EN BANC

G.R. No. E-02865 — NELTON L. SUMITON, Petitioner, v. **COMMISSION ON AUDIT, CHAIRPERSON GAMALIEL A. CORDOBA, COMMISSIONER ROLAND CAFÉ PONDOC, and COMMISSIONER MARIO G. LIPANA, THE AUDIT TEAM LEADER OF THE NATIONAL COMMISSION ON INDIGENOUS PEOPLES REGIONAL OFFICE NO. IX,** Respondents.

Promulgated:

February 18, 2026

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CONCURRING OPINION

CAGUIOA, *J.*:

I concur.

I submit this Concurring Opinion to emphasize the distinction between two kinds of funds for purposes of the Commission on Audit's (COA) audit jurisdiction. On the one hand are funds which, although sourced from a private party, are officially received and controlled by a government agency in an accountable capacity for a public purpose. These funds assume a public character and properly fall within the COA's constitutional audit authority. On the other hand are funds that remain privately owned, with government acting merely as custodian or depositary, which do not fall within the COA's audit jurisdiction. As ruled in the *ponencia*, the Free, Prior, and Informed Consent (FPIC) deposit fees involved in the present case fall within the first category.

The present case arose from several Notices of Disallowance issued against petitioner Nelton L. Sumiton (Sumiton), then a Community Affairs Officer I of the National Commission on Indigenous Peoples (NCIP), in relation to cash advances and reimbursements amounting to PHP 2,028,400.00 for the conduct of the FPIC proceedings concerning various projects affecting ancestral domains. Before the Court, Sumiton contends that the funds disbursed to him were not public funds because they came from the FPIC deposit fees paid by project proponents and not from government appropriations. He, thus, argues that the COA acted without jurisdiction in auditing them and in issuing the assailed disallowances.

The *ponencia* correctly rejects this position. It explains that the COA's jurisdiction is broad and constitutionally grounded, covering the audit of funds owned or held in trust by, or pertaining to, the Government, as well as funds received by public officers in an accountable capacity. The *ponencia* further clarifies that, in substance, funds are "government funds" subject to the COA audit if ownership or beneficial ownership has shifted to a government entity or to a public officer in an accountable capacity, such that the entity or officer has effective control over their use or disposition for a public purpose. If there is no such transfer and the government acts merely as a custodian or depositary, the funds do not fall within the COA's audit jurisdiction.[1]

Applying this standard, the *ponencia* holds that ownership or beneficial ownership of the FPIC deposit fees has shifted to the NCIP. The fees are required by regulation, officially received by the NCIP collecting officers in an accountable capacity, and are collected and controlled by the State for a defined public purpose, namely the conduct of the FPIC proceedings.[2] As the *ponencia* explains, the funds are disbursable only for purposes authorized by law and are subject to documentation, accounting, and refund of any unspent balance.[3] Thus, once the NCIP officially receives the FPIC fees, the funds come into the possession of a government agency for the fulfillment of a governmental function and fall within the COA's audit jurisdiction.[4]

I agree with the *ponencia*'s reasoning.

The controlling distinction is not simply the source of the funds, nor whether they originate from government appropriations, but the legal character the funds ***assume*** once received by government. The inquiry turns on whether the government merely holds the funds as a depositary for a private party, or it receives and controls them in an accountable capacity in furtherance of a public purpose.

Such a distinction is rooted in the nature of governmental accountability. When funds are officially received by public officers in connection with the performance of a statutory function, such officers assume responsibility for their proper use and disposition under the applicable auditing laws. The COA's jurisdiction is therefore not defeated by the private source of the funds, so long as the funds are received, held, or administered by government in a manner that gives them public character. This framework is consistent with the Government Auditing Code of the Philippines, or Presidential Decree No. 1445,[5] which provides:

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1 *Ponencia*, p. 17.
2 *Id.* at 20.
3 *Id.* at 21.
4 *Id.* at 20.
5 Presidential Decree No. 1445 (1978).

