Republic of the Philippines
Supreme Court
Manila

EN BANC

ROSENDO R. CORALES, in his official capacity as Municipal Mayor of Nagcarlan, Laguna, and DR. RODOLFO R. ANGELES, in his official capacity as Municipal Administrator of Nagcarlan, Laguna

Petitioners,

- *versus* -

REPUBLIC OF THE PHILIPPINES, represented by the COMMISSION ON AUDIT, as represented by Provincial State Auditor of Laguna MAXIMO L. ANDAL,

Respondent.

G.R. No. 186613

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,**
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE, and
LEONEN, *JJ.*

Promulgated:

August 27, 2013

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DECISION

PEREZ, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to nullify the Decision[1] and Resolution[2] dated 15 September

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* On Official Leave.

** On Official Leave.

[1] Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Vicente S.E. Veloso and Ricardo R. Rosario, concurring. *Rollo*, pp. 42-53.

[2] Id. at 55.

2008 and 20 February 2009, respectively, of the Court of Appeals in CA-G.R. SP No. 101296 and, in effect, to reinstate the Petition for Prohibition and Mandamus[3] filed by herein petitioners Rosendo R. Corales (Corales) and Dr. Rodolfo R. Angeles (Dr. Angeles) with the Regional Trial Court (RTC) of San Pablo City, Laguna. The assailed Decision annulled and set aside the Order[4] dated 17 May 2007 of Branch 32, and the Order[5] dated 5 September 2007 of Branch 29, both of the RTC of San Pablo City, Laguna in Civil Case No. SP-6370 (07), which respectively denied herein respondent Republic of the Philippines' (Republic) Motion to Dismiss petitioners' Petition for Prohibition and the subsequent Motion for Reconsideration thereof. The Court of Appeals thereby ordered the dismissal of petitioners' Petition for Prohibition with the court *a quo*. The questioned Resolution, on the other hand, denied for lack of merit petitioners' Motion for Reconsideration of the assailed Decision.

The antecedents, as culled from the records, are as follows:

Petitioner Corales was the duly elected Municipal Mayor of Nagcarlan, Laguna for three (3) consecutive terms, *i.e.*, the 1998, 2001 and 2004 elections. In his first term as local chief executive, petitioner Corales appointed petitioner Dr. Angeles to the position of Municipal Administrator, whose appointment was unanimously approved by the *Sangguniang Bayan* of Nagcarlan, Laguna (*Sangguniang Bayan*) per Resolution No. 98-64[6] dated 22 July 1998. During his second and third terms as municipal mayor, petitioner Corales renewed the appointment of petitioner Dr. Angeles. But, on these times, the *Sangguniang Bayan* per Resolution No. 2001-078[7] dated 12 July 2001 and 26 subsequent Resolutions, disapproved petitioner Dr. Angeles' appointment on the ground of nepotism, as well as the latter's purported unfitness and unsatisfactory performance. Even so, petitioner Dr. Angeles continued to discharge the functions and duties of a Municipal Administrator for which he received an annual salary of ₱210,012.00.[8]

Following an audit on various local disbursements, Maximo Andal (Andal), the Provincial State Auditor of Laguna, issued an Audit Observation Memorandum (AOM) No. 2006-007-100[9] dated 6 October

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3 Id. at 61-79.
4 Penned by Acting Presiding Judge Romulo SG. Villanueva. CA *rollo*, pp. 21-22.
5 Penned by Judge Honorio E. Guanlao, Jr. Id. at 23.
6 *Rollo*, pp. 80-81.
7 Id. at 82-84.
8 CA Decision dated 15 September 2008. Id. at 43-44; Petition for Review on *Certiorari* dated 17 April 2009. Id. at 19-21.
9 Id. at 56-59.

2006 addressed to petitioner Corales who was asked to comment/reply. The aforesaid AOM, in sum, states that: 1) petitioner Dr. Angeles' appointment as Municipal Administrator (during the second and third terms of petitioner Corales) was without legal basis for having been repeatedly denied confirmation by the *Sangguniang Bayan*; 2) petitioner Dr. Angeles can be considered, however, as a *de facto* officer entitled to the emoluments of the office for the actual services rendered; 3) nonetheless, it is not the Municipality of Nagcarlan that should be made liable to pay for petitioner Dr. Angeles' salary; instead, it is petitioner Corales, being the appointing authority, as explicitly provided for in Article 169(I) of the Rules and Regulations Implementing the Local Government Code of 1991,[10] as well as Section 5, Rule IV of the Omnibus Rules of Appointments and Other Personnel Actions;[11] 4) a post audit of payrolls pertaining to the payment of salaries, allowances and other incentives of petitioner Dr. Angeles from 15 July 2001 up to 31 May 2006[12] partially amounted to ₱1,282,829.99; and 5) in view thereof, it is recommended that an appropriate Notice of Disallowance be issued for the payment of salary expenses incurred without legal basis by the Municipality of Nagcarlan in the aforestated amount.[13]

Instead of submitting his comment/reply thereon, petitioner Corales, together with petitioner Dr. Angeles, opted to file a Petition for Prohibition and Mandamus against Andal and the then members of the *Sangguniang Bayan* before the RTC of San Pablo City, Laguna, docketed as Civil Case No. SP-6370 (07) and originally raffled to Branch 32. Petitioners sought, by way of prohibition, to require the Office of the Provincial Auditor, through Andal, to recall its AOM and to eventually desist from collecting reimbursement from petitioner Corales for the salaries paid to and received by petitioner Dr. Angeles for the latter's services as Municipal Administrator. Petitioners similarly sought, by way of mandamus, to compel the then members of the *Sangguniang Bayan*, as a collegial body, to recall its Resolutions denying confirmation to petitioner Dr. Angeles'

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10 Upon checking, however, of the Rules and Regulations Implementing the Local Government Code of 1991, Article 169 thereof speaks of "Promotion" and it has no subparagraph I. It is Article 168, Rule XXII of the aforesaid rules which speaks of "Appointments," and subparagraph (i) thereof specifically provides, thus: "The appointing authority shall be liable for the payment of the salary of the appointee for actual services rendered if the appointment is disapproved because the appointing authority issued it in willful violation of applicable laws, rules and regulations thereby making the appointment unlawful."

11 Sec 5. The services rendered by any person who was required to assume the duties and responsibilities of the position without an appointment having been issued by the appointing authority shall not be credited nor recognized by the Commission and shall be the personal accountability of the person who made him assume office.

12 Excluding the period from 1 November 2001 to 31 December 2001; 16 March 2002 to 15 May 2002; 1-31 August 2002; 16-30 June 2003; 1-31 December 2003; 1-31 September 2004; and 1 June 2006 to 30 September 2006.

13 *Rollo*, pp. 56-59.

appointment as Municipal Administrator and in their stead to confirm the validity and legitimacy of such appointment.[14]

In its turn, the Office of the Solicitor General (OSG), on Andal's behalf, who was impleaded in his official capacity, filed a Motion to Dismiss petitioners' Petition for Prohibition and Mandamus grounded on lack of cause of action, prematurity and non-exhaustion of administrative remedies. It was specifically contended therein that: (1) the issuance of the AOM was merely an initiatory step in the administrative investigation of the Commission on Audit (COA) to allow petitioner Corales to controvert the findings and conclusions of the *Sangguniang Bayan* in its Resolution No. 2001-078, as well as those of then Secretary Jose D. Lina, Jr. in Department of Interior and Local Government (DILG) Opinion No. 124 s. 2002; (2) it was only after the completion of the said investigation that a resolution will be issued as regards the propriety of the disbursements made by the Municipality of Nagcarlan in the form of salaries paid to petitioner Dr. Angeles during his tenure as Municipal Administrator; and (3) instead of resorting to judicial action, petitioner Corales should have first responded to the AOM and, in the event of an adverse decision against him, elevate the matter for review to a higher authorities in the COA.[15] With these, petitioners' petition should be dismissed, as petitioner Corales has no cause of action against Andal − his resort to judicial intervention is premature and he even failed to avail himself of, much less exhaust, the administrative remedies available to him.[16]

In its Order dated 17 May 2007, the trial court denied the said Motion to Dismiss on the ground that Andal was merely a nominal party.[17] The subsequent motion for its reconsideration was also denied in another Order dated 5 September 2007.[18]

Respondent Republic, as represented by COA, as represented by Andal, consequently filed a Petition for *Certiorari* with the Court of Appeals ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court in rendering the Orders dated 17 May 2007 and 5 September 2007, as it unjustly denied respondent's right to actively prosecute the case through a mere declaration that it was a nominal

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14 Petition for Prohibition and Mandamus dated 31 December 2006. Id. at 61-79; CA Decision dated 15 September 2008. Id. at 46-47.

