



Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

*Please take notice that the Court en banc issued a Resolution dated **OCTOBER 11, 2022**, which reads as follows:*

“G.R. No. 225241 (Arthur N. Aguilar v. Director Leila S. Paras, Director IV, Office of the Cluster Director, Government Sector, Cluster 4, Commission on Audit). – This is a Petition for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court filed by the petitioner Arthur N. Aguilar (petitioner), seeking to annul the respondent Commission on Audit’s (COA) Decision No. 2015-457² dated December 29, 2015.

The antecedent facts follow:

During the period relevant to the disallowed transaction, the petitioner is the Chairperson/Director of the Philippine National Construction Corporation (PNCC).³

PNCC was incorporated in 1966 as Construction Development Corporation of the Philippines (CDCP), with a term of 50 years. On March 31, 1977, Presidential Decree (P.D.) No. 1113⁴ was passed, granting CDCP a franchise to construct, operate, and maintain toll facilities in the North and South Luzon Expressway. By virtue of P.D. No. 1894,⁵ CDCP was also given the authority over the Metro Manila Expressway.⁶

Owing to its losses and piling obligations with Government Financial Institutions (GFIs), CDCP was ordered rehabilitated through then President Ferdinand E. Marcos’ Letter of Instruction (LOI) No. 1295 dated February

¹ *Rollo*, pp. 3-78.

² *Id.* at 46-49.

³ *Id.* at 34-35.

⁴ GRANTING THE CONSTRUCTION AND DEVELOPMENT CORPORATION OF THE PHILIPPINES (CDCP) A FRANCHISE TO OPERATE, CONSTRUCT AND MAINTAIN TOLL FACILITIES IN THE NORTH AND SOUTH LUZON TOLL EXPRESSWAYS AND FOR OTHER PURPOSES; signed on March 31, 1977.

⁵ AMENDING THE FRANCHISE OF THE PHILIPPINE NATIONAL CONSTRUCTION CORPORATION TO CONSTRUCT, MAINTAIN AND OPERATE TOLL FACILITIES IN THE NORTH LUZON AND SOUTH LUZON EXPRESSWAYS TO INCLUDE THE METRO MANILA EXPRESSWAY TO SERVE AS AN ADDITIONAL ARTERY IN THE TRANSPORTATION OF TRADE AND COMMERCE IN THE METRO MANILA AREA; signed on December 22, 1983.

⁶ *Rollo*, pp. 34-35.

23, 1983. Pursuant to which, CDCP's outstanding debt was converted into common shares. As a result, the government, through the collective stocks of GFIs, acquired majority ownership of the CDCP. Subsequently, CDCP filed an amended Articles of Incorporation with the Securities and Exchange Commission (SEC) to reflect the change in ownership and to rename CDCP to PNCC.⁷

Pursuant to the privatization program of the government under Proclamation No. 50,⁸ the equity shares of the GFIs in PNCC were transferred, in trust, to the Asset Privatization Trust (APT).⁹

Throughout the years, the PNCC entered into various joint venture agreements with private investors and operators. Eventually, the maintenance and operation of the expressways under PNCC's management were turned over to private investors. This prompted the PNCC to create a 'Retirement/Resignation/Gratuity Benefit Program' (Retirement Program) for its officers and employees.¹⁰

The Retirement Program is supported by various Board Resolutions¹¹ which provided for the grant to the PNCC Board of Directors (BOD), Officers, and Assistant Corporate Secretary of various gratuity benefits from 2007-2010 amounting to ₱90,784,975.21.¹²

On post-audit of PNCC transactions and accounts for 2007-2010, the Audit Team issued Audit Observation Memorandum (AOM) No. 11-013

⁷ Id. at 36.

⁸ PROCLAIMING AND LAUNCHING A PROGRAM FOR THE EXPEDITIOUS DISPOSITION AND PRIVATIZATION OF CERTAIN GOVERNMENT CORPORATIONS AND/OR THE ASSETS THEREOF, AND CREATING THE COMMITTEE ON PRIVATIZATION AND THE ASSET PRIVATIZATION TRUST; signed on December 8, 1986.

⁹ Id.

¹⁰ *Rollo*, p. 36.

¹¹ Id. at 36-37.

Among the aforesaid Board Resolutions are:

1. Board Resolution No. BD-028-2005 dated March 29, 2005, authorizing the grant of gratuity pay to the outgoing directors equivalent to one month gross remuneration for every year of continuous and uninterrupted service;
2. Board Resolution No. BD-031-2007 dated April 25, 2007, authorizing the creation of PNCC Retirement/Resignation/Gratuity Benefit Program for Directors and Senior Officers in addition to retirement benefits. The benefit extends to Executive Directors such as the President and Chief Executive Officer, Executive Vice President, Senior Vice President, Corporate Secretary, and Assistant Corporate Secretaries and its Corporate Secretariat Staff;
3. Board Resolution No. BD-043-2007 dated August 30, 2007, creating the Board of Trustees of the PNCC Retirement Fund with the power and authority to approve full and partial payments and releases of advance payments of retirement gratuity to eligible beneficiaries or entitled members of the Board and Senior Management;
4. Resolution No. BD-019-2009 dated August 27, 2009, granting cash gratuities to Mr. Rolando L. Macasaet, in his capacity as then President and Chairperson of the Board of PNCC and its subsidiaries, and to Mr. Wilfredo P. Cu, then President of PNCC and PNCC Skyway Corporation and its subsidiaries; and
5. Resolution BD-031-2008 dated November 5, 2008, granting additional powers and duties to the Board of Trustees of PNCC to re-align and distribute savings and other income from its budget to the Retirement Trust Fund and implement payment of regular gratuity approved under Resolution No. BD-028-2005, as amended.

¹² Id. at 36-37, 112.

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(2010)¹³ dated March 28, 2011. After the PNCC failed to satisfactorily explain the grant of gratuity benefits, Notice of Disallowance (ND) No. 11-002-(2007-2010),¹⁴ dated July 8, 2011 was issued. The ND found that the payment of gratuity benefits in the total amount of ₱90,784,975.21 was irregular, unnecessary, excessive, and extravagant, in violation of COA Circular No. 85-55-A¹⁵ dated September 8, 1985, and as such must be refunded by the payees as well as the officers who approved the grant thereof,¹⁶ viz.:

| Persons Liable | Position | Nature of Participation |
|---------------------------|---|---|
| Arthur N. Aguilar | Chairperson/Director | Approved the payment, Payee |
| Ma. Theresa T. Defensor | President/Chief Executive Officer | Approved the payment, Payee |
| Marvin V. Paule | Member, BOD | Approved the payment; signed the check; approved the check voucher; and payee |
| Enrique C. Cuejilo | Member, BOD | Approved the payment; signed the check; approved the check voucher; and payee |
| Segundo M. Gaston | Senior Vice President, Head-Support Service Group | Approved the payment; signed the check; approved the check voucher; and payee |
| Miriam M. Pasetes | Senior Vice President, Head-Treasury | Approved the payment; signed the check; approved the check voucher; certified the check voucher; approved the budget; certified the availability of funds |
| Glenna Jean R. Ogan | Vice President, Head-Legal | Signed the check |
| Garth Noel P.E. Tolentino | Member, BOD | Payee |
| Jeremy Z. Parulan | Member, BOD | Payee |
| Fermin S. Lusung | Member, BOD | Payee |
| Antonio T. Vilar | Member, BOD | Payee |
| Roy Eduardo T. Lucero | Member, BOD | Payee |

¹³ Id. at 128-134.

¹⁴ Id. at 136-147.

¹⁵ AMENDED RULES AND REGULATIONS ON THE PREVENTION OF IRREGULAR, UNNECESSARY, EXCESSIVE OR EXTRAVAGANT EXPENDITURES OR USES OF FUNDS AND PROPERTY.

¹⁶ *Rollo*, pp. 37-38.

| | | | |
|------------------------|-----------|-------------------------------|-------|
| Ottomama Benito | Morohom | Member, BOD | Payee |
| Guillermo N. Hernandez | | Member, BOD | Payee |
| Abraham A. Puruganan | | EVP- Director | Payee |
| Rolando L. Macasaet | | Former Director | Payee |
| Wilfredo P. Cu | | Former Director | Payee |
| Manuel Luis C. Antonio | | VP, Head TMD | Payee |
| Jaime Armonio | Manuel F. | Assistant Corporate Secretary | Payee |

The persons found liable under the ND,¹⁷ through the herein petitioner, submitted their appeal to the COA Corporate Government Sector (CGS), Cluster 4, in which they argued that the grant of the gratuity benefit is legal and that PNCC is an acquired asset corporation and as such is not subject to the same rules and regulations applicable to government agencies or government-owned and controlled corporations.¹⁸

On April 2, 2014, COA CGS Cluster 4, Director IV Leila S. Paras rendered her Decision No. 2014-02,¹⁹ denying the appeal, viz.:

WHEREFORE, foregoing premises considered, the instant appeal is hereby **DENIED**. Accordingly, Notice of Disallowance No. 11-002-(2007-2010) dated July 8, 2011 in the total amount of P90,784,975.21 is hereby **AFFIRMED**.²⁰ (Emphasis in the original)

The petitioner, as well as the other officials and payees of the PNCC filed their respective Petitions for Review which were consolidated by the COA Commission Proper.²¹ On December 29, 2015, the COA rendered the herein assailed Decision No. 2015-457²² dismissing the petitions for having been filed out of time, viz.:

WHEREFORE, premises considered, the consolidated petitions for review of Mr. Arthur N. Aguilar, Chairman/Director, and Mr. Antonio T. Vilar, et al., through counsel, all of Philippine National Construction Corporation (PNCC), are hereby **DISMISSED** for having been filed out of time. Accordingly, CGS-4 Decision No. 2014-02 dated April 2, 2014, affirming Notice of Disallowance No. 11-002-(2007-2010) dated July 8, 2011 in the aggregate amount of P90,784,975.21, on the payment of gratuity benefits/pay to the members of PNCC Board of Directors, officers and Assistant Corporate Secretary in calendar years 2007 to 2010, is **FINAL AND EXECUTORY**.²³ (Emphasis in the original)

The COA Commission Proper held that from the date of actual receipt by the petitioner of the ND on July 20, 2011 until the filing of the

¹⁷ Id. at 113-114, 137-141.

¹⁸ Id. at 38.

¹⁹ Id. at 35-45.

²⁰ Id. at 45.

²¹ Id. at 46.

²² Id at 46-49.

²³ Id. at 48.

consolidated petitions for review on July 30, 2014, 186 days have already passed. In view of the petitioner's failure to file within the 180-day period required by the 2009 Revised Rules of Procedure of the COA (COA Rules of Procedure), Decision No. 2014-02 dated April 2, 2014 had become final and executory.²⁴

Aggrieved, with the exception of the petitioner, a Motion for Reconsideration²⁵ of the said decision was filed by the persons found liable under the ND on May 3, 2016. The petitioner, for his part, filed the instant petition for *certiorari* on July 12, 2016.²⁶

The petitioner argues that the Respondent erred in disallowing the gratuity benefits, submitting that the grant is a valid exercise of corporate business judgment.²⁷ Likewise, the petitioner claims that PNCC is a private corporation that is not bound by the internal audit standards set by the COA.²⁸ Ultimately, the petitioner posits that following jurisprudence, good faith and presumption of regularity bar the order for refund.²⁹

On the procedural aspect, the petitioner attributed error upon respondent COA Commission Proper when it denied his petition for review for having been filed beyond the 180-day period required by Section 48 of P.D. No. 1445³⁰ and Section 3, Rule VII of the COA Rules of Procedure.³¹ The petitioner argues that the counting of the period should commence from the date of receipt of the ND by his lawyer Atty. Jeremy Z. Parulan on July 25, 2011 and not on July 20, 2011, the date of receipt by the new PNCC President and CEO, as the petitioner and the members of his BOD were no longer connected with the PNCC since 2010.³²

Reckoned from July 25, 2011, the last day to file the petition for review before the COA Commission Proper would be on July 28, 2014. However, on even date, the Office of the COA is closed in view of the State of the Nation Address by the President, whereas the following day is *Eid'l Fitr*, a regular holiday.³³ Thus, the petition for review filed before the COA Commission Proper on July 30, 2014³⁴ is well within the reglementary period.

²⁴ Id. at 47-48.

²⁵ Id. at 187-197.

²⁶ Id. at 3.

²⁷ Id. at 13.

²⁸ Id. at 15-16.

²⁹ Id. at 16.

³⁰ ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES; signed on June 11, 1978.

³¹ Sec. 3. **Period of Appeal.** - The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, or under Sections 9 and 10 of Rule VI in case of decision of the ASB.

³² *Rollo*, p. 12.

³³ Id. at 4-5.

³⁴ Id. at 47.

On the other hand, the Respondent through the Office of the Solicitor General (OSG), claims that the instant petition is prematurely filed in view of the pendency of the petitioner's motion for reconsideration before the COA Commission Proper which, thus, warrants the outright dismissal of the case.³⁵

The Court issued a Resolution³⁶ on July 7, 2020 directing the parties to move in premises. In compliance, the petitioner filed his *Manifestation and Motion*³⁷ on November 25, 2020, while the OSG filed its *Compliance and Manifestation*³⁸ on October 16, 2020 stating that, 't is not aware of any significant development in the instant case which would affect the parties.'

Significantly, on September 29, 2022, Atty. Ma. Rica A. Gatchalian, counsel for the petitioner, filed another *Compliance*³⁹ to the Court's Resolution dated July 7, 2020, informing the Court that without her knowledge, the petitioner joined his co-respondents in the COA case below, and filed a petition for *certiorari* under Rule 64 before the Court, docketed as G.R. No. 258527. The said petition assailed the Decision No. 2020-479 of the COA Commission Proper, which ruled on the motion for reconsideration filed by the petitioner's co-respondents on May 3, 2016. In its Decision No. 2020-479, the COA Commission Proper reconsidered its earlier dismissal of the case after finding that there was no constructive service to the persons subject of the ND. The COA Commission Proper then proceeded to resolve the issue on the propriety of the disallowance.⁴⁰

The Court's Ruling

The petition should be **dismissed**.

The Court notes that with the COA Commission Proper's reconsideration of Decision No. 2015-457, in effect, it reconsidered its earlier ruling and ruled that the appeal was timely filed. This rendered the procedural issue raised herein moot and academic.

On the merits, it must be stated that under the Rules it is the prerogative of a party whether to file a motion for reconsideration or opt to file directly before the Court from the ruling of the COA Commission Proper.⁴¹ Under the attendant circumstances, the petitioner directly filed the instant petition before the Court whereas, his co-respondents below filed a motion for reconsideration before the COA. As earlier stated, a ruling on the said motion has already been issued and is now questioned before the Court

³⁵ Id. at 116-123, 405-414.

³⁶ Id. at 593-594.

³⁷ Id. at 601-605.

³⁸ Id. at 595-598.

³⁹ Id. at 611-617.

⁴⁰ *Aguilar v. Commission on Audit*, G.R. No. 258527, March 8, 2022.

⁴¹ RULES OF COURT, Rule 64, Section 3; 2009 Commission on Audit RULES OF PROCEDURES, Sections 9, 10, 12.

Done

in G.R. No. 258527. In the said case, the petitioner joined his co-respondents in the case before COA, thus, effectively abandoning the instant petition which assails the earlier COA Decision No. 2015-457.

Per verification in the Court Administration System,⁴² the Court, in G.R. 258527, resolved to grant the motion for reconsideration filed by therein petitioners. Hence, the Court reinstated the petition for *certiorari* and directed the respondents to file a comment thereon.

In view of the factual developments of the case, particularly considering that an adjudication on merits has already been rendered by the COA and is now pending before the Court, a dismissal of the instant petition which is anchored primarily on the issue of timeliness of the appeal before the COA Commission Proper, is warranted under the premises.

WHEREFORE, in light of the foregoing disquisitions, the petition for *certiorari* is hereby **DISMISSED.** Caguioa, Rosario and Marquez, JJ., on official leave. (54)

By authority of the Court:


MARIFE M. LOMIBAO-CUEVAS
Clerk of Court

⁴² Last visited on October 3, 2022.

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