



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,
 PERALTA,
 BERSAMIN,
 DEL CASTILLO,
 PERLAS-BERNABE,
 LEONEN,
 JARDELEZA,
 CAGUIOA,
 MARTIRES,
 TIJAM,
 ****REYES, JR., and
 GESMUNDO, 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:

November 21, 2017

[Signature]

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RESOLUTION

BERSAMIN, J.:

A party and its counsel who make offensive and disrespectful statements in their motion for reconsideration may be properly sanctioned for indirect contempt of court.

* On leave.
 ** Acting Chief Justice per Special Order No. 2519 dated November 21, 2017.
 *** On official leave.
 **** On official leave.

We hereby resolve the following submissions of the petitioner, namely: (a) *Joint Explanation*;¹ (b) *Manifestation with Motion for Leave to File Second Motion for Reconsideration*;² and (c) *Second Motion for Reconsideration*.³

To recall the antecedents, the Court issued a resolution on January 27, 2015 denying the petitioner's *Motion for Reconsideration*⁴ on the following grounds, namely: (a) failure to comply with the rule on proof of service; (b) late filing; (c) failure to file a verified declaration under the *Efficient Use of Paper Rule*; and (d) failure to prove grave abuse of discretion on the part of respondent Commission on Audit (COA).

In the same resolution, however, the Court required the petitioner and its counsel, Atty. Eduardo S. Fortaleza, to show cause why they should not be punished for indirect contempt of court for using in the petitioner's *Motion for Reconsideration* dated October 1, 2014 harsh and disrespectful language towards the Court; and further required Atty. Fortaleza to explain why he should not be disbarred, disposing thusly:

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.⁵

In the *Joint Explanation* dated March 9, 2015, the petitioner and Atty. Fortaleza, both now represented by former Senate President Aquilino Q. Pimentel, Jr., have apologized for the statements made in the *Motion for Reconsideration*, but have stated nonetheless that they had been constrained to attach cut print-outs of registry receipt numbers because the Makati City Central Post Office (MCPO) stopped issuing registry receipts and had adopted an electronic system instead;⁶ that they thought that the Court, in mentioning proof of service, had been referring to the non-submission of the affidavit of service;⁷ that Atty. Fortaleza had been only lacking in finesse in the formulation of his submissions; that the petitioner honestly believed that it had faithfully complied with the requirements of the *Rules of Court* on the

¹ *Rollo*, pp. 275-282.

² *Id.* at 294-304.

³ *Id.* at 305-320.

⁴ *Id.* at 265-272.

⁵ *Id.* at 272.

⁶ *Id.* at 276-277.

⁷ *Id.* at 277.

service of pleadings;⁸ and that because of time constraints Atty. Fortaleza had not been able to sufficiently go over the *Motion for Reconsideration*.⁹

Atty. Fortaleza has prayed that he be spared from disbarment, stressing his not being some wayward member of the Integrated Bar of the Philippines (IBP), but had in fact served the IBP by handling *pro bono* cases in his home province of Antique.¹⁰

Additionally, the petitioner has filed its so-called *Manifestation with Motion for Leave to file Second Motion for Reconsideration*, attaching therewith its *Second Motion for Reconsideration*. It has contended in the *Second Motion for Reconsideration* that the *final order* referred to in *Neypes v. Court of Appeals*¹¹ applied to the 30-day period mentioned in Section 3, Rule 64 of the *Rules of Court* as to make such period be reckoned from notice of the denial by the COA of its *Motion for Reconsideration*; and that the reckoning of the 30-day period ought to be from July 14, 2014, the date when it received the denial by the COA of its *Motion for Reconsideration*.¹²

On the substantive issue, the petitioner has maintained that whether or not the *Local Government Code* (LGC) allowed provincial governments to provide group insurance for *barangay* officials was a question of law; that the interpretation of Atty. Pimentel as the Senator who had authored the LGC had been unjustly ignored by the COA;¹³ and that the COA had consequently gravely abused its discretion in interpreting the LGC during the pre-audit.¹⁴

The petitioner has further maintained that it had complied with the requirement of publication under the *Government Procurement Act*; that it did not furnish the proof of publication of the notice to bid to the COA because the term *bidding documents* in Republic Act No. 9184 did not include the proof of publication;¹⁵ that the insurance program had been a laudable initiative of former Gov. Salvacion Zaldivar Perez that had been stopped by Auditor Yolanda TM Veñegas, a known ally of Gov. Exequiel B. Javier, the successor of Gov. Zaldivar; and that the Province of Negros Occidental had been implementing the same insurance program without any issue.¹⁶

⁸ Id. at 278.

⁹ Id. at 279.

¹⁰ Id. at 280.