15 Motion to Dismiss dated 28 March 2007 filed before the RTC of San Pablo City, Laguna. CA *rollo*, pp. 74-80; CA Decision dated 15 September 2008. Id. at 47-48.

16 Id. at 79; id. at 48.

17 *Rollo*, pp. 21-22.

18 Id. at 22.

party despite a clear showing that the Petition for Prohibition referred to the respondent as a real party in interest.[19]

On 15 September 2008, the Court of Appeals rendered its now assailed Decision granting respondent's Petition for *Certiorari*, thereby annulling and setting aside the RTC Orders dated 17 May 2007 and 5 September 2007 and, accordingly, dismissing petitioners' Petition for Prohibition with the court *a quo*.[20] The Court of Appeals justified its decision in the following manner:

> x x x We agree with the OSG's contention that **the [herein respondent Republic]**, herein represented by the COA and specifically by Andal in the latter's capacity as Provincial State Auditor of Laguna, is **not merely a nominal party to the petition for prohibition**. x x x. **That the [respondent] naturally has an interest in the disposition/disbursement of said public funds as well as in the recovery thereof should the ongoing investigative audit confirm the illegality thereof cannot be gainsaid. Rather than a mere nominal party, therefore, the [respondent] is an indispensable party to the petition for prohibition and may thus seek its dismissal**, **given that under the attendant facts there is a yet no actual case or controversy calling for [therein] respondent court's exercise of its judicial power**.
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> **Judicial review cannot be exercised in *vacuo***. **Thus, as a condition precedent for the exercise of judicial inquiry, there must be an actual case or controversy**, which exists when there is a conflict of legal rights or an assertion of opposite legal claims, which can be resolved on the basis of existing law and jurisprudence. x x x. An actual case or controversy thus means an existing case or controversy that is appropriate or ripe for judicial determination, not conjectural or anticipatory, lest the decision of the court would amount to an advisory opinion.
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> **[Herein petitioners]** x x x **have failed to show the existence of an actual case or controversy** that would necessitate judicial inquiry through a petition for prohibition. As the OSG aptly observed, the **issuance of the AOM is just an initiatory step in the investigative audit** being then conducted by Andal[,] as Provincial State Auditor of Laguna **to determine the propriety of the disbursements made by the Municipal Government of Nagcarlan**. **While Andal may have stated an opinion in the AOM that [herein petitioner] Corales should reimburse the government treasury for the salaries paid to [herein petitioner Dr. Angeles] in light of the repeated disapproval and/or rejection of the latter's appointment by the *Sangguniang [Bayan]* of Nagcarlan, there is no showing whatsoever of any affirmative action taken by Andal to enforce such audit observation**. **What Andal did, as the AOM unmistakably shows, was to merely request [petitioner] Corales to**

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19 Petition for *Certiorari* dated 8 November 2007 filed before the Court of Appeals. CA *rollo*, p. 8.

20 CA Decision dated 15 September 2008. *Rollo*, p. 49.

> **submit a reply/comment to the audit observation** and in the process afford the latter an opportunity to controvert not only Andal's opinion on salary reimbursement but the other statements therein expressed by the other members of the audit team.
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> In the absence moreover of a showing that [petitioners], particularly [petitioner] Corales, sustained actual or imminent injury by reason of the issuance of the AOM, there is no reason to allow the continuance of the petition for prohibition which was, after all, manifestly conjectural or anticipatory, filed for a speculative purpose and upon the hypothetical assumption that [petitioner] Corales would be eventually compelled to reimburse the amounts paid as [petitioner Dr. Angeles'] salaries should the audit investigation confirm the irregularity of such disbursements. This Court will not engage in such speculative guesswork and neither should respondent court x x x.[21] (Emphasis and italics supplied).

Disgruntled, petitioners moved for its reconsideration but it was denied for lack of merit in a Resolution dated 20 February 2009.

Hence, this petition.

In their Memorandum, petitioners raise the following issues:

> **I.**
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> **WHETHER OR NOT THE COURT OF APPEALS COMMITTED A PALPABLY ERRONEOUS RESOLUTION OF A SUBSTANTIAL QUESTION OF LAW WHEN IT ORDERED THE DISMISSAL OF PETITIONERS' SUIT FOR PROHIBITION.**
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> **II.**
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> **WHETHER OR NOT THE COURT OF APPEALS ACTED UNJUSTLY AND INJUDICIOUSLY WHEN IT HELD THAT THE FACTS AND CIRCUMSTANCES SURROUNDING THE SUIT FOR PROHIBITION IS NOT YET RIPE FOR JUDICIAL DETERMINATION.**
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> **III.**
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> **WHETHER OR NOT THE COURT OF APPEALS COMMITTED GRAVE AND REVERSIBLE ERROR IN THE INTERPRETATION AND RESOLUTION OF A PIVOTAL LEGAL ISSUE WHEN IT CONCLUDED THAT THERE IS NO ACTUAL DISPUTE OR CONCRETE CONTROVERSY WHICH MAY BE THE PROPER SUBJECT MATTER OF A SUIT FOR PROHIBITION.**

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[21] Id. at 50-52.

