

## RE: PROPERTIES PROPOSED TO BE PURCHASED BY ASSOCIATE JUSTICE JOSE C. VITUG

*A.M. No. 04-7-05-SC. September 30, 2004*

Ponente: TINGA, J.

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### TINGA, J.:

In two separate letters dated July 12, 2004 and July 14, 2004, then Associate Justice Jose C. Vitug requested permission to purchase motor vehicles, office equipment, appliances and pieces of furniture (the “items”) assigned to him during his incumbency.

The Court approved Justice Vitug’s request in its Resolution dated July 20, 2004.

Also on July 20, 2004, the Department of Budget and Management (DBM) informed the Chief Justice that the request for release of funds for payment of Justice Vitug’s terminal leave and gratuity benefits was partially disallowed to the extent of One Million One Hundred Two Thousand One Hundred Twenty Seven Pesos and Fifty Nine Centavos (P1,102,127.59). According to the DBM, the amount disallowed represents the proportionate retirement gratuity benefits corresponding to the special allowance received by Justice Vitug pursuant to Republic Act No. 9227[1] (R.A. No. 9227) and the excess Representation and Travel Allowances (RATA) computation. It advised that under Section 34 of the General Provisions of Republic Act No. 9206[2] (the 2003 GAA), the disallowed amount should be charged not against the General Fund of the government but against the fund from which the special allowance was drawn, which it insinuated is not the General Fund.[3]

In a letter dated July 29, 2004, Justice Vitug requested that since he still has a receivable from the Court in the amount of P1,102,127.59—the amount that the DBM disallowed and made payable by the Court, the disallowed portion pertaining to his RATA be charged against prior years’ savings of retirement gratuity and terminal leave benefits; that the amount corresponding to his special allowance under R.A. No. 9227 earmarked; and that the total amount of P1,102,127.59 credited to the purchase of the items approved by the Court in its July 20, 2004 Resolution.

On July 30, 2004, Ms. Corazon M. Ordoñez, Chief of the Fiscal Management and Budget Office (FMBO) of the Court, indorsed the July 29, 2004 letter of Justice Vitug to the Chief Justice for appropriate action.

On August 3, 2004, the Court in a Resolution referred the matter to the Office of Chief Attorney (OCAT) for study and recommendation.

On August 23, 2004, the OCAT submitted its Report on the matter. It also submitted an addendum thereto on September 4, 2004.

The OCAT disagrees with the DBM’s view that the portion of Justice Vitug’s retirement gratuity and terminal leave benefits corresponding to his allowance under R.A. No. 9227 should be taken from the Special Allowance for the Judiciary (SAJ) created pursuant that law, the SAJ being the fund from which the special allowance under R.A. No. 9227 is sourced.[4]

It contends that the second sentence of Section 34 of the 2003 GAA, relied upon by the DBM in making the disallowance, does not apply to Justices and judges. The OCAT asserts that it is the first sentence of Section 34, which states that “personnel benefits costs of government officials and employees shall be charged against the funds from which their compensations are paid”, that applies to Justices and judges. The second sentence of Section 34, which pertains to government employees whose salaries are drawn from special funds, does not apply to Justices and judges.[5]

The OCAT explains that under the law,[6] the SAJ is to be used only for the grant of special allowances for Justices, judges and all other positions in the Judiciary with the equivalent rank of Justices of the Court of Appeals and of the Regional Trial Court. The use of a special fund such as the SAJ for a purpose under than what is provided in the law creating such fund would be violative of the Constitution.[7]

The OCAT further states that while Section 5 of R.A. No. 9227 provides that the allowances actually received by a Justice shall be included in the computation of his retirement benefits, the inclusion in the computation does not mean that the amount corresponding thereto should be sourced from the SAJ because by then, the retired justice would no longer be an incumbent member of the Judiciary entitled to a special allowance under R.A. No. 9227. Upon retirement, a retired Justice would be entitled to receive only his retirement benefits.[8]

