

SPECIAL SECOND DIVISION

Petitioners,

CTA AC NO. 238
(Civil Case No. 10-CV-2608)

Members:

- versus -

BACORRO-VILLENA, *Acting Chairperson*
CUI-DAVID, *JJ.*

NATIONAL POWER CORPORATION (NPC), & POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION (PSALM),
Respondents.

Promulgated: SEP 08 2022

X-----X
1: n p.m.

RESOLUTION

For the Court's resolution is petitioners Municipality of Itogon, Benguet, and Angela C. Cariño's (**petitioners'**) "Motion for Reconsideration of the Resolution dated October 6, 2021 with Compliance and Apology"¹ (**MR on the Resolution**) filed through registered mail on 12 November 2021.²

The aforesaid MR on the Resolution seeks the reversal of this Court's Resolution dated 06 October 2021³ (**assailed Resolution**), which considered petitioners' "Motion for Reconsideration"⁴ (**MR on the Decision**) filed through registered mail on 09 March 2021⁵ as **DEEMED NOT FILED** and thus a mere scrap of paper.

¹ Division Docket, pp. 340-350.

² Received by the Court on 23 November 2021.

³ Division Docket, pp. 338-339.

Id., pp. 316-323.

⁵ Received by the Court on 19 May 2021.

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As background, petitioners filed the MR on the Decision to seek the reversal of the Decision dated 16 February 2021⁶ (**assailed Decision**). The dispositive portion reads:

...
WHEREFORE, the Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

...

However, *per* Records Verification dated 19 May 2021⁷, petitioners filed only one (1) copy of the MR on the Decision. Subsequently, the Court, through a Minute Resolution dated 20 May 2021⁸ (**Minute Resolution**), found the MR on the Decision as insufficient in the number of copies and thus directed petitioners to submit three (3) additional copies within ten (10) days from notice thereof. The Court further informed petitioners that its failure to submit the additional copies within the period given shall constrain the Court to consider the MR on the Decision as **deemed not filed**. Petitioners received the said Minute Resolution on 26 May 2021.⁹ Hence, petitioners had until 05 June 2021 to comply with the directives.

Unfortunately, petitioners failed to comply with the Minute Resolution *per* Records Verification dated 12 July 2021.¹⁰ Thus, on 06 October 2021, the Court issued the assailed Resolution.

In their present MR on the Resolution, petitioners claim that the surge of COVID-19 cases in the municipality of La Trinidad, Benguet, prevented them from submitting the additional copies of the MR on the Decision within the prescribed period. Petitioners then appeal, in the interest of justice, for reconsideration of the assailed Resolution and the admission of the attached additional copies of the MR on the Decision.

⁶ Division Docket, pp. 303-314.

⁷ Id., p. 315.

⁸ Id., p. 325.

⁹ Sent through registered mail with tracking number RE483516507zz. *Per* PHLPPost tracking (<https://tracking.phlpost.gov.ph/>, last accessed on 16 August 2022), the item was sent on 26 May 2021.

¹⁰ Division Docket, p. 336.

Before acting on the MR on the Resolution, the Court ordered respondents National Power Corporation (**NPC**), & Power Sector Assets and Liabilities Management Corporation (**PSALM**) (**respondents**) to comment thereon within 10 days from notice thereof.¹¹

On 09 February 2022, respondent NPC filed its “Manifestation and Motion (To Suspend Period to File Comment)”¹² and requested for an additional time to file its comment as it had yet to receive a copy of the MR on the Resolution. The Court granted the request on 29 March 2022.¹³

Later or on 07 April 2022, respondent NPC again filed a “Manifestation and Motion”¹⁴ where it stated that it still had not received a copy of the MR on the Resolution and requested that the Court direct petitioners to furnish respondents with a copy thereof.

On 13 April 2022, respondent PSALM filed *via* registered mail¹⁵ its “Manifestation with Comment” stating that it did not receive a copy of petitioners’ MR on the Decision and MR on the Resolution hence, the Court was correct in ruling that the MR on the Decision was a mere scrap of paper for non-compliance with the Court’s internal rules. In addition, respondent PSALM prayed that if the Court admits petitioners’ MR on the Resolution, it be allowed to file its comment thereto from the receipt of the copy thereof.

On 31 May 2022, the Court noted both of respondents’ manifestations and ordered petitioners to submit further proof of service to respondents of the alleged furnished copies of the MR on the Resolution within five (5) days from notice thereof.¹⁶ However, *per* Records Verification dated 09 August 2022, petitioners failed to comply with the said Court order.¹⁷

We resolve.

¹¹ See Resolution dated 01 December 2021, *id.*, p. 353.
¹² Received by the Court on 03 March 2022, *id.*, pp. 354-357.
¹³ See Resolution dated 29 March 2022, *id.*, p. 363.
¹⁴ *Id.*, pp. 364-366.
¹⁵ Received by the Court on 21 April 2022, *id.*, pp. 373-376.
¹⁶ See Resolution dated 31 May 2022, *id.*, pp. 370-371.
¹⁷ *Id.*, p. 386.

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After an assiduous review of the records of the case, the Court is constrained to deny petitioners' MR on the Resolution for being filed out of time.

Section 11 of Republic Act (RA) No. 1125, as amended, provides:

...
SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal.* – ...

...

... A party adversely affected by a ruling, order or decision of a Division of the CTA **may file a motion for reconsideration** or new trial before the same Division of the CTA **within fifteen (15) days from notice thereof[.]** ...¹⁸

...

Relative thereto, Section 1, Rule 15 of the Revised Rules of the Court of Tax Appeals (RRCTA), states:

...
SEC. 1. *Who may and when to file motion.* – Any aggrieved party **may seek a reconsideration** or new trial of any decision, resolution or order of the Court by **filing a motion for reconsideration** or new trial **within fifteen days from the date of receipt of notice of the decision, resolution or order of the Court in question.**¹⁹

...

