Republic of the Philippines
Supreme Court
Manila

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WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
FEB 28 2017

THIRD DIVISION

NUEVA ECIJA II ELECTRIC COOPERATIVE, INC., AREA I, Mr. REYNALDO VILLANUEVA, President, Board of Directors, and Mrs. EULALIA CASTRO, General Manager,	**G.R. No. 196084**
Petitioners,	Present:
-versus-	VELASCO, JR., *J.*, *Chairperson,* BERSAMIN, REYES, JARDELEZA, and CAGUIOA,* ***JJ.***
ELMER B. MAPAGU,	
Respondent.	Promulgated:
	February 15, 2017

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DECISION

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] assailing the September 2, 2010[2] and March 3, 2011[3] Resolutions of the Court of Appeals (CA) in CA–G.R. SP No. 114690. The CA dismissed outright the petition for *certiorari* filed by Nueva Ecija II Electric Cooperative, Inc., Area I (NEEC), Reynaldo Villanueva (Villanueva) and Eulalia Castro (Castro) (collectively, petitioners) on the ground that their Verification and Certification against Forum Shopping was unsigned.

I

Respondent Elmer B. Mapagu (Mapagu) was employed with NEEC as a data processor since May 1983.[4] NEEC is an electric cooperative which supplies electricity to households in Nueva Ecija, including Aliaga, where Mapagu resides.[5] Upon the request of the NEEC Board of Directors, the National Electrification Administration (NEA) conducted a special audit on

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* Designated as Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.
1 Under Rule 45 of the Rules of Court. *Rollo*, pp. 7-22.
2 *Id.* at 210-211. Penned by Associate Justice Hakim S. Abdulwahid with Associate Justices Ricardo R. Rosario and Samuel H. Gaerlan, concurring.
3 *Id.* at 219-220.
4 *Id.* at 134.
5 *Id.* at 97.

the power bills and accounts receivables of the consumers, as well as related internal control and procedure, of NEEC.[6] The audit revealed unaccounted consumption or readings which have accumulated due to under-reading and under-billing in prior years or months. Mapagu's electric consumption was found to be under-read and under-billed by 12,845 kilowatt hours (kWhrs) and 1,918 kWhrs for the months of April 2004 and March to May 2005, respectively. This under-reading/under-billing amounted to a total of ₱87,666.17.[7] As a result, petitioners sent a Notice of Charges dated June 13, 2006 against Mapagu, charging him with grave violations of Sections 7.2.18 & 7.2.19 of the NEEC Code of Ethics and Discipline (NEEC Code),[8] to wit:

> "Section 7.2.18 – Fraud or willful breach by the employee of the trust reposed in him/her by his/her supervisor or by the management."
>
> "Section 7.2.19 – All other acts of dishonesty which cause or tend to cause prejudice to the REC."[9]

Mapagu was informed that the penalty for the charges is dismissal for the first offense and was directed to submit an answer within 72 hours from receipt of the Notice of Charges.[10] In his answer, Mapagu denied under oath that his electric meter was under-read and under-billed by 1,918 kWhrs. He asserted that he has no meter reading from November 2002 to April 2005. He also argued that he availed of the amnesty offered and given by the NEEC Officer in Charge General Manager Jun Capulong in connection with employees' meter problems. Since the charges have been condoned, pardoned and disregarded, Mapagu maintains that he cannot be charged with unaccounted consumption.[11]

NEEC created an Investigation and Appeals Committee (IAC) to investigate Mapagu and the other workers implicated in the special audit. The IAC scheduled four conferences where data encoders and meter readers were invited as resource persons.[12]

On September 5, 2006, the IAC issued its findings and recommendations. It held that while the charges of under-reading and under-billing were not established, Mapagu failed to observe the highest degree of honesty as an employee. He did not take action to correct his kWhr consumption despite knowledge that he has no reading from 2002 to 2005. To the IAC, this was proof that Mapagu consented to the anomaly for his own benefit.[13] On account of his failure to protect the interest of NEEC, the IAC found him guilty of the charges against him, with the additional finding

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6 *Id.* at 154.
7 *Id.* at 188, 191-192.
8 *Id.* at 97-98.
9 *Id.* at 98.
10 *Id.*
11 *Rollo*, pp. 99-100.
12 *Id.* at 137.
13 *Id.* at 182.

that he also violated Section 7.2.3 of the NEEC Code for concealing defective work resulting in the prejudice or loss of NEEC.

Nevertheless, and for humanitarian reasons, the IAC recommended that Mapagu only be suspended for two years, on the condition that he execute a waiver in favor of NEEC management against the filing of any legal action regarding his suspension. He was also ordered to pay his unbilled consumption worth ₱87,666.17.[14]

On January 2, 2007, however, Mapagu received a Notice of Dismissal from service. Hence, he filed a Complaint for illegal dismissal and non-payment of allowances against petitioners. He later amended the Complaint to include a prayer for moral, exemplary and actual damages and attorney's fees, dropping his claim for allowances.[15] NEEC countered that Mapagu was dismissed due to valid and legal causes. His gross dishonesty, fraud and willful misconduct were unveiled by the special audit conducted by the NEA.[16] NEEC contended that the amnesty claimed by Mapagu cannot work in his favor because it only provided for a special payment arrangement, where he was allowed to pay his under-billed obligation on installment for two years.[17]

In his November 30, 2007 Decision,[18] Labor Arbiter (LA) Leandro M. Jose ruled in favor of petitioners. Stating that NEEC discharged its burden of proving that Mapagu was lawfully dismissed, LA Jose dismissed Mapagu's Complaint for lack of merit.[19]

Mapagu appealed to the National Labor Relations Commission (NLRC), which reversed and set aside[20] the ruling of the LA. The NLRC held that under the circumstances and facts of the case, the penalty of dismissal is unwarranted. According to the NLRC, while the law does not condone wrongdoing by an employee, it urges a moderation of the sanction that may be applied to him where a penalty less punitive would suffice.[21] The NLRC compared the penalty imposed upon Mapagu with the sanctions received by his co-employees who admitted that they altered or tampered their meter reading slips. It found that despite the IAC recommendation of dismissal from the service, the other employees were merely suspended and even given separation pay by the petitioners.[22] The NLRC observed:

> Further, if respondents-appellees [herein petitioners] were able to condone, through Board Resolution No. 09-11-05, those with tampered meters, under read meters,

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14 *Id.* at 183.
15 *Id.* at 23-25, 137.
16 *Id.* at 102-103.
17 *Id.* at 109.
18 *Id.* at 96-115.
19 *Id.* at 114.
20 *Id.* at 134-144.
21 *Id.* at 140.
22 *Id.* at 141-142.

> stop/slow meters and illegal connection through payment of the unaccounted consumption, the dismissal of the complain[ant]–appellant all the more is shown to be tainted with bad faith. The condonation of some employees who have committed acts punishable with the (*sic*) dismissal and the dismissal of employees who have committed acts punishable with dismissal shows the bias of appellees.[23]

The NLRC concluded that Mapagu is entitled to the twin relief of reinstatement and backwages. Considering, however, that the trust reposed on Mapagu can no longer be restored, and reinstatement is no longer feasible, the NLRC ordered the payment of separation pay reckoned from the time of Mapagu's employment up to the finality of the Decision. The dispositive portion of the NLRC Decision reads:

> **WHEREFORE**, premises considered, the appeal is hereby **granted**. The 30 November 2007 Decision of the Labor Arbiter is **reversed and set aside** and a new one entered directing Nueva Ecija Electric Cooperative II to pay Elmer Mapagu separation pay in an amount equivalent to one (1) month pay reckoned from his employment up to the finality of this Decision and backwages reckoned from the time he was dismissed up to the finality of this Decision. However, from his backwages, the amount pertaining to his two years suspension must be deducted.
>
> The claims for moral and exemplary damages are dismissed for want of merit.
>
> **SO ORDERED**.[24] (Emphasis in the original.)

Petitioners sought reconsideration but this was denied by the NLRC. Mapagu, meanwhile, filed a Motion for Clarification and Motion for Partial Reconsideration. The NLRC denied the latter motion but clarified that the separation pay referred to in the decretal portion of its Decision refers to one (1) month pay for every year of service reckoned from the time of Mapagu's employment up to the finality of its Decision.[25] Petitioners elevated the case to the CA via a petition for *certiorari* under Rule 65 of the Rules of Court (Rules).

In its September 2, 2010 Resolution, the CA dismissed the petition outright. It found that petitioners failed to sign the attached Verification and Certification against Forum Shopping and held that a defective verification and certification is equivalent to non-compliance with the Rules. It also constitutes valid cause for dismissal of the petition under the last paragraph of Section 3, Rule 46. Further, Section 5, Rule 7 of the Rules which requires the pleader to submit a certification of non-forum shopping executed by the

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[23] *Id.* at 142.
[24] *Id.* at 143-144.
[25] *Id.* at 208.

plaintiff or principal party, is mandatory. Subsequent compliance cannot excuse a party from failing to comply in the first place.[26]

Petitioners filed a Motion for Reconsideration which the CA denied. The CA noted that petitioners still failed to attach a signed verification and certification of non-forum shopping.[27] Petitioners seek recourse with us via a petition for review under Rule 45.

Petitioners fault the CA for dismissing the case on the ground that not all of the petitioners signed the Verification and Certification against Forum Shopping. They explained that only Castro, the General Manager of NEEC, signed the verification and certification because she was authorized and empowered by the NEEC Board of Directors through Resolution No. 02-18-07[28] dated February 22, 2007, to sign on behalf of NEEC. Likewise, Villanueva, the President of NEEC, executed a Special Power of Attorney[29] (SPA) dated February 20, 2007, giving Castro the power to represent him in this case and to sign all the documents for and on his behalf.[30] More importantly, petitioners contend that Villanueva and Castro have only one defense—that they were both sued as officers of NEEC. Thus, sharing a common interest, the execution by one of them of the certificate of non-forum shopping constitutes substantial compliance with the Rules.[31]

Mapagu filed his Comment,[32] claiming that the petition is filed out of time. He asserts that petitioners themselves disclosed that they received the Resolution of the CA denying their Motion for Reconsideration on March 17, 2011; hence, they only had until April 2, 2011 to file a petition for review on *certiorari*. The petition was filed on May 5, 2011, well beyond the reglementary period. Thus, the questioned Resolutions of the CA have become final and executory.[33] With respect to the alleged SPA in favor of Castro, Mapagu allege that NEEC only authorized Castro to represent Villanueva in the case before the NLRC and not before the CA. Also, the Board Resolution of the NEEC refers only to pending cases as of February 22, 2007. Since the original action for *certiorari* before the CA was filed only on July 23, 2010, Castro could not have validly signed the verification and certification on behalf of NEEC on the basis of the February 22, 2007 SPA.[34]

On the merits of the case, Mapagu attacks the LA's Decision for being rendered with grave abuse of discretion because the latter did not explain how petitioners were able to prove the validity of his dismissal from the

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26 *Id.* at 211.
27 *Id.* at 219-220.
28 *Id.* at 216-217.
29 *Id.* at 218.
30 *Id.* at 16-17.
31 *Id.* at 17-18.
32 *Id.* at 223-244.
33 *Id.* at 223-224.
34 *Id.* at 224-225.

service. He alleges that the LA merely declared petitioners as "victors without explanation."[35] He explains that petitioners' charges against him relate to his status as a customer and not as an employee of NEEC.[36] He maintains that as a computer operator or data processor, he merely encoded the bills of industrial consumers. This did not include residential consumers or those of NEEC employees.[37] Mapagu attributes bias against petitioners who he claimed treated him harshly compared to his co-employees who admitted their wrongdoings and committed far worse offenses.[38]

On April 4, 2012, petitioners filed their Reply[39] and insist that they have 60 days from March 17, 2011 (or until May 17, 2011) to file the petition for review on *certiorari*. Since the petition was filed on May 6, 2011, they maintain that the same was in fact, filed 11 days ahead of the deadline for submission.[40]

On December 13, 2011, Mapagu filed an Urgent Manifestation[41] disclosing that since he had already been paid the full monetary award granted him by the NLRC, petitioners are now released from any and all obligations to him arising from the NLRC's judgment.

The issues raised are:

1. Whether the petition for review on *certiorari* was, filed before the CA within the reglementary period; and

2. Whether the CA erred in dismissing the petition for *certiorari* for non-compliance with the Rules.

II

We deny the petition.

The facts and material dates are undisputed. Petitioners received the September 2, 2010 Resolution of the CA on September 14, 2010. They filed a Motion for Reconsideration and received the Resolution denying the same on **March 17, 2011.** Thereafter, they filed a Motion for Extension of Time to File Petition for Review on *Certiorari* with Payment of Docket Fees.[42] They sought an extension of 20 days from April 1, 2011 or until April 21, 2011 within which to file the appeal.

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35 *Id.* at 226.
36 *Id.* at 234.
37 *Id.* at 229-231.
38 *Id.* at 243-244.
39 *Id.* at 253-261.
40 *Id.* at 253-254.
41 *Id.* at 246.
42 *Id.* at 3-4.

On May 6, 2011, they filed this petition. They allege that they have 60 days to file the appeal and in fact, they claim that they are filing it 11 days ahead of the reglementary deadline. Petitioners insist that following *Republic v. Court of Appeals*[43] and *Bello v. National Labor Relations Commission,*[44] petitions for review on *certiorari* can be filed within 60 days from receipt of the order denying the motion for reconsideration.

Petitioners are gravely mistaken. The right to appeal is a mere statutory privilege and must be exercised only in the manner and in accordance with the provisions of the law. One who seeks to avail of the right to appeal must strictly comply with the requirement of the rules. Failure to do so leads to the loss of the right to appeal.[45] The case before us calls for the application of the requirements of appeal under Rule 45, to wit:

> Sec. 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari.* The petition shall raise only questions of law which must be distinctly set forth.
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> Sec. 2. *Time for filing; extension.* – **The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.** (Emphasis supplied.)

Petitioners failed to comply with the foregoing provisions. They confuse petitions for review on *certiorari* under Rule 45 with petitions for *certiorari* under Rule 65. It is the latter which is required to be filed within a period of not later than 60 days from notice of the judgment, order or resolution. If a motion for new trial or reconsideration is filed, the 60-day period shall be counted from notice of the denial of the motion. Sections 1 and 4 of Rule 65 read:

> Sec. 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his

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[43] G.R. No. 141530, March 18, 2003, 399 SCRA 277.

[44] G.R. No. 146212, September 5, 2007, 532 SCRA 234.

[45] *National Transmission Corporation v. Heirs of Teodulo Ebesa*, G.R. No. 186102, February 24, 2016, 785 SCRA 1, 10, citing *Julian v. Development Bank of the Philippines,* G.R. No. 174193, December 7, 2011, 661 SCRA 745, 753.

> jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.
>
> x x x
>
> Sec. 4. *When and where petition filed.* – **The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.** x x x (Emphasis supplied.)

Petitioners' reliance on *Republic* and *Bello* are misplaced. In both cases, we are confronted with the issue of whether the petitions for *certiorari* before the CA were filed out of time. No other issue was raised in *Republic* and *Bello*. Further, it does not escape our attention that petitioners initially filed a motion for extension of time to file a petition for review where they recognized that they only have until April 1, 2011 (or 15 days from receipt of the denial of their Motion for Reconsideration) to file the petition. Clearly, petitioners were fully aware of the correct period for filing an appeal under Rule 45. Yet, in their actual petition, they maintain that they have 60 days to file the appeal. We cannot countenance petitioners' obvious legal maneuvering.

A party litigant wishing to file a petition for review on *certiorari* must do so within 15 days from notice of the judgment, final order or resolution sought to be appealed. Here, petitioners received the Resolution of the CA denying their Motion for Reconsideration on March 17, 2011. Under the Rules, they have until April 1, 2011 to file the petition. However, they filed the same only on May 6, 2011. This was **50 days** beyond the 15-day period provided under Section 2, Rule 45 and 30 days beyond the extension asked for. Even if petitioners were given the maximum period of extension of 30 days, their petition before us still cannot stand. The Rules allow only for a maximum period of 45 days within which an aggrieved party may file a

petition for review on *certiorari*. By belatedly filing their petition with the CA, petitioners have clearly lost their right to appeal.[46]

There are instances when we have relaxed the rules governing the periods of appeal to serve substantial justice.[47] In *Azores v. Securities and Exchange Commission,*[48] we held:

> The failure of a party to perfect his appeal in the manner and within the period fixed by law renders the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision. For it is more important that a case be settled than that it be settled right. **It is only in exceptional cases when we have allowed a relaxation of the rules governing the periods of appeals**. As stated in *Bank of America, NT & SA v. Gerochi, Jr.*, typical of these cases are the following:
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> > In Ramos vs. Bagasao, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when *her counsel of record was already dead.* Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In Republic vs. Court of Appeals, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days *to prevent a gross miscarriage of justice* since the Republic stood to lose hundreds of hectares of land *already titled in its name* and had since then been devoted for educational purposes. In Olacao vs. National Labor Relations Commission, 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been *judicially settled, with finality, in another case.* The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.[49] (Emphasis supplied, citation omitted. Italics in the original.)

None of the foregoing justifications are, however, present here. Petitioners remain adamant that they properly observed the Rules when clearly they failed to do so. They did not even attempt to allude to any exceptional circumstance that would move us to use our equity jurisdiction to allow a liberal application of the Rules. Hence, we are constrained to

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[46] See *Salvacion v. Sandiganbayan (Fifth Division)*, G.R. No. 175006, November 27, 2008, 572 SCRA 163, 183.

[47] *Boardwalk Business Ventures, Inc. v. Villareal, Jr.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 481, citing *Apex Mining Co., Inc. v. Commissioner of Internal Revenue*, G.R. No. 122472, October 20, 2005, 473 SCRA 490, 497-498.

[48] G.R. No. 112337, January 25, 1996, 252 SCRA 387.

[49] *Id.* at 392-393.

declare that for petitioners' failure to file an appeal by *certiorari* within the reglementary period, the assailed Resolutions of the CA had already become final and executory.

In the case of *Gonzales v. Pe*,[50] we held that:

> While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem, as it deprives the appellate court of its jurisdiction over the appeal. After a decision is declared final and executory, vested rights are acquired by the winning party. Just as a losing party has the right to appeal within the prescribed period, the winning party has the correlative right to enjoy the finality of the decision on the case.[51]

All told, considering that we have lost jurisdiction to review the case in view of the finality of the CA Decision, we see no further reason to delve into the other issues raised by petitioners.

WHEREFORE, the petition is **DENIED**. The September 2, 2010 and March 3, 2011 Resolutions of the Court of Appeals in CA–G.R. SP No. 114690 are hereby **AFFIRMED**.

SO ORDERED.

FRANCIS H. JARDELEZA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

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[50] G.R. No. 167398, August 8, 2011, 655 SCRA 176.

[51] *Id.* at 191-192, citing *National Power Corporation v. Laohoo,* G.R. No. 151973, July 23, 2009, 593 SCRA 564, 591.

LUCAS P. BERSAMIN
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest 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's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's attestation, 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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