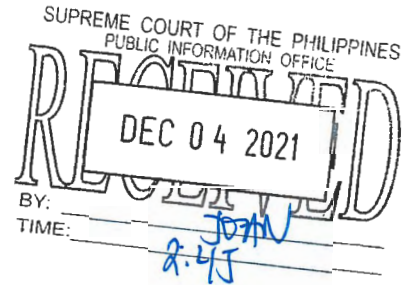




Republic of the Philippines
Supreme Court
Manila



EN BANC

RAFAEL M. CRISOL, JR.,

Petitioner,

G.R. No. 235764

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO, and
LOPEZ, J., JJ

- versus -

COMMISSION ON AUDIT,

Respondent.

Promulgated:

September 14, 2021

X ----- X

DECISION

ROSARIO, J.:

In order for a superior public officer to be made civilly liable for acts done in the performance of his official duties, there must be a clear showing of bad faith, malice, or gross negligence. For negligence to be considered gross, there must be an act or omission to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious

indifference to consequences in so far as other persons or the government may be affected.

Petitioner challenges on *certiorari*, under Rule 64 in relation to Rule 65 of the Rules of Court, the Decision dated November 9, 2016 and Resolution dated September 7, 2017 of respondent Commission on Audit (COA) which disapproved petitioner's exclusion from liability on account of his subordinate's failure to remit collections amounting to Php425,555.53.

I

The antecedent facts are as follows:

On September 17, 2010, District Collector Atty. Rogel Gatchalian designated Arnel Tabije (Tabije) as Special Collection Officer (SCO) at the Collection Division, Customs District II-A, Bureau of Customs (BOC). However, in December 2010, Tabije no longer reported for work, thus prompting Atty. Gatchalian to send him a letter directing him to report to the Chief of the Administrative Division or of the Collection Division.

On January 27, 2011, petitioner reported to Atty. Gatchalian that he conducted an initial audit on the collections and deposits of Tabije and discovered that the latter failed to deposit collections in the amount of Php425,555.52 and did not turn over the auction fund passbook to their office.¹

On February 28, 2011, petitioner sent Tabije a letter informing him of said irregularities and requiring him to settle the same but Tabije failed to respond. On March 28, 2011, Atty. Gatchalian instructed petitioner to refer the matter to the Audit Team Leader (ATL), COA, BOC, Port Area, Manila for audit.

During the investigation by Special Investigator Jaime Regala, Tabije failed to appear and participate in the proceedings despite notice. Regala later recommended that he be charged with Dishonesty, Unauthorized Absences, Inefficiency and Gross Neglect of Duty, which was approved by the Revenue Collection Monitoring Group/Legal Service of the BOC.²

On post-audit of the collections/receipts of Tabije for the period of September to November 2010, the ATL and the Supervising Auditor issued

¹ *Rollo*, p. 109.

² *Id.* at 110-115.

Notice of Charge (NC) No. 2011-001-101(10), dated October 12, 2011, in the amount of Php425,555.53, representing Tabije's unremitted collections, and determined that the latter, as SCO, Atty. Gatchalian, as head of office, and petitioner, as Chief of the Cash Division, were liable therefor.³

On appeal, the director of the COA National Government Sector (NGS) Cluster A granted Atty. Gatchalian and petitioner's request for exclusion from liability in Decision No. 2012-006 dated June 8, 2012 on the ground that they were included in the NC merely for being the head of the Port of Manila, BOC and Chief of Cash Collection Division, respectively, which cannot in any manner be deemed as badges of participation and/or taking part in the unremitted collection.⁴

However, upon automatic review of said decision, the COA, in Decision No. 2016-331 dated November 9, 2016, disapproved the same only insofar as it excluded petitioner from liability, and directed the COA Legal Services Sector to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable.⁵

His subsequent motion for reconsideration having been denied by the COA in its Resolution⁶ dated September 7, 2017, petitioner filed the present petition for *certiorari*, arguing that the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued said decision and resolution disapproving his exclusion from liability.

Subsequently, the COA issued a Notice of Finality of Decision⁷ (NFD) dated December 5, 2018 pursuant to Section 9 of Rule X of the 2009 Revised Rules of Procedure of the COA ("COA Rules"), as amended by COA Resolution No. 2011-006, prompting petitioner to move for the quashal and/or recall thereof. The COA, through its letter dated January 18, 2019, informed petitioner that under its amended rules, the finality of its issuance may only be stayed by a direct order of this Court.

During the pendency of the present petition, petitioner filed a Manifestation⁸ dated February 14, 2019 stating, among others, that Tabije had settled the subject unremitted collection in the amount of Php425,555.53 as evidenced by Official Receipt No. 9750686⁹ and Notice of Settlement of Suspension/Disallowance/Charge¹⁰ (NSSDC) dated February 7, 2019.

³ Id. at 53-54.

⁴ Id. at 127-129.

⁵ Id. at 131-136.

⁶ Id. at 106.

⁷ Id. at 191-192.

⁸ Id. at 187-190.

⁹ Id. at 203.

¹⁰ Id. at 201-202.

Nonetheless, petitioner prays for the grant of the petition on the merits considering that the COA's finding relative to petitioner's liability remains a justiciable controversy that this Court may pass upon.

II

This Court generally refrains from entertaining petitions under Rule 64 questioning the dismissal of an appeal by the COA on account of failure to file said appeal within the reglementary period, given the well-settled rule that courts are bereft of jurisdiction to review decisions that have become final and executory and that perfection of an appeal in the manner and within the period set by law is not only mandatory but jurisdictional. However, jurisprudence recognizes several exceptions to the rule on immutability of final judgments: (1) the correction of clerical errors, (2) *nunc pro tunc* entries which cause no prejudice to any party, (3) void judgments, and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.¹¹

We have also allowed the relaxation of this rigid rule in order to serve substantial justice in considering (1) matters of life, liberty, honor or property; (2) the existence of special or compelling circumstances; (3) the merits of the case; (4) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (5) a lack of any showing that the review sought is merely frivolous and dilatory; or (6) the other party will not be unjustly prejudiced thereby.¹² Verily, when extraordinary circumstances exist, We are empowered to set aside technicalities in the exercise of our equity jurisdiction in order to fully serve the demands of substantial justice.¹³

As applied, we find that the full settlement of the unremitted collection during the pendency of the present petition, and more importantly, the merits of the case as will be hereafter discussed, merit a relaxation of technical rules in the exercise of Our equity jurisdiction.

Section 13 of the 2009 Rules and Regulations on the Settlement of Accounts (COA Circular No. 2009-006) provides:

SECTION 13. NOTICE OF SETTLEMENT OF SUSPENSION/
DISALLOWANCE/CHARGE (NSSDC)

13.1 The Auditor shall issue the NSSDC – Form 5 – whenever a suspension/disallowance or charge is settled.

¹¹ *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66*, 659 Phil. 117, 123 (2011), citing *Villa v. Government Service Insurance System*, 619 Phil. 740-756 (2009).

¹² *Estalilla v. Commission on Audit*, G.R. No. 217448, September 10, 2019, citing *Barnés v. Judge Padilla*, 482 Phil. 903, 915 (2004).

¹³ *Bugna, Jr. v. Commission on Audit*, UDK 16666, January 19, 2021.

X X X X

13.1.2 A disallowance or charge shall be settled by payment of the amount disallowed or by such other applicable modes of extinguishment of obligation as provided by law. x x x.

In relation thereto, Article 1217 of the Civil Code provides that payment “made by one of the solidary debtors extinguishes the obligation.”

While the payment by Tabije of the amount of Php425,555.53 extinguished his civil liability, the question remains as to whether petitioner could be held solidarily liable for said amount in the first place.

Despite the above supervening event, the case has not yet been rendered moot and academic but continues to present a justiciable controversy which this Court may pass upon.

In *Penafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration*,¹⁴ We held:

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.

However, in *Ilusorio v. Baguio Country Club Corp., et al.*,¹⁵ We ruled that the mootness of one of the issues in the case does not render it automatically dismissed if there are other issues raised that need to be resolved.

Here, aside from disapproving the exclusion of petitioner from liability under the NC, the COA, in the dispositive portion of the assailed decision, likewise directed its Legal Services Sector to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against petitioner and Tabije. It ratiocinated in this wise:

¹⁴ 728 Phil. 535, 540 (2014), citing *Philippine Savings Bank v. Senate Impeachment Court*, 699 Phil. 34-37 (2012), citing *Sales v. Commission on Elections*, 559 Phil. 593, 596-597 (2007).

¹⁵ 738 Phil. 135, 142 (2014).

Sections 16.1 and 16.2 of the [2009 Rules and Rules and Regulations on the Settlement of Accounts (RRSA)]¹⁶ provide that the liability of public officers and other persons for audit charges shall be determined on the basis of the duties and responsibilities or obligations of the officers/employees concerned and that said liability shall be measured by the individual participation and involvement of public officers whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

Mr. Crisol, Jr., as the Chief of Cash Division, has direct supervision over the transactions of Mr. Tabije. Knowing that Mr. Tabije was new to his assignment as SCO, Mr. Crisol, Jr. should have monitored Mr. Tabije's transactions to ensure that they conform with the relevant rules

X X X X

In the case of Mr. Tabije's collections, the same were not deposited within the prescribed period, contrary to the above regulation. Moreover, Mr. Tabije did not prepare and submit the required monthly report of collections and deposits for the months of September to November 2010. Had the foregoing been monitored Mr. Crisol, Jr., and had he required Mr. Tabije to comply with the rules, the non-remittance of the amount could have been avoided.