IV.

WHETHER OR NOT THE COURT OF APPEALS UNJUSTIFIABLY TRANSGRESSED AND TRAMPLED UPON A CATEGORICAL JURISPRUDENTIAL DOCTRINE WHEN IT TOOK COGNIZANCE OF AND FAVORABLY RESOLVED THE [HEREIN RESPONDENT'S] PETITION FOR *CERTIORARI*, IN BLATANT VIOLATION OF THE RULE LAID DOWN IN THE *APROPOS* CASE OF *CHINA ROAD AND BRIDGE CORPORATION [V.] COURT OF APPEALS* (348 SCRA 401).

V.

WHETHER OR NOT THE COURT OF APPEALS OVERSTEPPED AND WENT BEYOND THE BOUNDARIES OF ITS LEGITIMATE DISCRETION WHEN IT DEVIATED AND VEERED AWAY FROM THE PRINCIPAL ISSUES OF THE CASE, INSTEAD OF PRONOUNCING THAT PETITIONERS HAVE A VALID, PERFECT AND LEGITIMATE CAUSE OF ACTION FOR PROHIBITION.[22] (Italics supplied).

The Petition is bereft of merit.

The issues will be discussed *in seriatim*.

The first three issues concern the ripeness or prematurity of the Petition for Prohibition assailing the AOM issued by Andal to petitioner Corales. Petitioners argue that from the tenor of the AOM it is clear that petitioner Corales is being adjudged liable and personally accountable to pay or to reimburse, in his private capacity, the salaries paid to and received by petitioner Dr. Angeles for the latter's services as Municipal Administrator, as his appointment thereto was considered invalid for lack of necessary confirmation from the *Sangguniang Bayan*. It is further argued that contrary to the claim of respondent Republic that such AOM is a mere initiatory step in the course of an investigative auditing process, the wordings thereof unmistakably reveal that the same is a categorical disposition and enforcement measure requiring petitioner Corales to reimburse the money disbursed by the Municipality of Nagcarlan to pay petitioner Dr. Angeles' salaries as Municipal Administrator. Such AOM is a firm, clear and affirmative official action on the part of the Provincial State Auditor to hold petitioner Corales liable for reimbursement; thus, to require the latter to still comment or controvert the findings thereon is a mere frivolous and useless formality. Since the requirement for petitioner Corales to pay and reimburse the salaries of petitioner Dr. Angeles is actual, direct and forthcoming, the same may be the proper subject of an action for prohibition. Otherwise stated, such imposition of liability for reimbursement against petitioner

[22] Petitioners' Memorandum dated 31 August 2010. Temporary *rollo*, pp. 14-16.

Corales presents a concrete justiciable controversy and an actual dispute of legal rights.

Petitioners' contention is unavailing.

To begin with, this Court deems it proper to quote the significant portions of the questioned AOM, to wit:

FOR: **Hon. ROSENDO R. CORALES**
Municipal Mayor
Nagcarlan, Laguna

FROM: **Mr. MAXIMO L. ANDAL**
State Auditor IV
Audit Team Leader

May we have your comment/reply on the following audit observation. Please return the duplicate within fifteen (15) days upon receipt by filling up the space provided for with your comments.

AUDIT OBSERVATION	MANAGEMENT COMMENT
The appointment of [herein petitioner Dr. Angeles] as Municipal Administrator was repeatedly denied not confirmed/ concurred by Sangguniang Bayan hence, the validity of the appointment as per opinion/rulings by the then Secretary Jose D. Lina, Jr. of the DILG in opinion No. 124 s.2002 was without legal basis. DILG Opinion No. 124 s[.]2002 states that the continued discharge of powers by [petitioner Dr. Angeles] as Municipal Administrator appears to have no legal basis. A person may assume public office once his appointment is already effective. The Supreme Court in one case (*Atty. David B. Corpuz [v.] Court of Appeals, et al[.]*, G.R. No. 123989, 26 January 1998) held that where the assent or confirmation of some other office or body is required, the appointment may be complete only when such assent or confirmation is	

obtained. Until the process is completed, the appointee can claim no vested right in the office nor invoke security of tenure. Since the appointment of a Municipal Administrator requires *sanggunian* concurrence (Section 443 (d), RA 7160) and considering that the appointment never became effective. As such, his assumption and continued holding of the office of the Municipal Administrator find no legal basis.

However, [petitioner Dr. Angeles] may claim salary for the services he has actually rendered. As held in one case (*Civil Liberties Union [v.] Executive Secretary*, 194 SCRA 317), a *de facto* officer is entitled to emoluments of the office for the actual services rendered. Here, [petitioner Dr. Angeles] can be considered as a *de facto* officer. x x x, as held in the *Corpuz* case cited above, the Supreme Court ruled that a public official who assumed office under an incomplete appointment is merely a *de facto* officer for the duration of his occupancy of the office for the reason that he assumed office under color of a known appointment which is void by a reason of some defect or irregularity in its exercise.

It is worthy to emphasize along that line that while [petitioner Dr. Angeles] may be entitled to the salary as a *de facto* officer, the municipality cannot be made liable to pay his salaries. Instructive on this point is Article 169 (I) of the Rules and Regulations Implementing the Local Government Code of 1991 which explicitly provides, thus:

> **"The appointing authority shall be liable for the payment of salary of the appointee for actual services rendered if the appointment**

is disapproved because the appointing authority issued it in willful violation of applicable laws, rules and regulations thereby making the appointment unlawful." Corollary, Section 5 of Rule IV of the Omnibus Rules of Appointments and Other Personnel Actions provides, thus: **"The services rendered by any person who was required to assume the duties and responsibilities of any position without appointment having been issued by the appointing authority shall not be credited nor recognized by the Commission and shall be the personal accountability of the person who made him assume office."** Hence, [herein petitioner Corales] shall pay the salaries of [petitioner Dr. Angeles] for the services the latter has actually rendered. x x x x x x x x x x x x Clearly, the appointment of [petitioner Dr. Angeles] **per se was bereft of legal basis** in view of the absence of the concurrence of the legislative body thus payment of his salaries from the funds of the Municipality for actual services rendered remained unlawful. Further, in paragraph 4 of the letter of Mr. Allan Poe M. Carmona, Director II of the CSC dated [1 December 2004] to Mr. Ruben C. Pagaspas, OIC, Regional Cluster Director, COA, Cluster III, Sub-Cluster VI stated that [petitioner Dr. Angeles] cannot be appointed to Municipal Administrator without the concurrence of the *Sangguniang*	

Bayan as provided under RA 7160. Post audit of payrolls pertaining to the payment of salaries, allowances and other incentives of [petitioner Dr. Angeles] as Municipal Administrator for the period from [15 July 2001] up to [31 May 2006] excluding the period from [1 November 2001] to [31 December 2001], [16 March 2002] to [15 May 2002], [1-31 August 2002], [16-30 June 2003], [1-31 December 2003], [1-31 September 2004] and [1 June 2006] to [30 September 2006] were partially amounted to ₱1,282,829.99. x x x. Issuance of Notice of Disallowance was suggested by Atty. Eden T. Rafanan, Regional Cluster Director for [L]egal and Adjudication Office in her 2nd Indorsement dated [3 July 2006]. In view hereof, **it is recommended that appropriate Notice of Disallowance be issued** for the payment of the salary expenses incurred without legal basis by the municipality in the amount mentioned in the above paragraph.[23] (Emphasis, italics and underscoring supplied).	

As can be gleaned therefrom, petitioner Corales was simply required **to submit his comment/reply on the observations** stated in the AOM. As so keenly observed by the Court of Appeals, any mention in the AOM that petitioner Corales shall reimburse the salaries paid to petitioner Dr. Angeles in light of the repeated disapproval or rejection by the *Sangguniang Bayan* of his appointment as Municipal Administrator was merely an initial opinion, not conclusive, as there was no showing that Andal had taken any affirmative action thereafter to compel petitioner Corales to make the necessary reimbursement. Otherwise stated, it has not been shown that Andal carried out or enforced what was stated in the AOM. On the contrary, petitioner Corales was given an opportunity to refute the findings and observations in the AOM by requesting him to comment/reply thereto, but he never did. More so, even though the AOM already contained a recommendation for the issuance of a Notice of Disallowance of the

[23] *Rollo*, pp. 56-59.

payment of salary expenses, the records are bereft of any evidence to show that a Notice of Disallowance has, in fact, been issued. Concomitantly, the AOM did not contain any recommendation to the effect that petitioner Corales would be held personally liable for the amount that would be disallowed. It is, therefore, incongruous to conclude that the said AOM is tantamount to a directive requiring petitioner Corales to reimburse the salaries paid to and received by petitioner Dr. Angeles during the latter's stint as Municipal Administrator after his appointment thereto was held invalid for want of conformity from the *Sangguniang Bayan*.

In relation thereto, as aptly observed by the OSG, to which the Court of Appeals conformed, the **issuance of the AOM is just an initiatory step in the investigative audit** being conducted by Andal as Provincial State Auditor to determine the propriety of the disbursements made by the Municipal Government of Laguna. That the issuance of an AOM can be regarded as just an initiatory step in the investigative audit is evident from COA Memorandum No. 2002-053 dated 26 August 2002.[24] A perusal of COA Memorandum No. 2002-053, particularly Roman Numeral III, Letter A, paragraphs 1 to 5 and 9, reveals that any finding or observation by the Auditor stated in the AOM is not yet conclusive, as the comment/justification[25] of the head of office or his duly authorized representative is still necessary before the Auditor can make any conclusion. The Auditor may give due course or find the comment/justification to be without merit but in either case, the Auditor shall clearly state the reason for the conclusion reached and recommendation made. Subsequent thereto, the Auditor shall transmit the AOM, together with the comment or justification of the Auditee and the former's recommendation to the Director, Legal and Adjudication Office (DLAO), for the sector concerned in Metro Manila and/or the Regional Legal and Adjudication Cluster Director (RLACD) in the case of regions. The transmittal shall be coursed through the Cluster Director concerned and the Regional Cluster Director, as the case may be, for their own comment and recommendation. The DLAO for the sector concerned in the Central Office and the RLACD shall make the necessary evaluation of the records transmitted with the AOM. When, on the basis thereof, he finds that the transaction should be suspended or disallowed, he will then issue the corresponding Notice of Suspension (NS), Notice of Disallowance (ND) or Notice of Charge (NC), as the case may be, furnishing a copy thereof to the Cluster Director. Otherwise, the Director

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[24] This and COA Resolution No. 2006-001 dated 31 January 2006, which restored to the audit sectors the responsibility for the issuance of notices of suspension, disallowance or charge arising in the course of the settlement of accounts and their review of transactions covered by their audit programs; the Offices under the Legal and Adjudication Sector shall be responsible for the issuance of such notices in case of audits conducted by its teams, were later superseded by COA Circular No. 2009-006 dated 15 September 2009.

[25] To be submitted 15 days from receipt of the AOM.

may dispatch a team to conduct further investigation work to justify the contemplated action. If after in-depth investigation, the DLAO for each sector in Metro Manila and the RLACD for the regions find that the issuance of the NS, ND, and NC is warranted, he shall issue the same and transmit such NS, ND or NC, as the case may be, to the agency head and other persons found liable therefor.

From the foregoing, it is beyond doubt that the issuance of an AOM is, indeed, an initial step in the conduct of an investigative audit considering that after its issuance there are still several steps to be conducted before a final conclusion can be made or before the proper action can be had against the Auditee. There is, therefore, no basis for petitioner Corales' claim that his comment thereon would be a mere formality. Further, even though the AOM issued to petitioner Corales already contained a recommendation for the issuance of a Notice of Disallowance, still, it cannot be argued that his comment/reply to the AOM would be a futile act since no Notice of Disallowance was yet issued. Again, the records are bereft of any evidence showing that Andal has already taken any affirmative action against petitioner Corales after the issuance of the AOM.

Viewed in this light, this Court can hardly see any actual case or controversy to warrant the exercise of its power of judicial review. Settled is the rule that for the courts to exercise the power of judicial review, the following must be extant: (1) there must be an actual case calling for the exercise of judicial power; (2) the question must be ripe for adjudication; and (3) the person challenging must have the "standing." An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a mere hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Closely related thereto is that **the question must be ripe for adjudication**. **A question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it**. The third requisite is legal standing or *locus standi*, which has been defined as a personal or substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged, alleging more than a generalized grievance. The gist of the question of standing is whether a party alleges "such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions." Unless a person is injuriously affected in any of his

constitutional rights by the operation of statute or ordinance, he has no standing.[26]

The requisites of actual case and ripeness are absent in the present case. To repeat, the AOM issued by Andal merely requested petitioner Corales to comment/reply thereto. Truly, the AOM already contained a recommendation to issue a Notice of Disallowance; however, no Notice of Disallowance was yet issued. More so, there was no evidence to show that Andal had already enforced against petitioner Corales the contents of the AOM. Similarly, there was no clear showing that petitioners, particularly petitioner Corales, would sustain actual or imminent injury by reason of the issuance of the AOM. The action taken by the petitioners to assail the AOM was, indeed, premature and based entirely on surmises, conjectures and speculations that petitioner Corales would eventually be compelled to reimburse petitioner Dr. Angeles' salaries, should the audit investigation confirm the irregularity of such disbursements. Further, as correctly pointed out by respondent Republic in its Memorandum, what petitioners actually assail is Andal's authority to request them to file the desired comment/reply to the AOM, which is beyond the scope of the action for prohibition, as such request is neither an actionable wrong nor constitutive of an act perceived to be illegal. Andal, being the Provincial State Auditor, is clothed with the authority to audit petitioners' disbursements, conduct an investigation thereon and render a final finding and recommendation thereafter. Hence, it is beyond question that in relation to his audit investigation function, Andal can validly and legally require petitioners to submit comment/reply to the AOM, which the latter cannot pre-empt by prematurely seeking judicial intervention, like filing an action for prohibition.

Moreover, prohibition, being a preventive remedy to seek a judgment ordering the defendant to desist from continuing with the commission of an act perceived to be illegal, may only be resorted to when there is "**no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law**."[27]

In this case, petitioners insist that it is no longer necessary to exhaust administrative remedies considering that there is no appeal or any other plain, speedy and appropriate remedial measure to assail the imposition under the AOM aside from an action for prohibition.

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[26] *Didipio Earth-Savers' Multi-Purpose Association, Inc., (DESAMA) v. Gozun*, 520 Phil. 457, 471-472 (2006).

[27] *Guerrero v. Domingo*, G.R. No. 156142, 23 March 2011, 646 SCRA 175, 182; 1997 Revised Rules of Civil Procedure, Rule 65, Sec. 2.

This Court finds the said contention plain self-deception.

As previously stated, petitioners' action for prohibition was premature. The audit investigative process was still in its initial phase. There was yet no Notice of Disallowance issued. And, even granting that the AOM issued to petitioner Corales is already equivalent to an order, decision or resolution of the Auditor or that such AOM is already tantamount to a directive for petitioner Corales to reimburse the salaries paid to petitioner Dr. Angeles, still, the action for prohibition is premature since there are still many administrative remedies available to petitioners to contest the said AOM. Section 1, Rule V of the 1997 Revised Rules of Procedure of the COA, provides: "[a]n aggrieved party may appeal from an order or decision or ruling rendered by the Auditor embodied in a report, memorandum, letter, notice of disallowances and charges, Certificate of Settlement and Balances, to the Director who has jurisdiction over the agency under audit." From the final order or decision of the Director, an aggrieved party may appeal to the Commission proper.[28] It is the decision or resolution of the Commission proper which can be appealed to this Court.[29]

Clearly, petitioners have all the remedies available to them at the administrative level but they failed to exhaust the same and instead, immediately sought judicial intervention. Otherwise stated, the auditing process has just begun but the petitioners already thwarted the same by immediately filing a Petition for Prohibition. In *Fua, Jr. v. COA,*[30] citing *Sison v. Tablang,*[31] this Court declared that the general rule is that before a party may seek the intervention of the court, **he should first avail himself of all the means afforded him by administrative processes**. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to the court without first giving such administrative agency the opportunity to dispose of the same after due deliberation. Also, in *The Special Audit Team, Commission on Audit v. Court of Appeals and Government Service Insurance System,*[32] this Court has extensively pronounced that:

> If resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. **The premature invocation of the intervention of the court is**

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28 1997 Revised Rules of Procedure of the COA, Rule VI, Sec. 1.
29 Revised Rules of Procedure of the COA, Rule XI, Sec. 1.
30 G.R. No. 175803, 4 December 2009, 607 SCRA 347, 352.
31 G.R. No. 177011, 5 June 2009, 588 SCRA 727, 731.
32 G.R. No. 174788, 11 April 2013.

fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, **the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case**. x x x.