The OCAT also explains[9] that the disallowed amount of P1,102,127.59 has two components: (a) terminal leave benefits of P356,482.99 and (b) retirement gratuity of P745,644.00. These are broken down as follows:

A. Terminal leave benefits of P356,482.99

1. Terminal leave benefits

[taken from the Special Allowance  
for Justices and Judges Account] - P327,797.76

2. Additional allowances as

Committee Chair (RATA)  
[taken from the Court's savings] 28,685.22

B. Retirement Gratuity of P745,644.00

1. Retirement Gratuity

[taken from the Special Allowance  
for Justices and Judges Account] - P685,644.60

2. Additional Allowances as

Division Chair (RATA)  
[taken from the Court's savings] 60,000.00[10]

According to the OCAT, the additional allowances forming part of the terminal leave and retirement gratuity benefits which are granted out of the Court's savings may also be paid out from such savings. However, the

Special Allowance components of the terminal leave and retirement gratuity benefits should be taken from the General Fund.[11]

Anent the request of Justice Vitug that of the P1,102,127.59, the portion pertaining to his RATA be charged against prior years' savings of retirement gratuity and terminal leave benefits and the amount corresponding to his special allowance under R.A. No. 9227 be earmarked and credited to his purchase of the items, the OCAT recommends that the request be denied.

The OCAT argues that a setting off cannot take place under the circumstances because the relationship between the Court and Justice Vitug is not that of creditor and debtor, but rather that of seller and buyer. Neither can the portion pertaining to his special allowance as a justice be earmarked for the purchase of the items because payment thereof will not be sourced from the Court's savings but from the General Fund. The only option available would be to request the DBM to immediately release the Special Allowance component of the amount receivable by Justice Vitug.[12]

Resolution of the issues presented before the Court largely hinges on the determination of the funding source of the retirement gratuity and terminal leave benefits of Justices and judges, i.e., whether it is the General Fund or the SAJ.

The Court agrees with the recommendation of the OCAT that Justice Vitug's terminal leave benefits and retirement gratuity, corresponding to the special allowance under R.A. No. 9227 which he received during his incumbency, should be taken from the General Fund.

Section 34 of the General Provisions of the 2003 GAA reads:

*Funding of Personnel Benefits.—The personnel benefits costs of government officials and employees shall be charged against the funds from which their compensations are paid. All authorized supplemental or additional compensation, fringe benefits, and other personal service costs of officials and employees whose salaries are drawn from special accounts or special funds, such as salary increases, step increment for length of service, incentive and service fees, commutation of vacation and sick leaves, retirement and life insurance premiums, compensation insurance premiums, health insurance premiums, Home Development Mutual Fund (HDMF) contributions, hospitalization and medical benefits, scholarship and educational benefits, training and seminar expenses, all kinds of allowances, whether commutable or reimbursable, in cash or in kind, and other personnel benefits and privileges authorized by law, including the payment of retirement gratuities, separation and terminal leave benefits, shall similarly be charged against the corresponding fund from which their basic salaries are drawn and in no case shall such personnel benefits costs be charged against the General Fund of the National Government. Officials and employees on detail with other offices, including the representatives and support personnel of auditing units assigned to serve other offices or agencies, shall be paid their salaries, emolument, allowances and the foregoing supplemental compensation, fringe benefits and other personal services costs from the appropriations of their parent agencies, and in no case shall such be charged against the appropriations of the agencies where they are assigned or detailed, except when authorized by law. (Emphasis supplied).*

Section 34 lays down the rule that the personnel benefits costs of government officials and employees have to be charged against the funds from which their compensations are paid. For the application of the rule, the Section classifies such officials and employees into two (2) groups. The first group includes officials and employees whose compensations or salaries are drawn from the General Fund. They are covered by the first sentence of the Section. On the other hand, the second group covers officials and employees whose compensations or salaries are drawn from special accounts or special funds. They are referred to in the second sentence of the Section.

The General Fund is the same as the appropriations from the General Appropriation Act.[13]

Under the first sentence of the Section, the personnel benefits costs of the first group are chargeable against the General Fund even if one or all their benefits, aside from their salaries, are sourced from special funds. In contrast, in accordance with the second sentence of the Section, the second group's personnel benefits costs are chargeable to the special accounts or special funds from which their salaries are drawn even if they receive benefits from the General Fund. Clearly then, the determinant in identifying the funding source for the benefits is the fund from which the salaries or compensations are drawn.

A careful reading of Section 34 reveals that it is the first situation that applies to Justices and judges. The salary of a Justice or judge is taken from the General Fund of the government, not from the SAJ. Thus, following Section 34 of the General Provisions of the 2003 GAA, the retirement benefits of a Justice should be taken also from the General Fund.

As explained in the OCAT Report dated September 4, 2004, thus:

Apparently, the DBM has misinterpreted the law in taking the position that the Special Allowance component of the retirement gratuity and terminal leave benefits should be drawn from the source of the Special allowance which, under Administrative Circular No. 35-2004 (Guidelines in the Allocation of the Legal Fee Collected under Rule 141 of the Rules of Court, as amended, between the Special Allowance for the Judiciary Fund and the Judiciary Development Fund), is now deposited with the Land Bank of the Philippines for the account of the "Special allowance for the Judiciary Fund" or SAJ Fund.

Rep. Act No. 9227 creates a Special Fund for the Special Allowance as follows:

SEC. 3. Funding Source. The amount necessary to implement the additional compensation in the form of special allowances granted under this Act shall be sourced from, and charged against the legal fees originally prescribed, imposed and collected under Rule 141 of the Rules of Court prior to the promulgation of the amendments under Presidential Decree No. 1949, dated July 18, 1984, and from the increases in current fees and new fees which may be imposed by the Supreme Court of the Philippines after the effectivity of this Act.

Under this provision of law, the fund for the Special Allowance has two components: (1) the "legal fees originally prescribed, imposed and collected under Rule 141 of the Rules of Court prior to the promulgation of the amendments under Presidential Decree No. 1949" creating the Judiciary Development Fund (JDF), and (2) "increases in current fees and new fees which may be imposed" by the Court.

Fund Source No. 1 used to be deposited with the National Treasury and formed part of the General Fund in accordance with Section 3 of the General Provisions of the GAA for FY 2003. P.D. No. 1949 mentioned in Section 3 of Rep. Act No. 9227, established the JDF only out of the "increase in the legal fees prescribed in the amendments to Rule 141" of the Rules of Court. Upon the effectivity of Rep. Act No. 9227 authorizing this portion of the General Fund for the Special Allowance, fund Source No.1 acquired the character of a Special Fund intended for the special purpose of granting Special Allowance to Justices and Judges and Judiciary officials with the "equivalent rank" of Justices and Judges, and hence, it has since been segregated from the General Fund and deposited in the account called Special Account for the Judiciary (SAJ).

Fund Source No. 2, on the other hand, or the "increases in current fees and new fees" that have been imposed by the Court through A.M. No. 04-2-04-SC (Re: Proposed Revision of Rule 141, Revised Rules of Court) apparently pursuant to the directive of Section 3 of Rep. Act No. 9227, would not longer form part of the JDF, as the amounts have been earmarked by the law to be utilized as the Special allowance. Like Fund source No. 1, the amount constituting Fund Source No. 2 are now deposited with the SAJ.

Consequently, upon the effectivity of Rep. Act No. 9227, legal fees collected under Rule 141 of the Rules of Court are now completely covered by two special funds: (1) the JDF, consisting of the "increase in the legal fees

prescribed in the amendments to Rule 141 of the Rules of Court,” and (2) the SAJ Fund consisting of: (a) the “legal fees originally prescribed, imposed and collected under Rule 141 of the rules of Court prior to the promulgation of the amendments” P.D. No. 1949, and (b) the “increases in current fees and new fees which may be imposed by the Supreme Court of the Philippines” after the effectivity of Rep. Act No. 9227. Consequently, all the legal fees prescribed by Rule 141 are now covered by the said special funds.[14]

The OCAT further notes that the amounts granted to Justices or judges under R.A. No. 9227 is not salary but an allowance, or an emolument granted in addition to their fixed compensation.[15] According to the OCAT, it is only upon the passage of a law mandating an increase in the salary rates of Justices and judges under Republic Act No. 6758[16] (R.A. No. 6758) that the special allowance under R.A. No. 9227 shall be converted as part of their basic salary. In the event that such a law is passed, the amounts received by Justices and judges under R.A. No. 9227 would become part of their salary and accordingly be included in the computation of their retirement benefits.

Still, it is worthy to note that even if the salaries of Justices and judges under R.A. No. 6758 have not yet been increased by law, Section 5 of R.A. 9227[17] expressly states that the special allowance actually received by a Justice or judge during his incumbency shall be included in the computation of his retirement benefits.

However, as a special fund, the SAJ can only be used for the purposes for which it was created, namely, the grant of special allowances to incumbent or serving Justices, judges and all other positions in the Judiciary with the equivalent rank of Justices of the Court of Appeals and of the Regional Trial Court.[18] It cannot therefore be availed of to grant the retirement gratuity, terminal leave or other benefits to a retired Justice, judge or employee of the Judiciary with a rank equivalent to that of a Court of Appeals Justice or a Regional Trial Court judge.

Section 5 of R.A. No. 9227 only mandates that the actual amount of special allowances received by a Justice during his incumbency under that law be included in the computation of his retirement benefits. It does not ordain the source from which where the portion of the retirement benefit corresponding to the special allowances will be taken. There being no exception under R.A. No. 9227 to the general rule under Section 34 of the 2003 GAA, the general rule that the personnel benefits of a government employee whose salary is taken from the General Fund must also be taken from the General Fund applies.

Hence, the portion of Justice Vitug’s unreleased terminal leave and retirement gratuity benefits payable from the Special Allowance for Justices and Judges Account, amounting to One Million Thirteen Thousand Four Hundred Forty Two Pesos and Thirty Six Centavos (P1,013,442.36)[19] should be taken from the General Fund.

The remaining Eighty Eight Thousand Six Hundred Eighty Five Pesos and Twenty Two Centavos (P88,685.22) of the amount disallowed by the DBM,[20] which corresponds to the terminal leave benefits and additional allowance (RATA) of Justice Vitug as Chair of the Committee on Legal Education and Bar Matters, may be paid out of the savings of the Court since such additional allowance was sourced out of the Court’s savings.

With respect to the request of Justice Vitug that the portion of his benefits disallowed by the DBM corresponding to his RATA be charged against prior years’ savings of retirement gratuity and terminal leave benefits and that the amount corresponding to his special allowance under R.A. No. 9227 be earmarked, the Court can only grant the same to the extent of P88,685.22 as above mentioned .

As correctly pointed out by the OCAT, the amount of P1,013,442.36, representing a huge chunk of the retirement and terminal leave benefits still owing to Justice Vitug, is chargeable to the General Fund and not to the Court’s funds. The purchase price of the items which the Court has allowed Justice Vitug to purchase cannot be set-off against such amount because it is not the Court which owes that amount to Justice Vitug. However, the smaller

amount of P88,685.22 chargeable to the savings of the Court may be set-off against the amount due from Justice Vitug as payment for the items he purchased since to that extent, the Court of Justice Vitug are creditors and debtors of each other.

The Civil Code provides that compensation shall take place when two persons, in their own right, are creditors and debtors of each other,[21] provided that the following requisites are present:

- (1) Each one of the obligors be bound principally, and that he be at the same time a principal creditor of the other;
- (2) That both debts consist in a sum of money, or if the things due are consumable, that they be of the same kind, and also of the same quality if the latter has been stated;
- (3) That the two debts be due;
- (4) That they be both liquidated and demandable; and
- (5) That over neither of them there be any retention or controversy, commenced by third persons and communicated in due time to the debtor.[22]

The Court declares that compensation may take place between itself and Justice Vitug to the extent of P88,685.22 since all the requisites of a valid compensation are present to the extent of the said amount.

Thus, upon recording of the set-off in the books of account and other relevant records of the Court, Justice Vitug may retrieve the items which the Court has allowed him to purchase equivalent to a maximum of P88,685.22.

WHEREFORE, in view of the foregoing, the Court RESOLVED to:

- 1) PARTIALLY GRANT the request of Justice Jose C. Vitug for the setting off of the amounts receivable by him directly from the Court corresponding to his additional allowance (RATA) as Division Chair and retirement gratuity in the amount of Eighty Eight Thousand Six Hundred Eighty Five Pesos and Twenty Two Centavos (P88,685.22);
- 2) DIRECT the Fiscal Management and Budget Office to release the amount of Eighty Eight Thousand Six Hundred Eighty Five Pesos and Twenty Two Centavos (P88,685.22), representing components of the retirement and terminal leave benefits of Justice Jose C. Vitug that were granted out of the savings of the Court;
- 3) DIRECT the Department of Budget and Management to issue a Notice of Cash Allotment (NCA) and Special Allotment Release Order (SARO) for the amount of One Million Thirteen Thousand Four Hundred Forty Two Pesos and Thirty Six Centavos (P1,013,442.36) within fifteen (15) days from receipt of this Decision; and
- 4) AUTHORIZE Justice Vitug to retrieve the items which the Court had allowed him to purchase in its July 20, 2004 Resolution, to the extent of P88,685.22, after the compensation between the Court and Justice Vitug to the extent of such amount shall have been recorded in the books of account and other relevant records of the Court.

**SO ORDERED.**

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., and Azcuna, JJ., concur.  
Chico-Nazario, J., on leave.

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[1] An Act Granting Additional compensation in the Form of Special Allowances for Justices, Judges and All Other Positions in the Judiciary with the Equivalent Rank of Justices of the Court of Appeals and Judges of the Regional Trial Court and for Other Purposes. The law took effect on November 9, 2003 following its publication in Today on October 25, 2003.

[2] The General Appropriations Act of 2003. Since Congress did not enact an appropriations law for the fiscal year 2004, R.A. No. 9206 is deemed reenacted for 2004 and shall remain in force and effect until Congress enacts a General Appropriations Act for 2004 [Const., Art. VI, Sec. 25 (7)].

[3] The text of the Advice of NCA (National Cash Allotment) Issued dated July 20, 2004, sent by the DBM to the Chief Justice reads:

Hon. HILARIO G. DAVIDE, JR.

xxx

Attention: Atty. Luzviminda D. Puno  
Clerk of Court

ADVICE OF NCA ISSUED  
(Fund 101)

Sir:

Please be advised that the amount of FIVE MILLION SIX HUNDRED THIRTY NINE THOUSAND ONE HUNDRED SIXTY FIVE PESOS ONLY (P5,639,165) was credited to your account, details as follows:

NCA No. : 227997-0

MDS Sub\_Account No. : 2059-90033-4

GSB Branch : LBP-Taft Avenue

Purpose : To cover funding requirements for payment of terminal leave and retirement gratuity benefits of former Justice Jose C. Vitug

The difference of P1,102,127.59 between the amount requested and the amount herein released corresponds to the terminal leave (P356,482.99) and retirement gratuity (P745,644.60) benefits of Justice Jose Vitug due to the inclusion of the special allowance granted under R.A. 9227, which is chargeable against the fund from which said allowance was drawn pursuant to Section 34 of the General Provisions of R.A. 9206 as re-enacted, and the excess RATA computation.

Notwithstanding this release, disbursement of funds by departments/agencies shall be subject to existing, budgeting, accounting and auditing rules and regulations.

Very truly yours,

EMILIA T. BONCODIN By:  
Secretary (Sgd.)

MARIO L. RELAMPAGOS

Undersecretary

The Advice of SARO [Special Allotment Release Order] Issued, also dated July 20, 2004, signed by Undersecretary Relampagos reproduced the explanation in the Advice of NCA Issued for the difference of P1,102,127.59 in the amount requested by the Court and the amount released by the DBM.

[4] OCAT Report dated September 4, 2004, pp. 5-12.

[5] OCAT Report dated September 4, 2004, pp. 3-4.

[6] R.A. No. 9227 in relation to Section 29, Article VI of the Constitution.

[7] OCAT Report dated August 23, 2004, pp. 6-8; OCAT Report dated September 4, 2004, pp. 9-11.

[8] OCAT Report dated September 4, 2004, pp. 9-10.

[9] In its Report dated August 23, 2004, p. 14, the OCAT cited the computation made by the Chief of the Budget Division of the Court's Fiscal Management and Budget Office.

[10] See OCAT Report dated August 23, 2004, p. 14.

[11] Ibid. at 15.

[12] Id. at 15-16.

[13] Sec. 3 of the GAA for FY 2003 provides that "all fees, charges, assessments, and other receipts or revenues collected by departments, bureaus, offices or agencies in the exercise of their functions, at such rates as are now or may be approved by the Secretary concerned, shall be deposited with the National Treasury and shall accrue to the General Fund pursuant to Section 44, chapter 5, Book VI of E. O. No. 292 and Section 65 of P.D. No. 1445. . ." The Administrative Code of 1987 (E.O. No. 292) provides in Section 44, supra, as follows: Accrual of Income to Unappropriated Surplus of the General Fund. – Unless otherwise specifically provided by law, all income accruing to the departments, offices and agencies by virtue of the provisions of existing laws, orders and regulations shall be deposited in the National Treasury or in the duly authorized depository of the Government and shall accrue to the unappropriated surplus of the General Fund of the Government; Provided, That amounts received in trust and from business-type activities of government may be separately recorded and disbursed in accordance with such rules and regulations as may be determined by the Permanent Committee created under this Act." Sec. 65 of P.D. No. 1445 (Government Auditing Code of the Philippines) also provides for "[a] accrual of income to unappropriated surplus of the General Fund."

[14] OCAT Report dated September 4, 2004, pp. 5-6.

[15] Id. at 7. The OCAT, citing Section 286, Article 1, Chapter 5, Title 5, Book III of the Government Accounting and Auditing Manual, explains that an "allowance" is an emolument granted in addition to fixed compensation or in exchange for services rendered and paid or given in cash or in kind to officers and employees entitled thereto under specific authority of law.

[16] The Salary Standardization Law.

[17] Section 5, R.A. 9227 provides:

Inclusion in the Computation of Retirement Benefits.—For purposes of retirement, only the allowances actually received and the tranche or tranches of the special allowance already implemented and received pursuant to this Act by the justices, judges and all other positions in the Judiciary with the equivalent rank of justices of the Court of Appeals and judges of the Regional Trial Court as authorized under existing laws shall, at the date of their retirement, be included in the computation of their respective retirement benefits.

[18] Section 1, R.A. No. 9227.

[19] This amount corresponds to the P327,797.76 as terminal leave benefits and P685,644.60 as retirement gratuity taken from the Special Allowance for Justices and Judges Account. Please see page 6 of this Resolution.

**[20] P1,102,127.59.**

[21] Article 1278.

[22] Article 1279, Civil Code.

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