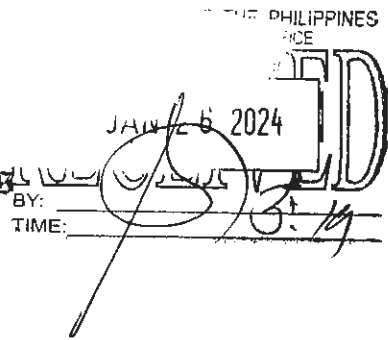




Republic of the Philippines
Supreme Court
Manila



EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **JUNE 13, 2023**, which reads as follows:

“G.R. No. 253759 (CORAZON T. AGUINALDO, Petitioner, v. THE COMMISSION ON AUDIT PROPER, Respondent).

X-----X

RESOLUTION

This Court resolves a Petition for *Certiorari*¹ filed under Rule 64 in relation to Rule 65 of the Rules of Court, assailing the Commission on Audit (COA) Commission Proper (CP) Decision No. 2018-415² dated December 21, 2018, and the Resolution No. 2020-292³ dated January 31, 2020. The assailed issuances denied Corazon T. Aguinaldo’s (Aguinaldo) Petition for Review and affirmed the Notice of Disallowance (ND) No. 2010-01⁴ dated December 14, 2010, which disallowed the grant of cash advances to purchase materials for the construction of the new Philippine Aerospace Development Corporation (PADC) in Makati City.

The Facts

On June 1, 2005, Aguinaldo was appointed as Executive Secretary to PADC President Roberto R. Navida (Navida) with contractual status.⁵ Her appointment was raised to permanent status on September 1, 2005.⁶ As Executive Secretary, she directly reported to Navida and his son, the Head Executive Assistant, Robert Alain Navida (Robert Alain).⁷ Pursuant to

¹ *Rollo*, pp. 3–306.

² *Id.* at 137–140.

³ *Id.* at 51–55.

⁴ *Id.* at 111.

⁵ *Id.* at 5, Petition for *Certiorari*.

⁶ *Id.* at 127–128.

⁷ *Id.* at 6, Petition for *Certiorari*.

PADC Board Resolution No. 09, Series of 2006,⁸ Aguinaldo was also designated as Acting Treasurer with authority to sign checks on behalf of PADC.⁹ Further, Aguinaldo was one of the disbursing officers of the PADC Office of the President, named as payee of checks to facilitate the release of funds, including cash advances from the President's discretionary funds, upon the authority and approval of the President.¹⁰

Through Board Resolution No. 10, Series of 2005, PADC approved the transfer of its executive offices from Pasay City to Makati City. It considered the costly monthly lease rate at PHP 180,000.00 for the Pasay City office compared to the PHP 137,225.00 monthly lease rate, with 3% annual increase, of the bigger office space in Makati City. With the transfer, PADC also wished to repackage its image as the leader in the Philippine aviation industry.¹¹

According to Aguinaldo, she was instructed by her superiors Navida and Robert Alain to procure cash advances for the purchase of materials for the construction of the PADC Executive Office in Makati City.¹² It was established that Aguinaldo was granted a cash advance in the amount of PHP 500,000.00 under Check No. 308045 dated September 6, 2006 and another cash advance in the amount of PHP 750,000.00 under Check No. 308062 dated September 13, 2006 – or a total amount of PHP 1,250,000.00.¹³

On September 24, 2008, COA Auditor Arsenio Rayos, Jr. (Auditor Rayos) issued a Notice of Suspension (NS) No. 2008-003-(2006)¹⁴ against Aguinaldo, Navida, Vice-President for Administration and Finance Richard K. Lazaro (Lazaro), and Comptroller Josefa R. Cabangangan (Cabangangan) for the amount of PHP 998,000.00. The NS noted the following deficiencies with respect to the cash advances: (1) Aguinaldo was not bonded; (2) all purchases were paid in cash regardless of the amount, in violation of existing regulations that limit to PHP 15,000.00 the amount that may be paid in cash; (3) the attached documents were observed to not have been properly accomplished, i.e., purchase orders, inspection and acceptance reports, and the invoices/official receipts issued by the supplier did not state the specific purchase order being paid for. The NS further stated that non-settlement of the items suspended within 90 days after receipt would become a disallowance pursuant to Section 82 of Presidential Decree No. 1445.¹⁵

⁸ *Id.* at 129.

⁹ *Id.* at 6, Petition for *Certiorari*.

¹⁰ *Id.*

¹¹ *Id.* at 294, Minutes of the Meeting of the PADC Board of Directors (September 19, 2005).

¹² *Id.* at 7, Petition for *Certiorari*.

¹³ *Id.* at 160, COA CGS-Cluster IV Decision No. 2017-02.

¹⁴ *Id.* at 112.

¹⁵ *Id.*



With the non-settlement of the NS, Auditor Rayos issued ND No. 2010-016¹⁶ on December 14, 2010, disallowing the grant of cash advances for the purchase of construction materials of the new PADC office in the amount of PHP 998,000.00. The persons held liable under ND No. 2010-016 were as follows:

| Name | Position/Designation | Nature of Participation in the Transaction |
|--------------------------|---------------------------------------|--|
| 1. Roberto R. Navida | President | For approving the transactions and countersigning the checks |
| 2. Richard K. Lazaro | Vice-President for Admin. and Finance | For signing the Budget Utilization Slips |
| 3. Josefa R. Cabangangan | Comptroller | For being the Comptroller |
| 4. Corazon T. Aguinaldo | Executive Secretary | For being the payee and signing the checks |

Aguinaldo filed her Memorandum of Appeal¹⁷ dated October 14, 2011, praying that the ND be lifted and set aside.

The Ruling of the COA CGS-Cluster IV

In its Decision No. 2017-02¹⁸ dated February 24, 2017, the COA Corporate Government Sector (CGS)-Cluster IV denied the appeal and affirmed the ND. The dispositive portion of the Decision reads:

WHEREFORE, foregoing premises considered, this Cluster **DENIES** Appellant Aguinaldo's request for exclusion from any liability under ND No. 2010-016. However, the amount of her liability together with the rest of the officers named in the subject ND is reduced from ₱998,000.00 to ₱997,800.00.

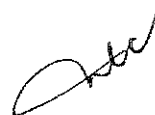
Pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit, the reduction of ₱200.00 from the total amount stated in the ND would have subjected this Decision to the automatic review of the Commission Proper. However, pursuant to COA Resolution No. 2016-023, modification of the ND in an amount less than ₱100,000.00 no longer subjects a Cluster Decision to automatic review of the CP.¹⁹ (Emphasis in the original)

¹⁶ *Id.* at 111.

¹⁷ *Id.* at 227-286.

¹⁸ *Id.* at 159-166.

¹⁹ *Id.* at 166.



Aggrieved, Aguinaldo filed a Petition for Review²⁰ before the COA-CP.

The Ruling of the COA-CP

On December 21, 2018, the COA-CP issued Decision No. 2018-415,²¹ which denied the Petition for Review for being filed out of time. According to the COA-CP, 275 days had lapsed from the date of receipt of the ND on February 3, 2011 up to the date of filing of the appeal with the COA CGS-Cluster IV on October 17, 2011. Further, 20 days had lapsed from the date of receipt of the COA CGS-Cluster IV Decision on March 14, 2017 up to the date of filing of the Petition for Review on April 3, 2017. Thus, the Decision of the COA CGS-Cluster IV had already attained finality and may no longer be modified.²²

However, even if the Petition for Review were to be decided on the merits, the COA-CP ruled that Aguinaldo would still be liable and the transfer of the cash advance to Navida's possession and utilization would be a violation of Item 4.1.6 of COA Circular No. 97-002. The COA-CP ruled that, as payee, Aguinaldo was responsible to account for all the expenditures and to submit the receipts pertaining to the cash advances. However, the documents submitted for liquidation were not properly accomplished and were not recorded in the books of accounts of the Accounting Department of the PADC. Thus, the COA-CP ruled that Aguinaldo's exclusion from liability under the ND could not be favorably granted.²³ The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Petition for Review of Ms. Corazon T. Aguinaldo, Senior Industrial Relations Management Officer B, Philippine Aerospace Development Corporation, Pasay City is hereby **DENIED** for having been filed out of time and for lack of merit. Accordingly, Commission on Audit Corporate Government Sector-Cluster 4 Decision No. 2017-02 dated February 24, 2017 and Notice of Disallowance (ND) No. 2010-016 dated December 14, 2010, on the grant of cash advances to purchase materials for the construction of the new PADC Executive Office in Makati City, in the amount of [PHP]998,000.00, are **AFFIRMED**. All persons named under the ND remain liable therefor.²⁴ (Emphasis in the original)

²⁰ *Id.* at 142–226.

²¹ *Id.* at 137–140.

²² *Id.* at 138.

²³ *Id.* at 138–139.

²⁴ *Id.* at 139.

Aguinaldo filed a Motion for Reconsideration²⁵ dated March 11, 2019, which the COA-CP denied through Resolution No. 2020-292²⁶ dated January 31, 2020. The dispositive portion of the Resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration of Ms. Corazon T. Aguinaldo, Senior Industrial Relations Management Officer B, Philippine Aerospace Development Corporation, is **DENIED** for lack of merit.²⁷ (Emphasis in the original)

Hence, this Petition for *Certiorari*, which prays for the reversal of the COA-CP Decision No. 2018-415 and COA-CP Resolution No. 2020-292 and the enjoinder of the implementation of the ND. With the filing of the Office of the Solicitor General's (OSG) Comment on the Petition and, subsequently, Aguinaldo's Reply to the OSG's Comment, the case was submitted for resolution.

The Issue

Did the COA-CP act with grave abuse of discretion in affirming the COA CGS-Cluster IV Decision, disallowing the grant of the PADC cash advances?

The Ruling of the Court

The Court resolves to dismiss the Petition.

The Court finds that the COA-CP did not act with grave abuse of discretion in issuing Decision No. 2018-415 dated December 21, 2018 and Resolution No. 2020-292 dated January 31, 2020, which are both in accord with the facts and applicable laws and jurisprudence.

It is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally created, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws that they are entrusted to enforce.²⁸ Relatedly, the Court's limited review of COA's actions under the

²⁵ *Id.* at 57-136.

²⁶ *Id.* at 51-55.

²⁷ *Id.* at 54.

²⁸ *Abpi v. Commission on Audit*, 877 Phil. 362, 379 (2020) [Per J. Delos Santos, *En Banc*], citing *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 308 (2015) [Per J. Leonen *En Banc*].

extraordinary remedy of *certiorari* was explained in the case of *Paguio v. Commission on Audit*.²⁹

No less than the Constitution vested the COA, as the guardian of public funds, with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. In the exercise of its constitutional duty, the COA is accorded plenary discretion, and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce. Only when the COA acts without or in excess of jurisdiction or with grave abuse of discretion may the Court grant a petition assailing the COA's actions. There is grave abuse of discretion only when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism. This complements the limited scope of the Court's review under the extraordinary remedy of *certiorari*, wherein the Court is confined solely to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.³⁰ (Italics in the original; emphasis and underscoring supplied; citation omitted)

As will be discussed below, Aguinaldo failed to establish grave abuse of discretion on the part of the COA-CP to warrant the reversal or modification of the assailed COA-CP's issuances.

The Petition for Review was properly dismissed by the COA-CP for being filed out of time

In her Petition, Aguinaldo argued that the COA-CP committed grave abuse of discretion in dismissing her Petition for Review as it reckoned the computation of the period for filing an appeal from February 3, 2011, or the date of receipt by PADC.³¹ Aguinaldo argued that the ND was served at the time of the interruption of her employment with PADC.³² Aguinaldo noted that the ND was merely forwarded by the PADC to her residence, but the same was not personally received by her. While she cannot recall the exact date of receipt as she had an abnormal daily schedule while working in a call center, she estimated the date of receipt to be probably around April 17, 2011.³³ Thus, Aguinaldo argued that the denial of her appeal on the basis of a mere technicality runs afoul of her right to due process.³⁴

²⁹ G.R. No. 223547, April 27, 2021 [Per J. M. Lopez, *En Banc*].

³⁰ *Id.*

³¹ *Rollo*, p. 11.

³² *Id.*

³³ *Id.* at 11–12.

³⁴ *Id.* at 24.

The argument deserves scant consideration.

The 2009 Revised Rules of Procedure of the COA (COA Rules) prescribes a period of six months or 180 days from receipt of the ND to appeal an auditor's decision to the regional director up to the COA-CP.³⁵ In dispute is the date of actual receipt of the ND by Aguinaldo.

