



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

**FORTUNE LIFE INSURANCE  
COMPANY, INC.,**

Petitioner,

**G.R. No. 213525**

Present:

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

- versus -

**COMMISSION ON AUDIT (COA)  
PROPER; COA REGIONAL OFFICE  
NO. VI-WESTERN VISAYAS;  
AUDIT GROUP LGS-B, PROVINCE  
OF ANTIQUE; AND PROVINCIAL  
GOVERNMENT OF ANTIQUE,**

Respondents.

Promulgated:

January 27, 2015

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**RESOLUTION**

**BERSAMIN, J.:**

Petitioner Fortune Life Insurance Company, Inc. seeks the reconsideration<sup>1</sup> of the resolution promulgated on August 19, 2014,<sup>2</sup> whereby the Court dismissed its petition for *certiorari* under Rule 64 in

\* On Leave.

\*\* Acting Chief Justice per Special Order No. 1914.

\*\*\* On official leave.

<sup>1</sup> *Rollo*, pp. 229-242.

<sup>2</sup> *Id.* at 226.

relation to Rule 65 of the *Rules of Court* due to its non-compliance with the provisions of Rule 64, particularly for: (a) the late filing of the petition; (b) the non-submission of the proof of service and verified declaration; and (c) the failure to show grave abuse of discretion on the part of the respondents.<sup>3</sup>

### Antecedents

Respondent Provincial Government of Antique (LGU) and the petitioner executed a memorandum of agreement concerning the life insurance coverage of qualified *barangay* secretaries, treasurers and *tanod*, the former obligating ₱4,393,593.60 for the premium payment, and subsequently submitting the corresponding disbursement voucher to COA-Antique for pre-audit.<sup>4</sup> The latter office disallowed the payment for lack of legal basis under Republic Act No. 7160 (*Local Government Code*). Respondent LGU appealed but its appeal was denied.

Consequently, the petitioner filed its petition for money claim in the COA.<sup>5</sup> On November 15, 2012, the COA issued its decision denying the petition,<sup>6</sup> holding that under Section 447 and Section 458 of the *Local Government Code* only municipal or city governments are expressly vested with the power to secure group insurance coverage for *barangay* workers; and noting the LGU's failure to comply with the requirement of publication under Section 21 of Republic Act No. 9184 (*Government Procurement Reform Act*).

The petitioner received a copy of the COA decision on December 14, 2012,<sup>7</sup> and filed its motion for reconsideration on January 14, 2013.<sup>8</sup> However, the COA denied the motion,<sup>9</sup> the denial being received by the petitioner on July 14, 2014.<sup>10</sup>

Hence, the petitioner filed the petition for *certiorari* on August 12, 2014, but the petition for *certiorari* was dismissed as earlier stated through the resolution promulgated on August 19, 2014 for (a) the late filing of the petition; (b) the non-submission of the proof of service and verified declaration; and (c) the failure to show grave abuse of discretion on the part of the respondents.

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<sup>3</sup> Id. at 226.

<sup>4</sup> Id. at 18.

<sup>5</sup> Id. at 13-22.

<sup>6</sup> Id. at 71-91.

<sup>7</sup> Id. at 92.

<sup>8</sup> Id. at 92-104.

<sup>9</sup> Id. at 70.

<sup>10</sup> Id. at 6.

### Issues

In its motion for reconsideration, the petitioner submits that it filed the petition for *certiorari* within the reglementary period following the *fresh period rule* enunciated in *Neypes v. Court of Appeals*;<sup>11</sup> and that the petition for *certiorari* included an affidavit of service in compliance with Section 3, Rule 13 of the *Rules of Court*. It admits having overlooked the submission of a verified declaration; and prays that the declaration attached to the motion for reconsideration be admitted by virtue of its substantial compliance with the Efficient Use of Paper Rule<sup>12</sup> by previously submitting a compact disc (CD) containing the petition for *certiorari* and its annexes. It disagrees with the Court, insisting that it showed and proved grave abuse of discretion on the part of the COA in issuing the assailed decision.

### Ruling

We deny the motion for reconsideration for being without merit.

#### I

#### **Petitioner did not comply with the rule on proof of service**

The petitioner claims that the affidavit of service attached to the petition for *certiorari* complied with the requirement on proof of service.

The claim is unwarranted. The petitioner obviously ignores that Section 13, Rule 13 of the *Rules of Court* concerns two types of proof of service, namely: the affidavit and the registry receipt, *viz*:

Section 13. *Proof of Service.* – x x x. If service is made by registered mail, proof shall be made by such **affidavit and the registry receipt** issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Section 13 thus requires that if the service is done by registered mail, proof of service shall consist of the affidavit of the person effecting the mailing *and* the registry receipt, both of which must be appended to the

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<sup>11</sup> G.R. No. 141524, September 14, 2005, 469 SCRA 633.

<sup>12</sup> A.M. No. 11-9-4-SC, November 13, 2012.

paper being served. A compliance with the rule is mandatory, such that there is no proof of service if either or both are not submitted.<sup>13</sup>

Here, the petition for *certiorari* only carried the affidavit of service executed by one Marcelino T. Pascua, Jr., who declared that he had served copies of the petition by registered mail “under Registry Receipt Nos. 70449, 70453, 70458, 70498 and 70524 attached to the appropriate spaces found on pages 64-65 of the petition.”<sup>14</sup> The petition only bore, however, the cut *print-outs* of what *appeared to be* the registry receipt numbers of the registered matters, not the registry receipts themselves. The rule requires to be appended the registry receipts, not their reproductions. Hence, the cut print-outs did not substantially comply with the rule. This was the reason why the Court held in the resolution of August 19, 2014 that the petitioner did not comply with the requirement of proof of service.<sup>15</sup>

## II

### ***Fresh Period Rule under Neypes* did not apply to the petition for *certiorari* under Rule 64 of the *Rules of Court***

The petitioner posits that the *fresh period rule* applies because its Rule 64 petition is akin to a petition for review brought under Rule 42 of the *Rules of Court*; hence, conformably with the *fresh period rule*, the period to file a Rule 64 petition should also be reckoned from the receipt of the order denying the motion for reconsideration or the motion for new trial.<sup>16</sup>

The petitioner’s position cannot be sustained.

There is no parity between the petition for review under Rule 42 and the petition for *certiorari* under Rule 64.

As to the nature of the procedures, Rule 42 governs an appeal from the judgment or final order rendered by the Regional Trial Court in the exercise of its appellate jurisdiction. Such appeal is on a question of fact, or of law, or of mixed question of fact and law, and is given due course only upon a *prima facie* showing that the Regional Trial Court committed an error of fact or law warranting the reversal or modification of the challenged judgment or final order.<sup>17</sup> In contrast, the petition for *certiorari* under Rule 64 is similar to the petition for *certiorari* under Rule 65, and assails a

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<sup>13</sup> *Cruz v. Court of Appeals*, G.R. No. 123340, August 29, 2002, 388 SCRA 72, 80-81.

<sup>14</sup> *Rollo*, p. 224.

<sup>15</sup> *Supra* note 1.

<sup>16</sup> *Rollo*, pp. 234-235.

<sup>17</sup> Section 6, Rule 42 of the *Rules of Court*.

judgment or final order of the Commission on Elections (COMELEC), or the Commission on Audit (COA). The petition is not designed to correct only errors of jurisdiction, not errors of judgment.<sup>18</sup> Questions of fact cannot be raised except to determine whether the COMELEC or the COA were guilty of grave abuse of discretion amounting to lack or excess of jurisdiction.

The reglementary periods under Rule 42 and Rule 64 are different. In the former, the aggrieved party is allowed 15 days to file the petition for review from receipt of the assailed decision or final order, or from receipt of the denial of a motion for new trial or reconsideration.<sup>19</sup> In the latter, the petition is filed within 30 days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration, if allowed under the procedural rules of the Commission concerned, interrupts the period; hence, should the motion be denied, the aggrieved party may file the petition within the remaining period, which shall not be less than five days in any event, reckoned from the notice of denial.<sup>20</sup>

The petitioner filed its motion for reconsideration on January 14, 2013, which was 31 days after receiving the assailed decision of the COA on December 14, 2012.<sup>21</sup> Pursuant to Section 3 of Rule 64, it had only five days from receipt of the denial of its motion for reconsideration to file the petition. Considering that it received the notice of the denial on July 14, 2014, it had only until July 19, 2014 to file the petition. However, it filed the petition on August 13, 2014, which was 25 days too late.

We ruled in *Pates v. Commission on Elections*<sup>22</sup> that the belated filing of the petition for *certiorari* under Rule 64 on the belief that the *fresh period rule* should apply was fatal to the recourse. As such, the petitioner herein should suffer the same fate for having wrongly assumed that the *fresh period rule* under *Neypes*<sup>23</sup> applied. Rules of procedure may be relaxed only to relieve a litigant of an injustice that is not commensurate with the degree of

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<sup>18</sup> *Reyna v. Commission on Audit*, G.R. No. 167219, February 8, 2011, 647 SCRA 210, 225.

<sup>19</sup> Section 1, Rule 42, *Rules of Court*.

<sup>20</sup> Section 3, Rule 64, *Rules of Court*, states:

Section 3. *Time to file petition.* – The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

<sup>21</sup> *Rollo*, p. 7.

<sup>22</sup> *Pates v. Commission on Elections*, G.R. No. 184915, June 30, 2009, 591 SCRA 481, 488.

<sup>23</sup> *Supra*, note 11.

his thoughtlessness in not complying with the prescribed procedure.<sup>24</sup> Absent this reason for liberality, the petition cannot be allowed to prosper.

### III

#### **Petition for *certiorari* further lacked merit**

The petition for *certiorari* is also dismissible for its lack of merit.

The petitioner insists on having fully shown that the COA committed grave abuse of discretion, to wit: (1) the challenged decision was rendered by a divided COA proper; (2) the COA took almost a year before promulgating its decision, and more than a year in resolving the motion for reconsideration, in contravention of the express mandate of the Constitution; (3) the resolution denying the motion for reconsideration was made up of only two sentences; (4) the matter involved a novel issue that called for an interpretation of the pertinent provisions of the *Local Government Code*; and (5) in issuing the resolution, COA Commissioners Grace Pulido-Tan and Heidi L. Mendoza made it appear that they knew the *Local Government Code* better than former Senator Aquilino Pimentel who offered an opinion on the matter.<sup>25</sup>

*Grave abuse of discretion* implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.<sup>26</sup>

A close look indicates that the petition for *certiorari* did not sufficiently disclose how the COA committed grave abuse of its discretion. For sure, the bases cited by the petitioner did not approximate grave abuse of discretion. To start with, the supposed delays taken by the COA in deciding the appeal were neither arbitrary nor whimsical on its part. Secondly, the mere terseness of the denial of the motion for reconsideration was not a factor in demonstrating an abuse of discretion. And, lastly, the fact that Senator Pimentel, even if he had been the main proponent of the *Local Government Code* in the Legislature, expressed an opinion on the issues different from the COA Commissioners' own did not matter, for it was the latter's adjudication that had any value and decisiveness on the issues by virtue of their being the Constitutionally officials entrusted with the authority for that purpose.

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<sup>24</sup> *Canton v. City of Cebu*, G.R. No. 152898, February 12, 2007, 515 SCRA 441, 448.

<sup>25</sup> *Rollo*, pp. 239-242.

<sup>26</sup> *Delos Santos v. Court of Appeals*, G.R. No. 169498, December 11, 2008, 573 SCRA 690, 700.

It is equally relevant to note that the COA denied the money claim of the petitioner for the further reason of lack of sufficient publication as required by the *Government Procurement Act*. In that light, the COA acted well within its authority in denying the petitioner's claim.

**IV**  
**Petitioner and its counsel**  
**exhibited harshness and disrespect**  
**towards the Court and its Members**

The petitioner contends that the Court erred in appreciating the petitioner's non-compliance with the requirement of the proof of service, alleging that even "a perfunctory scrutiny" of the petition for *certiorari* and its annexes could have easily shown that it had attached an affidavit of service to the petition. It goes on to make the following statements, viz:

25. Apparently, the staff of the Justice-in-charge failed to verify the PETITION and its annexes up to its last page, thus, the erroneous finding that there was non-submission of the proof of service;

26. In turn, the same omission was hoisted upon the other members of this Honorable Court who took the observation from the office of the Justice-in-charge, to be the obtaining fact, when in truth and in fact, it is not;<sup>27</sup>

The petitioner and its counsel thereby exhibited their plain inability to accept the ill consequences of their own shortcomings, and instead showed an unabashed propensity to readily lay blame on others like the Court and its Members. In doing so, they employed harsh and disrespectful language that accused the Court and its Members of ignorance and recklessness in the performance of their function of adjudication.

We do not tolerate such harsh and disrespectful language being uttered against the Court and its Members. We consider the accusatory language particularly offensive because it was unfounded and undeserved. As this resolution earlier clarifies, the petition for *certiorari* did not contain a proper affidavit of service. We do not need to rehash the clarification. Had the petitioner and its counsel been humbler to accept their self-inflicted situation and more contrite, they would have desisted from their harshness and disrespect towards the Court and its Members. Although we are not beyond error, we assure the petitioner and its counsel that our resolutions and determinations are arrived at or reached with much care and caution,

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<sup>27</sup> *Rollo*, p. 238.

aware that the lives, properties and rights of the litigants are always at stake. If there be errors, they would be unintended, and would be the result of human oversight. But in this instance the Court and its Members committed no error. The petition bore only cut reproductions of the supposed registry receipts, which even a mere “perfunctory scrutiny” would not pass as the original registry receipts required by the *Rules of Court*.

Accordingly, the petitioner and its counsel, Atty. Eduardo S. Fortaleza, should fully explain in writing why they should not be punished for indirect contempt of court for their harsh and disrespectful language towards the Court and its Members; and, in his case, Atty. Fortaleza should further show cause why he should not be disbarred.

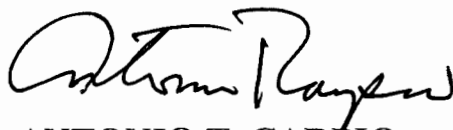
**WHEREFORE**, the Court **DENIES** the Motion for Reconsideration for its lack of merit; **ORDERS** the petitioner and its counsel, Atty. Eduardo S. Fortaleza, to show cause in writing within ten (10) days from notice why they should not be punished for indirect contempt of court; and **FURTHER DIRECTS** Atty. Fortaleza to show cause in the same period why he should not be disbarred.

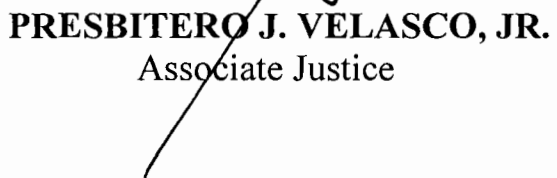
**SO ORDERED.**

  
LUCAS P. BERSAMIN  
Associate Justice

**WE CONCUR:**

(On Leave)  
MARIA LOURDES P. A. SERENO  
Chief Justice

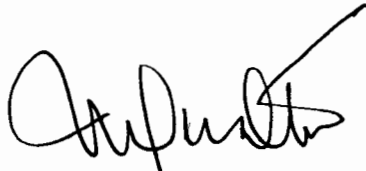
  
ANTONIO T. CARPIO  
Acting Chief Justice

  
PRESBITERO J. VELASCO, JR.  
Associate Justice

  
TERESITA J. LEONARDO-DE CASTRO  
Associate Justice

(On Official Leave)  
ARTURO D. BRION  
Associate Justice





**DIOSDADO M. PERALTA**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



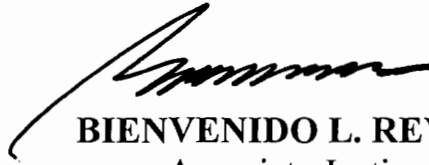
**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**JOSE PORTUGAL PEREZ**  
Associate Justice



**JOSE CATRAL MENDOZA**  
Associate Justice



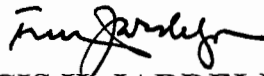
**BIENVENIDO L. REYES**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



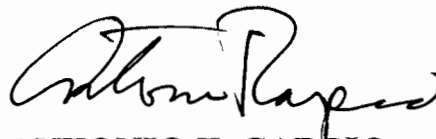
**MARVIC M.V.F. LEONEN**  
Associate Justice



**FRANCIS H. JARDELEZA**  
Associate Justice

### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above resolution were reached in consultation before the case was assigned to the writer of the opinion of the Court.



**ANTONIO T. CARPIO**  
Acting Chief Justice