¹¹ G.R. No. 141524, September 14, 2005, 469 SCRA 633.

¹² *Rollo*, pp. 296-300.

¹³ Id. at 301.

¹⁴ Id. at 315.

¹⁵ Id. at 316.

¹⁶ Id. at 316-317.

In its comment,¹⁷ the COA, through the Office of the Solicitor General (OSG), has countered that the *Second Motion for Reconsideration*, being a prohibited motion, should be denied;¹⁸ that the *Fresh Period Rule* enunciated in *Neypes* did not apply to petitions for *certiorari* filed under Rule 64 of the *Rules of Court*;¹⁹ that the petitioner's interpretation of the term *final order* would contradict and render meaningless the last sentence of Section 3 of Rule 64;²⁰ that the distance between the petitioner's Makati office and its counsel's office in the Province of Antique was not sufficient to excuse the belated filing of the petition for *certiorari*;²¹ that the petitioner did not submit proof of service of its petition for *certiorari* and the verified declaration required by the *Efficient Use of Paper Rule*;²² that the supposed adoption by the MCPO of an electronic system in the processing of mail matter did not inspire belief because the explanation came from the petitioner's own staff who did not have personal knowledge of the supposed adoption of the new system of the MCPO;²³ that the Court affirmed the grounds cited by the COA for disallowing the money claim;²⁴ that the unchallenged giving of insurance coverage by the Provincial Government of Negros Occidental did not validate the petitioner's claim because a violation of law could not be excused by any practice to the contrary;²⁵ and that the petitioner should have presented the question of publication to the COA when it sought the reconsideration.²⁶

Ruling of the Court

I

Petitioner and Atty. Fortaleza were guilty of indirect contempt of court

The concept and objective of the power to punish contempt of court have been expounded in *Lorenzo Shipping Corporation v. Distribution Management Association of the Philippines*,²⁷ viz.:

Contempt of court has been defined as a willful disregard or disobedience of a public authority. In its broad sense, contempt is a disregard of, or disobedience to, the rules or orders of a legislative or judicial body or an interruption of its proceedings by disorderly behavior

¹⁷ Id. at 343-352.

¹⁸ Id. at 344.

¹⁹ Id. at 345-347.

²⁰ Id. at 347.

²¹ Id. at 374.

²² Id. at 348.

²³ Id. at 348-349.

²⁴ Id. at 349.

²⁵ Id.

²⁶ Id.

²⁷ G.R. No. 155849, August 31, 2011, 656 SCRA 331.

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or insolent language in its presence or so near thereto as to disturb its proceedings or to impair the respect due to such a body. In its restricted and more usual sense, contempt comprehends a despising of the authority, justice, or dignity of a court. The phrase *contempt of court* is generic, embracing within its legal signification a variety of different acts.

The power to punish for contempt is inherent in all courts, and need not be specifically granted by statute. It lies at the core of the administration of a judicial system. Indeed, there ought to be no question that courts have the power by virtue of their very creation to impose silence, respect, and decorum in their presence, submission to their lawful mandates, and to preserve themselves and their officers from the approach and insults of pollution. The power to punish for contempt essentially exists for the preservation of order in judicial proceedings and for the enforcement of judgments, orders, and mandates of the courts, and, consequently, for the due administration of justice. The reason behind the power to punish for contempt is that respect of the courts guarantees the stability of their institution; without such guarantee, the institution of the courts would be resting on a very shaky foundation.²⁸ (Bold underscoring supplied for emphasis)

Bearing the foregoing exposition in mind, the Court felt impelled to require the petitioner and Atty. Fortaleza to show cause why they should not be punished for contempt of court for the offensive and disrespectful statements contained in their *Motion for Reconsideration* dated October 1, 2014,²⁹ to wit:

x x x x

24. Second, with regard to the PROOF OF SERVICE required under Section 2(c), Rule 56 in relation to Section 13, 1997 Rules of Civil Procedures, as amended, **even a perfunctory scrutiny** of the present PETITION and its annexes would have yielded the observation that the last document attached to the PETITION is the AFFIDAVIT OF SERVICE dated August 12, 2014, by Marcelino T. Pascua, Jr., xxx in compliance with Sections 5, 6, 7, 8, 11, & 13, RULE 13 of the 1997 REVISED RULES OF CIVIL PROCEDURE. A copy of the AFFIDAVIT OF SERVICE is attached hereto as ANNEX "B", and made an integral part hereof;

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 were non-submission of the proof of service;**

²⁸ Id. at 342-344.

²⁹ *Rollo*, pp. 229-245.

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;**

27. There is therefore need for this Honorable Court to rectify its foregoing finding;³⁰ (Bold underscoring supplied for emphasis)

x x x x

The Court subsequently observed in the resolution promulgated on January 27, 2015 as follows:

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, 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*.³¹ (Bold underscoring supplied for emphasis)

Although the petitioner and Atty. Fortaleza are now apologizing for their offensive and disrespectful statements, they insist nonetheless that the statements arose from their honest belief of having complied with the rule on proof of service. They also attribute their procedural error to the supposed adoption by the MCPO of an electronic system in the processing of mail matter.

³⁰ Id. at 238.

³¹ Id. at 271-272.

The Court finds and declares the petitioner and Atty. Fortaleza guilty of indirect contempt of court.

The administration of justice is an important function of the State. It is indispensable to the maintenance of order in the Society. It is a duty lodged in this Court, and in all inferior courts. For the Court and all other courts of the land to be able to administer and dispense evenhanded justice, they should be free from harassment and disrespect.

The statements of the petitioner and Atty. Fortaleza unquestionably tended to attribute gross inefficiency and negligence to the Court and its staff. It is worse because the statements were uncalled for and unfounded. As such, the statements should be quickly deterred and gravely sanctioned for actually harming and degrading the administration of justice by the Court itself.³² The wrong the statements wrought on the reputation and prestige of the Court and its operating staff must by all means be vindicated, and even undone if that was at all possible.

Moreover, we cannot but view and consider the attempt to shift the blame to the postal system as the manifestation of the unwillingness of the petitioner and Atty. Fortaleza to take personal responsibility for their harsh and disrespectful statements. We must reject the attempt, firstly, because it reflected their lack of remorse for a grave contempt of court they committed, and, secondly, because their shifting of blame was not even proved reliably. It appears, indeed, that they were content on relying solely on the self-serving affidavit of a member of the petitioner's own staff who could not at least profess having the personal knowledge about the change in the system by MCPO.³³

The courts have inherent power to impose a penalty for contempt that is reasonably commensurate with the gravity of the offense. The degree of punishment lies within the sound discretion of the courts.³⁴ Ever mindful that the inherent power of contempt should be exercised on the preservative, not on the vindictive, principle,³⁵ and that the penalty should be meted according

³² Section 3, Rule 71 of the *Rules of Court* pertinently provides:

Sec. 3. Indirect contempt to be published after charge and hearing, - After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

xxx xxx xxx

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

xxx xxx xxx

³³ *Rollo*, pp. 348-349.

³⁴ *Mercado v. Security Bank Corporation*, G.R. No. 160445, February 16, 2006, 482 SCRA 501, 518.

³⁵ *Limbona v. Lee*, G.R. No. 173290, November 20, 2006, 507 SCRA 452, 460-461; *Province of Camarines Norte v. Province of Quezon*, G.R. No. 80796, October 11, 2001, 367 SCRA 91, 106.

to the corrective, not the retaliatory, idea of punishment,³⁶ the Court must justly sanction the contempt of court committed by the petitioner and its counsel. Under Section 7, Rule 71 of the *Rules of Court*, the penalty of fine not exceeding ₱30,000.00, or imprisonment not exceeding six months, or both fine and imprisonment, may be meted as punishment for contemptuous conduct committed against a Regional Trial Court or a court of equivalent or higher rank. Upon considering all the circumstances, the Court imposes a fine of ₱15,000.00 on the petitioner and Atty. Fortaleza.

II

Second Motion for Reconsideration, being a prohibited motion, is denied

Section 2, Rule 52 of the *Rules of Court* prohibits a second motion for reconsideration by the same party. Section 3, Rule 15 of the *Internal Rules of the Supreme Court* echoes the prohibition, providing thusly:

Section 3. *Second motion for reconsideration.* — The Court shall not entertain a second motion for reconsideration, and any exception to this rule can only be granted in the higher interest of justice by the Court en banc upon a vote of at least two-thirds of its actual membership. There is reconsideration “in the higher interest of justice” when the assailed decision is not only legally erroneous, but is likewise patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the parties. A second motion for reconsideration can only be entertained before the ruling sought to be reconsidered becomes final by operation of law or by the Court's declaration.

In the Division, a vote of three Members shall be required to elevate a second motion for reconsideration to the Court En Banc.

A second motion for reconsideration, albeit prohibited, may be entertained in the higher interest of justice, such as when the assailed decision is not only legally erroneous but also patently unjust and potentially capable of causing unwarranted and irremediable injury or damage to the moving party.

The showing of exceptional merit to justify the acceptance of the petitioner's *Second Motion for Reconsideration* was not made herein. Hence, we deny the *Second Motion for Reconsideration*.

³⁶ *Rodriguez v. Blancaflor*, G.R. No. 190171, March 14, 2011, 645 SCRA 286, 292.

For sure, the petitioner's non-compliance with the rule on proof of service and the petitioner's unjustified reliance on the *Fresh Period Rule* as the basis to extend the period for filing of the special civil actions for *certiorari* under Rule 64 of the *Rules of Court* were already enough ground to dismiss the petition for *certiorari*. We need not remind that the *Fresh Period Rule* applies only to appeals in civil and criminal cases, and in special proceedings filed under Rule 40, Rule 41, Rule 42, Rule 43, Rule 45,³⁷ and Rule 122.³⁸

Hence, liberality could not be extended to the petitioner. According to *Ginete v. Court of Appeals*,³⁹ only matters of life, liberty, honor or property may warrant the suspension of the rules of the most mandatory character. That is not the situation of the petitioner herein. It is also true that other justifications may be considered, like: (1) the existence of special or compelling circumstances; (2) the merits of the case; (3) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (4) a lack of any showing that the review sought is merely frivolous and dilatory; and (5) the other party will not be unjustly prejudiced thereby.⁴⁰ But, again, the petitioner has not shown the attendance of any of such justifications for excepting its petition for *certiorari* from the stricture of timeliness of filing.

As earlier pointed out, the petition for *certiorari* was dismissed upon reasonable but still formidable grounds, namely: (a) noncompliance with the rule on proof of service; (b) noncompliance with the *Efficient Use of Paper Rule*; and (c) failure to establish the grave abuse of discretion committed by the COA. The plea for liberality was really unworthy of favorable consideration.

ACCORDINGLY, the Court:

(1) **FINDS** and **PRONOUNCES** the petitioner and its counsel, Atty. Eduardo S. Fortaleza, **GUILTY** of **INDIRECT CONTEMPT OF COURT**, and, accordingly, **SENTENCES** them to pay, **JOINTLY AND SEVERALLY**, a fine of **₱15,000.00**; and

³⁷ *Panolino v. Tajala*, G.R. No. 183616, June 29, 2010, 622 SCRA 209, 315.

³⁸ *Yu v. Tatad*, G.R. No. 170979, February 9, 2011, 642 SCRA 421, 428.

³⁹ G.R. No. 127596, September 24, 1998, 296 SCRA 38.

⁴⁰ *Id.* at 53.

(2) **DENIES** the *Motion for Leave to File Second Motion for Reconsideration* and the *Second Motion for Reconsideration*.

SO ORDERED.


LUCAS P. BERSAMIN
Associate Justice

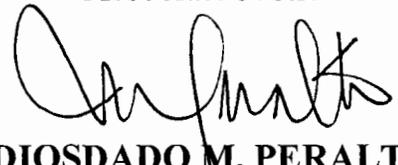
WE CONCUR:

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


ANTONIO T. CAPIO
Associate Justice

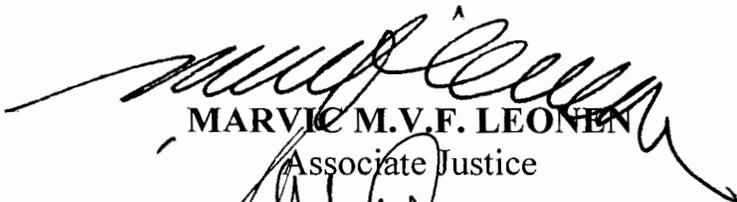
(On Official Leave)
PRESBITERO J. VELASCO, JR
Associate Justice


TERESITA J. LEONARDO DE CASTRO
Associate Justice

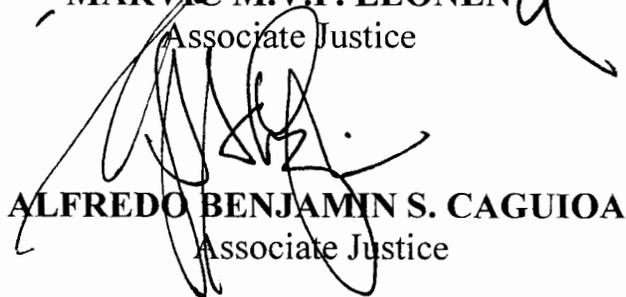

DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


SAMUEL R. MARTIRES
Associate Justice

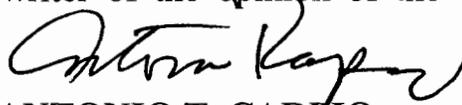

NOEL GIMENEZ TIJAM
Associate Justice

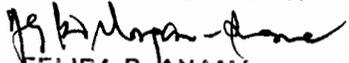
(On Official Leave)
ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Acting Chief Justice

CERTIFIED XEROX COPY:

FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT