EN BANC

[G.R. No. 222810. July 11, 2023]

FORMER MUNICIPAL MAYOR CLARITO A. POBLETE, MUNICIPAL BUDGET OFFICER MA. DOLORES JEANETH BAWALAN, AND MUNICIPAL ACCOUNTANT NEPHTALI V. SALAZAR, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

R E S O L U T I O N

SINGH, J.:

This is a Petition for *Certiorari*[1] (**Petition**) under Rule 65 of the Rules of Court in relation to Rule 64 filed by the petitioners former Municipal Mayor Clarito A. Poblete, Municipal Budget Officer Ma. Dolores Jeaneth Bawalan, and Municipal Accountant Nephtali V. Salazar (collectively, the **petitioners**), assailing Decision No. 2015-048,[2] dated February 23, 2015, and Resolution No. 2015-350,[3] dated November 27, 2015, of the Commission on Audit (**COA**), for having been issued with grave abuse of discretion. The assailed Decision dismissed the Petition for Review filed by the petitioners for having been filed out of time. The assailed Resolution denied the petitioners' Motion for Reconsideration for lack of merit.

The Facts

The petitioner Clarito A. Poblete (**Mayor Poblete**) was the former Municipal Mayor of Silang, Cavite, while the petitioners Ma. Dolores Jeaneth Bawalan and Nephtali V. Salazar were the Municipal Budget Officer and Municipal Accountant, respectively, of the same Municipality.[4]

On June 2, 2011, the Audit Team Leader (**ATL**) and Supervising Auditor (**SA**) of COA Team No. 18, Silang, Cavite issued 12 Notices of Disallowance (**ND**) amounting to a total of P2,891,558.31:

ND No. 11-001-101-(10)	P200,000.00
ND No. 11-002-101-(10)	344,255.65
ND No. 11-003-101-(10)	538,586.32
ND No. 11-004-101-(10)	526,124.25

ND No. 11-005-101-(10)	75,199.32
ND No. 11-006-101-(10)	425,358.71
ND No. 11-007-101-(10)	200,000.00
ND No. 11-008-101-(10)	202,432.00
ND No. 11-009-101-(10)	150,000.00
ND No. 11-010-101-(10)	30,817.90
ND No. 11-011-101-(10)	30,434.86
ND No. 11-012-101-(10)	168,349.30
	P2,891,558.31

The said amounts pertained to various projects undertaken by the municipality in the years 2004, 2006, and 2007, which were disallowed because these were appropriated during the 2010 budget in violation of Section 350[5] of the Local Government Code (**LGC**). The petitioners were, thus, named as persons liable therefor.

Hence, they filed an appeal before the COA Regional Office.

The Ruling of the COA Regional Office

In a Decision,[6] dated August 1, 2013, the COA Regional Office No. IV-A in Decision No. 2013-19 affirmed the NDs issued by the ATL and SA:

> WHEREFORE, the instant Appeal is DENIED for lack of merit. Accordingly, ND Nos. 11-001-101 (10) to 11-012-101 (10) all dated June 2, 2011 are hereby AFFIRMED.[7] (Emphasis omitted)

It found that pursuant to P.D. No. 1445 and case law, the contracts for various projects in 2004, 2006, and 2007 are void for being entered into without the necessary appropriation and certificate of availability of funds.[8]

The petitioners, thus, filed a Petition for Review[9] with the COA Proper through the Commission Secretariat.

The Ruling of the COA Proper

On February 23, 2015, the COA issued the assailed Decision:[10]

> WHEREFORE, premises considered, the instant petition for review is hereby DISMISSED for having been filed out of time. Accordingly, COA RO IV-A Decision No. 2013-19 dated August 1, 2013, which sustained ND Nos. 11-001-101(10) to 11-012-101(10), all dated June 2, 2011, on the payment of various local projects undertaken in years 2004, 2006 and 2007, in the total amount of [P]2,891,558.31, is final and executory.[11] (Emphasis omitted)

The COA ruled that the Petition before it was filed out of time for failure of the petitioners to pay the required filing fees within the prescribed period. Under the 2009 Revised Rules of Procedure of the COA (**RRPC**), the perfection of an appeal shall be taken by filing a petition for review before the Commission Secretariat within the time remaining of the six months or the 180-day reglementary period, with proof of payment of the prescribed fees attached thereto.[12]

The COA found that the petitioners belatedly paid the filing fees. Specifically, the petitioners paid the prescribed fees only on October 14, 2013, or after 212 days counted from the time they received the NDs on June 6, 2011.[13]

On November 27, 2015, the COA issued a Resolution[14] denying the petitioners' Motion for Reconsideration.

Hence, this Petition.

The Issue

The sole issue for the Court's consideration is whether the COA gravely abused its discretion in dismissing the case on account of the petitioners' failure to file the Petition for Review within the reglementary period.

The Ruling of the Court

The petitioners argued that the COA gravely abused its discretion when it disregarded its own rules of procedure. Under the RRPC, the running of the six-month prescriptive period is suspended upon the filing of an appeal. This is without regard to the date when the filing fee is directed to be, and actually paid.[15] In fact, the petitioners insisted that they were made to pay the required fees twice.[16]

Moreover, the RRPC does not state that the payment of the prescribed fees is mandatory

and jurisdictional, contrary to the ruling of the COA in the assailed Decision. The petitioners also pointed out that the Commission Secretary through a Letter, dated August 29, 2013, cured the belated payment of the filing fee, since the Commission Secretary only ordered the payment, amounting to P2,920.48, on even date.[17] Also, the RRPC expressly states that any appeal/petition without the required filing fee will be returned to the party concerned for compliance with the said requirement.[18]

The petitioners added that the RRPC expressly states that the said rules shall be applied liberally.[19]

The petitioners also claimed that there can be no malversation or illegality since funds were appropriated for the purpose of paying the prior years' obligations or vouchers.[20]

Lastly, the petitioners invoked the application of the principle of *quantum meruit* to the present case.

For his part, petitioner Mayor Poblete argued that he must be relieved of any liability as the former Mayor, based on the Arias Doctrine.[21]

In its Comment,[22] the COA remained firm in its stance that it is within its jurisdiction to dismiss the petitioners' appeal grounded on their failure to file the same within the prescribed period. It pointed out that the COA issued Resolution No. 2008-005, dated February 15, 2008, which instructs that the payment of filing fees should be made at the time of the filing of the pleading, or else, no action shall be taken on the appeal.[23]

COA claimed that the petitioners violated Section 350 of the LGC, which requires that all expenditures and obligations during the fiscal year must be taken up in the accounts of the same year. COA also averred that Mayor Poblete should have known the foregoing since he was the Mayor of Silang for three terms, hence, the Arias Doctrine finds no application.[24] Lastly, the principle of *quantum meruit* is, likewise, not applicable in the present case.[25]

In a Motion for Leave to file a Reply,[26] the petitioners clarified that the Letter of the Commission Secretariat, dated August 29, 2013, directing the petitioners to pay the filing fee amounting to P2,920.48, was not directly sent to any of the petitioners, but to the incumbent Municipal Mayor Emilia Lourdes F. Poblete.[27]

Furthermore, the petitioners reiterated the pertinent provisions of the RRPC stating that any appeal or petition without the required filing fee will be returned for purposes of

compliance.[28]

Anent the violation of Section 350 of the LGC, the petitioners argued that the law does not mean that the lawful obligations incurred in previous years cannot anymore be paid in subsequent years.[29]

Lastly, contrary to the claim of COA, the principle of *quantum meruit* can be favorably applied to the projects or contracts in question.

The Court rules in favor of the respondent COA.

An appeal made before the COA Proper must be accompanied by proof of payment of filing fees

Prior to the 2009 RRPC, the 1997 COA Revised Rules of Procedure did not require the payment of filing fees in cases filed before the COA or in any of its offices pursuant to its quasi-judicial functions.[30]

Subsequently, the COA *en banc* issued Resolution No. 2008-005, dated February 15, 2008,[31] the pertinent provisions of which state:

> WHEREFORE, premises considered, the Commission Proper resolves, as it is hereby resolved, to authorize the adjudicating bodies/offices of this Commission, in the exercise of its original and appellate jurisdictions, to **impose and collect filing** fees on the following cases:
>
> 1. Appeals from notices of suspension, disallowance or charge
> 2. Appeals for relief from accountability
> 3. Money claims, except if the claimant is a government agency
> 4. Requests for condonation
>
> The appellant/petitioner/claimant/complainant in any of the above cases shall pay a filing fee, as follows:
>
> | Amount Involved | Filing Fee |
> |---|---|

[P]1,000,000.00 and below	[P]1,000.00 or 1/10 of 1% (0.1%) of the amount involved in the case whichever is lower
Above [P]1,000,000.00	Additional [P]1,000.00 for every [P]1,000,000.00 or a fraction thereof but not to exceed [P]10,000.00

In addition, a Legal Research Fund of one percent (1%) of the filing fee herein imposed but in no case lower than Ten Pesos shall be collected pursuant to Section 4, Republic Act No. 3870, as amended, and as reiterated under Letter of Instruction No. 1182 dated December 16, 1981.

The fees **shall be paid** at the Treasury Division, Finance Sector, this Commission, **at the same time the pleading is filed** in any of the adjudicating bodies/offices of this Commission. For appealed cases emanating from the region, the fee may be paid at the Regional Finance of the nearest COA Regional Office. **A copy of the official receipt shall be attached to the pleading otherwise, the adjudicating bodies/offices shall not take action.** (Underscoring and emphasis supplied)

From the foregoing, it is clear that the filing of an appeal requires the concomitant payment of the prescribed filing fee.

On September 15, 2009, the 2009 RRCP was approved, which similarly provides:

Rule IX, Section 5. Payment of Filing Fee. — Every petition/appeal filed before an adjudicating body/office of this Commission pertaining to the cases enumerated below shall be imposed a filing fee equivalent to 1/10 of 1% of the amount involved, but not exceeding [P]10,000.00:

a) appeal from audit disallowance/charge
b) appeal from disapproval of request for relief from accountability
c) money claim, except if the claimant is a government agency
d) request for condonation of settled claim or liability except if between government agencies

Payment shall be made at the COA Central Office Cashier or at the Cashier of the COA Regional Finance Office. If not practicable, payment may be remitted

> through postal money order payable to the Commission on Audit.
>
> Any appeal/petition without the required filing fee will be returned to the party concerned for compliance with such requirement.

The Petitioners claim that the last paragraph of the above-cited provision requires that the COA return the appeal in instances where a party concerned failed to comply with the payment of the filing fee.

Here it is admitted by the petitioners that the COA, through the Commission Secretariat, indeed gave the petitioners the opportunity to comply with the requirement of payment of filing fees. There is no question that the Petition for Review before the COA Proper was filed on August 23, 2013. In a Letter, dated August 29, 2013, the Commission Secretariat required the petitioners to pay the filing fee. Yet, the petitioners paid the filing fee only on October 14, 2013, or after roughly one and a half months.[32]

As correctly argued by the COA,[33] the belated payment rendered the appeal unseasonable as it was filed beyond the six-month period provided under Section 3, Rule VII of the RRPC:

> 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 Settlement Board].

Section 4, Rule V of the RRPC provides:

> Section 4. When Appeal Taken. — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

Here, the petitioners received the NDs on June 6, 2011. However, they perfected their appeal upon the payment of filing fees only on October 14, 2013, or 212 days after receiving the NDs.[34] Hence, their appeal was perfected beyond six months or the 180-day reglementary period.

It bears to stress that the payment of filing fees in both judicial and quasi-judicial tribunals is essential in our jurisdiction. It is recognized as a limitation to the right to appeal,[35] which is neither a natural right nor part of due process. It is merely a statutory privilege that must be exercised only in a manner and in accordance with the provisions of law. To be sure, the RRPC was crafted to ensure the orderly disposition of cases.[36]

The Court cannot agree with the argument of the petitioners that the Letter, dated August 29, 2013, cured the belated payment of the filing fee. To rule in their favor would open an avenue for the circumvention of the RRPC. Specifically, it would set to naught the requirement of payment of filing fees and the prescriptive period provided.

The COA, therefore, did not err, much less commit grave abuse of discretion in dismissing the petitioners' appeal on account of the foregoing procedural lapse.

Even if the Court brushes aside these technical rules, the Petition still fails on substantial grounds.

The appropriation in the Municipality's 2010 budget for prior years' obligations runs counter to several laws

Section 350 of the LGC[37] requires all expenditures and obligations during the fiscal year to be taken up in the accounts of the same year:

> Section 350. Accounting for Obligations. — All lawful expenditures and obligations incurred during a fiscal year shall be taken up in the accounts of that year.

