JUNE 8, 1992

GUALBERTO J. DELA LLANA, PETITIONER, VS. THE CHAIRPERSON, COMMISSION ON AUDIT, THE EXECUTIVE SECRETARY AND THE NATIONAL TREASURER, RESPONDENTS.

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SERENO, J.:

This is a Petition for Certiorari under Rule 65 of the Rules of Court with a prayer for the issuance of a temporary restraining order pursuant to Section 7, Article IX-D of the 1987 Constitution, seeking to annul and set aside Commission on Audit (COA) Circular No. 89-299, which lifted its system of pre-audit of government financial transactions.

Statement of the Facts and the Case

On 26 October 1982, the COA issued Circular No. 82-195, lifting the system of pre-audit of government financial transactions, albeit with certain exceptions. The circular affirmed the state policy that all resources of the government shall be managed, expended or utilized in accordance with law and regulations, and safeguarded against loss or wastage through illegal or improper disposition, with a view to ensuring efficiency, economy and effectiveness in the operations of government. Further, the circular emphasized that the responsibility to ensure faithful adherence to the policy rested directly with the chief or head of the government agency concerned. The circular was also designed to further facilitate or expedite government transactions without impairing their integrity.

After the change in administration due to the February 1986 revolution, grave irregularities and anomalies in the government's financial transactions were uncovered. Hence, on 31 March 1986, the COA issued Circular No. 86-257, which reinstated the pre-audit of selected government transactions. The selective pre-audit was perceived to be an effective, although temporary, remedy against the said anomalies.

With the normalization of the political system and the stabilization of government operations, the COA saw it fit to issue Circular No. 89-299, which again lifted the pre-audit of government transactions of national government agencies (NGAs) and government-owned or -controlled corporations (GOCCs). The rationale for the circular was, first, to reaffirm the concept that fiscal responsibility resides in management as embodied in the Government Auditing Code of the Philippines; and, second, to contribute to accelerating the delivery of public services and improving government operations by curbing undue bureaucratic red tape and ensuring facilitation of government transactions, while continuing to preserve and protect the integrity of these transactions. Concomitant to the lifting of the pre-audit of government transactions of NGAs and GOCCs, Circular No. 89-299 mandated the installation, implementation and monitoring of an adequate internal control system, which would be the direct responsibility of the government agency head.

Circular No. 89-299 further provided that the pre-audit activities retained by the COA as therein outlined shall no longer be a pre-requisite to the implementation or prosecution of projects and the payment of claims. The COA aimed to henceforth focus its efforts on the post-audit of financial accounts and transactions, as well as on the assessment and evaluation of the adequacy and effectivity of the agency's fiscal control process. However, the

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circular did not include the financial transactions of local government units (LGUs) in its coverage.

The COA later issued Circular No. 94-006 on 17 February 1994 and Circular No. 95-006 on 18 May 1995. Both circulars clarified and expanded the total lifting of pre-audit activities on all financial transactions of NGAs, GOCCs, and LGUs. The remaining audit activities performed by COA auditors would no longer be pre-requisites to the implementation or prosecution of projects, perfection of contracts, payment of claims, and/or approval of applications filed with the agencies.[1]

It also issued COA Circular No. 89-299, as amended by Circular No. 89-299A, which in Section 3.2 provides:

> 3.2
>
> Whenever circumstances warrant, however, such as where the internal control system of a government agency is inadequate, This Commission may reinstitute pre-audit or adopt such other control measures, including temporary or special pre-audit, as are necessary and appropriate to protect the funds and property of the agency.

On 18 May 2009, COA issued Circular No. 2009-002, which reinstituted the selective pre-audit of government transactions in view of the rising incidents of irregular, illegal, wasteful and anomalous disbursements of huge amounts of public funds and disposals of public property. Two years later, or on 22 July 2011, COA issued Circular No. 2011-002, which lifted the pre-audit of government transactions implemented by Circular No. 2009-002. In its assessment, subsequent developments had shown heightened vigilance of government agencies in safeguarding their resources.

In the interregnum, on 3 May 2006, petitioner dela Llana wrote to the COA regarding the recommendation of the Senate Committee on Agriculture and Food that the Department of Agriculture set up an internal pre-audit service. On 18 July 2006, the COA replied to petitioner, informing him of the prior issuance of Circular No. 89-299.[2] The 18 July 2006 reply of the COA further emphasized the required observance of Administrative Order No. 278 dated 8 June 1992, which directed the strengthening of internal control systems of government offices through the installation of an internal audit service (IAS).

On 15 January 2008, petitioner filed this Petition for Certiorari under Rule 65. He alleges that the pre-audit duty on the part of the COA cannot be lifted by a mere circular, considering that pre-audit is a constitutional mandate enshrined in Section 2 of Article IX-D of the 1987 Constitution.[3] He further claims that, because of the lack of pre-audit by COA, serious irregularities in government transactions have been committed, such as the P728-million fertilizer fund scam, irregularities in the P550-million call center laboratory project of the Commission on Higher Education, and many others.

On 22 February 2008, public respondents filed their Comment[4] on the Petition. They argue therein that the Petition must be dismissed, as it is not proper for a petition for certiorari, considering that (1) there is no allegation showing that the COA exercised judicial or quasi-judicial functions when it promulgated Circular No. 89-299; and (2) there is no convincing explanation showing how the promulgation of the circular was done with grave abuse of discretion. Further, the Petition is allegedly defective in form, in that there is no discussion of material dates as to when petitioner received a copy of the circular; there is no factual background of the case; and petitioner failed to attach a certified true copy of the circular. In any case, public respondents aver that the circular is valid, as the COA has the power under the 1987 Constitution to promulgate it.

On 9 May 2008, petitioner filed his Reply[5] to the Comment.

On 17 June 2008, this Court resolved to require the parties to submit their respective memoranda. On 12 September 2008, public respondents submitted their Memorandum.[6] On 15 September 2008, Amethya dela

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Llana-Koval, daughter of petitioner, manifested to the Court his demise on 8 July 2008 and moved that she be allowed to continue with the Petition and substitute for him. Her motion for substitution was granted by this Court in a Resolution dated 7 October 2008. On 5 January 2009, petitioner, substituted by his daughter,[7] filed his Memorandum.[8]

The main issue for our resolution in this Petition is whether or not petitioner is entitled to the extraordinary writ of certiorari.

Procedural Issues
Technical Defects of the Petition

Public respondents correctly allege that petitioner failed to attach a certified true copy of the assailed Order, and that the Petition lacked a statement of material dates. In view, however, of the serious matters dealt with in this Petition, this Court opts to tackle the merits thereof with least regard to technicalities. A perusal of the Petition shows that the factual background of the case, although brief, has been sufficiently alleged by petitioner.

Standing

This Petition has been filed as a taxpayer's suit.

A taxpayer is deemed to have the standing to raise a constitutional issue when it is established that public funds from taxation have been disbursed in alleged contravention of the law or the Constitution.[9] Petitioner claims that the issuance of Circular No. 89-299 has led to the dissipation of public funds through numerous irregularities in government financial transactions. These transactions have allegedly been left unchecked by the lifting of the pre-audit performed by COA, which, petitioner argues, is its Constitutional duty. Thus, petitioner has standing to file this suit as a taxpayer, since he would be adversely affected by the illegal use of public money.

Propriety of Certiorari

Public respondents aver that a petition for certiorari is not proper in this case, as there is no indication that the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions, as required in certiorari proceedings.[10] Conversely, petitioner for his part claims that certiorari is proper under Section 7, Article IX-A of the 1987 Constitution, which provides in part:

> Section 7. x x x. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof.

Petitioner is correct in that decisions and orders of the COA are reviewable by the court via a petition for certiorari. However, these refer to decisions and orders which were rendered by the COA in its quasi-judicial capacity. Circular No. 89-299 was promulgated by the COA under its quasi-legislative or rule-making powers. Hence, Circular No. 89-299 is not reviewable by certiorari.

Neither is a petition for prohibition appropriate in this case. A petition for prohibition is filed against any tribunal, corporation, board, or person — whether exercising judicial, quasi-judicial, or ministerial functions — who has acted without or in excess of jurisdiction or with grave abuse of discretion, and the petitioner prays that judgment be rendered, commanding the respondent to desist from further proceeding in the action or matter specified in the petition.[11] However, prohibition only lies against judicial or ministerial functions, but not against legislative or quasi-legislative functions.[12]

Nonetheless, this Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein.[13] In this case, petitioner avers

that the conduct of pre-audit by the COA could have prevented the occurrence of the numerous alleged irregularities in government transactions that involved substantial amounts of public money. This is a serious allegation of a grave deficiency in observing a constitutional duty if proven correct.

