultantly, any audit conducted by COA beyond the aforementioned is accomplished beyond the scope of its authority and functions.

Here, the P2,000,000.00 financial assistance granted by PAGCOR to PVHA was sourced from PAGCOR's operating expenses, in particular, its marketing expenses. It is, thus, clear that the audit conducted by COA in this case was not made in relation to either the 5% franchise tax or the Government's 50% share in its gross earnings and therefore, beyond the scope of COA's audit authority. As pointed out by Genuino, the limitation imposed on COA's authority to audit PAGCOR is further bolstered by the fact that there are bills in Congress that have been filed precisely to expand COA's audit jurisdiction beyond the said franchise tax and the Government's share in its gross earnings. By implication, these bills would have been unnecessary had COA been empowered to conduct a general audit on all of PAGCOR's funds.

FACTS

In 2010, Philippine Amusement and Gaming Corporation (PAGCOR) approved a project for the construction of a flood control and drainage system for Pleasant Village Subdivision (Pleasantville), and donated an amount of P2,000,000 to Pleasant Village Homeowners Association (PVHA).

However, in 2013 the Commission on Audit (COA) issued a Notice of Disallowance disapproving the financial assistance to PVHA. According to COA, it violated the Government Auditing Code for being used for a private purpose, since Pleasantville is a private property. The disallowance was made after COA received confirmation that neither the whole nor part of Pleasantville had been donated to the Municipality of Los Banos, Laguna. Thus, Mr. Efriam C. Genuino (Genuino), among others, was held liable as the Chairman and CEO and for approving the payment.

Genuino filed an appeal, but the COA-Corporate Government Sector denied the same and held him solidarily liable as the official who approved the grant and payment of the financial assistance.

Aggrieved, Genuino filed a Petition for Review based on the following grounds: (1) the subject roads covered by PAGCOR's P2,000,000.00 financial assistance was public property, and, thus, met the public purpose requirement; (2) the financial assistance was extended pursuant to PAGCOR's corporate social responsibility; (3) the Minutes of the Meeting of the Sangguniang Barangay Tuntungin-Putho effected the turn-over of the subject roads to the barangay as early as August 2009, and, thus, the subject roads were public property; (4) the Minutes of the Meeting of the Sangguniang Barangay was executed by public officials in the performance of their official functions, and, thus, enjoys the presumption of regularity; and (5) the approval of the financial assistance was a collegial act of the Board of Directors and petitioner merely exercised his duties in approving the same.

The COA maintained the propriety of the disallowance ruling that the area covered by the donation P2,000,000.00 financial assistance is not public property, nor is the donation for a public purpose, contrary to Section 4(2) of Presidential Decree No. 1445. The subject property is still considered private until the local government of Los Bafios, Laguna acquires the property by donation, purchase or expropriation. A mere acceptance in a Sangguniang Barangay meeting cannot produce a legal transfer and turnover of a property.

Genuino repleaded all his prior arguments. In addition, he averred that COA's audit jurisdiction over PAGCOR is limited to 5% franchise tax remitted to the Bureau of Internal Revenue (BIR) and 50% of its gross earnings remitted to the National Treasury. Since the P2,000,000 financial assistance to PVHA was sourced from PAGCOR's operating expenses, particularly its marketing expenses, it was beyond COA's audit jurisdiction.

Hence, this petition.

ISSUE

Did COA exceed its audit jurisdiction over PAGCOR?

RULING

YES. The Court found that COA acted with grave abuse of discretion when it exceeded its audit jurisdiction over PAGCOR. By law, COA's audit jurisdiction over PAGCOR is limited to the latter's remittances to the BIR as franchise tax and the National Treasury with respect to the Government's share in its gross earnings.

COA's limited audit jurisdiction over PAGCOR is based on its very own Charter. Section 15 of P.D. No. 1869 states that the COA's audit jurisdiction is limited to the 5% franchise tax and 50% share of the Government in its gross earnings. As it stands, since Sec. 15 of P. D. No. 1869 has yet to be amended, repealed, or declared unconstitutional, the Court held that it is left with no recourse except as to apply the law as presently written, that is, any government audit over PAGCOR should be limited to its 5% franchise tax and 50% of its gross earnings pertaining to the Government as its share. Resultantly, any audit conducted by COA beyond the aforementioned is accomplished beyond the scope of its authority and functions.

Here, the P2,000,000.00 financial assistance granted by PAGCOR to PVHA was sourced from PAGCOR's operating expenses, particularly, its marketing expenses. It is, thus, clear that the audit conducted by COA in this case was not made in relation to either the 5% franchise tax or the Government's 50% share in its gross earnings and, therefore, beyond the scope of COA's audit authority.

Despite COA's general mandate to ensure that "all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguard against loss or wastage through illegal or improper disposition, the same cannot prevail over a special law such as P.D. No. 1869 or the "PAGCOR Charter." In granting a special charter to PAGCOR, legislature is presumed to have specially considered all the relevant factors and circumstances in granting the same, being mindful of PAGCOR's dual role: first, to operate and to regulate gambling casinos and second, to generate sources of additional revenue to fund infrastructure and socio-civic projects, and other essential public services.

It remains a basic fact in law that the decision of a court or tribunal without jurisdiction is a total nullity. It is, thus, apparent that COA's actions in this case, from the issuance of Notice of Disallowance and, correspondingly, the assailed Decision and Resolution, are null and void. They create no rights and

produce no legal effect. To stress, the disposition of this case rests solely on the fact that COA acted with grave abuse of discretion in conducting an audit of PAGCOR's accounts beyond the 5% franchise tax and 50% of the Government's share in its gross earnings as stated in Sec. 15 of P.D. No. 1869. The Court, therefore, made no pronouncement whether the financial assistance granted to PVHA was violative of the public purpose requirement under P.D. No. 1445 and the propriety of holding Genuino civilly liable therefore, for having been rendered moot and academic.

MORE ELECTRIC AND POWER CORPORATION *v.* PANAY ELECTRIC COMPANY, INC.

G.R. NO. 248061, 09 MARCH 2021, *EN BANC RESOLUTION* (CARANDANG, *J.*)

REPUBLIC OF THE PHILIPPINES, MORE ELECTRIC AND POWER CORPORATION *v.* PANAY ELECTRIC COMPANY, INC.

G.R. No. 249406, 09 March 2021, *EN BANC RESOLUTION*(Carandang, *J.*)

DOCTRINE OF THE CASE:

The following are the requisites for the valid exercise of the power of eminent domain: (1) the property taken must be private property; (2) there must be genuine necessity to take the private property; (3) the taking must be for public use; (4) there must be payment of just compensation; and (5) the taking must comply with due process of law. The requirement of "public use" is now synonymous with "public interest," "public benefit," and "public convenience.".

In this case, expropriation under Sections 10 and 17 of R.A. No. 11212 is for the general purpose of electricity distribution which affects the public welfare. The assailed provisions ensure uninterrupted supply of electricity in the city during the transition from the old to the new franchisee. MORE, as the new franchisee, is mandated under Section 2 of R.A. No. 11212 to operate and maintain the distribution system in the best manner possible. To do so, its right to expropriate the distribution system in Iloilo City to ensure uninterrupted supply of electricity should not be hampered by unfounded allegations of undue benefit and corporate takeover. In the end, the net public benefit generated from the exercise of the right of eminent domain outweighs any incidental and secondary benefit any private entity, including MORE, may acquire.

FACTS

On 23 July 2018, Republic Act No. 11212 (R.A. No. 11212) was enacted to grant More Electric and Power Corporation (MORE) a franchise to establish, operate, and maintain an electric power distribution system in Iloilo City. Sec. 10 of R.A. No. 11212 confers on MORE the authority to exercise the right of eminent domain. The distribution system presently used in Iloilo City was owned by Panay Electric Company, Inc. (PECO), the franchise holder since 1922, which expired on 18 January 2019. Given that no new franchise has been issued in favor

of PECO and MORE has not established its service yet, Sec. 17 of R.A. No. 11212 permits PECO to continue operating the existing distribution system during the interim period. This same provision also stated that the interim arrangement shall not prevent MORE from acquiring the system through the exercise of the right of eminent domain.

PECO filed a Petition for Declaratory Relief assailing the constitutionality of Sections 10 and 17 of R.A. No. 11212 and argued that these provisions encroach on its constitutional right to due process and equal protection. According to PECO, the authority granted to MORE to takeover PECO's business by seizing its assets under the veil of expropriation cannot be done without violating its right to substantive due process. Meanwhile, MORE filed a Complaint for Expropriation with the Regional Trial Court (RTC), which was enjoined by a Temporary Restraining Order issued by the trial court. Upon motion by PECO for judgment on the pleadings, RTC decided that the assailed provisions were void and unconstitutional because of want of the element of public use. MORE filed a petition for review on *certiorari* under Rule 45 before the Supreme Court. On 15 September 2020, the Court rendered its Decision reversing and setting aside the Decision of the RTC. Hence, this Motion for Reconsideration filed by PECO.

ISSUE

May the assets of a power distribution company whose franchise has expired be acquired, through expropriation, by another power distribution utility with a new franchise?

RULING

YES. Sections 10 and 17 of R.A. No. 11212, giving MORE the power to expropriate the distribution system of PECO, are but integral parts of the grant of the franchise by Congress. Since the exercise of eminent domain is necessary to carry out the franchise, it is prudent that the Court accords respect to the legislative will.

The Court upheld the constitutionality of Sections 10 and 17 of R.A. No. 11212 recognizing the following requisites for the valid exercise of the power of eminent domain: (1) the property taken must be private property; (2) there must be genuine necessity to take the private property; (3) the taking must be for public use; (4) there must be payment of just compensation; and (5) the taking must

comply with due process of law. The requirement of "public use" is now synonymous with "public interest," "public benefit," and "public convenience."

In this case, expropriation under Sections 10 and 17 of R.A. No. 11212 is for the general purpose of electricity distribution which affects public welfare. The assailed provisions ensure uninterrupted supply of electricity in the city during the transition from the old to the new franchisee. Iloilo City's public space is already burdened by PECO's existing distribution system and yet, the distribution system cannot continue to operate under PECO's franchise as this has not been renewed by Congress. The Court emphasized that in carrying out the obligations of MORE in its legislative franchise, time is of the essence in that MORE is only given two years from the grant of the legislative franchise to either establish its own distribution system or acquire the existing distribution system through the exercise of eminent domain. This aligns with the State's objective of ensuring uninterrupted supply of electricity in the city. MORE considered it practical to exercise its power of eminent domain as there are already existing structures that would facilitate the unimpeded transition from PECO to MORE.

In granting MORE the right to exercise eminent domain, the primordial concern of Congress is the welfare of the residents of Iloilo City who rely on the distribution system of PECO. There is no question that PECO's franchise was not renewed. Thus, it can no longer operate the distribution system in Iloilo City. MORE, as the new franchisee, is mandated under Section 2 of R.A. No. 11212 to operate and maintain the distribution system in the best manner possible. To do so, its right to expropriate the distribution system in Iloilo City to ensure uninterrupted supply of electricity should not be hampered by unfounded allegations of undue benefit and corporate takeover. In the end, the net public benefit generated from the exercise of the right of eminent domain outweighs any incidental and secondary benefit any private entity, including MORE, may acquire.

Moreover, the incidental benefit enjoyed by MORE does not render its legislative franchise unconstitutional because the same does not override the paramount public interest on which the right of eminent domain is hinged. It would be unfair for the public to be deprived of access to uninterrupted supply of electricity, an important tool to economic growth, simply because of some incidental benefit MORE may gain from its legislative franchise.

OFFICE OF THE OMBUDSMAN *v.* OSCAR MALAPITAN

G.R. NO. G.R. NO. 229811, APRIL 28, 2021, THIRD DIVISION (LEONEN, *J.*)

DOCTRINE OF THE CASE

The condonation doctrine was abandoned on April 12, 2016, when Carpio Morales v. Court of Appeals attained finality. Nonetheless, despite its abandonment, the doctrine can still apply to pending administrative cases provided that the reelection is also before the abandonment. As for cases filed after April 12, 2016, the impleaded public official can no longer resort to the condonation doctrine.

FACTS

Malapitan was the Caloocan City First District Representative from 2004 to 2007. He was reelected from 2007 to 2010 and again from 2010 to 2013. In 2013, he became the Caloocan City mayor, and was reelected in 2016. He was reelected again in 2019 which makes him the incumbent mayor of Caloocan.

On February 16, 2015, the Office of the Ombudsman's Public Assistance and Corruption Prevention Office filed a criminal complaint for violation of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act, against Malapitan. The complaint arose from the allegedly anomalous use of Malapitan's Priority Development Assistance Fund (PDAF) worth P8,000,000.00 committed in 2009 during his reign as district representative.

The criminal complaint also contained an administrative charge for grave misconduct, gross neglect of duty, and conduct prejudicial to the best interest of service against three officials. Malapitan was not impleaded in the administrative complaint. On January 22, 2016, the Public Assistance and Corruption Prevention Office filed a Motion to Admit Attached Amended Complaint, asking that Malapitan be impleaded in the administrative complaint after he had been inadvertently left out as a respondent. On February 22, 2016, the Office of the Ombudsman's Task Force PDAF granted the motion.

The denial of Malapitan's Motion for Reconsideration prompted him to file a Petition for *Certiorari* and Prohibition before the Court of Appeals (CA). On August 31, 2016, the CA granted the Petition. It revisited the history of the condonation doctrine in jurisprudence until it was abandoned in *Carpio Morales v.*

Court of Appeals on November 10, 2015. It pointed out that such abandonment applied prospectively. It then ruled that since Malapitan's alleged misconduct was committed in 2009, the condonation doctrine is applicable.

The Office of the Ombudsman contends that the condonation doctrine was not applicable to Malapitan since it was already abandoned in Carpio Morales. Furthermore, the said doctrine should no longer be applied to cases that are still pending before its abandonment.

Hence, this petition.

ISSUES

(1) Did the CA err in ruling that the condonation doctrine is applicable to Malapitan?

(2) Did the CA err in ruling on the administrative liability of Malapitan when the latter raised the issue of grave abuse of discretion on the part of the Office of the Ombudsman when it grated the Motion to Admit Attached Amended Complaint?

RULING

(1) **NO.** Since the act constituting the administrative offense was allegedly committed in 2009, and he was reelected in 2010, the condonation doctrine would still apply.

In *Crebello v. Office of the Ombudsman,* the Supreme Court declared the exact date of the abandonment of the condonation doctrine:

> "The abandonment of the doctrine of condonation took effect on April 12, 2016, when the Supreme Court denied with finality the OMB's Motion for Reconsideration in *Morales v. Court of Appeals."*

Here, the amended administrative complaint was admitted on February 22, 2016; hence, the condonation doctrine was not yet abandoned. The alleged acts imputed to respondent were supposedly committed in 2009. He was reelected as member of the House of Representatives in 2010. This immediately succeeding victory is what the condonation doctrine looks at. That respondent was later reelected in 2013, 2016, and 2019 would be irrelevant.

Although the administrative complaint was filed against respondent after the 2010 elections, it would not change the fact that the alleged act was committed in 2009, and the electorate reelected him in 2010, the immediately succeeding election.

The Court took the opportunity to clarify the effect of *Carpio Morales.* In *Crebello,* the Court upheld the Office of the Ombudsman's argument that since the abandonment became effective only on April 12, 2016, "it would no longer apply the defense of condonation starting on April 12, 2016 *except for open and pending administrative cases."* Thus, after *Carpio Morales* became final, the condonation doctrine's applicability now depends *on the date of the filing of the complaint,* not the date of the commission of the offense. Had the case been filed against Malapitan on April 13, 2016, for instance, he could no longer rely on the condonation doctrine.

However, since the case was filed in January 2016, and was admitted in February 2016, *it was already an open case by the time the condonation doctrine was abandoned.*

(2) **NO.** Generally, courts are limited to the issues raised by the parties before it. However, since Malapitan invoked the condonation doctrine, and it was ruled that the doctrine is applicable in his case, then there the CA did not err.

For administrative cases filed after April 12, 2016, the date when the condonation doctrine was abandoned, the rule is that courts should refrain from interfering with investigations conducted by the Office of the Ombudsman, being an independent body authorized by no less than our Constitution and Republic Act No. 677077 to handle complaints against public officials and civil servants.

For clarity, Malapitan is absolved only of administrative liability based on the condonation doctrine. The Court makes no pronouncement on the criminal complaint against him.

PHILIPPINE CHAMBER OF COMMERCE AND INDUSTRY, SAN BEDA COLLEGE ALABANG INC., ATENEO DE MANILA UNIVERSITY, AND RIVERBANKS DEVELOPMENT CORPORATION *v.* DEPARTMENT OF ENERGY, HON. ALFONSO G. CUSI, IN HIS OFFICIAL CAPACITY AS SECRETARY OF THE DEPARTMENT OF ENERGY, ENERGY REGULATORY COMMISSION AND HON. JOSE VICENTE B. SALAZAR, IN HIS OFFICIAL CAPACITY AS CHAIRPERSON OF THE ENERGY REGULATORY COMMISSION, AND HON. ALFREDO J. NON, HON. GLORIA VICTORIA C. YAPTARUC, HON. JOSEFINA PATRICIA M. ASIRIT, AND HON. GERONIMO D. STA. ANA, IN THEIR OFFICIAL CAPACITY AS INCUMBENT COMMISSIONERS OF THE ENERGY REGULATORY COMMISSION

G.R. NO. 228588, 229143 & 229453, 02 MARCH 2021, *EN BANC*, (LEONEN, *J.*)

DOCTRINE OF THE CASE

All that is required for the valid exercise of the power of subordinate legislation is that the regulation must be germane to the objects and purposes of the law and in conformity with the standards prescribed by the law.

In the case at bar, the Court finds that the contested Department Circular supports the voluntary transfer to the contestable market by emphasizing customer choice, with the contestable customer at liberty to source its electricity supply from as it reflects the EPIRA's underlying objective of creating a free and competitive market that will provide reliable electricity at reasonable prices. Clearly, the voluntary participation or migration of contestable customers to the contestable market in Department Circular is contrary to the directive of mandatory migration contained in the assailed issuances.

FACTS

Republic Act No. 9136 or the Electric Power Industry Reform Act of 2001 (EPIRA) was enacted in 2001 and it sought to provide a framework for the restructuring of the electric power industry, including the privatization of the assets of National Power Corporation, the transition to the desired competitive structure, and the definition of the responsibilities of the various government

agencies and private entities to attain its underlying objective of creating a free and competitive market that will provide reliable electricity at reasonable prices.

In line with the EPIRA, the Department of Energy (DOE) and the Energy Regulatory Commission (ERC) (Department of Energy, *et al.*) issued several administrative issuances allowing electricity end-users in the contestable market to freely choose from the qualified retail electricity suppliers, including local retail electricity suppliers and distribution utilities within their franchise area. Moreover, DOE issued a Department Circular, which provided policies for the full implementation of Retail Competition and Open access.

However, Philippine Chamber of Commerce and Industry, San Beda College Alabang Inc., Ateneo De Manila University, and Riverbanks Development Corporation (Philippine Chamber of Commerce and Industry, *et al.*), the electricity end-users and electric cooperatives under EPIRA, filed petitions against such administrative issuances. Specifically, they claimed that the Department of Energy Circular and Energy Regulatory Commission Resolution Nos. 5, 10, 11, and 28, all series of 2016, are unconstitutional for usurping legislative authority, violating the right to due process, equal protection clause, and non-impairment clause, as well as being an unreasonable exercise of police power.

In 2017, the Court issued a Temporary Restraining Order enjoining the Department of Energy, *et al.* from implementing the assailed issuances. The Department of Energy, *et al.* asserted that the migration is mandatory, as supported by the EPIRA itself and posited that the assailed issuances providing for mandatory migration fall under DOE's power and function under the EPIRA to formulate rules and regulations to implement the objectives of the law and that they do not violate the non-impairment clause because a franchise is in the nature of a grant, which is not covered by the non-impairment clause.

In 2018, DOE filed a separate Comment to the consolidated Petitions and Petitions-in-Intervention, with motion for early resolution as it found the Department Circular to be inconsistent with the EPIRA, particularly with its requirement for the mandatory migration to the contestable market. However, the Office of the Solicitor General said it would maintain its original position and would only represent respondent ERC in the case from thereon.

ISSUES

(1) Should the assailed issuances be struck down for being ultra vires?
(2) Would the petitions have been mooted by DOE's revocation of its assailed Department Circular?

RULING

(1) **YES.** As held by the Court in *Equi-Asia Placement, Inc. v. Department of Foreign Affairs*:

> All that is required for the valid exercise of the power of subordinate legislation is that the regulation must be germane to the objects and purposes of the law; and that the regulation be not in contradiction to, but in conformity with, the standards prescribed by the law. Under the first test or the so-called completeness test, the law must be complete in all its terms and conditions when it leaves the legislature such that when it reaches the delegate, the only thing he will have to do is to enforce it. The second test or the sufficient standard test, mandates that there should be adequate guidelines or limitations in the law to determine the boundaries of the delegate's authority and prevent the delegation from running riot.

Thus, to be a valid delegation of legislative power, subordinate legislation from specialized administrative agencies must be germane to the objects and purposes of the law and in conformity with the standards prescribed by the law.

Here, DOE, with its mandate of supervising the restructuring of the electricity industry, is the agency tasked with formulating rules and regulations to give life to EPIRA's policy objectives. Respondent ERC, for its part, is tasked with implementing the rules and regulations formulated and issued by respondent DOE.

After thorough scrutiny, the Court finds that the contested Department Circular supports the voluntary transfer to the contestable market by emphasizing customer choice, with the contestable customer at liberty to source its electricity supply from as it reflects the EPIRA's underlying objective of creating a free and competitive market that will provide reliable electricity at reasonable prices.

Clearly, the voluntary participation or migration of contestable customers to the contestable market in Department Circular is contrary to the directive of mandatory migration contained in the assailed issuances. Moreover, with the assailed Department Circular having been repealed, the assailed ERC Resolutions, which were regulatory guidelines to the Department Circular, have become bereft of legal basis.

(2) **NO.** A case is rendered moot when there is no longer a conflict of legal rights which would entail judicial review. The Court is precluded from ruling on moot cases, where no justiciable controversy exists. However, exceptions do exist. In *David v. Arroyo*:

> Courts will decide cases, otherwise moot and academic, if: first, there is a grave violation of the Constitution; second, the exceptional character of the situation and the paramount public interest is involved; third, when constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; and fourth, the case is capable of repetition yet evading review.

Here, while the repealing Department Circulars may have modified or repealed portions of the assailed Department Circular, respondent ERC continues to assert that distribution utilities should be prohibited from participating in the contestable market, and that the migration of qualified end-users to the contestable market is mandatory. Clearly, there remains a continuing controversy which requires judicial resolution. Thus, the Court may not consider the case as moot and academic as of yet.

SECURITIES AND EXCHANGE COMMISSION *v.* COMMISSION ON AUDIT

G.R. No. 252198, 27 April 2021, *EN BANC* (Lazaro-Javier, *J.*)

DOCTRINE OF THE CASE

GAA 2010, Special Provision No. 1 clearly limits the use of income for augmenting only the MOOE and CO allocations of the SEC. Special Provision No. 1 did not repeal Section 75 of the SRC but simply imposed a limitation on how the SEC could use its retained income.

To elucidate, a provident fund "is a type of retirement plan where both the employer and employee make fixed contributions. Out of the accumulated fund and its earnings, employees receive benefits upon their retirement, separation from service or disability." Thus, when SEC utilized its retained income to pay for its counterpart in the provident fund, it was not for the purpose of paying for "expenses necessary for the regular operations of an agency like, among others, traveling expenses, training and seminar expenses, water, electricity, supplies expense, maintenance of property, plant and equipment, and other maintenance and operating expenses." Nor was the payment used for the "purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of Government."

In this case, the COA correctly classified contributions to the provident fund within the category of "personal services." SEC failed to comply with the law when it used its retained income to pay for its counterpart contribution to the provident fund, which is neither and MOOE or a CO item. Consequently, the disbursement of the SEC's retained income warrants its disallowance.

FACTS

In 2002, the Securities and Exchange Commission (SEC) established a provident fund for its officials and employees pursuant to Section 7 of the Securities Regulation Code (SRC). Thereafter, SEC *En Banc* approved an across-the-board 15% increase of its counterpart contribution to the provident fund. The said 15% increase will be taken from the SEC'S retained income.

In 2004, SEC received a letter from the Department of Budget and Management (DBM) informing the SEC that the utilization of retained income is left to the discretion of the Commission subject to the usual accounting rules and regulations. Encouraged by this pronouncement, the SEC *En Banc* approved the

annual allocation of its provident fund contribution from its retained income starting 2004.

When the SEC submitted auditing requirements to the DBM it was shown that around P19 million was disbursed as counterpart contribution to the provident fund. COA-SEC Audit Team disallowed the disbursement made under Notice of Disallowance. The basis of the disallowance are the following: *First,* the disbursement from the retained income is not in accord with Section 1 of the Special Provisions for the SEC – GAA for Fiscal Year 2010. *Second*, the granting of personnel benefits authorized by law but not supported by specific appropriations is deemed unauthorized under Sec 37 of Presidential (PD) 1177. *Third,* the compensation plan was subject to the approval of the Office of the President, which in this case was absent. Hence, the approving, certifying, and authorizing officers, including the SEC employees, were solidarily liable for the total disallowance.

Aggrieved, SEC appealed before the COA-National Government Sector (COA-NGS). However, it affirmed the disallowance. It was also affirmed with modification by COA *En Banc,* where only the approving, certifying, and authorizing officers were held liable.

SEC argues that COA overlooked the fact that the disbursement was part of its retained income under Section 75 of the SRC. As such, it was an off-budget fund, did not need appropriation, and was not included in the coverage of GAA 2010. Further, Section 75 of the SRC grants SEC exclusive discretion on how it should be used. The Office of the Solicitor General (OSG) contends that the authority of SEC is still subject to auditing requirements, standards, and procedures; and that it violated Special Provision No. 1 for SEC in GAA 2010, Section 37 of PD 1177, and Sections 34 and 25 of the Administrative Code.

Hence, this petition.

ISSUES

(1) Did the COA validly disallow the allocation and payment from SEC's retained income to the provident fund?
(2) Are the approving, certifying, and authorizing officials of the SEC liable to refund the disallowed amount?

RULING

(1) **YES.** The disallowance of the disbursement is valid.

"Section 75 of the SRC states:

> SEC. 75. Partial Use of Income. — To carry out the purposes of this Code, the Commission is hereby authorized, in addition to its annual budget, to retain and utilize an amount equal to one hundred million pesos (P100,000,000.00) from its income.
>
> The use of such additional amount shall be subject to the auditing requirements, standards and procedures under existing laws."