Moreover, **courts have accorded respect for the specialized ability of other agencies of government to deal with the issues within their respective specializations prior to any court intervention**. The Court has reasoned thus:

> We have consistently declared that the doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

The 1987 Constitution created the constitutional commissions as independent constitutional bodies, tasked with specific roles in the system of governance that require expertise in certain fields. For COA, this role involves:

> 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, instrumentalities, including government-owned and controlled corporations with original charter. x x x.

As one of the three (3) independent constitutional commissions, **COA has been empowered to define the scope of its audit and examination and to establish the techniques and methods required therefor; and to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds and properties**.

Thus, in the light of this constitutionally delegated task, the courts must exercise caution when intervening with disputes involving these independent bodies, for the **general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes**. **The issues which administrative agencies are authorized to decide should not be**

> **summarily taken from them** and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.[33] (Emphasis supplied).

In their futile attempt to convince this Court to rule in their favor, petitioners aver that by filing a Motion to Dismiss on the ground of lack of cause of action, respondent Republic, in essence, admitted all the material averments and narration of facts stated in the Petition for Prohibition and Mandamus. As such, there is no longer any question of fact to speak of and what remains is a pure question of law. The judgment, therefore, of the trial court denying the Motion to Dismiss is no longer subject to any appeal or review by the Court of Appeals. Instead, it is already appealable and reviewable by this Court under Rule 45 of the Rules of Court, where only pure questions of law may be raised and dealt with. This is in line with the pronouncement in *China Road and Bridge Corporation v. Court of Appeals*[34] (*China Road Case*). The Court of Appeals should have dismissed respondent Republic's Petition for *Certiorari* under Rule 65 of the Rules of Court for being an improper and inappropriate mode of review.

Petitioners' above argument is misplaced.

China Road Case is not at all applicable in the case at bench. Therein, the Motion to Dismiss the Complaint was granted. As the order granting the *motion to dismiss* was a final, as distinguished from an interlocutory order, the proper remedy was an appeal in due course.[35] Thus, this Court in *China Road Case* held that:

> x x x Applying the test to the instant case, it is clear that private respondent raises pure questions of law which are not proper in an ordinary appeal under Rule 41, but should be raised by way of a petition for review on *certiorari* under Rule 45.
>
> We agree with private respondent that in a motion to dismiss due to failure to state a cause of action, the trial court can consider all the pleadings filed, including annexes, motions and the evidence on record. However in so doing, the trial court does not rule on the truth or falsity of such documents. It merely includes such documents in the hypothetical admission. Any review of a finding of lack of cause of action based on these documents would not involve a calibration of the probative value of such pieces of evidence but would only limit itself to the inquiry of whether the law was properly applied given the facts and these supporting

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33 Id.

34 401 Phil. 590 (2000).

35 *Heirs of Spouses Teofilo M. Reterta and Elisa Reterta v. Spouses Lorenzo Mores and Virginia Lopez*, G.R. No. 159941, 17 August 2011, 655 SCRA 580, 592.

documents. **Therefore, what would inevitably arise from such a review are pure questions of law, and not questions of fact.**[36] (Emphasis supplied).

In the case at bench, however, the Motion to Dismiss was denied. It is well-entrenched that an order denying a motion to dismiss is an interlocutory order which neither terminates nor finally disposes of a case as it leaves something to be done by the court before the case is finally decided on the merits.[37] Therefore, contrary to the claim of petitioners, the denial of a Motion to Dismiss is not appealable, not even *via* Rule 45 of the Rules of Court. The only remedy for the denial of the Motion to Dismiss is a special civil action for *certiorari* showing that such denial was made with grave abuse of discretion.[38]

Taking into consideration all the foregoing, this Court finds no reversible error on the part of the Court of Appeals in reversing the Orders of the court *a quo* and consequently dismissing petitioners' Petition for Prohibition filed thereat.

WHEREFORE, premises considered, the Decision and Resolution dated 15 September 2008 and 20 February 2009, respectively, of the Court of Appeals in CA-G.R. SP No. 101296 are hereby **AFFIRMED**. Costs against petitioners.

SO ORDERED.

JOSE PORTUGAL PEREZ
Associate Justice

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36 *China Road and Bridge Corporation v. Court of Appeals*, supra note 34 at 602.

37 *Global Business Holdings, Inc. v. Surecomp Software, B.V.*, G.R. No. 173463, 13 October 2010, 633 SCRA 94, 101.

38 Id. at 102.

WE CONCUR:

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MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified 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.

MARIA LOURDES P. A. SERENO
Chief Justice