

BENITO M. BUSTAMANTE, PETITIONER, VS. COMMISSIONER ON AUDIT, AND MARTHA ROXANA T. CABURIAN, RESPONDENTS.

G.R. No. 103309. November 27, 1992

Ponente: CAMPOS, JR., J.

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CAMPOS, JR., J.:

This petition for Certiorari with Preliminary Injunction seeks to annul and set aside the Decision of the respondent Commissioner on Audit (hereinafter referred to as the Commission), dated February 5, 1991 which denied due course to the appeal of petitioner from the disallowance by Regional Auditor Martha Roxana Caburian of petitioner's claim for transportation allowance for the period covering the month of January 1989 in the amount of P1,250.00.

Petitioner is the Regional Legal Counsel of the National Power Corporation (NPC) for the Northern Luzon Region Center covering the provinces of Rizal up to Batanes. As such he was issued a government vehicle with plate number SCC 387. Pursuant to NPC policy as reflected in the Board Resolution No. 81-95 authorizing the monthly disbursement of transportation allowance, the petitioner, in addition to the use of government vehicle, claimed his transportation allowance for the month of January 1989. On May 31, 1990, the petitioner received an Auditor's Notice to Person Liable dated April 17, 1990 from respondent Regional Auditor Martha Roxana Caburian disallowing P1,250.00 representing aforesaid transportation allowance.

In a letter to the said Regional Auditor dated June 18, 1990, the petitioner moved for reconsideration of the disallowance of the claim for transportation allowance. The Regional Auditor denied petitioner's motion in a letter dated June 27, 1990. Petitioner appealed this denial to the Commission on Audit at Quezon City, which denied it due course.

Hence this petition.

The issue to be resolved is whether such denial to give due course to the appeal of herein petitioner constitutes grave abuse of discretion amounting to lack of jurisdiction.

Grave abuse of discretion implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or in other words where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[1]

It is beyond dispute that the discretion exercised in the denial of the appeal is within the power of the Commission on Audit as it is provided in the Constitution:

"Sec. 2. The Commission on Audit shall have the following powers and functions:

"(1) Examine, audit, and settle, in accordance with law and regulations, all accounts pertaining to the revenues and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the

Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations; keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers pertaining thereto; and promulgate accounting and auditing rules and regulations including those for the prevention of irregular, unnecessary, excessive, or extravagant expenditures or uses of funds and property. x x x." (Article XII-D, 1973 Constitution.)[2]

In the exercise of such power it promulgated COA Circular No. 75-6 dated November 7, 1975, regulating the use of government motor vehicles, aircrafts and watercrafts, which, among others, provides:

"VI. Prohibition Against Use of Government Vehicles by Officials provided with transportation allowance –

"No official who has been furnished motor transportation allowance by any government corporations or other office shall be allowed to use motor vehicle transportation operated and maintained from funds appropriated in the abovesited Decree. (Sec. 14, P.D. 733)".

The petitioner takes exception from the coverage of said circular contending that such circular did not mention the NPC as one of the corporations/offices covered by it. We do not agree with him for it is very patent that the circular is addressed, among others, to managing heads of Government-owned or Controlled Corporations, the NPC being held under such category of corporations. Petitioner goes on to argue that existing NPC policy grants transportation allowance to employees in the likes of petitioner. Under the NPC Charter, R.A. 6395, petitioner contends that the NPC has the power to formulate and adopt policies and measures for the management and operation of the NPC.[3] Pursuant thereto, NPC passed Resolution No. 81-95 dated April 20, 1981 authorizing the monthly reimbursement of representation and transportation allowance. This was implemented by Circular 81-11 dated April 22, 1988. He then contends that the COA Circular Nos. 75-6 and 75-6A should be limited in their application to the NPC.

We likewise cannot sustain petitioner's contention that the Commission, in the exercise of its power granted by the Constitution, usurped the statutory functions of the NPC Board of Directors for it leads to the absurd conclusion that a mere Board of Directors of a government-owned and controlled corporation, by issuing a resolution, can put to naught a constitutional provision which has been ratified by the majority of the Filipino people. If We will not sustain the Commission's power and duty to examine, audit and settle accounts pertaining to this particular expenditure or use of funds and property, owned or held in trust by this government-owned and controlled corporation, the NPC, We will be rendering inutile this Constitutional Body which has been tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately, the people's property.

The factual finding of the Commission that petitioner was indeed assigned a government vehicle is conclusive upon this Court. The petitioner faults respondent Regional Auditor for relying on her serious doubts as to the nature of the use of the vehicle assigned to petitioner as basis for the disallowance. We hold, however, that such issue is immaterial in the case at bar for the COA circular, in prohibiting the use of motor vehicles by officials receiving transportation allowance, is categorical. The use of government motor vehicle and the claim for transportation allowance are mutually exclusive. It is on this basis that the P1,250.00 transportation allowance was disallowed.

Construed in the light of the applicable law and rules on the matter, the decision of the Commissioner on Audit disallowing the petitioner's claim for transportation allowance does not indicate a grave abuse of discretion which will warrant setting aside and nullifying the said COA ruling.

WHEREOF, the instant petition is hereby DISMISSED for lack of merit. With costs against the petitioner.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Melo, JJ., concur.

[1] *Dimayacyac vs. Court of Appeals*, 93 SCRA 265 (1979); *Alhambra Cigar & Cigarette Mfg. Co., Inc. vs. National Administrator of Regional Office No. 2, Dept. of Labor*, 14 SCRA 1019 (1965); *Hamoy vs. Hon. Sec. of Agriculture & Natural Resources, et al.*, 106 Phil. 1046 (1960).

[2] The corresponding provision in the 1987 Constitution reads as follows:

"Sec. 2. (1) The Commission on Audit shall have the power, authority and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of and expenditures or uses of funds and property, owned or held in trust by or pertaining to, the government, or any of its subdivisions, agencies, or instrumentalities, including government-owned and controlled corporations with original charters and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non--governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. x x x.

"(2) The Commission shall have exclusive authority, subject to the limitations in the Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties." (Article IX-D).

[3] R.A. 6395, Sec. 6 (a).

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