Republic of the Philippines
Supreme Court
Manila

EN BANC

TOPBEST PRINTING CORPORATION, as duly represented by SHIRLEY L. DIONISIO, *Petitioner*,	**G.R. No. 261207**
- versus -	Present: GESMUNDO, *CJ.*, LEONEN, CAGUIOA, HERNANDO, LAZARO-JAVIER, INTING,* ZALAMEDA, LOPEZ, M., GAERLAN, ROSARIO, LOPEZ, J., DIMAAMPAO, MARQUEZ, KHO, JR., and SINGH, *JJ.*
SOFIA C. GEMORA, in her capacity as Director IV of the Commission on Audit, EDNA P. SALAGUBAN, Supervising Auditor, FAHAD BIN ABDUL MALIK N. TOMAWIS, Audit Team Leader, *Respondents*.	Promulgated: August 22, 2023

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RESOLUTION

SINGH, *J.*:

The petitioner, Topbest Printing Corporation (Topbest), filed this June 23, 2022, Petition for *Certiorari*[1] under Rule 64 in relation to Rule 65, of the Rules of Court. The Petition assails the January 22, 2019 Decision No. 2022-

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* On leave

1 *Rollo*, pp. 3–30.

014[2] of the Commission on Audit (COA) National Government Audit Sector (NGAS) Cluster 1 and the Notice of Disallowance No. 19-001-207542-17 (Notice of Disallowance),[3] dated January 22, 2019. Topbest claims that Sofia C. Gemora, Director IV (Director Gemora), Edna P. Salaguban, Supervising Auditor, and Fahad Bin Abdul Malik N. Tomawis, Audit Team Leader of the COA (collectively, the respondents), who are responsible for the issuance of the Decision and the Notice of Disallowance, acted with grave abuse of discretion.

On May 23, 2016, the National Printing Office (NPO) awarded to Topbest a contract for the lease of Lot 2: one (1) unit–4 Stations Web/Continuous Form Machine with Collator, min. size: 4.5" with a contract price of PHP 49,500,000.00.[4]

Following the award, the NPO and Topbest entered into an Equipment Lease Agreement (ELA)[5] on June 28, 2016 for the lease of one (1) unit–4 Stations Web/Continuous Form Machine with Collator, Min. size: 4.5."

The relevant provisions of the ELA are as follows:

1. LEASE

    1.1 The NPO-BAC declared Topbest Printing Corporation as the Lowest Calculated Responsive Bid for:

    1 unit – 4 Stations Web/Continuous Form Machine with Collator, Min. Size: 4.5"

    1.2 The leased machines shall be in tip top running conditions which shall be manned/operated by NPO operators assigned at the Lessor's premises;

    . . . .

3. RENTAL FEE

    3.1 The amount/consideration for the one (1) year rental shall be Forty Nine Million, Five Hundred Thousand Pesos only ([PHP] 49,500,000.00)

    3.2 The Lessee shall pay the Lessor after the completion of the job order/work order on running basis. The rental fee for the aforementioned machines shall be computed on the value of the output from the machines on running basis only.

    . . . .

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2 *Id.* at 31–40. Penned by COA Director IV Sofia C. Gemora.
3 *Id.* at 41–59.
4 *Id.* at 75, Notice of Award.
5 *Id.* at 76–80.

> 6. MAINTENANCE, REPAIR AND CARE
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> 6.1 The Lessor shall at all times during the lease term ensure that the machines/equipment remain fit for the contemplated purposes and uses.
>
> 6.2 The expense of all maintenance and repairs made during the lease term, including labor, materials, parts and other items shall be for the account of the Lessor.[6]

On July 10, 2017, the NPO released an Invitation to Apply for Eligibility and to Submit Proposal for a Joint Venture Undertaking with the NPO in the Augmentation of Printing Capacity Phase I (Invitation to Bid).[7]

The Invitation to Bid invited private sector participants to submit proposals for "joint venture in any or all of the lots under the project: Printing Capacity Augmentation Phase I." It described the project as a "joint provision of property, plant and equipment, including consumables and services for use in the printing of various specialized/customized accountable and non-accountable forms for existing NPO clients."[8] It also stated:

> Capital outlay and operating expense required under the proposed joint venture agreement/s except for personnel and marketing costs, shall be for the exclusive account of the selected JV partner/s. The Revenue Sharing Arrangement shall be set forth in the Instruction to Private Sector Participants (ITPSP) which shall be made available by the Secretary of the NPO Joint Venture Special Committee.[9]

Topbest submitted its proposal and was eventually issued a Notice of Award,[10] dated September 13, 2017, by the NPO. The Notice of Award stated that Topbest is awarded Lot 2 of the Printing Capacity Augmentation Project Phase I.[11]

However, while a joint venture was supposed to be executed between Topbest and the NPO, Topbest admitted that the NPO applied the same terms and conditions of the ELA except for the condition that the payment of the leased printing equipment would be paid through a "per-usage basis" as shown in the work orders issued by the NPO to Topbest.[12]

The Notice of Disallowance

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6 *Id.* at 76–78, Equipment Lease Agreement.
7 *Id.* at 82–85.
8 *Id.* at 82, Invitation to Bid.
9 *Id.* at 83.
10 *Id.* at 86.
11 *Id.*
12 *Id.* at 12 & 88–92, Printing and Binding W.O. Envelope.

On October 16, 2017, the NPO-Audit Team (Audit Team) issued Audit Observation Memorandum No. 2017-001 (AOM) on the printing operations of NPO. It stated, among others:

> Subcontracting the printing of the accountable forms in the guise of ELA with private printers paying a total amount of [PHP] 3.71 billion from August 9, 2011 to August 13, 2017 contrary to the Government Procurement Policy Board Resolution No. 05-2010 dated October 29, 2010.[13]

The NPO responded to the AOM arguing that it could enter into joint venture agreements with private printers because it is a government instrumentality with corporate powers.[14]

On January 22, 2019, the Audit Team issued the Notice of Disallowance which disallowed the transactions between NPO and twelve (12) private printers, including Topbest, for the period of April to December 2017, in the total amount of PHP 499,376,515.60. The Notice of Disallowance explained:

> The transactions are being disallowed in audit because records of that transactions, upon examination and review, disclosed that the payments made to the private printers under subcontracting is irregular, in violation of Section 4.6 of the Government Procurement Policy Board (GPPB) Resolution No. 05-2010, which provides that:
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> > The appropriate RGP engaged by the procuring entity shall directly undertake the printing services for the contracts entered into, and cannot engage, subcontract, or assign any private printer to undertake the performance of the printing service.[15]

The Notice of Disallowance also stated that Topbest, as payee, is liable for the rental fee that it received from the NPO.[16]

Topbest received the Notice of Disallowance on February 8, 2019.[17] Under the COA's 2009 Revised Rules of Procedure (COA Rules of Procedure), Topbest had six (6) months from receipt of the Notice of Disallowance to file its appeal memorandum to Director Gemora.

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13 *Id.* at 32, COA Decision.
14 *Id.* at 33.
15 *Id.* at 42, Notice of Disallowance.
16 *Id.*
17 *Id.* at 61, Appeal Memorandum.

On August 6, 2019, Topbest filed its Appeal Memorandum (Appeal Memorandum),[18] dated August 5, 2019, before Director Gemora. Topbest claimed that it was denied due process because the Notice of Disallowance did not provide any evidence to support its findings.[19]

It also averred that the Notice of Disallowance did not adequately establish the presence of a subcontracting agreement between Topbest and the NPO.[20] Topbest insisted that the contractual arrangement between it and the NPO is a contract of lease which is valid and is comparable to a bareboat or demise charter.[21]

Director Gemora's Decision

Director Gemora of the COA-NGAS Cluster 1 denied Topbest's appeal in the COA-NGAS Decision. The COA-NGAS Decision emphasized that in administrative proceedings, due process does not require a formal or trial-type hearing. It is sufficient that the person is notified of the charge and is given an opportunity to defend themselves. In Topbest's case, the COA-NGAS Decision found that Topbest was notified of the charges against it "as evidenced by its own allegation in its appeal." The COA-NGAS Decision also highlighted that before the Notice of Disallowance was issued, the Audit Team gathered its evidence consisting of "voluminous transactions, records, and receipts." Moreover, the COA-NGAS Decision highlighted that "the sources of these pieces of evidence came from the appellant [Topbest] and the NPO themselves."[22]

As to the true nature of the contractual arrangement between Topbest and the NPO, the COA-NGAS Decision affirmed the Notice of Disallowance's finding that it is a subcontracting arrangement. The COA-NGAS Decision stated that while the ELA provided that the rental fee shall be computed on the value of the output from the machines on running basis only, this was not the actual payment scheme observed by the parties. Instead, the payment to Topbest was not just rental fee but was also payment for labor, raw materials, and revenue costs. The COA-NGAS Decision explained:

> However, scrutiny and examination of the records show that the payments are made not on the value of the output from the machine on running basis but at the rate of 85% and 15% between the private printers and the NPO, respectively, of the total cost of the JO/WO.
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> . . . .

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18 *Id.* at 60–73.
19 *Id.* at 65–66.
20 *Id.* at 66–67.
21 *Id.* at 67–70.
22 *Id.* at 36, COA Decision.

> A further research revealed that a Technical Evaluation Report dated May 11, 2012 was issued by this Technical Service Division, National Government Sector A, this Commission, relative to the Review and Evaluation of contracts of leases of printing services of the NPO and TPC. In the said Report, it was revealed what constituted the 85% and 15% division Item 4, Letter E states that:
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> > The unit cost per Job Orders (J.O.s) to the lessor was considered standard transaction costs between NPO and its government clients from which NPO deducts 15% as its profit. The rental cost and materials cost are taken from the remaining amount (85%) of the Job Order.
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> Applying this, it becomes clear that the 15% represented the profit of the NPO from the JOs/WOs, it also confirms that the 85% does not only represent the rental fee but also includes the material cost, maintenance cost, power, operator and etc. Given this additional information, we now ask, is the ELA just [a] Lease Contract, considering it's not only the equipment but including the entire costs of production or did the NPO farm out the JOs/WOs and reserved the 15% of its cost as its profit?
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> . . . .
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> Considering all these material information in relation to the laws and jurisprudence mentioned above, one thing is clear, the NPO farmed out its contracts with the requisitioning-agencies to different private printers, in this case TPC. In sum, the NPO subcontracted its projects to TPC at a value of 85% of the JOs/WOs.[23] (Emphasis in the original; citations omitted)

Thus, the COA-NGAS Decision concluded that the ELA, being a subcontracting agreement, violated Government Procurement Policy Board (GPPB) Resolution No. 05-2010 (GPPB Resolution No. 05-2010) which approved the Guidelines on the Procurement of Printing Services. The Guidelines on the Procurement of Printing Services expressly prohibited the NPO from subcontracting its printing services.[24]

Director Gemora insisted in the COA-NGAS Decision that Topbest and the NPO deliberately omitted the details of their arrangement to circumvent the law. Thus, the COA-NGAS Decision concluded that the NPO accepted projects from its clients and then allowed private entities, such as Topbest, to perform its obligations, in exchange for eighty five percent (85%) of the contract price with its clients.[25]

The COA-NGAS Decision also found Topbest liable as it was an active party in the transactions.[26]

The dispositive portion of the Decision states:

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[23] *Id.* at 37–38.
[24] *Id.* at 38–39.
[25] *Id.* at 39.
[26] *Id.*

> **WHEREFORE**, premises considered, Ms. Shirley L. Dionisio, TOPBEST Printing Corporation, from Notice of Disallowance No. No. 19-001-207542-17 dated January 22, 2019, for the rental fee of leased printing machines/equipment paid National Printing Office to twelve (12) private printers for the period of April to December 2017, in the total amount of [PHP]499,376,515.60, is hereby **DENIED**. Accordingly, the Appellant's liability in the amount of [PHP]6,039,057.54, is hereby **AFFIRMED**.[27] (Emphasis in the original)

Topbest received the Decision on May 24, 2022. Instead of filing an appeal before the COA Commission Proper in accordance with Rule VII, Section 3 of the COA Rules of Procedure, Topbest filed this Petition before the Court on June 23, 2022.[28]

In the Petition, Topbest claims that at the time it received the Decision on May 24, 2022, it only had until the following day, May 25, 2022, to file its appeal before the COA Commission Proper. Specifically, Topbest cites Rule VII, Section 3 of the COA Rules of Procedure, which states:

> 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 ASB.[29]

Topbest states that considering that it only had one day to file an appeal before the COA Commission Proper, "there is no longer any appeal, or any plain, speedy, and adequate remedy." Thus, Topbest asserts that recourse to the Court through a special civil action for *certiorari* under Rule 64 in connection with Rule 65 of the Rules of Court is proper.[30]

Topbest further argued that the respondents acted with grave abuse of discretion in issuing the Notice of Disallowance and the COA-NGAS Decision. According to Topbest, the Notice of Disallowance was "procedurally and substantially insufficient as it failed to tender a single piece of evidence in support of the Audit Team's findings."[31] Moreover, Topbest avers that even the COA-NGAS Decision, which affirmed the Notice of Disallowance, merely stated that the Audit Team examined transactions, records, and receipts without establishing "what these supporting evidence and documents were – just that they supposedly exist."[32]

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27 *Id.*
28 *Id.* at 9–10, Petition.
29 *Id.* at 10.
30 *Id.*
31 *Id.* at 14–15.
32 *Id.* at 16.

Topbest also disputes the COA-NGAS Decision's conclusion that the arrangement between it and the NPO is a subcontracting agreement because of the fact that Topbest received eighty five percent (85%) of the total cost of the job orders/working orders and that its share included payment for maintenance and operating costs.

Topbest relies on Article 1654 of the Civil Code of the Philippines (Civil Code) which provides that the lessor has the obligation to make all necessary repairs in order to keep the thing leased suitable for the use to which it is devoted. Topbest insists that since under Article 1654, the lessor is responsible for the upkeep and maintenance of the leased property, "it is only normal and actually mandated by law that [Topbest], being the lessor, be made responsible for the maintenance and repair of the equipment which it leases. As such, it is [Topbest]'s humble submission that total rental fees include the basic cost of rent as well as all other incidental expenses which the lessor, in this case [Topbest], is bound to shoulder under [the] law."[33] In addition, Topbest asserts that no law prohibits the inclusion of maintenance and operating costs in the rental fee and that this fact alone does not make a lease agreement a subcontracting agreement.[34]

Finally, Topbest takes the position that even assuming that the NPO indeed violated the law, Topbest should not be held liable because there is nothing in the record showing that Topbest was aware of the NPO's violations. Topbest insists that it simply entered into a lease contract with the NPO.[35]

The Office of the Solicitor General (OSG), on behalf of the respondents, filed a Comment on the Petition for *Certiorari* (Comment),[36] dated August 16, 2022.

The respondents argued in the Comment that Topbest failed to exhaust administrative remedies, and thus, the Petition should be dismissed. They stressed that under the COA Rules of Procedure, Topbest should have appealed the COA-NGAS Decision to the COA Commission Proper. Topbest admits this in the Petition and confirms that it still had one day to file the appeal. However, instead of doing so, Topbest opted to file this Petition before the Court. The respondents argue that contrary to Topbest's claim, it actually had two days (and not merely one day) to file the appeal before the COA Commission Proper.[37]

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33 *Id.* at 19.
34 *Id.* at 20.
35 *Id.*
36 *Id.* at 190–205.
37 *Id.* at 195.

Further, while Topbest argued that it did not have enough time to file the appeal, the respondents aver that this is Topbest's own fault because it filed its Appeal Memorandum too close to the end of the six-month period under the COA Rules of Procedure. In any event, the respondents insist, it is clear that Topbest still had an administrative remedy available to it and its failure to exhaust this administrative remedy prevents the Court from taking cognizance of the case.[38]

In addition, the respondents claim that Topbest's failure to exhaust administrative remedies also fails to meet a vital requirement for invoking a Rule 64, in connection to Rule 65, petition. A special civil action for *certiorari* can only be availed of where there is no appeal or other plain, speedy, and adequate remedy in the ordinary course of law.[39]

As to Topbest's allegation that the respondents acted with grave abuse of discretion, the respondents assert that the COA-NGAS Decision and the Notice of Disallowance were validly issued. Contrary to Topbest's claim, the respondents argue that Topbest failed to establish that the respondents patently acted in an arbitrary and despotic manner. Topbest's bare assertion that the respondents had no basis for disallowing the NPO's payment to Topbest is controverted by the COA-NGAS Decision itself, which clearly states both the factual and legal bases for its conclusion.[40]

In its Reply,[41] dated September 30, 2022, Topbest contends that the doctrine of administrative exhaustion does not apply to its Petition. According to Topbest, this doctrine assumes that a remedy within the administrative machinery is still available and can still be made. Topbest asserts that this is not the case here where it only had one day from its receipt of the COA-NGAS Decision to file its appeal with the COA Commission Proper. It claims that the COA Rules of Procedure "requires an extensive form of appeal that could not be possibly complied with within a day."[42] Thus, considering that there was no other plain, adequate, and speedy remedy in the course of law, Topbest insists that it correctly filed the Petition before the Court.[43]

Topbest further avers that the respondents acted with grave abuse of discretion which was emphasized when the COA-NGAS Decision "revealed for the first time the supposed Technical Evaluation Report, dated 11 May 2012[,] which formed the very centerpiece of the finding that the Equipment

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38 *Id.* at 193–197.
39 *Id.* at 197.
40 *Id.* at 198–202.
41 *Id.* at 222–231.
42 *Id.* at 224.
43 *Id.*

Lease Agreement with [Topbest] is supposedly a subcontracting agreement."[44]

The Issues

1. Whether Topbest availed of the correct remedy in filing the Petition instead of an appeal before the COA Commission Proper?
2. Whether the respondents acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the COA-NGAS Decision and the Notice of Disallowance?

The Court's Ruling

Topbest should have filed an appeal before the COA Commission Proper

The procedure for contesting notices of disallowance is governed by Rules IV, V, and VII of the COA Rules of Procedure.

In particular, Rule IV, Section 8 states that a COA auditor's decision (which would include a notice of disallowance) shall become final upon the expiration of six months from the date of receipt unless an appeal to the Director is filed.[45]

Rule V, Section 2 provides that the appeal to the Director shall be taken by filing an Appeal Memorandum with the Director.[46] Under Section 4 of Rule V, an appeal must be filed within six months from the receipt of the decision appealed from.[47] The Director's receipt of the Appeal Memorandum tolls the running of the period of appeal which will resume to run upon the appellant's receipt of the Director's decision.[48]

Rule VII, Section 1 states that an appeal from the decision of the Director is done through the filing of a Petition for Review.[49] The appeal must

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44 *Id.* at 228.

45 COA Rules of Procedure, Rule IV, sec. 8: *Finality of the Auditor's Decision.* - Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

46 Rule V, sec. 2: *How Appeal Taken.* - The appeal to the Director shall be taken by filing an Appeal Memorandum with the Director, copy furnished the Auditor. Proof of service of a copy to the Auditor shall be attached to the Appeal Memorandum. Proof of payment of the filing fee prescribed under these Rules shall likewise be attached to the Appeal Memorandum.

47 Rule V, sec. 4: *When Appeal Taken* - An Appeal must be filed within six (6) months after receipt of the decision appealed from.

48 Rule V, sec. 5: *Interruption of Time to Appeal.* - The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

49 Rule VII, sec. 1: *Who May Appeal and Where to Appeal.* - The party aggrieved by a decision of the Director or the ASB may appeal to the Commission Proper.

be filed within the remainder of the six-month period provided under Section 4 of 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[.]"[50]

In this case, Topbest received the Notice of Disallowance on February 8, 2019. Thus, it had six months, or until August 8, 2019, to file its Appeal Memorandum to the COA Director. Topbest filed its Appeal Memorandum only on August 6, 2019, or two days before the end of the six-month period. The COA Director's receipt of the Appeal Memorandum stopped the running of the period. This left Topbest with two days to file an appeal before the COA Commission Proper in the event of an adverse decision from the COA Director. As the period to file an appeal is clearly provided in the COA Rules of Procedure, Topbest should have known that since it opted to file its Appeal Memorandum two days before the end of the six month-period, it only had two days to file an appeal before the COA Commission Proper.

Instead of preparing for this eventuality, Topbest opted to wait for its receipt of the COA-NGAS Decision and then filed a special civil action for *certiorari* under Rule 64 of the Rules of Court. In this regard, Topbest admits in the Petition and the Reply that the six-month period had not yet lapsed at the time it received the Decision, albeit its claim is that it only had one day, instead of two, to file an appeal before the COA Commission Proper. Alleging that filing an appeal before the COA Commission Proper with the little time it had was impossible, Topbest asserts that its filing of the Petition before the Court is proper.

The rules governing the filing of a special civil action for *certiorari* under Rule 64, in relation to Rule 65 of the Rules of Court, are clear. Rule 65, Section 1 of the Rules of Court states that a special civil action for *certiorari* may be invoked only if there is "no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law." Here, it is undisputed that the correct and available remedy was an appeal before the COA Commission proper.

That Topbest purportedly found the period to file the appeal inadequate does not excuse it from complying with the rules. It is worth emphasizing that Topbest received the Notice of Disallowance on February 8, 2019. From this date, it had six months to file an appeal before the Director and then to the COA Commission Proper. Topbest opted to file its Appeal Memorandum with the Director on August 6, 2019, leaving it with two days to file an appeal before the COA Commission Proper in the event that the Director decides against it. This notwithstanding, Topbest made no preparations in case of an adverse decision from the Director. It was clearly Topbest's own decision that placed it in the difficult situation it found itself in when it finally received

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[50] COA Rules of Procedure, Rule VII, sec. 3.

the COA-NGAS Decision. Topbest cannot be excused from complying with the rules.

The Court further agrees with the respondents' contention that Topbest failed to exhaust administrative remedies by choosing to file the Petition when the remedy of appeal with the COA Commission Proper was the correct and available remedy. As the Court explained in *Universal Robina Corp. (Corn Div.) v. Laguna Lake Development Authority*:[51]

> The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[52]

This is especially true in the case of the COA, a constitutional commission mandated specifically to audit the expenditures of government funds. That the Court is not a trier of facts further highlights this, because auditing government expenditures often requires the examination of documents and transactions. Thus, the importance of exhausting the remedies available within the COA so as to allow it to perform its constitutional duty cannot be overemphasized.

Topbest failed to establish that the COA acted with grave abuse of discretion

A special civil action for *certiorari* is a "unique and special rule"[53] as it is a remedy available for a limited review of a specific issue. In *Maritime Industry Authority v. Commission on Audit* (*Maritime Industry Authority*),[54] the Court explained:

> As an *extraordinary remedy*, its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined *solely* to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial function acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. . .[55] (Emphasis in the original)

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51 664 Phil. 754 (2011).
52 *Id.* at 759–760.
53 *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 307 (2015) [Per J. Leonen, *En Banc*].
54 *Id.*
55 *Id.* at 307.

A Rule 65 petition (and a Rule 64 petition filed in relation to Rule 65) has a high bar and can only be invoked for errors of jurisdiction. It is intended to correct grave abuse of discretion amounting to lack or excess of jurisdiction. The definition of grave abuse of discretion is well-established. It "denotes capricious, arbitrary[,] and whimsical exercise of power. The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as not to act at all in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility."[56]

This is even more underscored in cases where the Court is asked to review a ruling of the COA. In *Maritime Industry Authority*, the Court said:

> The limitation of the Court's power of review over COA rulings merely complements its nature as an ***independent constitutional body*** that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with power to (i) determine whether the government entities comply with the law and the rules in disbursing public funds; and (ii) disallow legal disbursements of these funds.[57] (Emphasis in the original)

The Court further highlights that the factual findings of administrative bodies, such as the COA, "charged with their specific field of expertise, are afforded great weight by the courts, and in the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are deemed conclusive and binding upon this Court. In the interest of stability of the governmental structure, they should not be disturbed."[58]

Moreover, as the Court ruled in *Patadon v. Commission on Audit* (*Patadon*),[59] COA audit reports and findings enjoy the presumption that they were issued as a result of the "*regular performance of COA's duties*: that these were *prepared* in line with the *reporting standards* set forth in Presidential Decree No. (PD) 1445, otherwise known as the Government Auditing Code of the Philippines, founded on *sufficient evidence*, and *duly communicated* to the concerned officials."[60]

In this case, Topbest failed to hurdle the high bar required to warrant a review and reversal of the Decision.

Topbest argues that the respondents acted with grave abuse of discretion because they deprived it of due process when it issued the Notice

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56 *Kilusang Mayo Uno, et al. v. Aquino, et al.*, 850 Phil. 1168, 1218 (2019) [Per J. Leonen, *En Banc*].
57 *Maritime Industry Authority v. Commission on Audit, supra* note 53 at 308.
58 *Puentevella v. Commission on Audit*, G.R. No. 254077, August 2, 2022 [Per J. Dimaampao, *En Banc*].
59 G.R. No. 218347, March 15, 2022 [Per J. Inting, *En Banc*].
60 *Id.* Emphasis in the original.

of Disallowance, which did not "tender a single piece of evidence in support of the Audit Team's findings" [61] and the COA-NGAS Decision, which affirmed the Notice of Disallowance, but similarly failed to identify what pieces of evidence were relied upon.

In *Patadon*, the Court ruled:

> It is settled that the essence of due process lies in the opportunity to be heard. In disallowance cases, which are in the nature of administrative proceedings, "one is heard when he is accorded a fair and reasonable opportunity to explain his case or is given the chance to have the ruling complained of reconsidered."
>
> Procedural due process requirements in disallowance cases are satisfied when the person held liable for a disallowance: (a) is *notified* of the auditor's conclusions, recommendations or dispositions, and the applicable laws, regulations, jurisprudence, and the generally accepted accounting and auditing principles upon which the audit findings were based; and (b) interposes an *appeal* therefrom, as allowed under the law and the COA Rules.[62] (Citations omitted)

The COA's duty in the issuance of a notice of disallowance is well-defined under the COA Rules of Procedure. Rule IV, Section 4 Thereof, states:

> Section 4. Audit Disallowances/Charges/Suspensions.— In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, the auditor shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions. **Such ND/NC shall be adequately established by evidence and the conclusions, recommendations or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles**. The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation. (Emphasis supplied)

Here, it is undisputed that Topbest was notified of the Audit Team's findings through the Notice of Disallowance which it was able to contest through its appeal before the Director. While Topbest makes it appear that the Notice of Disallowance was not based on any evidence, this is belied by the Notice of Disallowance itself which categorically stated that the Audit Team examined and reviewed the records of the transactions pertaining to the lease of printing machines and equipment to twelve (12) printers for the period of April to December 2017.[63] The Court rules that this suffices to comply with the COA's duty to parties in the issuance of a Notice of Disallowance.

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61 *Rollo*, p. 15, Petition.

62 *Patadon v. Commission on Audit*, *supra* note 59.

63 *Rollo*, pp. 41–42, Notice of Disallowance.

To be sure, the COA is not required to painstakingly enumerate all the pieces of evidence it considered and specify all the reasons why these pieces of evidence have weight. Nor is the COA required to "tender the evidence" or furnish parties copies of these pieces of evidence when, as Director Gemora stated in the Decision, the evidence consist of documents and transactions which came from Topbest and the NPO themselves.[64]

The COA-NGAS Decision also similarly emphasized that the findings in the Notice of Disallowance, as affirmed by Director Gemora is based on evidence. The Decision states:

> Further, the appellant failed to realize that before the issuance of the questioned ND, the Audit Team – NPO gathered its evidence as basis therefor. The Audit Team has its working papers, which composed of the voluminous transactions, records and receipts. The sources of these pieces of evidence came from the appellant and the NPO themselves. It is unfair, therefore, to assume that the questioned ND was issued without any evidence.[65]

Topbest harps on its argument that the COA-NGAS Decision purportedly hinged its ruling on the payment scheme between Topbest and the NPO, which was supposedly based on the Technical Evaluation Report, dated May 11, 2012. Topbest misreads the import of the COA-NGAS Decision.

To be clear, the COA-NGAS Decision did not base its conclusion solely on the payment scheme between the NPO and Topbest. The payment scheme, however, was sufficient evidence, among other pieces of evidence, of the fact that the NPO subcontracted printing work to Topbest, as found by the Audit Team in the Notice of Disallowance and as affirmed by the Decision.

In particular, the COA-NGAS Decision explained, and Topbest admitted in its Petition, that the NPO pays eighty five percent (85%) of the total cost of the job orders or work orders to Topbest while it retains fifteen percent (15%). The documents examined by the Audit Team and Director Gemora show that the fifteen percent (15%) retained by the NPO represents its profit while the eighty five percent (85%) received by Topbest was not just rental fee but also included the entire cost of production such as material cost, maintenance cost, power, and labor. This is a fact which Topbest admits in its pleadings. This, among other pieces of evidence, reveals that, while Topbest and the NPO claim that their contractual agreement was for the lease of equipment to the NPO, the actual agreement between them was for the NPO to outsource the work to Topbest in exchange for the payment of eighty five percent (85%) of the job orders or work orders.

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64 *Id.* at 36, COA-NGAS Decision.
65 *Id.*

While Topbest alleges that under Article 1654 of the Civil Code, the lessor has the duty to make necessary repairs, it should be clarified that the maintenance cost and labor cost are not usually included in the rental fee in ordinary lease agreements. Ordinary lease agreements are arrangements where one party is allowed to use a property owned by the other party for a fee. It does not cover a situation where the owner of the property not only leases it to another person but also obligates the lessee to perform the lessor's work, after which they split the revenue. This was precisely what the Notice of Disallowance and the COA-NGAS Decision found questionable in the NPO's and Topbest's transactions.

This is of particular relevance because the NPO is specifically prohibited from subcontracting its printing work. Section 29 of Republic Act No. 9970[66] or the General Appropriations Act of 2010 provides that the printing of accountable forms and sensitive high quality/volume requirements shall only be undertaken by the *Bangko Sentral ng Pilipinas*, the NPO, and the APO Production, Inc. In GPPB Resolution No. 05-2010, the GPPB approved the Guidelines on the Procurement of Printing Services. Section 4.6 categorically states that the recognized government printers, such as the NPO, "cannot engage, subcontract, or assign any private printer to undertake the performance of printing service."

Ultimately, the respondents, after examining the records, concluded that the NPO and Topbest entered into a prohibited subcontracting agreement. The Court rules that the findings and conclusions in the Notice of Disallowance and the COA-NGAS Decision are based on evidence and in accord with the relevant laws and rules. There is no showing that the respondents, in issuing the Notice of Disallowance and the Decision, acted capriciously and wantonly or in an arbitrary or despotic manner. There is no grave abuse of discretion in this case.

In the absence of any compelling reason to review and reverse the findings and conclusions in the Notice of Disallowance and the COA-NGAS Decision, the ruling of the COA is binding on the Court.

Moreover, as Topbest availed itself of the wrong remedy to assail the COA-NGAS Decision by filing a Rule 64 petition instead of an appeal before the COA Commission Proper, the period to appeal has lapsed. This means that the Decision, and necessarily the Notice of Disallowance, have attained finality. They are final, executory, and immutable.

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[66] Dated on January 1, 2010.

Topbest is liable for the return of the disallowed amount

Topbest also assails the Notice of Disallowance and the Decision which found it liable to return the disallowed amount. However, considering that the Decision and Notice of Disallowance are now final and immutable, this issue can no longer be reopened and relitigated. The rule is settled that when a judgment becomes final and executory, it becomes immutable and unalterable. In *Nacuray v. National Labor Relations Commission*,[67] the Court said:

> Nothing is more settled in law than that when a judgment becomes final and executory it becomes immutable and unalterable. The same may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether made by the highest court of the land. The reason is grounded on the fundamental considerations of public policy and sound practice that, at the risk of occasional error, the judgments or orders of courts must be final at some definite date fixed by law.[68]

Thus, the Court can no longer modify the COA-NGAS Decision and Notice of Disallowance. Topbest must suffer the consequences of its failure to comply with clear and settled rules for the proper filing of an appeal in the COA.

In this regard, in Associate Justice Antonio T. Kho, Jr.'s (Associate Justice Kho) Concurring and Dissenting Opinion, he argues that the principle of *quantum meruit* established in *Torreta v. COA* (*Torreta*)[69] should apply in this case.[70] While Justice Kho agrees that Topbest failed to seasonably appeal the COA-NGAS Decision, and thus, it became final and executory, he suggests that the Court should nonetheless remand the case to the COA for the determination of Topbest's liability (*i.e.*, the amount to which it is entitled as payment for its services and the amount it should return to the government).[71]

It cannot be overemphasized that the COA-NGAS Decision is final, immutable, and executory. That a decision can no longer be altered once it becomes final is a cornerstone of our judicial system and it may not be disregarded, except for a narrow set of exceptions. None of these exceptions is present in this case.

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67 336 Phil. 749 (1997) [Per J. Bellosillo, First Division].

68 *Id.* at 757–758.

69 889 Phil. 1119 (2020), [Per J. Gaerlan, *En Banc*].

70 *See* J. Kho, Concurring and Dissenting Opinion in *Topbest Printing Corp. v. Gemora, et al.*, G.R. No. 261207 [Per J. Singh, *En Banc*].

71 *Id.* at 3.

To reiterate, the COA Audit Team and the COA NGAS Cluster 1 concluded that the NPO improperly subcontracted its printing services to Topbest. Thus, it cannot be said that the merits of the case warrant a relaxation of a rule so fundamental as the immutability of judgments.

Moreover, the Petition brought before the Court is a Rule 64 petition, in relation to Rule 65. For this type of petition to prevail, the petitioner must hurdle a very high bar—it must be able to establish that the COA acted with grave abuse of discretion. Topbest failed to show that the COA NGAS Cluster 1 and the Audit Team gravely abused their discretion. In fact, as already mentioned, an examination of the records will confirm that the respondents' conclusion is based on the evidence and is in accordance with law.

In the face of these foregoing errors committed by Topbest, none of the exceptions to the doctrine of immutability of judgments should apply. Nor is there any equity consideration that would warrant a relaxation of this fundamental rule. In contrast, relaxing the rule here and allowing the case to be reopened and remanded to the COA would, in effect, reward litigants like Topbest, who not only violated laws pertaining to government contracting but also repeatedly failed to comply with procedural rules, without even putting forward a valid explanation.

Moreover, Associate Justice Kho, in his Concurring and Dissenting Opinion, as well as Associate Justice Alfredo Benjamin S. Caguioa during the deliberations on this case, argued that Topbest should not be required to return the compensation for its services because doing so will unjustly enrich the government. In this regard, it should be emphasized that the essence of unjust enrichment is that a person unjustly retains a benefit to the loss of another, or that a person retains money or property of another against the fundamental principles of justice, equity, and good conscience.[72] Stated simply, there is unjust enrichment when one party receives from another money or property *without just cause*. Enforcing the COA-NGAS Decision in this case (which requires the return of the amounts received by Topbest and which, more importantly, has become final and immutable) is a just cause and does not make the return of the money to the government contrary to principles of justice, equity, and good conscience. On the contrary, the law requires the return of the amount received by Topbest. It is worth repeating that a decision that has become final and immutable must be enforced in accordance with its terms. It is by virtue of this fundamental principle that Topbest can be validly required to return what it has received, precisely because it allowed the COA-NGAS Decision to attain finality.

In contrast, applying *Torreta* despite the final and immutable character of the COA-NGAS Decision, could open the floodgates for parties in illegal

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[72] *Manila International Airport Authority v. Avia Filipinas International, Inc.*, 683 Phil. 34, 44 (2012) [Per J. Peralta, Third Division].

contracts with the government to be paid notwithstanding the COA's final and immutable ruling that such payments should be disallowed.

Thus, the Court should dismiss the Petition to emphasize the importance not only of the doctrine of immutability of judgments but also the significance of complying with the stringent procedural requirements for invoking the Court's *certiorari* jurisdiction. The Court must underscore that our legal system will not reward petitioners like Topbest who have shown a repeated inability to comply with the law and procedural rules. Topbest engaged in a scheme to disguise subcontracting, which is expressly prohibited. If it is not directed to return the amounts it unlawfully received, it will amount to rewarding Topbest for circumventing the law and permit it to profit from such illegality.

ACCORDINGLY, the Petition for *Certiorari*, dated June 23, 2022, is **DISMISSED**. The Notice of Disallowance No. 19-001-207542-17 and the Decision No. 2022-014 are **AFFIRMED.**

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

See Concurring Opinion

MARVIC M.V.F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

On Leave
HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

Please see concurring and dissenting opinion
ANTONIO T. KHO, JR.
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.

ALEXANDER G. GESMUNDO
Chief Justice