

EN BANC

G.R. No. 230818 – EFRAIM C. GENUINO, *Petitioner*, v. COMMISSION ON AUDIT (COA), COA OFFICE OF THE DIRECTOR, CORPORATE GOVERNMENT SECTOR, CLUSTER 6, represented by DIRECTOR JOSEPH B. ANACAY, and the OFFICE OF THE COA SUPERVISING AUDITOR – PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), represented by AUDITOR BELEN B. LADINES, *Respondents*; and

G.R. No. 244540 – RENE C. FIGUEROA, *Petitioner*, v. COMMISSION ON AUDIT, *Respondent*.

Promulgated:

February 14, 2023

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CONCURRING AND DISSENTING OPINION

KHO, JR., J.:

I *concur* with the *ponencia* insofar as it overturns the Court's ruling in the original Decision dated June 15, 2021 in G.R. No. 230818, *Genuino v. COA* (2021 *Genuino* Decision),¹ and which in effect likewise overturns the earlier 2021 Decision of the Court in *Figueroa v. Commission on Audit*, G.R. Nos. 213212, 213497, and 213655 dated April 27, 2021 (2021 *Figueroa* Decision),² which held that the Commission on Audit (COA) has limited audit jurisdiction only to the five percent (5%) franchise tax and the Government's fifty percent (50%) share as stated in Section 15 of the Presidential Decree No. 1869 or "the PAGCOR Charter."

As discussed by the *ponencia*, Section 15 of the PAGCOR Charter has been repealed by the 1987 Constitution. Thus, I agree with the new doctrine enunciated in these cases that "*PAGCOR, being a government-owned or controlled corporation with its own original charter, and its funds regardless of source, come within the broad purview of Art. IX-D, Sec. 2 and Sec. 3 of the 1987 Constitution. In effect, the 'revenue and receipts of, and expenditures or uses of funds' which are held in trust by or pertaining to it, are subject to COA's audit jurisdiction, contrary to Sec. 15 of PD 1869, and the restrictions mentioned therein.*"³

¹ Penned by Associate Justice Edgardo L. Delos Santos.

² Penned by Associate Justice Samuel H. Gaerlan.

³ See *ponencia*, p. 11.



I likewise fully *concur* with the *ponencia* that the new doctrine of the Court on the audit jurisdiction of COA over all funds of PAGCOR, regardless of source, should be *prospective in nature*, and citing *People v. Jabinal*,⁴ it “*should not apply to parties who had relied on the old doctrine and acted on the faith thereof.*”⁵

However, I respectfully register my *dissent* on the determination by the *ponencia* of the propriety of the disallowance and petitioners’ respective liabilities despite the pronouncement in these cases that the new doctrine on the expansive audit jurisdiction of COA shall be applied prospectively. ***Following the rules on retroactivity and prospectivity of judicial decisions, the reversal of the 2021 Genuino Decision should not be applied to the disbursements made in the cases herein.***

I expound below.

I.

Prior to the new doctrine espoused by the present *ponencia*, the Court in the 2021 *Genuino* Decision reasoned that COA only had limited audit jurisdiction over PAGCOR’s funds (the old doctrine) based on the presumption of constitutionality as Section 15 of the PAGCOR Charter has not been “amended, repealed, or declared unconstitutional.”⁶ Accordingly, the Court stated that:

PAGCOR was created pursuant to a special law and is, thus, governed primarily by its provisions. As a legislative act, P.D No. 1869 and in particular, Section 15, enjoys the presumption of constitutionality. Courts accord the presumption of constitutionality to legislative enactments, not only because the legislature is presumed to abide by the Constitution, but also because the Judiciary, in the determination of actual cases and controversies, must reflect the wisdom and justice of the people as expressed through their representatives in the Executive and Legislative departments of the Government. Hence, unless otherwise repealed by a subsequent law or adjudged unconstitutional by this Court, a law will always be presumed valid and the first and fundamental duty of the court is to apply the law. As it stands, since Section 15 of P. D. No. 1869 has yet to be amended, repealed, or declared unconstitutional, the Court 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.⁷

⁴ *People v. Jabinal*, 154 Phil. 565 (1974) [Per J. Antonio, Second Division].

⁵ *Id.*

⁶ *Genuino v. COA*, G.R. No. 230818, June 15, 2021. The same ruling was made in the case of *Figueroa v. COA*, G.R. No. 213212, April 27, 2021.

⁷ *Id.*

While implied repeals are not favored, the Court has nonetheless held that the same may be done when it is manifest that the legislative authority so intended the repeal or *when it is convincingly and unambiguously demonstrated that the subject laws or orders are clearly repugnant and patently inconsistent that the laws cannot co-exist*.⁸

As astutely observed by the *ponencia*, COA's jurisdiction and Section 15 of the PAGCOR Charter are inconsistent with each other. It should be emphasized that COA is constitutionally empowered to exercise its general auditing power to determine, prevent, and disallow illegal, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds.⁹ This power is "among the constitutional mechanisms that give life to the check and balance system inherit in our form of government."¹⁰ Hence, Section 2, Article IX-D of the 1987 Constitution gives COA a wide latitude to rule on the legality of the disbursement of government funds, *viz*:

ARTICLE IX
Constitutional Commissions

x x x x

D. THE COMMISSION ON AUDIT

x x x x

Section 2. (1) The Commission on Audit shall have the **power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters**, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such nongovernmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. x x x.

x x x x (Emphases and underscoring supplied)

A reading of the emphasized portions of Section 2, Article IX-D of the 1987 Constitution makes it clear that **COA now has the power to examine and audit all funds pertaining to government-owned or controlled corporations with original charters**.

⁸ *The United Harbor Pilot's Association of the Philippines, Inc. v. Association of International Shipping Lines, Inc.*, 440 Phil. 188 (2002) [Per J. Sandoval-Gutierrez, *En Banc*].

⁹ *Small Business Corporation v. COA*, G.R. No. 251178, April 27, 2021 [Per J. Perlas-Bernabe, *En Banc*].

¹⁰ *Delos Santos v. COA*, 716 Phil. 322, 332 (2013) [Per J. Perlas-Bernabe, *En Banc*].

Thus, it would be improbable for this Court to conclude that Section 15 of the PAGCOR Charter could not have been impliedly repealed by the clear and categorical import of the 1987 Constitution.

II.

Finding that COA has the power to audit PAGCOR's funds without any limitation under its charter, the *ponencia* emphasized that "[it] shall apply prospectively and shall not affect parties who relied on, and acted upon, the force of former contrary views."¹¹ According to the *ponencia*, the prospective application of the present ruling is rooted in "justice and fairness."¹²

As stated earlier, I fully concur with the *ponencia* insofar as its findings with regard to COA's audit jurisdiction should be prospective in character.

In *Senarillos v. Hermosisima*,¹³ the Court *En Banc*, speaking through Justice Jose Benedicto Luis L. Reyes, laid down the fundamental rule that interpretations of the law made by the Supreme Court constitute part of the law as of the date it was originally passed since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.¹⁴

However, this canonical rule on retroactivity of judicial rulings admits of an exception. In *People v. Jabinal*,¹⁵ the Court, through Associate Justice Felix Q. Antonio, first laid down the rule that a new doctrine made by the Court shall be applied prospectively when an old doctrine is overruled and a different view is adopted, *viz*:

It will be noted that when appellant was appointed Secret Agent by the Provincial Governor in 1962, and Confidential Agent by the Provincial Commander in 1964, the prevailing doctrine on the matter was that laid down by Us in *People vs. Macarandang* (1959) and *People vs. Lucero* (1958). Our decision in *People vs. Mapa* reversing the aforesaid doctrine came only in 1967. The sole question in this appeal is: Should appellant be acquitted on the basis of Our rulings in *Macarandang* and *Lucero*, or should his conviction stand in view of the complete reversal of the *Macarandang* and *Lucero* doctrine in *Mapa*? The Solicitor General is of the first view, and he accordingly recommends reversal of the appealed judgment.

¹¹ See *ponencia*, p. 23.

¹² *Id.*

¹³ 100 Phil. 501 (1956) [Per J. J.B.L. Reyes].

¹⁴ *Id.* See also *People v. Jabinal*, *supra* note 4; *Commissioner of Internal Revenue v. Republic Cement Corporation*, 233 Phil. 507 (1987) [Per J. Cortes, En Banc]; *Eagle Realty Corporation v. Republic*, 579 Phil. 355 (2008) [Per J. Nachura, Third Division]; *Republic v. Remman Enterprises*, 727 Phil. 608 (2014) [Per J. B. Reyes, First Division].

¹⁵ 154 Phil. 565 (1974) [Per J. Antonio, Second Division]

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system x x x." The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "*legis interpretatio legis vim obtinet*" - the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in question and when he was arraigned by the trial court. It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.

It follows, therefore, that considering that appellant was conferred his appointments as Secret Agent and Confidential Agent and authorized to possess a firearm pursuant to the prevailing doctrine enunciated in *Macarandang* and *Lucero*, under which no criminal liability would attach to his possession of said firearm in spite of the absence of a license and permit therefor, appellant must be absolved. Certainly, appellant may not be punished for an act which at the time it was done was held not to be punishable.¹⁶

The rationale behind the rule on prospectivity of judicial decisions was expounded by the Court *En Banc*, through Justice Florenz D. Regalado, in *Columbia Pictures, Inc. v. Court of Appeals*,¹⁷ viz.:

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication.

x x x x

Withal, even the proposition that the prospectivity of judicial decisions imports application thereof not only to future cases but also to cases still ongoing or not yet final when the decision was promulgated,

¹⁶ Id.

¹⁷ 329 Phil. 875 (1996).

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should not be countenanced in the jural sphere on account of its inevitably unsettling repercussions. x x x.¹⁸

Based on the foregoing rulings by the Court, the rule on prospectivity of judicial decisions applies to cases where parties relied on a previous ruling of the Court. Thus, it appears from these Court decisions that the old doctrine – *that COA has limited jurisdiction over disbursements made by PAGCOR* – applies only to the period between the finality of the 2021 *Genuino* Decision and the finality of the present *ponencia*, and that the new doctrine – *that the audit jurisdiction of COA covers all funds of PAGCOR regardless of source* – applies to transactions made after the finality of the present *ponencia*. This is because the approving and certifying officers may rely on the 2021 *Genuino* Decision in good faith in making disbursements covering the period between the two *ponencias*.

The foregoing discussion, however, leads to the important question of what doctrine to apply to PAGCOR transactions done prior to the old doctrine enunciated in the 2021 Genuino Decision – that is, from the effectivity of the PAGCOR Charter to the finality of the 2021 Genuino Decision.

It appears that the *ponencia*, despite the rule on prospectivity of the new doctrine, applied the new doctrine for transactions affecting PAGCOR funds done prior to the finality of the old doctrine as enunciated in the 2021 *Genuino* Decision, considering that it recognized the audit jurisdiction of COA to the transactions made by petitioners.

This is where my thoughts diverge from that of the ponencia. Hence, my dissent.

I respectfully enter my dissent with the *ponencia*'s determination on the propriety of the disallowances herein and, accordingly, the determination of petitioners' respective liabilities. In applying the rules on retroactivity and prospectivity of judicial decisions, the *ponencia* should have affirmed the Court's findings in G.R. No. 230818 insofar as it did not go into petitioner's liability therein and granted the petition in G.R. No. 244540.

In *Philippine International Trading Corporation v. COA*¹⁹ (*PITC*), the Court *En Banc*, speaking through Associate Justice Teresita J. Leonardo-De Castro, held that its prior ruling in relation to the interpretation of Executive Order No. 756 should ***retroactively apply*** considering that it did not reverse an old doctrine nor adopt a new one:

¹⁸ Id.

¹⁹ 821 Phil. 144 (2017).

Applying the foregoing disquisition to the present case, the Court disagrees with PITC's position that the Decision in G.R. No. 183517 should be applied prospectively.

As the COA correctly argued, the Decision in G.R. No. 183517 neither reversed an old doctrine nor adopted a new one. The Court merely construed therein the meaning and application of Section 6 of Executive Order No. 756 by taking into consideration the rationale behind the provision, its interplay with pre-existing retirement laws, and the subsequent enactments and statutes that eventually repealed the same. **Prior to the Decision in G.R. No. 183517, there was no other ruling from this Court that explained the nature of the retirement benefits under Section 6 of Executive Order No. 756. Thus, the Court's interpretation of the aforesaid provision embodied in the Decision in G.R. No. 183517 retroacts to the date when Executive Order No. 756 was enacted.**²⁰
(Emphasis and underscoring supplied)

Applying *PITC* to this case, the 2021 *Genuino* Decision enunciating the old doctrine should be retroactively applied and remain in force when it comes to disbursements made prior to the said case. *Similar to PITC, the 2021 Figueroa Decision and thereafter the 2021 Genuino Decision did not reverse an old doctrine nor did it adopt a new one. In fact, the 2021 Genuino Decision even reiterated the earlier 2021 Figueroa Decision which was the first case addressing the issue of COA's audit jurisdiction over disbursements made by PAGCOR prior to the present cases.* Thus, to hold otherwise amounts to the Court punishing parties who relied on their long-standing belief in good faith that COA only had limited jurisdiction – based on the PAGCOR Charter – which was in fact reaffirmed by all the members of the Court *En Banc* in the 2021 *Genuino* Decision.²¹

Moreover, the present situation of petitioners is *akin to the badges of good faith* as discussed in *Madera v. COA*,²² through Associate Justice Alfredo Benjamin S. Caguioa. In said case, the Court adopted Associate Justice Marvic M.V.F. Leonen's badges of good faith in determining an officer's liability. The badges of good faith are:

- (1) Certificate of Availability of Funds pursuant to Section 40 of the Administrative Code,
- (2) In-house or Department of Justice legal opinion,
- (3) **that there is no precedent disallowing a similar case in jurisprudence;**^[23]
- (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, and
- (5) **with regard the question of**

²⁰ Id. at 156-157.

²¹ Penned by Associate Justice Edgardo I. Delos Santos and concurred in by all the members of the Court, except Associate Justice Alfredo Benjamin S. Caguioa who took no part.

²² G.R. No. 244128, September 8, 2020 [Per J. Caguioa, *En Banc*].

²³ Prior to the *Figueroa* and 2021 *Genuino* Decisions, there was no case law which affirmed the disallowance made by COA.

law, that there is a reasonable textual interpretation on its legality.²⁴
(Emphases supplied)

In view of the foregoing, the Court's reversal of the 2021 *Genuino* Decision in the present case ***should not be applied*** to the disbursements made in the cases herein. Hence, the Court should no longer look into the propriety of the disbursement as well as the corresponding liabilities of the approving and/or certifying officers and the recipients herein.

ACCORDINGLY, I vote to:

1. **PARTLY GRANT** the Motion for Reconsideration filed by respondent Commission on Audit in G.R. No. 230818 with regard to respondent's audit jurisdiction over PAGCOR;

2. **GRANT** petitioner Rene C. Figueroa's petition for *certiorari* in G.R. No. 244540; and

3. **SET ASIDE** the Commission on Audit Decision Nos. 2017-271 dated September 6, 2017, and 2015-420 dated December 28, 2015; and Commission on Audit Decision Nos. 2019-023 dated November 26, 2018, and 2017-073 dated March 21, 2017.


ANTONIO T. KHO, JR.
Associate Justice

²⁴ See Footnote 110 in *Madera v. COA*, supra. The present *ponencia* and the 2021 *Figueroa* and 2021 *Genuino* Decisions exhibits reasonable textual interpretation on the legality of the disbursements made by PAGCOR.