This Court can use its authority to set aside errors of practice or technicalities of procedure, including the aforementioned technical defects of the Petition, and resolve the merits of a case with such serious allegations of constitutional breach. Rules of procedure were promulgated to provide guidelines for the orderly administration of justice, not to shackle the hand that dispenses it.[14]

Substantive Issues

The 1987 Constitution has made the COA the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenues and expenditures and the use of public funds and property, including the exclusive authority to define the scope of its audit and examination; to establish the techniques and methods for the review; and to promulgate accounting and auditing rules and regulations.[15] Its exercise of its general audit power is among the constitutional mechanisms that give life to the check and balance system inherent in our form of government.[16]

Petitioner claims that the constitutional duty of COA includes the duty to conduct pre-audit. A pre-audit is an examination of financial transactions before their consumption or payment.[17] It seeks to determine whether the following conditions are present: (1) the proposed expenditure complies with an appropriation law or other specific statutory authority; (2) sufficient funds are available for the purpose; (3) the proposed expenditure is not unreasonable or extravagant, and the unexpended balance of appropriations to which it will be charged is sufficient to cover the entire amount of the expenditure; and (4) the transaction is approved by the proper authority and the claim is duly supported by authentic underlying evidence.[18] It could, among others, identify government agency transactions that are suspicious on their face prior to their implementation and prior to the disbursement of funds.

Petitioner anchors his argument on Section 2 of Article IX-D of the 1987 Constitution, which reads as follows:

> Section 2.
>
> 1. The Commission on Audit shall have 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, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post- audit basis:
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> - constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution;
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> - autonomous state colleges and universities;
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> - other government-owned or controlled corporations and their subsidiaries; and
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> - such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.
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> 2. The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and 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. (Emphasis supplied)

He claims that under the first paragraph quoted above, government transactions must undergo a pre-audit, which is a COA duty that cannot be lifted by a mere circular.

We find for public respondents.

Petitioner's allegations find no support in the aforequoted Constitutional provision. There is nothing in the said provision that requires the COA to conduct a pre-audit of all government transactions and for all government agencies. The only clear reference to a pre-audit requirement is found in Section 2, paragraph 1, which provides that a post-audit is mandated for certain government or private entities with state subsidy or equity and only when the internal control system of an audited entity is inadequate. In such a situation, the COA may adopt measures, including a temporary or special pre-audit, to correct the deficiencies.

Hence, the conduct of a pre-audit is not a mandatory duty that this Court may compel the COA to perform. This discretion on its part is in line with the constitutional pronouncement that the COA has the exclusive authority to define the scope of its audit and examination. When the language of the law is clear and explicit, there is no room for interpretation, only application.[19] Neither can the scope of the provision be unduly enlarged by this Court.

WHEREFORE, premises considered, the Petition is DISMISSED.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, Mendoza, Reyes, and Perlas-Bernabe, JJ., concur.
Del Castillo, J., on sick leave.

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[1] Circular No. 95-006, Sec. 5.01.

[2] Rollo, p. 4.

[3] While the Petition states "1978 Constitution," the cited provisions refer to those of the 1987 Constitution.

[4] Rollo, pp. 21-32.

[5] Rollo, pp. 34-39.

[6] Id. at 43-55.

[7] For purposes of convenience, references to "petitioner" shall henceforth continue to refer to the original petitioner, Gualberto J. dela Llana, as substituted by his daughter, Amethya dela Llana-Koval.

[8] Rollo, pp. 70-78.

[9] Gonzales v. Narvasa, G.R. No. 140835, 392 Phil. 518 (2000); Uy v. Sandiganbayan, G.R. No. 111544, 6 July 2004, 433 SCRA 424.

[10] Rules of Court, Rule 65, Sec. 1; Delos Santos v. Court of Appeals, G.R. No. 169498, 11 December 2008, 573 SCRA 690.

[11] Ongsuco v. Malones, G.R. No. 182065, 27 October 2009, 604 SCRA 499.

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[12] Holy Spirit Homeowners Association, Inc. v. Defensor, G.R. No. 163980, 529 Phil. 573 (2006).

[13] See Quinto v. Commission on Elections, G.R. No. 189698, 1 December 2009, 606 SCRA 258; Equi-Asia Placement, Inc. v. Department of Foreign Affairs, G.R. No. 152214, 19 September 2006, 502 SCRA 295.

[14] Quinto v. Commission on Elections, G.R. No. 189698, 1 December 2009, 606 SCRA 258.

[15] Yap v. Commission on Audit, G.R. No. 158562, 23 April 2010, 619 SCRA 154, citing Sec. 2 (1) and (2), Art. IX-A, 1987 Constitution.

[16] Olaguer v. Domingo, G.R. No. 109666, 411 Phil. 576 (2001).

[17] Villanueva v. Commission on Audit, G.R. No. 151987, 493 Phil. 887 (2005), citing Development Bank of the Philippines v. Commission on Audit, G.R. No. 107016, 11 March 1994, 231 SCRA 202.

[18] Id.

[19] Mendoza v. COMELEC, G.R. 191084, 25 March 2010, 616 SCRA 443.

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