Section 12.2 of COA Circular No. 2009-006³⁶ provides that personal service of the ND may be done by delivering personally a copy to the party or by leaving it in his office with his clerk or with a person having charge thereof. While Aguinaldo was designated as the payee, the ND was aptly addressed to the President of the PADC. Thus, the ND was properly served by leaving a copy of the same at the office of the PADC.

The facts established that the ND was received by the PADC Comptroller on February 3, 2011. Aguinaldo only filed her Appeal Memorandum before the COA CGS-Cluster IV on October 17, 2011, or after the lapse of 256 days. Nonetheless, the COA CGS-Cluster IV ruled on the merits of the appeal and upheld the ND in Decision No. 2017-02.

While receipt by the COA CGS-Cluster IV Director tolled the running of the period for filing the Petition for Review before the COA-CP, the period resumed to run when Aguinaldo received a copy of Decision No. 2017-02, pursuant to Section 5, Rule V of the COA Rules. At that time, 276 days had already lapsed from her receipt of the ND, which was beyond the 180-day reglementary period for filing an appeal from the ND.

Even assuming *arguendo* that Aguinaldo received the ND on April 17, 2011, the Petition for Review would have still been filed out of time, since a computation of the period would reveal that the same was filed 203 days after Aguinaldo's supposed receipt of the ND.

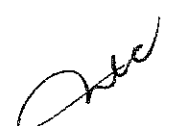
³⁵ Rule IV, SEC. 8. Finality of the Auditor's Decision. — Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

....
Rule V, SEC. 4. When Appeal Taken. — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

Rule V, SEC. 5. Interruption of Time to Appeal. — The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

....
Rule VII, SEC. 3. Period of Appeal. — The appeal shall be taken within the time remaining of the [six (6)-month] 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 [Adjudication and Settlement Board].

³⁶ The 2009 Rules and Regulations on the Settlement of Accounts, September 15, 2009.



Section 51 of Presidential Decree No. 1445³⁷ states that '[a] decision of the Commission or of any auditor upon any matter within its or his[/her] jurisdiction, if not appealed as herein provided, shall be final and executory.' As such, the Court agrees with the COA-CP that Decision No. 2017-02, which upheld the ND, had attained finality by virtue of Aguinaldo's failure to timely file an appeal. Therefore, no grave abuse of discretion may be ascribed to the COA-CP in dismissing Aguinaldo's Petition for Review for having been filed out of time.

Propriety of the disallowance

Furthermore, Court finds that COA-CP did not act with grave abuse of discretion in sustaining the ND.

COA Circular No. 90-331 dated May 3, 1990, as amended by COA Circular No. 97-002 dated February 10, 1997, provides for the rules and regulations on the granting, utilization, and liquidation of cash advances made by government officials in the national and local government, including government-owned and -controlled corporations. The general guidelines on the grant and utilization of cash advances are provided under COA Circular No. 97-002 as follows:

4.1.2 No additional cash advances shall be allowed to any official or employee unless the previous cash advance given to him[/her] is first settled or a proper accounting thereof is made.

....

4.1.6 Transfer of cash advance from one Accountable Officer (AO) to another shall not be allowed.

....

4.3.2 The cash advance shall not be used for payment or regular expenses, such as rentals, subscriptions, light and water and the like. Payments out of the cash advance shall be allowed only for amounts not exceeding [PHP]15,000.00 for each transaction, except when a higher amount is allowed by law and/or specific authority by the Commission on Audit. Splitting of transactions to avoid exceeding the ceiling shall not be allowed. (Underscore supplied)

Further, Section 101, paragraph 2 of P.D. No. 1445 provides:

2. Every accountable officer shall be properly bonded in accordance with law.

³⁷ Titled 'GOVERNMENT AUDITING CODE OF THE PHILIPPINES,' approved on June 11, 1978.



Relatedly, Item 7.1 of COA Circular No. 97-002 states:

7.1 Each accountable officer with a total cash accountability of [PHP] 2,000.00 or more shall be bonded. The amount of bond shall depend on the total accountability of the officer as fixed by the Head of the Agency. An official or employee who has both money and property accountability, shall be bonded only once to cover both accountabilities, but the amount of the bond shall be in accordance with the Schedule. (Underscoring supplied)

Based on the foregoing, the COA-CP correctly held that the ND was properly issued since the grant and utilization of the cash advances were made in violation of the foregoing issuances. Aguinaldo was not properly bonded when she was granted the cash advances for the purchase of construction materials for the new PADC Executive Office in Makati City, in clear violation of Section 101, paragraph 2 of P.D. No. 1445 and Item 7.1 of COA Circular No. 97-002. Further, Aguinaldo had an outstanding cash advance, pending settlement or proper accounting, at the time of the grant of the cash advances, in violation of Item 4.1.2 of COA Circular No. 97-002. Lastly, Aguinaldo violated Item No. 4.1.6 when she endorsed the total cash advance of PHP 1,250,000.00 to Robert Alain.

In addition, the ND properly noted that the payments relative to this transaction were all made in cash, regardless of amount, when Item No. 4.3.2 of COA Circular No. 97-002 clearly limits payments out of the cash advance to those not exceeding PHP 15,000.00.

Thus, the COA-CP properly sustained the ND. In view thereof, Aguinaldo's Petition must be dismissed.

Liability of the approving and certifying officers

The extent of liability of approving and certifying officers in disallowed transactions was discussed by the Court in *Madera v. Commission on Audit*,³⁸ where the Court had occasion to lay down the following guidelines:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

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.

³⁸ 882 Phil. 744 (2020) [Per J. Caguioa, *En Banc*].

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 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. 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, solidarity liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 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.³⁹

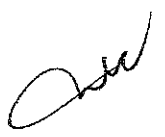
As discussed by the Court in *Patadon v. Commission on Audit*,⁴⁰ the role of approving and certifying officers in the disbursement process is more than perfunctory:

The basic rule is that *all approving officers* must discharge their duties pertinent to the disbursement process with the diligence of a good father of the family. In connection with the disbursement of government funds, *all those exercising authority shall share fiscal responsibility* over the financial affairs, transactions, and operations of the government agency, which includes ensuring that all disbursements are legal and in conformity with laws, rules, and regulations.

Thus, before any approving official affixes his signature on the document, he is expected to perform *basic verification procedures* to inquire into the legality and regularity of the transaction, *independent* from those done by other lower-ranking approving officials. For instance, if it shall become apparent on the face of the document that the transaction violates prevailing laws and regulations or that the document under review lacks key supporting documents, a prudent official is expected to withhold his approval. To be sure, he cannot rely *completely* on existing approvals or certifications. Otherwise, his function would be reduced to mere rubber stamping.

³⁹ *Id* at 817-818.

⁴⁰ G.R. No. 218347, March 15, 2022 [Per J. Inting, *En Banc*]



In the Court's view, it is reasonable to expect the approving officers in the present case to have *at least* taken note of primary information such as the *transaction date, payee name, transaction amount, and prior signatures/certifications, all of which are evident from the face of the document*. This procedure does not require technical expertise or a detailed examination of supporting attachment.⁴¹ (Emphasis in the original; citations omitted)

Based on the foregoing considerations and in view of the fact that the grant of cash advances were made in clear violation of relevant laws and regulations, the approving and certifying officers cannot benefit from the presumption of regularity in the performance of their official functions.

Expenses paid in violation of 'established rules, regulations, procedural guidelines, policies, principles[,] or practices that have gained recognition in law' (e.g., without the approval of the authorized signatory of checks, without the required supporting documents, etc.) are illegal or irregular expenditures, as the case may be.⁴² The difference between 'illegal' and 'irregular' expenditures has been explained under COA Circular No. 85-55-A:

The term 'irregular expenditure' signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles[,] or practices that have gained recognition in law. Irregular expenditures are incurred without conforming with prescribed usages and rules of discipline. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. An anomalous transaction which fails to follow or violates appropriate rules of procedure, is likewise irregular. **Irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law whereas, the former is incurred in violation of applicable rules and regulations other than the law.**⁴³ (Emphasis in the original)

In this case, the grant to and utilization of cash advances by the PADC were highly irregular, if not illegal. However, as further discussed by the Court in *Madera*, the approving and certifying officers' good faith may be established by the following circumstances:

To ensure that public officers who have in their favor the un rebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that

⁴¹ *Id.* at 21-22.

⁴² *Madera v. Commission on Audit*, 882 Phil. 744, 871-872 (2020) [Per J. Caguioa, *En Banc*], citing Justice Henri Jean Paul B. Inting's Concurring Opinion.

⁴³ Section 3.1, Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures or Uses of Funds and Property, September 8, 1995.

they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen’s (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates 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, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

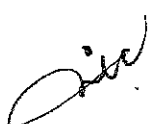
Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, **these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable.** The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.⁴⁴ (Emphasis in the original)

In this case, it was alleged that Cabangangan, in her capacity as Comptroller of the PADC, issued the certification of availability of funds for the disbursement. However, against the backdrop of clear violations of applicable rules and regulations, the existence of this badge alone cannot support a finding of good faith.

Thus, the Court resolves to uphold the joint and solidary liability of the following approving and certifying officers named in the ND for the full disallowed amount of PHP 998,000.00:

| Name | Position/Designation | Nature of Participation in the Transaction |
|--------------------------|---------------------------------------|--|
| 1. Roberto R. Navida | President | For approving the transactions and countersigning the checks |
| 2. Richard K. Lazaro | Vice-President for Admin. and Finance | For signing the Budget Utilization Slips |
| 3. Josefa R. Cabangangan | Comptroller | For being the Comptroller |
| 4. Corazon T. Aguinaldo | Executive Secretary | For being the payee and signing the checks |

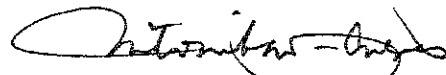
⁴⁴ *Madera v. Commission on Audit*, 882 Phil. 744, 797-798 (2020) [Per J. Caguioa, *En Banc*], citing Senior Associate Justice Marvic M.V.F. Leonen’s Separate Concurring Opinion.



FOR THESE REASONS, the Petition for *Certiorari* is **DISMISSED**. The Commission on Audit – Commission Proper Decision No. 2018-415 dated December 21, 2018 and Resolution No. 2020-292 dated January 31, 2020 are **AFFIRMED**.

The Notice of Disallowance No. 2010-016 dated December 14, 2010, in the total amount of PHP 998,000.00 is **UPHELD**. Accordingly, petitioner Corazon T. Aguinaldo, Roberto R. Navida, Richard K. Lazaro, and Josefa R. Cabangangan, as approving and certifying officers of the disallowed transaction, are held jointly and solidarily liable to pay the full amount of PHP 998,000.00, with legal interest at six percent (6%) *per annum* from the date of finality of this Resolution until fully paid.” Gesmundo, C.J. and Hernando, J., on official leave. Lopez, J., J., on leave. (50)

By authority of the Court:



MARIFE M. LOMIBAO-CUEVAS

Clerk of Court *MARIFE*

*(With Separate Concurring and Dissenting Opinion of
Associate Justice Antonio T. Kho, Jr.)*

CORAZON T. AGUINALDO (x)

Petitioner

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Quezon City

NARSOLIS LAW OFFICE (x)

(through Atty. Rebelinda S. Narsolis)

Counsel for Petitioner

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RICHARD K. LAZARO (x)

JOSEFA R. CABANGANGAN (x)

c/o Administrative Services Department

Philippine Aerospace Development Corporation

Hangar 2, General Aviation Area

Domestic Road, Pasay City

JUDICIAL RECORDS OFFICE (x)

JUDGMENT DIVISION (x)

PUBLIC INFORMATION OFFICE (x)

LIBRARY SERVICES (x)

Supreme Court

[For uploading pursuant to A.M. No. 12-7-1-SC]

THE CHAIRPERSON (x)

Commission on Audit

Commonwealth Avenue

Quezon City

THE AUDIT TEAM LEADER (x)

THE SUPERVISING AUDITOR (x)

COA PADC

Hangar 2, General Aviation Area

Domestic Road, Pasay City

THE CLUSTER DIRECTOR (x)

Cluster IV Industrial and Area Development

Government Corporate Sector

COA Compound, Commonwealth, Quezon City

THE ASSISTANT COMMISSIONERS (x)

Corporate Government Sector

COA Compound, Commonwealth, Quezon City

THE DIRECTOR (x)

Information Technology Office

Systems and Technical Services Sector

COA Compound, Commonwealth, Quezon City

THE SOLICITOR GENERAL (x)

Office of the Solicitor General

134 Amorsolo St., Legaspi Village

Makati City



G.R. No. 253759

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EN BANC

G.R. No. 253759 — CORAZON T. AGUINALDO, Petitioner v. THE COMMISSION ON AUDIT PROPER, Respondent.

Promulgated:

June 13, 2023

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**SEPARATE CONCURRING
AND DISSENTING OPINION**

KHO, JR., J.:

I concur with the *ponencia* insofar as it held that the disallowance of the cash advances made to petitioner Corazon T. Aguinaldo (petitioner) was proper for violating Commission on Audit (COA) Circular No. 97-002 which prohibits the transfer of cash advances from one accountable officer to another as well as the failure to properly bond petitioner when she was granted the cash advances. I likewise concur with the *ponencia*'s finding that the approving and certifying officers cannot be held to have acted in good faith due to the irregularities made in the disbursement of the cash advances.

Further, I similarly concur with the *ponencia*'s finding that petitioner failed to file an appeal before the COA within the reglementary period. Hence, petitioner is now barred from filing the present petition considering that the COA Corporate Government Sector - Cluster IV decision has already become final and executory for failure to appeal the same within the prescribed reglementary period under Section 48¹ of Presidential Decree No. 1445 and Section 3,² Rule VII of the 2009 Revised Rules of Procedure of the COA. Thus, a judgment without proper appeal therefrom that lapses into finality becomes final and immutable — hence, the present petition should have been dismissed outright for being filed out of time.³

¹ Section 48. Appeal from decision of auditors. Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

² Section 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 [Adjudication and Selection Board].

³ PD 1445, Section 51 provides:

Section 51. Finality of decisions of the Commission or any auditor. A decision of the Commission or of any auditor upon any matter within its or his[her] jurisdiction, if not appealed as herein provided, shall be final and executory. (See also *Paguio v. Commission on Audit*, G.R. No. 223547, April 27, 2021 [Per J. M. Lopez, *En Banc*], citing *Republic v. Heirs of Cirilo Gotengco*, 824 Phil. 568 [2018] [Per J. Gesmundo, Third Division])

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While I concur with the foregoing disquisitions of the *ponencia*, I, however, respectfully diverge from the *ponencia*'s holding with respect to the determination of liabilities. Considering the circumstances of the present case, I opine that *first*, the Court should have applied the parameters found in *Torreta v. Commission on Audit (Torreta)*⁴ and *second*, the approving and certifying officers' liabilities should have been tempered by the principle of *quantum meruit* as established in *Torreta* despite the Petition for Review before the COA Commission Proper having been filed out of time.

I expound below.

I.

Preliminary, it is worth clarifying which set of rules of return should have been applied in the present case. In determining the extent of the approving and certifying officers' liabilities, the *ponencia* applied the rules of return espoused in *Madera v. Commission on Audit*⁵ (*Madera Rules*) in finding them liable to return the disallowed cash advances. Contrary to the application of the *Madera Rules*, I opine that the guidelines established in *Torreta* is more suitable in determining their liability considering the nature of the present disallowance. In *Torreta*, the Court, speaking through Associate Justice Samuel H. Gaerlan, created a different set of guidelines for the procurement of goods and services arising from government contracts — particularly with respect to the application of the principle of *quantum meruit* — considering that the *Madera Rules* were specifically borne from the context of disallowance cases involving incentives and benefits granted to government officials and employees.⁶ Thus, *Torreta* provided the following guidelines:

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.

⁴ 889 Phil. 1119 (2020) [Per J. Gaerlan, *En Banc*].

⁵ 882 Phil. 744 (2020) [Per J. Caguioa, *En Banc*].

⁶ *Torreta v. Commission on Audit*, 889 Phil. 1119 (2020) [Per J. Gaerlan, *En Banc*].

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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.⁷

In the present case, it was identified that the cash advances given to petitioner were meant to be used in purchasing materials for the construction of the new Philippine Aerospace Development Corporation (PADC) Executive Office. While the circumstances of the present case do not fall squarely within the ambit of the *Torreta* guidelines due to the disbursement of cash advances to herein petitioner, the *ponencia* should have applied *Torreta* considering that the end result of the disbursement did not benefit petitioner in terms of receiving incentives and benefits—instead, the cash advances were meant to benefit PADC. In other words, the determination of what set of guidelines should be applied (i.e., *Madera Rules* or *Torreta* guidelines) requires the Court to investigate the nature of the disbursement by asking the following questions: *Did the government benefit from the disallowed amount? Or was the disallowed amount personally granted to government officials or employees as a form of benefit or incentive?* If the answer to the first question is in the affirmative, then the *Torreta* guidelines should apply—otherwise, the *Madera Rules* shall be the applicable rule.

II.

Despite my concurrence with the *ponencia* that petitioner is now barred from filing the present petition for having lapsed into finality, thereby making the same final and immutable, the liability of the approving and certifying officers should still be reduced following the principle of *quantum meruit* as established in *Torreta*.

The doctrine of finality and immutability of judgment is not a hard-and-fast rule. In *Aguinaldo IV v. People (Aguinaldo IV)*,⁸ the Court, speaking through retired Senior Associate Justice Estela M. Perlas-Bernabe, reiterated the Court's appreciation of the doctrine of finality and immutability of judgment:

Time and again, the Court has repeatedly held that “a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. This principle,

⁷ *Id.* at 1149.

⁸ G.R. No. 226615, January 13, 2021 [Per J. Perlas-Bernabe, Special Second Division], citing *Uy v. Del Castillo*, 814 Phil. 61 (2017) [Per J. Perlas-Bernabe, First Division].

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known as the doctrine of immutability of judgment, has a two-fold purpose, namely: (a) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Verily, it fosters the judicious perception that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time. As such, it is not regarded as a mere technicality to be easily brushed aside, but rather, a matter of public policy which must be faithfully complied.” However, this doctrine “is not a hard and fast rule as the Court has the power and prerogative to relax the same in order to serve the demands of substantial justice considering: (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) the lack of any showing that the review sought is merely frivolous and dilatory; and (f) that the other party will not be unjustly prejudiced thereby.”⁹

A reading of the Court’s discussion in *Aguinaldo IV* leads to the understanding that the doctrine of finality and immutability of judgment may still be relaxed “[...] in order to serve the demands of substantial justice considering [the following]: (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) the lack of any showing that the review sought is merely frivolous and dilatory; and (f) that the other party will not be unjustly prejudiced thereby.”¹⁰

Here, the finality of the COA Commission Proper’s decision may be relaxed based on the second, third, and sixth factors as cited above. In this relation, the Court’s ratiocination of the applicability of the principle of *quantum meruit* in *Torreta* exactly provides justification in relaxing the doctrine of finality and immutability of judgment. In allowing for the reduction of liability based on *quantum meruit*, the Court explained:

Verily, the peculiarity of cases involving government contracts for procurement of goods or services necessitates the promulgation of a separate guidelines for the return of the disallowed amounts. In these cases, it is deemed fit that the passive recipients be ordered to return what they received subject to the application of the principle of *quantum meruit*. ***Quantum meruit* literally means “as much as he deserves.” Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of quantum merit is predicated on equity. In the case of *Geronimo v. COA*, it has been held that “the [r]ecovery on the basis of *quantum meruit* was allowed despite the invalidity or absence of a written contract between the contractor and the government agency.” In *Dr. Eslao v. COA*, the Court**

⁹ *Id.*

¹⁰ *Id.* at 3.

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explained that the denial of the contractor's claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*. Thus, in applying this principle, the amount in which the petitioners together with the other liable individuals shall be equitably reduced.¹¹ (Emphasis supplied)

Applying *Torreta*, the government unjustly enriching itself is a compelling circumstance for the Court to relax the doctrine of finality and immutability of judgment. In the same manner, the government will not be unjustly prejudiced in relaxing the principle because the government already benefited from the disbursement of public funds. As I have previously discussed, the cash advances made to petitioner were meant to be used in purchasing materials for the construction of the new PADC Executive Office. To require the approving and certifying officers to return the entire disallowed amount despite PADC having benefited therefrom would be contrary to the demands of justice and equity.

ACCORDINGLY, I vote to **REMAND** the case to the Commission on Audit for the determination of the reduction of liability in Notice of Disallowance No. 2010-016.



ANTONIO T. KHO, JR.

Associate Justice

¹¹ *Torreta v. Commission on Audit*, 889 Phil. 1119, 1148 (2020) [Per J. Gaerlan, *En Banc*].