In the present case, the Municipality of Silang, Cavite entered into several agreements for local projects in the years 2004, 2006, and 2007.[38] These were, however, paid using the appropriations for the calendar year 2010[39] in contravention of the above-cited LGC provision.

Furthermore, the petitioners violated Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code of 1987:[40]

> Section 46. Appropriation Before Entering into Contract. — (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and
>
> (2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.
>
> Section 47. Certificate Showing Appropriation to Meet Contract. — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

The violation of the foregoing renders void the contract entered into and the officer/s responsible for entering into the said contract shall be held liable:

> Section 48. Void Contract and Liability of Officer. — Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

On this note, the petitioners' invocation of the *quantum meruit* principle is misplaced. The petitioners argue that the case of *Department of Public Works and Highways v. Quiwa, et al.* (***Quiwa***)[41] applies to the present case. Unlike in the present case, however, there was prior appropriation in the case of *Quiwa*:

> To emphasize, the contracts in the above cases, as in this case, were not illegal *per se*. There was prior appropriation of funds for the project including appropriation; and payment to the contractors, upon the subsequent completion of the works, was warranted.[42]

Furthermore, the factual milieu in *Quiwa* is exceptional since the government agency therein engaged the services of the respondents pursuant to an emergency project under the Mount Pinatubo Rehabilitation Project.[43]

The Arias Doctrine cannot be applied in favor of Mayor Poblete

When a document appears to be irregular on its face, the head of office cannot reasonably rely on the Arias Doctrine.[44]

In the present case, a detailed examination of the document is not necessary to see that the projects being funded for the 2010 budget were projects incurred in 2004, 2006, and 2007, in clear contravention of the law.

All told, the COA did not commit grave abuse of discretion when it dismissed the Petition for Review for being filed out of time.

WHEREFORE, the Petition is **DISMISSED**. The Commission on Audit's Decision in Decision No. 2015-048, dated February 23, 2015, is **AFFIRMED**.

SO ORDERED.

Gesmundo, C.J., Leonen, SAJ., Hernando, Lazaro-Javier, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, J. Lopez, Dimaampao, and *Marquez, JJ.*, concur.
Caguioa, J., see concurring and dissenting opinion.
Kho, Jr., J. please see concurring and dissenting opinion.

[1] *Rollo*, pp. 3-43, Petition for *Certiorari*, dated February 22, 2016.

[2] *Id.* at 49-52, COA Decision in Decision No. 2015-048, dated February 23, 2015. Signed by Commissioner (Officer-in-Charge) Heidi L. Mendoza and Commissioner Jose A. Fabia.

[3] *Id.* at 44-48, COA Resolution in Decision No. 2015-250, dated November 27, 2015. Signed by Commissioner Michael G. Aguinaldo and Commissioners Heidi L. Mendoza and Jose A. Fabia.

[4] *Id.* at 7.

[5] Local Government Code, Sec. 350. Accounting for Obligations. — All lawful expenditures and obligations incurred during a fiscal year shall be taken up in the accounts of that year.

[6] *Id.* at 140-144, COA Regional Office Decision, dated August 1, 2013 in Decision No. 2013-19.

[7] *Id.* at 144.

[8] *Id.* at 143.

[9] *Id.* at 64-83.

[10] *Id.* at 49-52, COA Decision in Decision No. 2015-048, dated February 23, 2015.

[11] *Id.* at 51.

[12] *Id.* at 50.

[13] *Id.*

[14] *Id.* at 44-48, COA Resolution in Decision No. 2015-250, dated November 27, 2015.

[15] *Id.* at 12-13.

[16] *Id.* at 20.

[17] *Id.* at 13-14.

[18] *Id.* at 16.

[19] *Id.* at 17.

[20] *Id.* at 21-24.

[21] *Id.* at 30-36, Petition for *Certiorari*.

[22] *Id.* at 191-205, Comment, dated July 8, 2016.

[23] *Id.* at 195-197.

[24] *Id.* at 199.

[25] *Id.* at 199-200.

[26] *Id.* at 208-221, Motion for Leave to File a Reply, dated July 22, 2016.

[27] *Id.* at 208-209.

[28] *Id.* at 210.

[29] *Id.* at 212.

[30] **Department of Foreign Affairs v. Commission on Audit, G.R. No. 194530**, July 7, 2020, 941 SCRA 343, 351.

[31] IMPOSITION AND COLLECTION OF FILING FEES ON CASES BEFORE THE COMMISSION ON AUDIT IN THE EXERCISE OF ITS QUASI-JUDICIAL FUNCTION.

[32] *Rollo*, p. 14.

[33] *Id.* at 195-196, Comment, dated July 8, 2016.

[34] *Id.* at 50, COA Decision in Decision No. 2015-048, dated February 23, 2015.

[35] **Department of Foreign Affairs v. Commission on Audit**, *supra* note 30 at 357.

[36] **Chozas v. Commission on Audit**, 864 Phil. 733, 750 (2019).

[37] Approved on October 10, 1991.

[38] *Rollo*, p. 7.

[39] *Id*. at 140, COA Regional Office Decision, dated August 1, 2013 in Decision No. 2013-19.

[40] Executive Order No. 292 (1987).

[41] 675 Phil. 9 (2011).

[42] *Id*. at 25.

[43] *Id*. at 12.

[44] **Chen v. Field Investigation Bureau, G.R. No. 247916**, April 19, 2022.

CONCURRING AND DISSENTING OPINION

CAGUIOA, *J.*:

I concur with the *ponencia* insofar as it finds the propriety of the disallowance for violation of Section 350 of the Local Government Code of 1991[1] (LGC) and Sections 46,[2] 47,[3] and 48[4] of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code of 1987.[5]

However, I disagree with the ruling that holds that the principle of *quantum meruit* does not apply here.

Brief review of the facts

The Commission on Audit (COA) issued 12 Notices of Disallowance (NDs) amounting to P2,891,558.31 to Former Municipal Mayor Clarito A. Poblete of Silang, Cavite, Municipal Budget Officer Ma. Dolores Jeaneth Bawalan, and Municipal Accountant Nephtali V. Salazar (petitioners). The disallowances stemmed from the fact that the Municipality of Silang (Municipality) had undertaken various projects in 2004, 2006, and 2007, which were funded and paid for by the Municipality from its 2010 budget. These local projects covered the concreting of roads at various barangays in the Municipality,[6] rehabilitation of canal,[7] improvement of road right of way,[8] payment of additional materials in Silang Jamboree,[9] payment for the materials used in the fabrication of long tables,[10] and payment for the installation of additional lights for election day at various schools in the Municipality.[11] **All these local projects had been successfully completed and done in accordance with the plans and specifications.**[12]

According to the COA auditors, petitioners violated Section 350 of the LGC which states that all lawful expenditures and obligations incurred during a fiscal year shall be taken up in the accounts of that year.

The COA Regional Office affirmed the NDs, stating that the contracts for the projects were void for being entered into without the necessary appropriation and certificate of availability of funds. On appeal, the COA Proper ruled that the petition was filed out of time due to petitioners' failure to pay the required filing fees within the prescribed period. The COA Proper denied the motion for reconsideration.

On procedural grounds, the *ponencia* finds that the belated payment of filing fees rendered the appeal unseasonable. Thus, the COA Proper did not gravely abuse its discretion in dismissing petitioners' appeal on account of this procedural lapse.[13]

On substantive grounds, the *ponencia* rules that the Municipality violated Section 350 of the LGC by paying for projects from 2004, 2006, and 2007 using appropriations from the 2010 budget. The Municipality also violated Sections 46, 47, and 48 of Book V, Title I, Subtitle B, Chapter 8 of the Administrative Code of 1987 — the contracts entered into without proper appropriation certification are void, and the officers responsible for them will be held liable for any damages resulting from the transaction. The *ponencia* then notes that the *quantum meruit* principle cannot be applied in this case because there was no prior appropriation for the projects.[14]

Principle of quantum meruit applicable in this case

As stated at the outset, I disagree with the ruling that petitioners' invocation of the *quantum meruit* principle should not be favored. I am of the view that such principle should be considered in this case.

While the NDs had already attained finality as to petitioners, who failed to pay the filing fees within the reglementary period, the principle of immutability of judgment admits several exceptions: (1) the correction of clerical errors; (2) the so-called *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. The Court has further allowed the relaxation of the rule on finality of judgments in order to serve substantial justice, taking into account: (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; and (6) the other party will not be unjustly prejudiced thereby.[15]

In *Estrella v. COA,*[16] (*Estrella*) the Court noted that the ND had already attained finality as to one of the petitioners therein, who failed to question the disallowance before the COA National Government Section Director, and sought recourse only by joining the motion for reconsideration of the COA Proper's Decision. Despite the procedural lapse, the Court deemed it necessary to apply the Decision in her favor, resulting in her solidary liability limited to returning only the net disallowed amount, if any.

I believe that the principle enunciated in *Estrella* is applicable to the instant controversy, considering that the ends of justice would be subverted if the Court were to uphold the principle of immutability of judgment notwithstanding the applicability of *quantum meruit*.

At the risk of repetition, the principle of *quantum meruit* should be considered in this case, despite the invalidity of the contracts. The pronouncement in the cases below can be reasonably extended to the present case.

In *Geronimo v. COA, et al.*,[17] the Court held that the "[r]ecovery on the basis of *quantum meruit* was also allowed despite the invalidity or absence of a written contract between the contractor and the government agency."[18] Furthermore, in the oft-cited case of *Dr. Eslao v. The COA*,[19] the Court granted compensation to the contractor for some accomplished work in the project, even if there was failure to go through the required process of public bidding. The Court reasoned that "[t]o deny the payment to the contractor of the two buildings which are almost fully completed and presently occupied by the university would be to allow the government to unjustly enrich itself at the expense of another."[20]

In *EPG Construction Co. v. Hon. Vigilar*,[21] the Court refused to stamp with legality the Department of Public Works and Highways' act of evading the payment of contracts that had been completed, and from which the government had already benefited. The Court held:

> Although this Court agrees with respondent's postulation that the "implied contracts," which covered the additional constructions, are void, in view of violation of applicable laws, auditing rules and lack of legal requirements, we nonetheless find the instant petition laden with merit and uphold, *in the interest of substantial justice*, petitioners-contractors' right to be compensated for the

> "additional constructions" on the public works housing project, applying the principle of *quantum meruit*.[22] (Emphasis and citation omitted)

Furthermore, it is crucial to note that even in the absence of a certificate of appropriation and availability of funds, the civil liability of the approving and certifying officers involved should be limited to the damage incurred by the government as a result of the transaction. In this case, it is evident that the government could not have been damaged to the extent that it benefited from the projects. Hence, the determination of petitioners, liability as officers likewise calls for the application of the principle of *quantum meruit*.

In light of the foregoing, I respectfully submit that despite the invalidity of the contracts resulting from the violation of the LGC and the Administrative Code of 1987, the implementation of the local projects had generated benefits that should not be disregarded. Therefore, the principle of *quantum meruit* should be considered, and the case should proceed with the proper determination of the amounts to be returned by petitioners. **The principle of immutability of final judgment ought not countenance unjust enrichment on the part of the government.**

In this regard, the Court, in *Torreta v. COA*,[23] (*Torreta*) laid down specific guidelines on the return of disallowed amounts in cases involving illegal or irregular government contracts, *viz.*:

1. If a [ND] is set aside by the Court, no return shall be required from any of the persons held liable therein.

2. If a [ND] 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.

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.[24]
(Emphasis supplied, citation omitted)

All told, notwithstanding the propriety of the disallowance, it is improper and unjust under the circumstances to hold petitioners liable for the entire aggregate amount. **It would be the height of injustice to blindly yield to the principle of immutability and leave petitioners solidarily liable for the full disallowed amount without considering the principle of *quantum meruit***. Applying paragraph 2(c) of the rules in *Toretta*, petitioners' liability for the disallowed amount may be reduced by the amounts due to the recipient.

Based on the foregoing premises, I vote to **PARTLY GRANT** the Petition and that the present case should be **REMANDED** to respondent Commission on Audit for the determination of the amount to which petitioners may be made liable.

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[1] Republic Act No. 7160, October 10, 1991.

[2] Section 46. *Appropriation Before Entering into Contract*. – (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditure; and
(2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

[3] Section 47. *Certificate Showing Appropriation to Meet Contract*. – Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount

necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

[4] Section 48. *Void Contract and Liability of Officer*. – Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

[5] Executive Order No. 292, July 25, 1987.

