Republic of the Philippines
Supreme Court
Manila

EN BANC

BINGA HYDROELECTRIC PLANT, INC., Herein Represented by its Executive Vice-President, ERWIN T. TAN,	**G.R. No. 218721**
Petitioner,	Present:
-versus-	CARPIO, *Senior Associate Justice** VELASCO, JR., LEONARDO-DE CASTRO, PERALTA, BERSAMIN, DEL CASTILLO, PERLAS-BERNABE, LEONEN,** JARDELEZA, CAGUIOA, MARTIRES, TIJAM, REYES, JR., and GESMUNDO, *JJ.*
COMMISSION ON AUDIT and NATIONAL POWER CORPORATION, Respondents.	Promulgated: July 10, 2018

x -x

DECISION

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 64, in relation to Rule 65, of the Rules of Court, assailing the Decision No. 2013-050[2] dated January 30, 2013 and the Resolution No. 2015-134[3] dated April 6, 2015 of the Commission on Audit (COA), which denied petitioner's money claim in the amount of $5,000,000.00 and ₱40,118,442.79.

---

* Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended.
** On official business.
1 *Rollo*, pp. 3-52.
2 *Id.* at 59-66.
3 *Id.* at 68-74.

In March 2003, the Binga Hydroelectric Plant, Inc. (BHEPI)[4] and the National Power Corporation (NPC),[5] together with the Power Sector Assets and Liabilities Management Corporation (PSALM),[6] entered into a Settlement Framework Agreement (SFA)[7] for the complete resolution and settlement of all claims and disputes between BHEPI and NPC in connection with the Rehabilitate-Operate-Leaseback (ROL) Contract of the Binga Hydroelectric Power Plant located at Tinongdan, Itogon, Benguet. The SFA pertinently provided that NPC shall pay BHEPI an amount equivalent to $5,000,000.00. It was preconditioned on the complete settlement of the unpaid claims of the subcontractors and employees of BHEPI in the amount of $6,812,552.55 and upon their execution of absolute quitclaims and waivers of rights and claims against the NPC.[8]

BHEPI and NPC also agreed that BHEPI would exert its best efforts to negotiate with its subcontractors and employees to further reduce their claims on record. Any savings to be generated from this reduction shall be equally shared between the NPC and BHEPI.[9]

The SFA was endorsed by the Department of Justice (DOJ) and approved by the Secretary of the Department of Energy (DOE). It was adopted *in toto* by the Boards of the NPC and PSALM in their resolutions.[10]

In May 2005, due to the alleged failure of the NPC to comply with the conditions of the SFA, BHEPI filed a case for specific performance with damages before the Regional Trial Court (RTC) of Baguio City. BHEPI demanded for the payment of $5,000,000.00, plus $1,700,000.00 representing 50% of generated savings realized from the reduction of the claims of its subcontractors and employees.[11] The RTC dismissed the case, prompting BHEPI to appeal before the Court of Appeals (CA). During the pendency of the appeal, BHEPI and NPC filed a joint motion to approve compromise agreement.[12] Assisted by the Office of the Solicitor General (OSG), the NPC agreed to pay BHEPI $5,000,000.00, representing complete settlement of the unpaid claims of subcontractors/employees, and ₱40,118,442.79 as savings realized from the reduction of the claims of subcontractors and employees, subject to certain conditions.[13] The CA

---

4 A duly organized corporation under Philippine laws.
5 A government-owned and controlled corporation.
6 A government-owned and controlled corporation created by virtue of Republic Act No. 9136, otherwise known as the "Electric Power Industry Reform Act of 2001."
7 *Rollo*, pp. 76-78.
8 *Id.* at 59-60.
9 *Id.* at 60.
10 *Id.* at 8.
11 *Id.* at 61.
12 *Id.* at 131-136.
13 *Id.* at 131-134. These conditions were: (a) Execution by BHEPI of all corresponding quitclaims and waivers of claims and rights against NPC for any other claims based on the SFA; (b) Submission and approval of the Compromise Agreement by the appropriate court, and the dismissal of the case filed by BHEPI for payment based on the SFA; and (c) Withdrawal/settlement/dismissal with prejudice of all other claims and cases filed by BHEPI in relation to the SFA to which NPC is a defendant.

approved the Compromise Agreement[14] and, accordingly, dismissed the appeal. An Entry of Judgment was subsequently issued.[15]

BHEPI moved for the execution of the judgment of the CA before the RTC, but the trial court noted that execution of money claims against the government including government-owned and controlled corporations (GOCCs) should be lodged before the COA.[16] Thus, BHEPI filed its petition[17] for money claim before the COA, praying that the COA take cognizance of the CA's judgment award on the Compromise Agreement.

In the assailed Decision, the COA denied BHEPI's money claim. The COA ruled that the power to compromise claims is vested exclusively in the Commission or Congress, pursuant to Section 20(1), Chapter IV, Subtitle B, Title I, Book V of Executive Order (EO) No. 292, also known as the Administrative Code of 1987. Thus, the Compromise Agreement not having been submitted to the COA for approval, as required by law, is null and void.[18]

The COA also ruled that PSALM, an indispensable party, was not a signatory to the Compromise Agreement. Even on the assumption that PSALM had assented to it, the COA held that the Compromise Agreement must still be denied because it was not supported with the necessary documents, and hence, the claim against the NPC's liability to BHEPI was unsubstantiated, and its reasonableness cannot be ascertained.[19]

BHEPI moved for reconsideration[20] of the COA Decision, but it was also denied via a Resolution dated April 6, 2015.[21] The COA reiterated its holding that the power to compromise a claim is vested in the Commission, the President or the Congress as provided under Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292. As such, it is Congress, upon the recommendation of the Commission and the President, which has the authority to compromise the claims of BHEPI against the NPC. The COA explained that in the exercise of its jurisdiction under the Section, it is mandated to confirm the veracity and validity of the claims of BHEPI before recommending to Congress the approval of the compromise. Having done so, the COA restated its earlier findings of the uncertainty of the reasonableness and validity of the compromised claims of unnamed subcontractors and employees and the alleged savings realized from the reduction of such unpaid claims in the absence of substantial supporting documents, such as vouchers, invoices, receipts, statement of accounts and other related papers within reach of accounting officers. The COA likewise

---

[14] *Id.* at 120-124.
[15] *Id.* at 150.
[16] *Id.* at 151-153.
[17] *Id.* at 154-160.
[18] *Id.* at 63.
[19] *Id.* at 63-64.
[20] *Id.* at 178-219.
[21] *Supra* note 3.

found BHEPI's claim to the "savings" in the amount of ₱40,118,442.79 to be improper and highly doubtful.[22]

Accordingly, apart from denying BHEPI's motion for reconsideration, the COA also recommended to Congress, through the President of the Philippines, the denial of the claim embodied in the Compromise Agreement between BHEPI and the NPC.[23]

Hence, this petition which essentially raises the issue of whether the COA committed grave abuse of discretion in denying the money claim. BHEPI argues in the main that the Judgment on the Compromise Agreement[24] is already final and immutable. Thus, the COA cannot anymore rule on the validity of the Compromise Agreement, as well as on the veracity of the money claim. BHEPI stresses that the Compromise Agreement, as approved by the OSG, was reached in good faith by the parties after the liability of the NPC had been thoroughly evaluated as early as the execution of the SFA. The SFA, in turn, had been reached by the parties, together with PSALM, DOE, and DOJ. BHEPI claims that contrary to the COA's assertion that the NPC's liability is unsubstantiated, evidence had been duly presented before the courts when it filed its action for specific performance.[25]

We deny the petition.

At the outset, we agree with the COA that the petition was filed out of time.[26] The petition is filed under Rule 64, in relation to Rule 65, of the Rules of Court. Section 3 of Rule 64 provides that the petition shall be filed within 30 days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt this period. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five days in any event, reckoned from notice of denial.

BHEPI received the Decision of the COA on March 5, 2013 and filed a motion for reconsideration on March 20, 2013. The filing of this motion for reconsideration interrupted the 30-day reglementary period, thus, giving BHEPI a remaining 15-day period within which to file a petition for *certiorari*. Having received the notice of the denial of its motion on June 11, 2015, BHEPI had until June 26, 2015 to file a petition for *certiorari*. It, however, filed one only on July 8, 2015.[27]

---

22 *Rollo*, pp. 72-73.
23 *Id.* at 73.
24 *Id.* at 142-149.
25 *Id.* at 3-5.
26 *Id.* at 360.
27 *Id.* at 361; See *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, G.R. No. 185544, January 13, 2015, 745 SCRA 269.

We have said previously that the belated filing of a petition for *certiorari* under Rule 64 is fatal. Procedural rules should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, we have recognized exceptions to the rules but only for the most compelling reasons, where stubborn obedience to the rules would defeat rather than serve the ends of justice. Every plea for a liberal construction of the rules must at least be accompanied by an explanation of why the party-litigant failed to comply with the rules and by a justification for the requested liberal construction. Where strong considerations of substantive justice are manifest in the petition, we may relax the strict application of the rules of procedure in the exercise of its legal jurisdiction.[28]

Here, there is no compelling reason why we should relax the rules. BHEPI, for one, did not advance any explanation in its petition as to why it failed to comply with procedural rules. With the COA pointing out the matter in its comment, BHEPI then invokes in its reply the relaxation of the strict application of procedural rules in the interest of substantial justice, harping on the alleged grievous error of the COA in overturning a final and executory decision of the CA. But as we will discuss shortly, this is not an error on the part of the COA. More importantly, the petition lacks merit.

To begin with, the COA is correct that the Compromise Agreement is null and void because the power to compromise the claims in this case is lodged with Congress.

Both BHEPI and the NPC argue that the NPC, as a GOCC, has the power to compromise claims under Section 36(2) of Presidential Decree (PD) No. 1445,[29] to wit:

> (2) **The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters** and if in their judgment, the interest of their respective corporations or agencies so requires. When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph. (Emphasis supplied.)

The only requirement under the second paragraph is that the government agency be authorized by its charter to compromise a particular claim. It does not state that the COA must approve the same.

---

[28] *Osmeña v. Commission on Audit*, G.R. No. 188818, May 31, 2011, 649 SCRA 654, 660. Citations omitted.

[29] GOVERNMENT AUDITING CODE OF THE PHILIPPINES.

BHEPI contends that the NPC has the power and authority, through its Board, to settle claims against it in furtherance of its interests for as long as the settlement is not disadvantageous to the interests of the government. BHEPI points out that the NPC, under its charter, has the power to sue and be sued. This means, therefore, that it has the power to compromise claims.

The NPC, through the OSG, meanwhile, contends that even if its charter does not expressly state that it has the power to compromise claims, such is inherent in its mandated powers to do things as may be reasonably necessary to carry out its business and purpose as enshrined in its charter.

BHEPI's and the NPC's arguments do not persuade. We have ruled in *Strategic Alliance Development Corporation v. Radstock Securities Limited*,[30] that Section 36 of PD No. 1445, enacted on June 11, 1978, has been superseded by a later law — Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, which provides:

> Sec. 20. *Power to Compromise Claims.* – (1) When the interest of the Government so requires, the Commission may compromise or release in whole or in part, any settled claim or liability to any government agency not exceeding ten thousand pesos arising out of any matter or case before it or within its jurisdiction, and with the written approval of the President, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos. **In case the claim or liability exceeds one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the President, with their recommendations, to the Congress** x x x. (Emphasis supplied.)

Under this provision, the authority to compromise a settled claim or liability exceeding ₱100,000.00 involving a government agency is vested, not in the COA, but exclusively in Congress. An agency of the Government refers to any of the various units of the Government, including a department, bureau, office, instrumentality, or government-owned or controlled corporation, or a local government or a distinct unit therein.[31] Thus, the provision applies to all GOCCs, with or without original charters. A GOCC cannot validly invoke its autonomy to enter into a compromise agreement that is in violation of the above provision.[32]

In *Strategic*, we held that since the liabilities of Philippine National Construction Corporation (PNCC), a GOCC, to Radstock amounted to more than ₱6 Billion, Congress had the exclusive power to compromise the claim.

---

[30] G.R. No. 178158, December 4, 2009, 607 SCRA 413.

[31] Section 2 on Introductory Provisions of the Administrative Code of 1987.

[32] See *Strategic Alliance Development Corporation v. Radstock Securities Limited, supra* at 489, where the Court so declared that the Philippine National Construction Corporation is "not 'just like any other private corporation' precisely because it is not a private corporation but indisputably a government owned corporation." (Emphasis omitted.)

Without congressional approval, the Compromise Agreement between Radstock and PNCC is void for being contrary to Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292. The Court stressed that the case involving PNCC and Radstock was exactly what the law seeks to prevent: a compromise agreement on a creditor's claim settled through admission by a government agency without the approval of Congress for amounts exceeding ₱100,000.00.[33]

Similarly in this case, the liabilities of the NPC in the amounts of $5,000,000.00 and ₱40,118,442.79 far exceed ₱100,000.00 and consequently, in line with Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292, Congress alone has the power to compromise the liabilities of the NPC. The participation of the COA, in conjunction with the President, is merely to recommend whether to grant the application for relief or not. In its Resolution denying the motion for reconsideration of BHEPI, the COA did make a recommendation to Congress, which unfortunately for BHEPI, was for the denial of the claim embodied in the Compromise Agreement. We find that the COA did not gravely abuse its discretion in making such recommendation, even if it went against a final and executory judgment of an appellate court. Contrary to the arguments of BHEPI and the NPC, the finality of the CA's judgment does not preclude the COA from ruling on the validity and veracity of the claims. As already discussed, EO No. 292 and PD No. 1445 give the COA the authority to do so, prescinding from its role to recommend the compromise of claims before Congress. This is consistent with the general jurisdiction of the COA to examine, audit, and settle all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.[34]

In the past, we have ruled that this authority and power can still be exercised by the COA even if a court's decision in a case has already become final and executory. The COA still retains its primary jurisdiction to adjudicate a claim even after the issuance of a writ of execution.[35] We said that as a matter of fact, the claimant has to first seek the COA's approval of the monetary claim, despite the rendition of a final and executory judgment validating said money claim against an agency or instrumentality of the Government.[36] Its filing with the COA is a condition *sine qua non* before

---

[33] *Id.* at 486-487.

[34] PD No. 1445, Sec. 26.

[35] *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*, G.R. No. 181792, April 21, 2014, 722 SCRA 66, 86.

[36] Supreme Court Administrative Circular 10-2000 dated October 25, 2000, Re: Exercise of utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units, provides in part:

> [I]t is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P. D. No. 1445, otherwise known as the Government Auditing Code of the Philippines x x x. All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and, in effect, sue the State thereby x x x. (Citing *Department of Agriculture v. NLRC*, G.R. No. 104269, November 11, 1993, 227 SCRA 693, 701-702

payment can be effected.[37] Concomitantly, the duty to examine, audit, and settle claims means deciding whether to allow or disallow the same. This duty involves more than the simple expedient of affirming or granting the claim on the basis that it has already been validated by the courts. To limit it would render the power and duty of the COA meaningless. This rationale also rings true with the Compromise Agreement at hand, which again, as we have demonstrated, needs not only the recommendation of the COA and the President, but also the approval of Congress pursuant to EO No. 292.

At this juncture, we emphasize anew, the import of the word "settled" in Section 20(1), Chapter IV, Subtitle B, Title I, Book V of EO No. 292. Citing an earlier case, *Benedicto v. The Board of Administrators of Television Stations RPN, BBC and IBC*,[38] we held in *Strategic* that the mandatory congressional approval of the compromise is only for claims that are already settled. This is in harmony with the scope of the COA's authority to only take cognizance of money claims that are liquidated and uncontested. This means that claims must be determined or readily determinable from vouchers, invoices, and such other papers within reach of accounting officers.[39] It may also mean that the claim no longer presents a justiciable question ripe for judicial determination.[40] The liability or non-liability of the government shall no longer be in issue and shall no longer require the examination of evidence and the use of judicial discretion.[41]

In *Strategic*, the Court considered the liabilities of PNCC settled in light of the admission of its Board through a formal Board Resolution of PNCC's liability for the Marubeni loans. The Court said that "PNCC's express admission of liability for the Marubeni loans is essentially the premise of the execution of the Compromise Agreement. In short, Radstock's claim against PNCC is *settled* by virtue of PNCC's express admission of liability for the Marubeni loans. The Compromise Agreement merely reduced this *settled liability* from ₱17 billion to ₱6.185 billion."[42]

While here, it may appear that the liabilities of the NPC have also been rendered settled as early as the NPC's and PSALM's approval of the SFA through their respective Board Resolutions,[43] it is patent, though, that PSALM was not a party to the Compromise Agreement. There is also no

---

Republic v. Villasor, G.R. No. L-30671, November 28, 1973, 54 SCRA 83; P.D. No. 1445, Secs. 49-50.)

[37] See *Rallos v. City of Cebu*, G.R. No. 202651, August 28, 2013, 704 SCRA 378, 401-402.

[38] G.R. No. 87710, March 31, 1992, 207 SCRA 659.

[39] *Euro-Med Laboratories, Phil., Inc. v. The Province of Batangas*, G.R. No. 148106, July 17, 2006, 495 SCRA 301, 306.

[40] *F.F. Mañacop Construction Co., Inc. v. Court of Appeals*, G.R. No. 122196, January 15, 1997, 266 SCRA 235, 241.

[41] See *Philippine Operations, Inc. v. Auditor General of the Philippines*, 94 Phil. 868, 875-876 (1954).

[42] *Strategic Alliance Development Corporation v. Radstock Securities Limited, supra* note 30 at 488. Italics in the original.

[43] PSALM Board Resolution No. 03-09 (was mentioned as attached to the complaint but it cannot be found in the records, see *rollo*, p. 183) and NPC Board Resolution No. 2004-30 dated April 27, 2004 (*id.* at 323-324); Subsequently, NPC issued Board Resolution No. 2010-03 dated February 1, 2010 approving the Compromise Agreement (*id.* at 330-332).

proof that PSALM issued a Board Resolution confirming or approving the Compromise Agreement. PSALM's non-participation and non-assent to the Compromise Agreement render the claims of BHEPI against the liabilities of the NPC doubtful and therefore, unsettled. As correctly held by the COA, PSALM should have been made a party to the Compromise Agreement. The Electric Power Industry Reform Act (EPIRA), which took effect on June 26, 2001, expressly created PSALM as a corporate entity separate and distinct from the NPC.[44] Section 49 of the EPIRA provides the creation of PSALM and its take-over of all existing NPC generation assets, *liabilitie*s, independent power producer contracts, real estate and all other disposable assets. Moreover, Section 56 of the EPIRA expressly provides that NPC liabilities transferred to PSALM shall constitute as claims against PSALM. Considering, therefore, that PSALM has assumed the outstanding liabilities of the NPC upon the effectivity of EPIRA in mid-2001, BHEPI should have negotiated with it instead. The NPC no longer had the personality, interest, and right to do so. This is also buttressed by the very own contention of BHEPI that the communications between the NPC and PSALM would show that PSALM acknowledges the liabilities of the NPC to BHEPI as one among those transferred to it pursuant to the EPIRA.

We likewise cannot blame the COA for concluding that the claims of BHEPI remain unsubstantiated and that the manner by which BHEPI succeeded the original party to the ROL Contract, China Chang Jiang Energy Corporation Group (CCJEC), remains dubious. Other than its bare assertions, BHEPI did not bother to present any record or document which would have established how the rights and obligations of CCJEC were assigned to it, and which would have consequently proven its contractual relationship with the NPC under the ROL Contract. Apart from this, the COA also noted the lack of records or documents showing details of actual accomplishments or services rendered by BHEPI or the subcontractors/employees under the ROL Contract of the 100 MW Binga Hydroelectric Power Plant. BHEPI, instead, banked on the years that the liabilities have supposedly been negotiated, the number of government agencies involved in said negotiations, the good faith it exercised, together with the NPC, in entering into the Compromise Agreement, and the approval of the OSG of the same. These, however, hardly guarantee that a compromise agreement borne out of the negotiations would be free from any infirmity.

Finally, we agree with the ruling of the COA that the claim for ₱40,118,442.79 representing the savings generated from the reduction of the claims of the subcontractors and employees of BHEPI is improper. As aptly observed by the COA, BHEPI would, in effect, get a commission of 50% on the waived portion of the original claims of its subcontractors and employees. This is a clear form of unjust enrichment at the expense of the

---

[44] *Power Sector Assets and Liabilities Management Corporation (PSALM) v. Court of Appeals (21st Division)*, G.R. No. 194226, February 15, 2017, 817 SCRA 551, 558-559.

subcontractors and employees. It does not only diminish the obligation of BHEPI to negotiate with its employees under the Compromise Agreement, but it also practically defeats the purpose of why the NPC even negotiated in the first place. In the end, the government would still end up paying substantially when it could have managed otherwise.

WHEREFORE, the petition is **DENIED**. The Decision No. 2013-050 dated January 30, 2013 and the Resolution No. 2015-134 dated April 6, 2015 of the Commission on Audit are **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

(*On Official Business*)
MARVIC M. V. F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

SAMUEL R. MARTIRES
Associate Justice

NOEL GIMENEZ TIJAM
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

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

ANTONIO T. CARPIO
Senior Associate Justice

CERTIFIED TRUE COPY

EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court