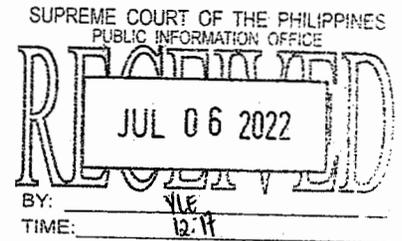




Republic of the Philippines
Supreme Court
Manila



EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JUNE 14, 2022**, which reads as follows:

“G.R. No. 260542 (*Maria Eugenia M. Alteza and Ma. Elena P. Miraflor*,¹ *Petitioners*, vs. *Commission on Audit, Michael G. Aguinaldo, Roland C. Pondoc, and Bresilio R. Sabaldan, in their respective capacities as Chairperson, Commissioner, and Director IV/Commission Secretary, Respondents*). – After a judicious review of the case, the Court resolves to **DISMISS** the instant Petition for *Certiorari*² under Rule 64 in relation to Rule 65 of the Rules of Court (Rules), for failure to exhaust the remedies available to petitioners Maria Eugenia M. Alteza and Ma. Elena P. Miraflor (petitioners) in the Commission on Audit’s (COA) Decision³ dated December 1, 2021, pursuant to the 2009 Revised Rules of Procedure of COA (COA Rules).⁴ Under Section 10, Rule X of the said COA Rules, ‘[a] motion for reconsideration may be filed [against the denial of an appeal] within the time remaining of the period to appeal,’ which petitioners failed to do in this case. Here, petitioners failed to show that they were able to file a motion for reconsideration prior to filing their petition for *certiorari* before the Court.

This notwithstanding, the present petition should likewise be dismissed for being filed out of time. Section 3, Rule 64 of the Rules provides that a petition for *certiorari* ‘shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed.’ In *Abpi v. COA*,⁵ the Court held that the belated filing of the petition for *certiorari* under Rule 64 is fatal, as in this case. Here, petitioners received the December 1, 2021 COA Decision on March 8, 2022, giving them until April 7, 2022 to file the present petition.⁶ Unfortunately,

¹ Per the instant petition, Romulo A. Britanico is not included as a petitioner in this case, and ‘has been transferred to the Regional Office of the DAR Region V as *Assistant Regional Director for Operations*’ (see *rollo*, p.4).

² Id. at 3–22.

³ Id. at 23–31. Decided by Chairperson Michael G. Aguinaldo and Commissioner Roland C. Pondoc.

⁴ Approved on September 15, 2009.

⁵ See G.R. No. 252367, July 14, 2020.

⁶ *Rollo*, pp. 1 and 3.

petitioners were only able to file the same on April 25, 2022 or eighteen (18) days beyond the last day of filing.⁷

In any event, even if the Court was to review the December 1, 2021 COA Decision denying petitioners' petition for review, the Court nonetheless finds that the COA did not commit grave abuse of discretion in rendering the assailed Decision. The COA correctly ruled that the Collective Negotiation Agreement (CNA) incentives cannot be sourced from the Comprehensive Agrarian Reform Program (CARP) Fund following the Court's pronouncements in *Dubongco v. COA (Dubongco)*.⁸ In *Dubongco*, the Court held that CNA incentives shall be sourced only from the savings generated from the operating expenses of the government agency during the life of the CNA, in accordance with Department of Budget and Management (DBM) Budget Circular No. 2006-01⁹ on the grant of CNA Incentives **only to rank-and-file employees**.¹⁰ Moreover, the Court held that grant of CNA incentives financed by the CARP Fund was likewise illegal due to it being in the character of a special fund, pursuant to Sections 20 and 21 of Executive Order No. 229, Series of 1987 and Section 63 of Republic Act. No. (RA) 6657.¹¹ Here, petitioners do not dispute that the CNA incentives granted were sourced from the CARP Fund. Worse, they granted the incentives to the officers of the provincial office contrary to the DBM Budget Circular which limits the grant to rank-and-file employees.

Anent the liabilities of the certifying and approving officers,¹² the COA correctly ruled that they are solidarily liable to return the disallowed amount, considering the absence of good faith on their part. In the case of *Madera v. COA (Madera)*,¹³ the Court ruled that the approving and certifying officers, who have acted in bad faith, malice, or gross negligence shall return the net disallowed amount pursuant to Section 43, Chapter 5, Book VI of Executive Order No. 292 or the Administrative Code of 1987. In this relation, the Court has consistently held that the presumption of good faith fails when an explicit law, rule, or regulation has been violated – thus amounts to gross negligence, as in this case.¹⁴ Here, the approving and certifying officers in this case blatantly violated the DBM Budget Circular on the grant of CNA Incentives, considering their admission of sourcing the funds from the CARP Fund and granting them beyond the coverage of the circular.

⁷ To note, the petition was posted only on April 25, 2021 (see id.)

⁸ See G.R. No. 237813, March 05, 2019. See also *Department of Agrarian Reform Employees Association v. COA*, G.R. No. 217285, November 10, 2020. See further id. at 25–30.

⁹ Issued on February 1, 2006.

¹⁰ See *Dubongco*, supra.

¹¹ See id.

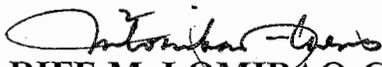
¹² See *rollo*, pp. 24–25.

¹³ See G.R. No. 244128, September 8, 2020.

¹⁴ See *SSS v. COA*, G.R. No. 244336, October 6, 2020; *Velasco v. COA*, 695 Phil. 226 (2012); *Reyna v. COA*, 657 Phil. 209 (2011); *Casal v. COA*, 538 Phil. 634 (2006); *Rotoras v. COA*, G.R. 211999, August 20, 2019; *MIAA v. COA*, 681 Phil. 644 (2012).

Neither can petitioners invoke good faith on behalf of the passive recipients to avoid liability. The Court, in *Madera*, clarified that passive recipients cannot invoke good faith to be excused from liability since they are only treated as ordinary persons governed by principles of unjust enrichment and *solutio indebiti*.¹⁵ Similarly, the Court finds that petitioners cannot invoke Rule 2c or 2d of the *Madera* Rules on Return.¹⁶ Anent Rule 2c, the Court in *Abellanosa v. COA*¹⁷ (*Abellanosa*) held that the invocation of Rule 2c requires the existence of the following requisites: (1) the item of compensation must have proper basis in law but was only disallowed due to irregularities that are merely procedural in nature; and (2) the item of compensation must have a clear, direct, and reasonable connection to the actual performance of the recipient's official work and functions for which it was intended as compensation.¹⁸ Here, the CNA incentives were disallowed not due to some procedural lapse committed by the certifying or approving officers but was caused by the grant of these incentives being contrary to law. Neither is Rule 2d availing in the present case. As held in *Abellanosa*, Rule 2d is only applicable to prevent a clear inequity after considering all relevant factors (*e.g.*, the nature and purpose of the disbursement, and its underlying conditions).¹⁹ Here, the present petition and the records do not provide for the existence of any extraordinary circumstance that could override the liability to return the disallowed amounts or how the return of the same would unduly prejudice the payees." Lazaro-Javier, J., on official leave. (158)

By authority of the Court:


MARIFE M. LOMIBAO-CUEVAS
Clerk of Court *ms*

¹⁵ See *Madera*, *supra*.

¹⁶ Rule 2c provides that '[r]ecipients — 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.'

Rule 2d provides that '[t]he 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.'

¹⁷ See G.R. No. 185806, November 17, 2020.

¹⁸ See *id.*

¹⁹ See *id.*

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