[6] *Rollo*, pp. 84-88, ND No. 11-001-101-(10), ND No. 11-002-101-(10), ND No. 11-003-101-(10), ND No. 11-004-101-(10), and ND No. 11-005-101-(10).

[7] *Id.* at 89 and 92, ND No. 11-006-101-(10) and ND No. 11-009-101-(10).

[8] *Id.* at 90-91, ND No. 11-007-101-(10) and ND No. 11-008-101-(10).

[9] *Id.* at 93, ND No. 11-010-101-(10).

[10] *Id.* at 94, ND No. 11-011-101-(10).

[11] *Id.* at 95, ND No. 11-012-101-(10).

[12] *Id.* at 75 and 214; emphasis and underscoring supplied.

[13] *Ponencia*, pp. 6-9.

[14] *Id.*at 9-11.

[15] **Estrella v. COA, G.R. No. 252079**, September 14, 2021; emphasis in the original, citations omitted.

[16] *Id.*

[17] 844 Phil. 651 (2018).

[18] *Id.* at 658.

[19] 273 Phil. 97 (1991).

[20] *Id.* at 107.

[21] 407 Phil. 53 (2001).

[22] *Id.* at 61.

[23] **G.R. No. 242925**, November 10, 2020.

[24] *Id.*

CONCURRING AND DISSENTING OPINION

KHO, JR., *J.*:

I concur with the Court's finding that the disallowances made were proper. As duly held by the Court, the expenditures made by the Municipality of Silang contravened Section 350[1] of Republic Act No. 7160[2] or the Local Government Code of 1991 and Sections 46,[3] 47,[4] and 48[5] of Chapter 8, Subtitle B, Title I, Book V of the Administrative Code[6] when the projects done in the years 2004, 2006, and 2007 did not have any respective appropriations at the time of their implementation. In this relation, I likewise concur that the invocation by petitioner Clarita A. Poblete of the doctrine espoused in *Arias v. Sandiganbayan*[7] is inapplicable in this case considering that a detailed examination of the 2010 budget is not required to show the irregularities of funding projects incurred in 2004, 2006, and 2007 through appropriations made in 2010, which as previously discussed is in clear contravention of the law.

Moreover, I concur with the Court's resolution insofar as it finds that petitioners failed to file an appeal before the Commission on Audit (COA) within the reglementary period. This lapse in procedure bars petitioners from filing the present petition considering that the COA Regional Office's decision had already become final and executory for failure to appeal the same within the prescribed reglementary period under Section 48[8] of Presidential Decree

No. 1445[9] and Section 3,[10] 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.[11]

Despite my concurrence with the foregoing disquisitions of the Court's resolution, I, however, respectfully express my disagreement from the Court's holding with respect to the determination of liabilities, particularly the non-applicability of the principle of *quantum meruit*. Considering the circumstances of the present case, the approving and certifying officers' liability should have been tempered by the principle of *quantum meruit* as established in *Torreta v. COA* (*Torreta*)[12] despite the Notices of Disallowance having become final and immutable.

In *Aguinaldo IV v. People* (*Aguinaldo IV*),[13] the Court, 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, 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."[14]

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: (*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***."[15]

Here, the finality of the Notices of Disallowance 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 meruit 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 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.[16] (emphasis and italics 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 would have already benefited from the disbursement of public funds. Here, the government benefited because of the subject local projects by the Municipality of Silang. To require the approving and certifying officers to return the entire disallowed amount despite the Municipality of Silang having benefited therefrom would be contrary to the demands of justice and equity.

In this relation, I express my disagreement with the resolution's finding that the principle of *quantum meruit* is inapplicable in the present case. In this case, petitioners invoked the principle following the case of *DPWH v. Ronaldo Quiwa* (*Quiwa*).[17] In debunking petitioners' invocation of the principle, the Court held that the ruling in *Quiwa* is inapplicable considering that: (*a*) there was a prior appropriation in *Quiwa*; and (*b*) the factual milieu in *Quiwa* is exceptional since the services rendered was pursuant to an emergency project.[18]

However, the principle of *quantum meruit* should still be applied in this case even if the present disallowances arose from the invalidity of the contracts (*i.e.*, violation of the Local Government Code and Administrative Code). In *Torreta*, the Court reiterated that the principle of *quantum meruit* is applicable "despite the invalidity or absence of a written contract between the contractor and the government agency,"[19] as in this case. To my mind, the invalidity of the projects due to lack of prior appropriation should not be a hindrance in ensuring that the government is not unjustly enriched from the benefits arising from the projects that have already been completed.

ACCORDINGLY, I vote to **REMAND** the case to the Commission on Audit for proper determination of the liabilities of the approving and certifying officers.

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[1] Section 350. Accounting for Obligations. — All lawful expenditures and obligations incurred during a fiscal year shall be taken up in the accounts of that year.

[2] Entitled "AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991," approved on October 10, 1991.

[3] Sec. 46. Appropriation Before Entering into Contract. — (1) No contract involving the expenditure of public funds shall be entered into unless there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the

proposed expenditure; and

(2) Notwithstanding this provision, contracts for the procurement of supplies and materials to be carried in stock may be entered into under regulations of the Commission provided that when issued, the supplies and materials shall be charged to the proper appropriations account.

[4] Sec. 47. Certificate Showing Appropriation to Meet Contract. — Except in the case of a contract for personal service, for supplies for current consumption or to be carried in stock not exceeding the estimated consumption for three (3) months, or banking transactions of government-owned or controlled banks, no contract involving the expenditure of public funds by any government agency shall be entered into or authorized unless the proper accounting official of the agency concerned shall have certified to the officer entering into the obligation that funds have been duly appropriated for the purpose and that the amount necessary to cover the proposed contract for the current calendar year is available for expenditure on account thereof, subject to verification by the auditor concerned. The certificate signed by the proper accounting official and the auditor who verified it, shall be attached to and become an integral part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the obligation of the government agency concerned under the contract is fully extinguished.

[5] Sec. 48. Void Contract and Liability of Officer. — Any contract entered into contrary to the requirements of the two (2) immediately preceding sections shall be void, and the officer or officers entering into the contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.

[6] Executive Order No. 292 entitled "INSTITUTING THE ADMINISTRATIVE CODE OF 1987" (July 25, 1987).

[7] 259 Phil. 794 (1989) [Per J. Gutierrez, Jr., *En Banc*].

[8] Sec. 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.

[9] Entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES," (June 11, 1978).

[10] Sec. 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].

[11] PD 1445, Sec. 51 provides:

> Sec. 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 jurisdiction, if not appealed as herein provided, shall be final and executory. (See also **Paguio v. COA, G.R. No. 223547**, April 27, 2021 [Per J. M. Lopez, *En Banc*], citing **Republic v. Heirs of Gotengco**, 824 Phil. 568 (2018) [Per J. Gesmundo, Third Division].

[12] **G.R. No. 242925**, November 10, 2020. [Per J. Gaerlan, *En Banc*].

[13] **G.R. No. 226615**, January 13, 2021 [Special Second Division]. See also **Uy v. Del Castillo**, 814 Phil. 61 (2017) [Per J. Perlas-Bernabe, First Division]; **Bigler v. People**, 782 Phil. 158 (2016) [Per J. Perlas-Bernabe First Division]; **Sumbilla v. Matrix Finance Corp.**, 762 Phil. 130 (2015) [Per J. Villarama, Jr., Third Division]; **Barnes v. Judge Padilla**, 500 Phil. 303 (2005) [Per J. Austria-Martinez, Second Division]; and **Sanchez v. COA**, 452 Phil. 665 (2003) [Per J. Bellosillo, *En Banc*].

[14] *Id.*, citation omitted.

[15] See **Aguinaldo IV v. People**, *supra*; **Uy v. Del Castillo**, *supra*, at 75; **Bigler vs. People**, *supra*, at 166; **Sumbilla v. Matrix Finance Corporation**, *supra*, at 138; **Barnes v. Judge Padilla**, *supra*; and **Sanchez v. COA**, *supra*.

[16] **Torreta v. COA**, *supra*; citations omitted.

[17] 675 Phil. 9 (2011) [Per J. Sereno, Second Division].

[18] See Resolution, p. 10.

[19] **Torreta**, *supra* note 12, citing **Geronimo v. COA**, 844 Phil. 651, 658 (2018) [Per J. J. Reyes, Jr., *En Banc*].

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