The first paragraph grants the SEC the authority to retain and utilize P100,000,000.00 from its income, in addition to its annual budget, while the second imposes a restriction to this authority "subject to the auditing requirements, standards and procedures under existing laws." One such law is the GAA 2010, Special Provision No. 1 of which provides that:

> "Use of Income. In addition to the amounts appropriated herein, One Hundred Million Pesos (P100,000,000) sourced from registration and filing fees collected by the Commission pursuant to Section 75 of R.A. 8799 shall be used to augment the MOOE and Capital Outlay requirements of the Commission."

This provision clearly limits the use of income for augmenting only the MOOE and CO allocations of the SEC. Special Provision No. 1 did not repeal Section 75 of the SRC but simply imposed a limitation on how the SEC could use its retained income. The two provisions are, therefore, supplementary; not contradictory.

But the SEC failed to comply with the plain letter of Special Provision No. 1 when it used its retained income to pay for its counterpart contribution to the provident fund, which is neither an MOOE nor a CO item.

Section 7.b, The Chart of Accounts, Volume III of the Manual on the New Government Accounting System for National Government Agencies (MNGAS-NGA) defines MOOE as follows:

> Sec. 7. Classification of Expenses. The expense accounts are classified into:
> xxxx b. Maintenance and Other Operating Expenses (MOOE) - These accounts include expenses necessary for the regular operations of an agency like, among others, traveling expenses, training and seminar expenses, water, electricity, supplies expense, maintenance of property, plant and equipment, and other maintenance and operating expenses.

As for "capital outlay" or capital expenditure, it is defined as:

> Capital Outlays or Capital Expenditures. An expenditure category/expense class for the purchase of goods and services, the benefits of which extend beyond the fiscal year and which add to the assets of Government, including investments in the capital stock of GOCCs and their subsidiaries.

To elucidate, a provident fund "is a type of retirement plan where both the employer and employee make fixed contributions. Out of the accumulated fund and its earnings, employees receive benefits upon their retirement, separation from service or disability."

Verily, the COA correctly classified contributions to the provident fund within the category of “personal services”. SEC failed to comply with the law when it used its retained income to pay for its counterpart contribution to the provident fund, which is neither and MOOE or a CO item. Consequently, the disbursement of the SEC’s retained income warrants its disallowance.

(2) **NO.** The approving, certifying, and authorizing officers are not liable to return the entire disapproved amount in the absence of malice, bad faith or gross negligence.

In determining whether they are liable, the ruling in *Madera et al. v. COA* is controlling:

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.
> (b) Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following Section 2c and 2d.
>
> (c) Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
>
> (d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.

In this case, there is no showing that the approving, certifying, and authorizing officers of the SEC acted with malice or bad faith or gross negligence in approving the payment of its counterpart contribution to the provident fund using its retained income. On the contrary, their actions invariably carry the badge of good faith.

First, there was no prior disallowance of payment of the SEC's contribution to the provident fund using its retained income. The SEC had already been making payments of its counterpart contribution for about five years under the same restriction before the same was disallowed.

Second, the DBM itself, by Letter dated August 19, 2004, assured the SEC that "the utilization of the retained income is left to the discretion of the Commission subject to the usual accounting and auditing rules and regulations." Notably, the letter was issued at a time when Special Provision 1 was not yet in the GAA.

Finally, the approving, certifying, and authorizing officers honestly believed that they were giving effect to Section 7.2 of the SRC, mandating the SEC to adopt a compensation plan comparable with the prevailing compensation plan in the Bangko Sentral ng Pilipinas and other government financial institutions. They simply found a way to do this, albeit mistakenly, was to utilize the retained earnings granted in Section 75 of the SRC to augment its personal service items.

GOVERNOR EDGARDO TALLADO *V.* COMMISSION ON ELECTIONS, NORBERTO VILLAMIN, AND SENANDRO JALGALADO

G.R. NO. 246679, 2 MARCH 2021, *EN BANC,* (GESMUNDO, *J.*)

DOCTRINE OF THE CASE

When an appointive official is initially dismissed by the Ombudsman (OMB) and his penalty eventually judicially modified and reduced, the rules of the OMB declare his period of dismissal, by fiction of law, as a period of preventive suspension with payment of backwages and other emoluments. This means that for the appointive official, it is as if he was never removed and all the vestiges of his removal were reversed. There is nothing wrong with this conversion because his removal only affected his wages which were eventually given to him. But this is not the same for elective local government officials, like Tallado, because dismissal of an elective local government official does not only affect receipt of salaries but also affects his term, which would effectively be interrupted – an interruption which has constitutional consequences.

When an elective local public officer is administratively dismissed by the OMB and his penalty subsequently modified to another penalty, like herein Tallado, the period of dismissal cannot just be nonchalantly dismissed as a period for preventive suspension considering that, in fact, his term is effectively interrupted. During said period, Tallado cannot claim to be Governor as his title is stripped of him by the OMB despite the pendency of his appeal. Neither does he exercise the power of the office. Said title and power are already passed to the Vice Governor. He also cannot claim that the exercise of his power is merely suspended since it is not. Hence, the Court cannot turn a blind eye on the interruption of his term despite the ex post facto redemption of his title following the OMB rule.

FACTS

The Supreme Court (Court) promulgated its September 10, 2019 Decision and dismissed the consolidated petitions for the cancellation of Governor Edgardo Tallado's (Tallado) Certificate of Candidacy for the position of Provincial Governor of Camarines Norte in the 2019 Local Elections. The Court also ordered Norberto Villamin and Senandro Jalgalado (Villamin and Jalgalado) to pay the costs of suit. The Commission on Elections (COMELEC) and Villamin and Jalgalado (COMELEC, *et al.*) filed their respective motions for reconsideration.

In unison, COMELEC, *et al.* argued that the Court erred in ruling that Tallado's removal constitutes as valid interruption of his term sufficient to break the three-term limit rule imposed on local candidates. They pointed out that Tallado's resort to appeal and the eventual modification of the administrative penalty imposed on him shows the lack of permanence of his ouster as governor and should be insufficient to warrant as an interruption of his term. Further, COMELEC, *et al.* urged the Court to consider Tallado's absence in office as preventive suspension in accordance with the Ombudsman (OMB) Rules. Lastly, they claim that for the Court to allow such construction to continue would reward corrupt and unscrupulous politicians to escape the grasp of the three-term prohibition.

ISSUE

Did Governor Tallado's dismissal from office amount to an interruption of his term in office?

RULING

YES. The Court reiterated its September 10, 2019, Decision where it ruled that:

Interruption of term entails the involuntary loss of title to office, while interruption of the full continuity of the exercise of the powers of the elective position equates to failure to render service. In this regard, *Aldovino Jr., et al. v. COMELEC and Asilo* is instructive, as follows:

> From all the above, we conclude that the "interruption" of a term exempting an elective official from the three-term limit rule is one that involves no less than the involuntary loss of title to office. The elective official must have involuntarily left his office for a length of time, however short, for an effective interruption to occur. This has to be the case if the thrust of Section 8, Article X and its [strict] intent are to be faithfully served, i.e., to limit an elective official's continuous stay in office to no more than three consecutive terms, using "voluntary renunciation" as an example and standard of what does not constitute an interruption.

> An interruption occurs when the term is broken because the office holder lost the right to hold on to his office, and cannot be equated with the failure to render service. The latter occurs during an office holder's term when he retains title to the office but cannot exercise his functions for reasons established by law. Of course, the [term] "failure to serve" cannot be used once the right to office is lost; without the right to hold office or to serve, then no service can be rendered so that none is really lost.

In the same Decision, the Court ruled that the dismissal orders of the OMB against Tallado served as permanent removal from office and was not merely temporary. From his dismissal until the Court of Appeals' modification of his penalty to suspension, Tallado neither had title nor powers to wield as Governor of Camarines Norte. As evidence of this lack of title by Tallado, Camarines Vice Governor Jonah Pedro G. Pimentel was sworn as Governor, and not as Acting Governor.

The nomenclature used here by the Department of the Interior and Local Government (DILG) is important because it recognizes that the vacancy is not temporary but a permanent one. To rule otherwise would result in the absurd situation where a public office is occupied by two persons when basic law on public officers is that in single constituency positions, like the Office of the Provincial Governor, only one person can occupy a public office at a given time.

The fact that the DILG has now clarified its position that it should have applied Section 46 of the Local Government Code, rather than Sec. 44, is irrelevant. As stated earlier, it is not the position of the DILG to characterize the nature of the dismissal of public officers being merely the implementer of the law.

Further, the OMB Rules placing Tallado in preventive suspension upon modification of his penalty cannot be applied, considering the constitutional consequences of his prior authorized removal, as compared to other public officers subject to the OMB's administrative jurisdiction.

Thus, when an appointive official is initially dismissed by the OMB and his penalty eventually judicially modified and reduced, the rules of the OMB declare his period of dismissal, by fiction of law, as a period of preventive suspension with payment of backwages and other emoluments. This means that

for the appointive official, it is as if he was never removed and all the vestiges of his removal were reversed. There is nothing wrong with this conversion because his removal only affected his wages which were eventually given to him. But this is not the same for elective local government officials, like Tallado, because dismissal of an elective local government official does not only affect receipt of salaries but also affects his term, which would effectively be interrupted – an interruption which has constitutional consequences.

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