Based on the foregoing provisions, an aggrieved party may file an MR within fifteen (15) days from the date of receipt of notice of the Court's decision, resolution or order.

Here, petitioners alleged in their MR on the Resolution that they received the assailed Resolution on 27 October 2021.²⁰ However, *per* checking with PHLPost Tracking²¹, the Notice of Resolution dated 06 October 2021²² with tracking number RE199127095zz²³ was

¹⁸ Emphasis supplied.

¹⁹ Emphasis supplied.

²⁰ Paragraph (Par.) 1, Motion for Reconsideration of the Resolution dated October 6, 2021 with Compliance and Apology, *supra* at note 1.

²¹ <https://tracking.phlpost.gov.ph/>, last accessed on 17 August 2022.

²² Division Docket, p. 337.

²³ Attached at the back page of the Notice of Resolution and in the registry return card, *id.*

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delivered to petitioners on 19 October 2021. Hence, counting 15 days from the receipt of the assailed Resolution, petitioners had until **03 November 2021** to file their MR. However, an examination of petitioners' MR on the Resolution reveals that it was filed through registered mail only on 12 November 2021, or nine (9) days beyond the prescribed period. Thus, the MR on the Resolution was filed way beyond the 15-day reglementary period. Even assuming that petitioners actually received the assailed Resolution on 27 October 2021, the MR on the Resolution was still filed one (1) day late.

With the above, petitioners' failure to duly file on time the MR on the Resolution resulted in the loss of their right to attack the Court's assailed Resolution. This is in accordance with the basic rule that a party who fails to question an adverse decision by not filing the proper remedy within the period prescribed by law for the purpose loses the right to do so.²⁴

In *Barrio Fiesta Restaurant, et al. v. Helen C. Beronia*²⁵, the Supreme Court declared:

...
...For purposes of determining its timeliness, a motion for reconsideration may properly be treated as an appeal. As a step to allow an inferior court to correct itself before review by a higher court, a motion for reconsideration must necessarily be filed within the period to appeal. **When filed beyond such period, the motion for reconsideration ipso facto forecloses the right to appeal.**
...

Accordingly, the Court's Resolution dated 06 October 2021 had already attained finality because of petitioners' failure to file the MR on the Resolution within the 15-day reglementary period allowed.

It is well-settled that judgments or orders become final and executory by operation of law and not by judicial declaration. The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed. The court need not even pronounce the finality of the order as the same becomes final by operation of law.²⁶

²⁴ *People of the Philippines v. Benedicta Mallari, et al.*, G.R. No. 197164, 04 December 2019.

²⁵ G.R. No. 206690, 11 July 2016; Citation omitted and emphasis supplied.

²⁶ *Philippine Savings Bank v. Josephine L. Papa*, G.R. No. 200469, 15 January 2018.

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Assuming *arguendo* that petitioners timely filed the MR on the Resolution, the Court shall still deny the admission of the additional copies of the MR on the Decision as petitioners failed to prove that they furnished copies of the MR on the Resolution to respondents NPC and PSALM.

Sections 5(b) and 7 of Rule 15 of the 2019 Amendments to the 1997 Rules of Civil Procedure²⁷ (**Revised Rules of Court**) state:

...
Sec. 5. Litigious motions. — ...
...

(b) **All motions shall be served** by personal service, accredited private courier or registered mail, or electronic means so as to **ensure their receipt by the other party.**²⁸
...

Sec. 7. Proof of service necessary. — **No written motion shall be acted upon by the court without proof of service thereof,** pursuant to Section 5(b) hereof.²⁹
...

Relative thereto, Section 17, Rule 13 of the Revised Rules of Court provides:

...
Sec. 17. Proof of service. — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a statement of the date, place, and manner of service. If the service is made by:
...

(b) Registered mail. - **Proof shall be made by the affidavit mentioned above and the registry receipt issued by the mailing office.** The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof, the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.³⁰
...

²⁷ A.M. No. 19-10-20-SC.
²⁸ Emphasis supplied.
²⁹ Emphasis supplied.
³⁰ Emphasis supplied.

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Based on the foregoing provisions, all motions must be served to the other party as evidenced by a proof of service. If a motion was served through registered mail, the proof of service shall consist of: (1) either a written admission of the party served or an affidavit of the party serving, containing a statement of the date, place, and manner of service; and, (2) the registry receipt issued by the mailing office. Absent a proof of service, the Court shall not act upon the written motion.

Here, an examination of the MR on the Resolution reveals that petitioners failed to attach the written statement or affidavit as mentioned above. Petitioners merely affixed the registry receipts in the MR on the Resolution. However, a perusal of the registry receipts showed that these did not indicate the relevant tracking numbers for the alleged furnished copies of the MR on the Resolution to respondents. Moreover, when the Court ordered petitioners to submit further proof of service to respondents, they failed to do so.³¹ The Court now cannot ascertain if petitioners indeed served a copy of the MR on the Resolution to respondents. Thus, without any sufficient proof of service, the Court shall not act upon petitioners' MR on the Resolution and shall consider it as a mere scrap of paper.

WHEREFORE, with the foregoing premises considered, petitioners Municipality of Itogon, Benguet, and Angela C. Cariño's "Motion for Reconsideration of the Resolution dated October 6, 2021 with Compliance and Apology" filed on 12 November 2021 is hereby **DENIED** for lack of merit.

SO ORDERED.


JEAN MARIE A. BACORRO-VILLENA
Associate Justice


LANEE S. CUI-DAVID
Associate Justice

³¹ Per Records Verification dated 09 August 2022.