> Section 3. *Definitions of Terms*. Wherever used in this Code, the following terms shall be taken and understood in the sense indicated hereunder, unless the context otherwise requires:
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> . . . .
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> (2) "Government funds" includes public moneys of every sort and other resources ***pertaining to any agency of the government***.
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> . . . .
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> (4) "Trust funds" refers to funds which have come ***officially into the possession*** of any agency of the government or of a public officer as trustee, agent, or administrator, or which have been received for the fulfillment of some obligation.
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> (5) "Depository funds" comprises funds over which the officer accountable therefor may retain control ***for the lawful purposes for which they came into his possession***. It embraces moneys in any and all depositories. (Emphasis supplied)

These provisions show that the legal character of funds depends on the capacity in which they are received and the control exercised over them. Thus, whether the funds "pertain to any agency of the government" and are "officially received" by a public officer remains central. This reading is reinforced by Section 63 of the same Code, which provides that, except as otherwise provided by law or competent authority, "all moneys and property officially received by a public officer in any capacity or upon any occasion must be accounted for as government funds and government property." Thus, official receipt by a public officer triggers public accountability and accounting requirements. It does not, however, erase the need to determine the capacity in which the funds are held and whether they pertain to the government or remain beneficially owned by a private party.

To illustrate, where ownership or beneficial control over the funds is transferred to the government for a public purpose, the funds ***assume*** a public character and fall within the COA's audit jurisdiction. This is the principle reflected in *Fernando v. COA*[6] where the Court held that funds of the Executive Committee of the Metro Manila Film Festival (MMFF), including those coming from non-tax revenues and purported private sources, were subject to the COA audit. Although privately sourced, the funds were solicited for a public purpose, namely the management of the MMFF. More importantly, despite the private source of funds, ownership over the same was already transmitted to the government by way of donation. As donee, the government had become the owner of the funds, with full ownership rights and control over the use and disposition of the same, subject only to applicable laws and the COA rules and regulations. Thus, upon donation to the government, the funds became public in character. Accordingly, the Court

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[6] 844 Phil. 664 (2018) [Per J. Tijam, *En Banc*].

concluded that funds coming from private sources became public upon receipt by the Executive Committee, for use in the purpose for which it was created. Being public in character, the COA could validly conduct an audit over such funds in accordance with its auditing rules and regulations.

The same principle was reiterated in *Oriondo v. COA*,[7] where the Court held that Corregidor Foundation, Inc. was under the COA's audit jurisdiction because its purposes were related to the promotion and development of tourism in the country, a declared state policy and, therefore, a function public in character. The Court also found that the government exercised control over the entity and its funds, since its budget required approval, its receipts and disbursements were reportable, and the disposition of the funds was subject to governmental authority. Thus, even assuming that the funds came from international organizations and foreign entities, these foreign grants already became public funds the moment they were donated and may therefore be audited by the COA.

At the same time, jurisprudence recognizes the converse situation. In *Republic v. Tatlonghari*,[8] although it did not involve the COA's audit jurisdiction, it addressed the antecedent question of when funds may be considered public or private. The Court explained that the notation "in trust for" or "for escrow" indicated that the deposit was for the benefit of a third party. Thus, when the Asset Privatization Trust deposited funds in trust for Pantranco North Express, Inc. (Pantranco), the funds belonged to Pantranco despite being held by a government entity. In this regard, the Court referred to the statutory definition of government funds under Presidential Decree No. 1445, which includes "public moneys of every sort and other resources pertaining to any agency of the Government."[9] It then emphasized that:

> The phrase "pertaining to any agency of the Government" distinguishes government funds from private funds. The definition of "government funds" indicates that for funds to be considered government funds or public funds, it must be shown that ***the funds properly belong to a government agency.***[10] (Emphasis supplied)

Tatlonghari therefore illustrates the converse side of the rule: where government custody is merely custodial, and the funds continue to belong to a private party, possession by a government entity does not by itself convert them into government funds. The government, in such instances, acts only as depositary for the private owner and does not acquire ownership or beneficial control over the funds.

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7 852 Phil. 633 (2019) [Per J. Leonen, *En Banc*].
8 773 Phil. 179 (2015) [Per J. Leonen, Second Division].
9 Presidential Decree No. 1445 (1978), sec. 3(2).
10 *Republic v. Tatlonghari*, *supra* at 210.

A similar limitation is illustrated in *Development Bank of the Philippines v. COA*.[11] There, Development Bank of the Philippines (DBP) created an employees' trust known as the Gratuity Plan Fund for the benefit of employees qualified to retire under Republic Act No. 1616.[12] Pursuant to the trust agreement, the DBP, as trustor, transferred legal title over the fund to the board of trustees of the Gratuity Plan Fund, which was vested with control and administration of the fund. The employees-beneficiaries, in turn, retained the beneficial interest in the fund. Accordingly, the Court held that the income of the Gratuity Plan Fund did not form part of the DBP's revenues or profits and could not be treated as the DBP's property or used for its own benefit.

DBP, thus, underscores that even where funds are held or administered within a government entity or instrumentality, they do not necessarily become government funds where the government does not retain ownership or beneficial control over them.

Another clear illustration of this principle is found in election protest deposits, where the government acts merely as depositary and does not acquire ownership over the funds. As recognized in *Fernando:*

> [D]espite the private source of funds, ownership over the same was already transmitted to the government by way of donation. As donee, the government had become the owner of the funds, with full ownership rights and control over the use and disposition of the same, subject only to applicable laws and COA rules and regulations. Thus, upon donation to the government, the funds became public in character.
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> This is in contrast to cases where there is no transfer of ownership over the funds from private parties to the government, such as in the case of cash deposits required in election protests filed before the trial courts, Commission on Elections, and electoral tribunals. In these cases, *the government becomes a mere depositary of such fund, the use and disposition of which is subject to the conformity of the private party-depositor who remains to be the owner thereof.*[13] (Emphasis supplied)

This distinction is reflected in the rules governing election protest deposits. Under Rule 33 of the 2010 Rules of the Presidential Electoral Tribunal,[14] each protestant or counter-protestant is required to make a cash deposit with the tribunal. The deposit is applied to the payment of expenses incidental to the bringing of ballot boxes, election documents, and paraphernalia to the tribunal, their return after termination of the case, and the compensation of members of the revision committees. The tribunal may also require additional cash deposits when circumstances demand, and any unused

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11 467 Phil. 62 (2004) [Per J. Carpio, *En Banc*].

12 Republic Act No. 1616 (1957), An Act Further Amending Section Twelve of Commonwealth Act Numbered One Hundred Eighty-Six, as Amended, by Prescribing Two Other Modes of Retirement and for Other Purposes.

13 *Fernando v. COA*, *supra* note 6, at 695.

14 A.M. No. 10-4-29-SC (2010), The 2010 Rules of the Presidential Electoral Tribunal.

cash deposit must be returned to the protestant or counter-protestant after the complete termination of the protest or counter-protest. Similar requirements exist in election contests before the Commission on Elections,[15] Senate Electoral Tribunal,[16] House of Representatives Electoral Tribunal,[17] and lower courts.[18]

The structure of these rules confirms that the election protest deposit serves merely as security for expenses which the protestant or counter-protestant is obligated to shoulder. While the tribunal is authorized to apply the deposit to specified expenses and to require additional amounts, such authority is strictly confined to expenses incidental to the protest. It does not confer ownership or beneficial control over the funds, which remain attributable to the depositor and are returnable to him or her to the extent unused. The funds therefore do not pertain to the government, notwithstanding their temporary custody by the tribunal.

Although the protest itself implicates the public interest in determining the true will of the electorate, this public purpose does not convert the deposit into government funds subject to the COA audit. The decisive consideration remains whether the funds pertain to the government. Here, they do not. The tribunal acts only as a depositary, holding the funds to cover expenses incidental to that proceeding.

Accordingly, consistent with the *ponencia*'s standard, election protest deposits do not fall within the COA's audit jurisdiction, given that ownership or beneficial ownership does not shift to the government. Despite their temporary custody by a government body, they do not assume the character of government funds for purposes of the COA audit.

Sumiton argues that the same principle governing election protest deposits applies to the FPIC deposit fees. According to Sumiton, the FPIC deposit fees are private deposits tendered by the proponents solely for the conduct of the FPIC proceedings, such that there was no transfer of ownership to the NCIP. Sumiton further contends that the NCIP merely acts as a facilitator of the FPIC process, and that any unspent amount is returned to the proponent, thereby supposedly showing that the funds never lose their private character at any stage of the process.[19]

The analogy is misplaced.

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15 Resolution No. 8804 (2010), In Re: COMELEC Rules of Procedure on Disputes in an Automated Election System in Connection with the May 10, 2010 Elections, Rule 11.

16 2013 Rules of the Senate Electoral Tribunal (2013), Rules 36 and 37.

17 The 2015 Revised Rules of the House of Representatives Electoral Tribunal (2015), Rules 35 and 36.

18 A.M. No. 07-4-15-SC (2023), The 2023 Amended Rules of Procedure in Election Contests Before the Courts Involving Elective Barangay and Sangguniang Kabataan Officials, Rule 7.

19 *Rollo*, pp. 15–20, Petition for *Certiorari*.

As stated at the outset, the FPIC deposit fees fall within the first category discussed above, where funds assume a public character and are subject to the COA's audit jurisdiction.

The FPIC fees are not funds that remain exclusively under the private dominion and disposition of the depositor while in government custody. They are required by regulation pursuant to the NCIP's statutory mandate under Republic Act No. 8371,[20] or the Indigenous Peoples' Rights Act of 1997 (IPRA), which establishes a regulatory framework to protect the rights of Indigenous Cultural Communities/Indigenous Peoples (ICCs/IPs) over their ancestral domains. In particular, Sections 57 and 59 of the IPRA prohibit the implementation of projects within ancestral domains without the free and prior informed consent of the affected ICCs/IPs and the corresponding certification from the NCIP. Complementing this, Section 44(m) authorizes the NCIP to issue such certification as a precondition to the grant of permits, licenses, or similar authorities.

To operationalize this mandate, the NCIP Administrative Order No. 3, s. 2002[21] expressly provides that the field-based investigation is the first step in the issuance of a certification precondition.[22] If the FPIC is required, the field-based investigation report must include an estimate of cost to be deposited by the proponent to cover the expenses of the FPIC proceedings.[23] Section 13 thereof further requires the proponent to deposit before the concerned NCIP regional office the FPIC fee in the amount as estimated by the said office, taking into account transportation, food allowance, and other necessary expenditures. The same provision requires that the deposit be properly documented, that any remaining unspent amount be duly accounted for and returned, and that collection of the FPIC fees on cost estimates made without sufficient basis shall be considered as an act of illegal exaction.[24]

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20 Republic Act No. 8371 (1997).

21 NCIP Administrative Order No. 3-02 (2002), Revised Guidelines for FPIC and Issuance of Certificate Precondition.

22 NCIP Administrative Order No. 3-02, sec. 9.

23 NCIP Administrative Order No. 3-02, sec. 10.

24 NCIP Administrative Order No. 3-02, sec. 13. *See also* Article 213, paragraph 2, Revised Penal Code, which states:

ARTICLE 213. *Frauds Against the Public Treasury and Similar Offenses.* — The penalty of *prision correccional* in its medium period to *prision mayor* in its minimum period, or a fine ranging from 200 to 10,000 pesos, or both, shall be imposed upon any public officer who:

. . . .

2. Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:
   (a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law.
   (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially.
   (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

Clearly, the FPIC deposit is not merely held in trust for the proponent. The obligation to pay arises from compliance with a regulatory requirement imposed by law. The NCIP, in turn, does not simply hold the funds for safekeeping. It exercises statutory authority to determine, collect, and administer the funds as part of its mandate to carry out the FPIC process, including facilitating consultations, coordinating proceedings, and ensuring compliance with the requirements of the law.[25] Thus, contrary to Sumiton's assertion, the NCIP does not act as a mere passive conduit with no authority over the funds.

This stands in marked contrast to election protest deposits. In election protests, the deposit remains attributable to the protestant and is held by the tribunal only to answer for expenses incidental to the proceedings in his or her protest, without any transfer of ownership or beneficial control to the government. The tribunal's authority over the funds is confined to applying them to the specified expenses incidental to the protest, after which any unused amount is returned to the depositor.

By contrast, the FPIC deposit fees are exacted as part of a regulatory process, and their collection and use are integrated into the State's exercise of its authority to protect the ICCs/IPs rights. Thus, upon receipt by the NCIP, the funds come under the custody of accountable officers authorized by law to administer and disburse them for the conduct of the FPIC process. In this sense, the funds assume a public character, as they are received, controlled, and applied in furtherance of a governmental function.

Neither does the fact that any unspent balance may later be returned to the project proponent render the FPIC deposit fees analogous to election protest deposits. In election protests, the return of any excess amount reflects the purely custodial character of the tribunal's possession of the funds. Ownership and beneficial control remain with the protestant throughout.

The FPIC deposit fees operate differently. The refund mechanism merely ensures that the fees correspond to the actual costs of the FPIC process and prevents illegal exaction. While any excess amount may ultimately be refunded to the project proponent, the funds, during the pendency of the process, remain subject to governmental control, accounting, and audit requirements.

Therefore, while the FPIC deposit fees originate from private project proponents, they are collected and controlled by the State for a defined public purpose, namely the protection of the rights of the ICCs/IPs through the FPIC process mandated by law. They therefore properly fall within the COA's audit jurisdiction.

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[25] NCIP Administrative Order No. 3-02, sec. 14.

Accordingly, I vote to **DISMISS** the Petition.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice