

HERMOGINA U. BULILAN, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 130057. December 22, 1998

Ponente: PURISIMA, J.

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PURISIMA, J.:

At bar is a petition for review on certiorari under Rule 45 of the Revised Rules of Court seeking to set aside the Decision of the Commission on Audit[1] dated June 20, 1995 in COA Decision No. 95-384.

From the records on hand, the facts that matter can be culled, as follows:

Petitioner Hermogina U. Bulilan was the Cashier of Visaya State College of Agriculture (VISCA, for brevity) in Baybay, Leyte, whose responsibility, as such Cashier, was to prepare the payroll of employees of said State College.

As the first quincina of the March payroll was due on March 12, 1990, on March 9, 1990, a Friday, petitioner withdrew from the Land Bank Branch in Tacloban City, the needed amount. Since she was scheduled to leave for Baguio City on the day the said payroll was to be released, according to petitioner, she and her staff rendered overtime service without pay on March 10, a Saturday, and on March 11, a Sunday, to make sure that payment of salaries of the employees would be on time.

The methodology adopted by petitioner in preparing the salaries of employees was simple. It was based on the standard practice of government offices, by placing the net pay of every employee in individual pay envelopes. When the corresponding amounts were put in the pay envelopes, the same became too bulky for the Mosler safe of petitioner to accomodate. Confronted with the problem, she placed such pay envelopes in a steel cabinet without a lock. According to petitioner, when she left her office, she saw to it that its main door was double-locked.

On the night of March 11, 1990, a robbery took place at the Cashier's Office of VISCA resulting to the loss of government funds amounting to Five Hundred Sixty-Six Thousand Four Hundred Sixty- Eight and 91/100 Ninety-One (P566,468.91) Pesos.

With respect to the robbery under inquiry, Mr. Dominador Ugsang, Chief Security Officer of VISCA, submitted the following report, to wit:

"At around 8:30 a.m. on March 12, 1990, personnel of the Cash Division discovered that the Cashier's Office had been robbed xxx.

"xxx, the undersigned (Mr. Ugsang, supplied) assisted the NBI personnel in pin pointing traces of fingerprints on window glasses left by the culprit. We also traced the route of the culprit in going to the Cashier's Office. We noted that the route taken could only be done by one who is very familiar with the building. The culprit gained entrance to the building using the fire exit. From there, he was able to enter the Personnel Office by pushing the sliding frame. From the Personnel Office, he passed through the Office of Business Affairs and to

the Budget Office. From the Budget Office he again pushed the sliding frame in order to reach the window (Northern Side) of the Cashier's Office. To gain entrance to the Cashier's Office, the culprit lifted up the iron grills of the sliding frame. The culprit was able to get the envelopes containing the salaries of VISCA staff placed inside a steel cabinet xxx"[2]

Because of what happened, petitioner cancelled her trip to Baguio City and reported the incident to the authorities concerned.

On March 27, 1990, petitioner wrote the Commission on Audit begging to be relieved of accountability for the loss of subject government funds allegedly taken by robbers, invoking Section 73 of P.D. 1445. But on June 20, 1995, the Commission on Audit denied petitioner's plea for relief from responsibility; ruling, thus:

"Premises considered, and in view of the definite proof of negligence on the part of Mrs. Hermogina Bulilan in the safekeeping of subject government funds and considering further the adverse recommendation of the resident auditor of VISCA and the Director, COA Regional Office No. VIII, this Commission hereby denies the instant request for relief from accountability."[3]

With the denial of her motion for reconsideration, petitioner found her way to this Court via the petition under scrutiny, faulting the Commission on Audit for not absolving her of responsibility, and for adjudging her negligent and answerable for the loss of the government funds involved.

Petitioner theorizes that what she did was what any reasonable person would have done under the attendant facts and circumstances and therefore, she should not be held liable for the effects of what she calls a fortuitous event over which she had no control.

Did the Commission on Audit err in not absolving petitioner of any liability and in holding her guilty of negligence, under the premises? On this crucial issue, we rule against the petitioner. The action of respondent Commission on the matter accords with law and the evidence.

To begin with, the petition for review under Rule 45 availed of by petitioner is not an appropriate remedy for her problem at hand. Under her present petition, only questions of law may be raised.[4] Questions of fact, such as the presence or absence of negligence on the part of petitioner in the handling or custody of subject public funds, cannot be looked into and determined under Rule 45. Succinct is the provision of Article IX-A, Section 7 of the Constitution of the Republic of the Philippines that decisions, orders or rulings of the Commission on Audit may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof. Rule 65 of the Revised Rules of Court prescribes such a remedy.

The denial by respondent Commission of petitioner's prayer for exoneration is premised on the November 24, 1992 Report[5] of Director Santos M. Alquizalas of the Commission on Audit, Regional Office VIII, finding petitioner negligent, and ratiocinating, thus:

"xxx

As noted during the ocular inspection, the Cash Division of VISCA, the scene of the robbery incident, had a concrete vault with double steel doors both secured by big Yale padlocks. This concrete vault is the one referred to by Mrs. Bulilan in her letter dated July 11, 1991 as the "locked room" utilized as storage for accountable forms and office supplies.

It is the opinion of this Office that the concrete vault is more secured for safekeeping purposes compared to the "unlocked storage cabinet" where the subject payroll money was placed. While it is true that the concrete vault could not be seen directly by the guard on duty at the lobby, the same is true also insofar as the storage cabinet is concerned ... The contention (of Mrs. Bulilan) therefore that 'the storage cabinet is strategically placed in an

area which can be seen directly by the guard on duty' is misleading.

xxx

Another factor to be considered is the failure of Mrs. Bulilan to turn over the payroll money to Ms. Anecia Fernandez, the Disbursing Officer. As established/confirmed by the Resident Auditor, the accountable officer concerned did not travel to Tacloban City on March 9, 1990, a Friday, but only to Ormoc City. On the following day, Saturday, and Sunday, March 10-11, 1990, Mrs. Bulilan, with the help of two (2) casual clerks, did the placing of the payroll money in the pay envelopes (sacking). It was only on March 12, 1990, a Monday, that she went to Tacloban City where she was overtaken by the news of the robbery. xxx"

To buttress her plea for reversal of the finding adverse to her, petitioner argues, that:

"The contention by COA that it would have been safe had petitioner placed the bulky envelopes in the concrete vault is unsustaining. Calling that concrete room a concrete vault is a misnomer, it appearing that indeed the original plan was to construct a concrete vault in said area, but because of financial constraint, said plan was never fully implemented. Only a concrete room was made minus the vault ... The ocular inspection conducted by the C[O]A Regional Director indicated the safe manner to place the money in said room, and this was so because right after the robbery incident, former President (Marianito R.) Villanueva (of VISCA), in order to cover up his negligence as the responsible official of VISCA funds, hurriedly improved the safety of government money by first, buying for a bigger safe and improving the lock mechanism of the concrete room instead of only an ordinary lock during petitioner's time ...

xxx, the allegation of the Auditor that petitioner did not travel to Tacloban City on March 9, 1990 but only to Ormoc City is utterly misplaced. It is true that petitioner was scheduled on March 9, 1990 to Ormoc [C]ity to withdraw and deposit funds. However, at around 9:45 a.m., she was called by Prof. Camilo D. Villanueva, her immediate boss at that time, together with Anecia C. Fernandez, Disbursing Officer, in the office and was informed about a radio message Prof. Camilo Villanueva received from Dr. Leonardo Manalo, Liason Officer based in Manila that VISCA money was transmitted to Land Bank Tacloban [C]ity. Hence, Prof. [.] Villanueva directed petitioner to immediately proceed to Tacloban City and verify if the money was already received by said bank before proceeding to Ormoc City. Because of that order and since the preparation of the remittance advice was not yet through when petitioner left, hence, petitioner failed to bring it with her to Tacloban City then to Ormoc. Stress is laid here that petitioner and companion left VISCA at around 10:00 in the morning and arrived past 5:00 o'clock (in the afternoon). If petitioner was only in Ormoc City, she could be back during lunch time because Ormoc is just few 38 kilometers away, more or less from VISCA."

The petition under consideration is premised on alleged misappreciation of facts by the respondent Commission. However, well settled is the rule that "the findings or conclusions of administrative bodies are generally respected and even given finality." [6] In *Vicente Villaflor vs. Court of Appeals*, 280 SCRA 297 [1997], the Court elucidated:

"By reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact in that regard are generally accorded great respect, if not finality, by the courts. The findings of fact of an administrative agency must be respected as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence."

After a careful examination of the records on hand, it can be gleaned therefrom that the findings of fact by the respondent Commission are duly supported by substantial evidence. Subject COA Decision was based on the November 24, 1992 Report of Mr. Santos M. Alquizalas, COA Director for Regional Office VIII, April 8, 1992

Report of Salvador L. Paril, resident Auditor of VISCA, and the Ad Hoc Committee Report[7], as shown by Memorandum No. 166, series of 1990.[8]

On the merits of the case, the Court is of the opinion, and so holds, that the respondent Commission did not err in finding the herein petitioner guilty of negligence.

Negligence is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and reasonable man could not do." [9] Stated otherwise, negligence is want of care required by the circumstances.[10]

Negligence is therefore a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require. Conformably, the diligence which the law requires an individual to observe and exercise varies according to the nature of the situation in which he happens to be, and the importance of the act which he has to perform.[11]

Applying the above contemplation of negligence to the case at bar, the irresistible finding and conclusion is that the herein petitioner was negligent in the performance of her duties as Cashier. She did not do her best, as dictated by the attendant circumstances, to safeguard the public funds entrusted to her, as such Cashier.

Upon verification and ocular inspection conducted by the Resident Auditor, and as confirmed by the COA Director for Regional Office VIII, it was found out that VISCA had a concrete vault/room with a steel door secured by a big Yale padlock, which was very much safer than the unlocked storage cabinet in which petitioner placed the government funds in question. It is irrefutable that a locked vault/room is safer than an unlocked storage cabinet.

What is more, the storage cabinet where subject payroll money and collections were kept could not be readily seen by the guard on duty who was usually posted near the main entrance of the building. The said storage cabinet could only be seen by the guard whenever he would go to the teller's window and peep sideways to the left through the window glass.

Furthermore, it is worthy to consider against the petitioner her failure to follow the frequency of deposit prescribed by Joint COA-MOF Circular No. 1-81. It was firmly established that she did not make a single deposit during the month of March, 1990. Had she complied with the said circular, the ill-fated government funds would not have been exposed to the danger of robbery. Not only that, the failure of petitioner to turn over to Ms. Anicia C. Fernandez, VISCA Disbursing Officer, the payroll money and collections to be needed by the school while she was out on travel was another indication of her non-compliance with the internal rules of VISCA.

All things studiously considered, we are of the ineluctable conclusion that the respondent Commission on Audit correctly denied petitioner's request for relief from responsibility. Section 73 of P.D. 1445, provides:

"Credit for loss occurring in transit or due to casualty or force majeure - (1) When a loss of government funds or property occurs while they are in transit or the loss is caused by fire, theft, or other casualty or force majeure, the office accountable therefor or having custody thereof shall immediately notify the Commission or the Auditor concerned and, within thirty days or such longer period as the Commission or Auditor may in the particular case allow, shall present his application for relief, with the available supporting evidence. Whenever warranted by the evidence credit for the loss shall be allowed. An officer who fails to comply with this requirement shall not be relieved of liability or allowed credit for any loss in the settlement of his accounts."

WHEREFORE, the petition is hereby DENIED for being an improper remedy, and for lack of merit, and COA Decision No. 95-384 AFFIRMED in its entirety. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, and Pardo, JJ., concur.

[1] Composed of Commissioners Celso D. Gangan (Chairman); Rogelio B. Espiritu and Sofronio B. Ursal as members.

[2] Petition, p. 5-6; Rollo, pp. 9-10.

[3] Annex "A," pp. 19-20, Rollo.

[4] Second paragraph of Sec. 2 which states, "Only questions of law may be raised in the petition and must be distinctly set forth"

[5] see :the 12th Indorsement dated November 24, 1992, Record Part I.

[6] Ting vs. Court of Appeals, 237 SCRA 797 [1994].

[7] Composed of Dr. Manuel K. Palomar (Chairman), Mr. Dominador S. Ugsang, Mr. Alfredo A. Arradaza, Jr., Dr. Jose L. Bacusmo and Dr. Jose M. Alkuino, J. (Members).

[8] "Annex Q," Records, Part II, COA Decision No. 97-278.

[9] McKee vs. Intermediate Appellate Court, 211 SCRA 517 (539).

[10] Valenzuela vs. Court of Appeals, 253 SCRA 303 (320).

[11] J. Cezar S. Sangco, Torts and Damages, 1993 ed., citing U.S. vs. Reyes, 1 Phil. 375 (377).

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