The foregoing shows that Mr. Crisol, Jr. was negligent and failed to exercise the diligence of a good father of a family in supervising Mr. Tabije.

Hence, he is jointly and solidarily liable with Mr. Tabije. Since Mr. Tabije had absconded, Mr. Crisol, Jr. is directly liable in full to the government for the amount of P425,555.53

X X X X

In view of violation of laws and regulations, specifically Section 21 of the Manual on the NGAS, Volume I, and Section 69 of PD 1445 which may constitute acts defined under Article 217 of the Revised Penal Code, the case shall be referred to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.¹⁷

¹⁶ Section 16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

X X X X

16.1.4 Public officers and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.

X X X X

Section 16.2 The liability for audit charges shall be measured by the individual participation and involvement of public officers whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

¹⁷ *Rollo*, pp. 133-135.

On the other hand, the COA agreed with the NGS Cluster A that Atty. Gatchalian was properly excluded from liability under the NC because of the absence of a clear showing of bad faith, malice or gross negligence on his part. It relied on Section 38, Chapter 9, Book I of the Administrative Code of 1987, which provides:

Section 38. *Liability of Superior Officers.* — (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

X X X X

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

The civil liability under the above provision of the Administrative Code arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence.¹⁸ Interestingly, while the COA found that there was no clear showing of bad faith, malice or gross negligence on the part of Atty. Gatchalian, its decision was also bereft of any finding of bad faith, malice or gross negligence on the part of petitioner.

Gross negligence is 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 in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.¹⁹ In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.²⁰ Mere allegation of gross negligence does not suffice. The fact of gross negligence must be proven and supported by evidence.²¹

In the case at bench, while the COA found petitioner to be negligent, it did not characterize the same as gross. It merely concluded that Tabije's failure to remit could have been avoided had petitioner monitored the former's transactions and reminded him to comply with the relevant rules and regulations.

Gross negligence cannot be automatically inferred from mere speculation that a subordinate's failure to remit collections resulted from his

¹⁸ *Madera v. Commission on Audit*, G.R. No. 244128, September 08, 2020.

¹⁹ *Sabio v. Sandiganbayan*, G.R. No. 233853-54, July 15, 2019, 909 SCRA 46, 58.

²⁰ *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 37-38 (2013).

²¹ *Philippine Gaming and Amusement Corporation (PAGCOR) v. Court of Appeals*, G.R. No. 230084, August 20, 2018, 878 SCRA 142, 151, citing *Baclaran Marketing Corp. v. Nieva*, 809 Phil. 92-106 (2017).

superior's failure to monitor his transactions and remind him to comply with the relevant rules and regulations. To support a finding of gross negligence, there has to be proof of the omission of an act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.²²

To say that failure to remit could have been avoided had petitioner required and reminded Tabije to comply with the pertinent rules and regulations is not only speculative but absurd since nothing less than compliance with the pertinent laws, rules and regulations is expected of all public officers, regardless of whether they are new to their position and regardless of any directive or reminder from their superior. In fact, even if petitioner reminded Tabije, there would still be no assurance that the latter would comply. In any case, even assuming that there was a duty on the part of petitioner to remind his subordinate, the failure to remind certainly does not rise to the level of gross negligence.

A perusal of petitioner's BOC-PES Individual Commitment Record as Chief of the Cash Collection Division of the Port of Manila reveals the following duties and responsibilities of petitioner:

Responsibility Area

1. Prepares & signs daily & monthly collection report, summary of statistical report;
2. Signs withdrawal permit on warehousing entries;
3. Signs Certificate of Payment of duties & taxes, verified paid & Certificate of Balance on import entry declaration;
4. Reviews & signs on matters pertaining to tax refund on over-payment of import duties and unutilized advance deposits;
5. Prepares & transmits demand letters to importers, brokers for all receivables including additional duties & taxes, fines additional duties and taxes, fines & penalties due to Bureau of Customs per VCRC resolution;
6. Validate/Encode payment of duties & taxes on all imported motor vehicles, parts and/or components that are required to be registered with the LTC thru the electronic transmission of Certificate of Payment/Clearance (e-CPC) to LTO;
7. Supervises, reviews & signs on matters pertaining to utilization of Tax Credit Certificates.²³

On the other hand, as collection officer, it was Tabije's responsibility under Section 21 of the Manual on the New Government Accounting System (NGAS), Volume 1, to deposit intact all his collections, as well as collections turned over to him by sub-collectors/tellers, with the authorized depository

²² *Ombudsman v. Delos Reyes, Jr.*, 745 Phil. 366, 381 (2014).

²³ *Rollo*, p. 107.

bank daily or not later than the next banking day. Tabije is also responsible for recording all deposits made in the Cash Receipts Record.

None of the above-mentioned responsibilities of petitioner require him to monitor each and every daily deposit or remittance made by all the collection officers under him. At most, petitioner's responsibility in relation to Tabije's duty to collect and deposit was to prepare and sign the daily and monthly collection reports based on the collection reports submitted to him by collection officers. Other than being the chief of the Cash Collection Division, there is no evidence on record of any badge of participation on the part of petitioner in Tabije's failure to remit the amount of Php425,555.53, much less any conspiracy in the latter's transactions. Even the Office of the Solicitor General noted that conspiracy is immaterial in this case because the findings on petitioner's liability are based on his alleged negligence and failure to observe the diligence of a good father of a family.²⁴

While ideally, petitioner should have been alerted as early as September 2010 that Tabije had failed to submit his report of collections and deposits for said month, not to mention for October and November 2010 as well, We find that petitioner's oversight did not rise to the level of gross negligence considering the following steps which he took to report and investigate the matter:

- a) On December 9, 2010, petitioner reported Tabije's irregular work attendance and ten-day absence without leave (AWOL).
- b) In January 2011, petitioner conducted a preliminary audit of Tabije's collections which revealed a discrepancy in the amount of Php425,555.53.
- c) On February 28, 2011, petitioner sent a letter to Tabije, directing him to immediately settle said amount.

The above actions of petitioner directly set in motion the investigation against Tabije, and resulted in the latter being charged with Dishonesty, Unauthorized Absences, Inefficiency and Gross Neglect of Duty. Indeed, without said actions, the amount of Php425,555.53 may have never made it back to the coffers of the government.

We find, therefore, that the COA gravely abused its discretion amounting to lack or excess of jurisdiction in disapproving petitioner's exclusion from liability.

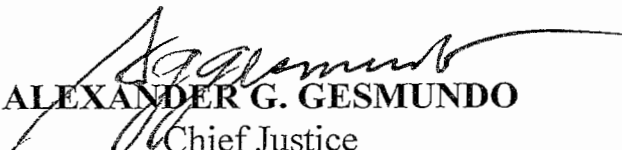
²⁴ Id. at 166-169.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed decision dated November 9, 2016 and resolution dated September 7, 2017 of the Commission on Audit are hereby **REVERSED** and **SET ASIDE** insofar as they hold petitioner Rafael M. Crisol civilly liable under Notice of Charge No. 2011-001-101(10).

SO ORDERED.

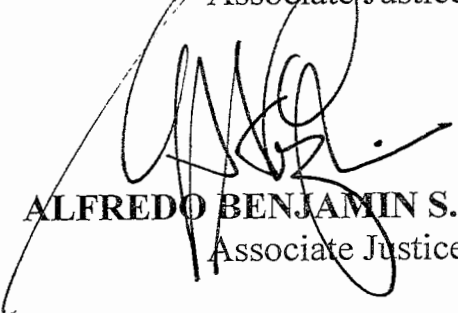

RICARDO R. ROSARIO
Associate Justice

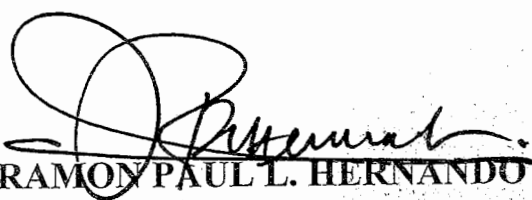
WE CONCUR:

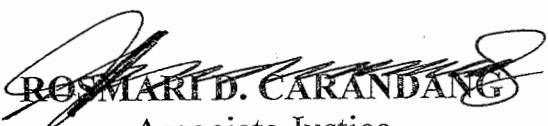

ALEXANDER G. GESMUNDO
Chief Justice

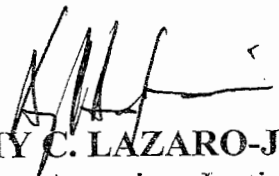

ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

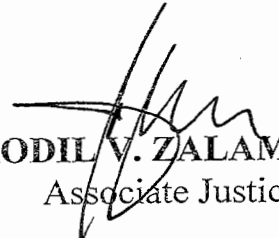

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice



ROSMARIE D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice

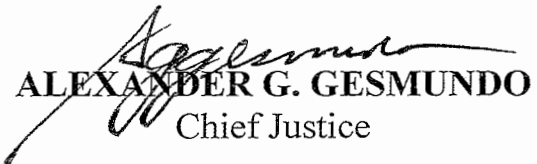

MARIYA LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JHOSEP LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice