

RUFINO O. ESLAO, IN HIS CAPACITY AS PRESIDENT OF PANGASINAN STATE UNIVERSITY, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 108310. September 01, 1994

Ponente: FELICIANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-108310/>

FELICIANO, J.:

In this Petition for Certiorari, Rufino O. Eslao in his capacity as President of the Pangasinan State University ("PSU") asks us to set aside Commission on Audit ("COA") Decisions Nos. 1547 (1990) and 2571 (1992) which denied honoraria and per diems claimed under National Compensation Circular No. 53 by certain PSU personnel including petitioner.

On 9 December 1988, PSU entered into a Memorandum of Agreement ("MOA")[1] with the Department of Environment and Natural Resources ("DENR") for the evaluation of eleven (11) government reforestation operations in Pangasinan.[2] The evaluation project was part of the commitment of the Asian Development Bank ("ADB") under the ADB/OECF Forestry Sector Program Loan to the Republic of the Philippines and was one among identical project agreements entered into by the DENR with sixteen (16) other state universities.

On 9 December 1988, a notice to proceed[3] with the review and evaluation of the eleven (11) reforestation operations was issued by the DENR to PSU. The latter complied with this notice and did proceed.

On 16 January 1989, per advice of the PSU Auditor-in-Charge with respect to the payment of honoraria and per diems of PSU personnel engaged in the review and evaluation project, PSU Vice President for Research and Extension and Assistant Project Director Victorino P. Espero requested the Office of the President, PSU, to have the University's Board of Regents ("BOR") confirm the appointments or designations of involved PSU personnel including the rates of honoraria and per diems corresponding to their specific roles and functions.[4]

The BOR approved the MOA on 30 January 1989[5] and on 1 February 1989, PSU issued Voucher No. 8902007[6] representing the amount of P70,375.00 for payment of honoraria to PSU personnel engaged in the project. Later, however, the approved honoraria rates were found to be somewhat higher than the rates provided for in the guidelines of National Compensation Circular ("NCC") No. 53. Accordingly, the amounts were adjusted downwards to conform to NCC No. 53. Adjustments were made by deducting amounts from subsequent disbursements of honoraria. By June 1989, NCC No. 53 was being complied with.[7]

On 6 July 1989, Bonifacio Icu, COA resident auditor at PSU, alleging that there were excess payments of honoraria, issued a "Notice of Disallowance"[8] disallowing P64,925.00 from the amount of P70,375.00 stated in Voucher No. 8902007, mentioned earlier. The resident auditor based his action on the premise that Compensation Policy Guidelines ("CPG") No. 80-4, dated 7 August 1980, issued by the Department of Budget and Management which provided for lower rates than NCC No. 53 dated 21 June 1988, also issued by the Department of Budget and Management, was the schedule for honoraria and per diems applicable to work done under the MOA of 9 December 1988 between the PSU and the DENR.

On 18 October 1989, a letter[9] was sent by PSU Vice President and Assistant Project Director Espero to the Chairman of the COA requesting reconsideration of the action of its resident auditor. In the meantime, the Department of Budget and Management ("DBM"), upon request by PSU, issued a letter[10] clarifying that the basis for the project's honoraria should not be CPG No. 80-4 which pertains to locally funded projects but rather NCC No. 53 which pertains to foreign-assisted projects. A copy of this clarification was sent to the COA upon request by PSU.

On 18 September 1990, COA Decision No. 1547[11] was issued denying reconsideration of the decision of its resident auditor. The COA ruled that CPG No. 80-4 is the applicable guideline in respect of the honoraria as CPG No. 80-4 does not distinguish between projects locally funded and projects funded or assisted with monies of foreign-origin.

PSU President Eslao sent a letter[12] dated 20 March 1991 requesting reconsideration of COA Decision No. 1547 (1990) alleging that (a) COA had erred in applying CPG No. 80-4 and not NCC No. 53 as the project was foreign-assisted and (b) the decision was discriminatory -- honoraria based on NCC No. 53 having been approved and granted by COA resident auditors in two (2) other state universities engaged in the same reforestation project. PSU then submitted to the COA (a) a certification[13] from the DENR to the effect that the DENR evaluation project was foreign-assisted and (b) the letter of the DBM quoted in the margin supra.

On 16 November 1992, COA Decision No. 2571 (1992)[14] was issued denying reconsideration.

In the meantime, in December 1990, the DENR informed petitioner of its acceptance of the PSU final reports on the review and evaluation of the government reforestation projects.[15] Subsequently, honoraria for the period from January 1989 to January 1990 were disbursed in accordance with NCC No. 53. A Certificate of Settlement and Balances (CSB No. 92-0005-184 [DENR])[16] was then issued by the COA resident auditor of PSU showing disallowance of alleged excess payment of honoraria which petitioner was being required to return.

The instant Petition prays that (a) COA Decision Nos. 1547 (1990) and 2571 (1992) be set aside; (b) the COA be ordered to pass in audit the grant of honoraria for the entire duration of the project based on the provisions and rates contained in NCC No. 53; and (c) the COA be held liable for actual damages as well as petitioner's legal expenses and attorney's fees.

The resolution of the dispute lies in the determination of the circular or set of provisions applicable in respect of the honoraria to be paid to PSU personnel who took part in the evaluation project, i.e., NCC No. 53 or CPG No. 80-4.

In asserting that NCC No. 53 supplies the applicable guideline and that the COA erred in applying CPG No. 80-4 as the pertinent standard, petitioner contends that:

- (a) CPG No. 80-4 applies to "special projects" the definition and scope of which do not embrace the evaluation project undertaken by petitioner for the DENR;
- (b) NCC No. 53 applies to foreign-assisted projects ("FAPs") while CPG No. 80-4 applies to locally-funded projects as no reference to any foreign component characterizing the projects under its coverage is made;
- (c) the DENR evaluation project is a foreign-assisted project per certification and clarification of the DENR and DBM respectively as well as the implied admission of the COA in its Comment; and
- (d) the DBM's position on the matter should be respected since the DBM is vested with authority to (i) classify positions and determine appropriate salaries for specific position classes, (ii) review the compensation benefits programs of agencies and (iii) design job evaluation programs.

The Office of the Solicitor General, in lieu of a Comment on the Petition, filed a Manifestation^[17] stating that (a) since, per certification of the DENR and Letter/Opinion of the DBM that the project undertaken by PSU is foreign-assisted, NCC No. 53 should apply; and (b) respondent COA's contention that CPG No. 80-4 does not distinguish between projects which are foreign-funded from locally-funded projects deserves no merit, since NCC No. 53, a special guideline, must be construed as an exception to CPG No. 80-4, a general guideline. The Solicitor General, in other words, agreed with the position of petitioner.

Upon the other hand, respondent COA filed its own comment, asserting that:

(a) while the DBM is vested with the authority to issue rules and regulations pertaining to compensation, this authority is regulated by Sec. 2 (2) of Art. IX-D of the 1987 Constitution which vests respondent COA with the power to "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;"

(b) the Organizational Arrangement and Obligations of the Parties sections of the MOA clearly show that the evaluation project is an "inter agency activity" between the DENR and PSU and therefore a "special project";

(c) the issue as to whether the evaluation project is in fact a "special project" has become moot in view of the DBM's clarification/ruling that the evaluation project is foreign-assisted and therefore NCC No. 53, not CPG No. 80-4 which applies only to locally-funded projects, should apply;

(d) the DBM issuance notwithstanding, respondent COA applied CPG No. 80-4 to effectively rationalize the rates of additional compensation assigned to or detailed in "special projects" as its application is without distinction as to the source of funding and any payment therefore in excess of that provided by CPG No. 80-4 is unnecessary, excessive and disadvantageous to the government;

(e) respondent COA's previous allowance of payment of honoraria based on NCC No. 53 or the fact that a full five years had already elapsed since NCC No. 53's issuance does not preclude COA from assailing the circular's validity as "it is the responsibility of any public official to rectify every error he encounters in the performance of his function" and "he is not duty bound to pursue the same mistake for the simple reason that such mistake had been continuously committed in the past";

(f) the DBM ruling classifying the evaluation project as foreign-assisted does not rest on solid ground since loan proceeds, regardless of source, eventually become public funds for which the government is accountable, hence, any project under the loan agreement is to be considered locally-funded;

(g) the DBM ruling constitutes an unreasonable classification, highly discriminatory and violative of the equal protection clause of the Constitution; and

(h) granting arguendo NCC No. 53 is the applicable criterion, petitioner received honoraria in excess of what was provided in the MOA.

We consider the Petition meritorious.

Section 2.1 of CPG No. 80-4 defines "special project" as

"an inter-agency or inter-committee activity or an undertaking by a composite group of officials/employees from various agencies which [activity or undertaking] is not among the regular and primary functions of the agencies involved." (Underscoring and brackets supplied)

Respondent COA maintains that the sections of the MOA detailing the "Organizational Arrangement and Obligations of the Parties" clearly show that the evaluation project is an "inter-agency activity." The pertinent sections of the MOA are as follows:

"ORGANIZATIONAL ARRANGEMENTS

A Coordinating Committee shall be created which shall be responsible for the overall administration and coordination of the evaluation, to be chaired by a senior officer of the DENR. The Committee shall [be] composed [of] the following:

Chairman : Undersecretary for Planning, Policy and Project Management [DENR]

Co-Chairman : Vice-President for Research and Development [PSU]

Members : Director of FMB

Dean, PSU Infanta Campus

Associate Dean, PSU Infanta Campus

Chief, Reforestation Division

Project Director of the ADB Program Loan for Forestry Sector

OBLIGATIONS OF THE PARTIES

Obligations of DENR:

The DENR shall have the following obligations:

1. Provide the funds necessary for the review and reevaluation of eleven (11) reforestation projects.

x x x x x x x x

2. Undertake the monitoring of the study to ascertain its progress and the proper utilization of funds in conformity with the agreed work and financial plan.
3. Reserve the right to accept or reject the final report and in the latter case, DENR may request PSU to make some revisions/modifications on the same.

Obligations of the PSU:

The PSU shall have the following obligations:

1. Undertake the review and evaluation of the eleven (11) DENR-funded reforestation projects in accordance with the attached TOR;
2. Submit regularly to DENR financial status reports apart from the progress report required to effect the second release of funds;
3. Submit the final report to DENR fifteen (15) days after the completion of the work. The report should at least contain the information which appears in Annex D;
4. Return to DENR whatever balance is left of the funds after the completion of work."

Simply stated, respondent COA argues that since the Coordinating Committee is composed of personnel from the DENR and PSU, the evaluation project is an "inter-agency activity" within the purview of the definition of a "special project".

We are unable to agree with respondent COA.

Examination of the definition in CPG No. 80-4 of a "special project" reveals that that definition has two (2)

components: firstly, there should be an inter-agency or inter-committee activity or undertaking by a group of officials or employees who are drawn from various agencies; and secondly, the activity or undertaking involved is not part of the "regular or primary" functions of the participating agencies. Examination of the MOA and its annexes reveals that two (2) groups were actually created. The first group consisted of the coordinating committee, the membership of which was drawn from officials of the DENR and of the PSU; and the second, the evaluation project team itself which was, in contrast, composed exclusively of PSU personnel.[18] We believe that the first component of the CPU No. 80-4's definition of "special project" is applicable in respect of the group which is charged with the actual carrying out of the project itself, rather than to the body or group which coordinates the task of the operating or implementing group. To construe the administrative definition of "special project" otherwise would create a situation, which we deem to be impractical and possibly even absurd, under which any undertaking entered into between the senior officials of government agencies would have to be considered an "inter-agency or inter-committee activity," even though the actual undertaking or operation would be carried out not by the coordinating body but rather by an separate group which might not (as in the present case) be drawn from the agencies represented in the coordinating group. In other words, an "inter-agency or inter-committee activity or x x x undertaking" must be one which is actually carried out by a composite group of officials and employees from the two (2) or more participating agencies.

As already noted, in the case at hand, the project team actually tasked with carrying out the evaluation of the DENR reforestation activity is composed exclusively of personnel from PSU; the project team's responsibility and undertaking are quite distinct from the responsibilities of the coordinating [DENR and PSU] committee. Thus, the project team is not a "composite group" as required by the definition of CPG No. 80-4 of "special projects." It follows that the evaluation projects here involved do not fall within the ambit of a "special project" as defined and regulated by CPG No. 80-4.

We do not consider it necessary to rule on whether the project at hand involved an undertaking "which is not among the regular and primary functions of the agencies involved" since the reforestation activity evaluation group is not, as pointed out above, a "special project" within the meaning of CPG No. 80-4. In any case, this particular issue was not raised by any of the parties here involved.

It is true, as respondent COA points out, that the provisions of CPG No. 80-4 do not distinguish between "a special project" which is funded by monies of local or Philippine origin and "a special project" which is funded or assisted by monies originating from international or foreign agencies. As earlier noted, CPG No. 80-4 was issued by the Department of Budget and Management back in 7 August 1980. Upon the other hand, NCC No. 53 was issued also by the Department of Budget and Management more than eight (8) years later, i.e., 9 December, 1988. Examination of the provisions of NCC No. 53 makes it crystal clear that the circular is applicable to foreign-assisted projects only. The explicit text of NCC No. 53 states that it was issued to

"prescribe/authorize the classification and compensation rates of positions in foreign-assisted projects (FAPs) including honoraria rates for personnel detailed to FAPs and guidelines in the implementation thereof pursuant to Memorandum No. 173 dated 16 May 1988"[19] (Emphasis supplied)

and which apply to all positions in foreign-assisted projects only. Clearly, NCC No. 53 amended the earlier CPG No. 80-4 by carving out from the subject matter originally covered by CPG No. 80-4 all "foreign-assisted [special] projects." CPG No. 80-4 was, accordingly, modified so far as "foreign-assisted [special] projects (FAPs)" are concerned. It is this fact or consequence of NCC No. 53 that respondent COA apparently failed to grasp. Thus, CPG No. 80-4 does not control, nor even relate to, the DENR evaluation project for at least two (2) reasons: firstly, the evaluation project was not a "special project" within the meaning of CPG No. 80-4; secondly, that same evaluation project was a Foreign-Assisted Project to which NCC No. 53 is specifically applicable.

That the instant evaluation project is a Foreign-Assisted Project is borne out by the records: (a) the MOA states that the project is "part of the commitment with the Asian Development Bank (ADB) under the Forestry Sector Program Loan"; (b) the certification issued by the DENR certifies that

"x x x the review and evaluation of DENR reforestation projects undertaken by State Universities and Colleges, one of which is Pangasinan State University, is one of the components of the ADB/OECF Forestry Sector Program Loan which is funded by the loan. It is therefore a foreign-assisted project" (Under-scoring supplied); and

(c) the clarification issued by the DBM stating that

"The honoraria rates of the detailed personnel should not be based on Compensation Policy Guidelines No. 80-4, which pertains to locally funded projects. Since the funding source for this activity come from loan proceeds, National Compensation Circular No. 53 should apply."

Even in its Comment respondent COA submits that

"x x x the issue as to whether or not the project was special already became moot in the face of the opinion/ruling of the DBM that since it (the project) is 'foreign-assisted' NCC 53 should apply, for CPG No. 80-4 applies only to 'locally-funded projects.'"[20]

Under the Administration Code of 1987, the Compensation and Position Classification Bureau of the DBM "shall classify positions and determine appropriate salaries for specific position classes and review appropriate salaries for specific position classes and review the compensation benefits programs of agencies and shall design job evaluation programs." [21] In *Warren Manufacturing Workers Union (WMWU) v. Bureau of Labor Relations*, [22] the Court held that "administrative regulations and policies enacted by administrative bodies to interpret the law have the force of law and are entitled to great respect." It is difficult for the Court to understand why, despite these certifications, respondent COA took such a rigid and uncompromising posture that CPG No. 80-4 was the applicable criterion for honoraria to be given members of the reforestation evaluation project team of the PSU.

Respondent COA's contention that the DBM clarification is unconstitutional as that ruling does not fulfill the requisites of a valid classification [23] is, in the Court's perception, imaginative but nonetheless an after-thought and a futile attempt to justify its action. As correctly pointed out by petitioner, the constitutional arguments raised by respondent COA here were never even mentioned, much less discussed, in COA Decisions Nos. 1547 (1990) and 2571 (1992) or in any of the proceedings conducted before it.

Petitioner also argues that the project's duration stipulated in the MOA was implicitly extended by the parties. The DENR's acceptance, without any comment or objection, of PSU's (a) letter explaining the delay in its submission of the final project report and (b) the final project report itself brought about, according to petitioner, an implied agreement between the parties to extend the project duration. It is also contended that by the very nature of an evaluation project, the project's duration is difficult to fix and as in the case at bar, the period fixed in the MOA is merely an initial estimate subject to extension. Lastly, petitioner argues that whether the project was impliedly extended is an inconsequential consideration; the material consideration being that the project stayed within its budget. The project having been extended, petitioner concludes that the evaluation team should be paid honoraria from the time it proceeded with the project and up to the time the DENR accepted its final report.

Mindful of the detailed provisions of the MOA and Project Proposal governing project duration and project financing as regulated by NCC No. 53, the Court is not persuaded that petitioner can so casually assume implicit consent on the part of the DENR to an extension of the evaluation project's duration.

The "Duration of Work" clause of the MOA provides that

"PSU shall commence the work 10 days from receipt of the Notice to Proceed and shall be completed five months thereafter." (Underscoring supplied)

On 9 December 1988, the DENR advised PSU President Rufino Eslao that PSU "may now proceed with the review and reevaluation as stipulated" in the MOA. The Notice to Proceed further stated that

"Your institution is required to complete the work within five months starting ten (10) days upon receipt of this notice." (Underscoring supplied)

In respect of the financial aspects of the project, the MOA provides that

"The DENR shall have the following obligations:

1. Provide the funds necessary for the review and reevaluation of the eleven (11) reforestation projects x x x in the amount not more than FIVE HUNDRED SIX THOUSAND TWO HUNDRED TWENTY FOUR PESOS (P506,224.00) which shall be spent in accordance with the work and financial plan which attached as Annex C. Fund remittances shall be made on a staggered basis with the following schedule:

a. FIRST RELEASE

Twenty percent (20%) of the total cost to be remitted within fifteen (15) working days upon submission of work plan;

b. SECOND RELEASE

Forty percent of the total cost upon submission of a progress report of the activities that were so far undertaken;

c. THIRD RELEASE

Thirty percent (30%) of the total amount upon submission of the draft final report;

d. FOURTH RELEASE

Ten percent of the total amount [upon submission] of the final report." (Underscoring supplied)

Annex "C" referred to in the MOA is the Project Proposal. Per the Proposal's "Budget Estimate," P175,000.00 and P92,500.00 were allotted for "Expert Services" and "Support Services" respectively itemized as follows:

" PERSONAL SERVICES

EXPERT SERVICES

:

Duration

:

:

Expert

:

of Service

:

Rate/

:

Total

:

(mo.)

:

mo.

:

1. Ecologist

4

P 5,000

P20,000

2. Silviculturist

3

- do -

15,000

3. Forestry

4

- do -

20,000

Economist

4. Soils Expert

2

- do -

10,000

5. Social Forestry

4

- do -

20,000

Expert

6. Management

2

- do -

10,000

Expert

7. Horticulturist

2

- do -

10,000

8. Agricultural

2

- do -

10,000

Engineer

9. System

2

- do -

10,000

Analysts/

Programmer

10. Statistician

2

- do -

10,000

11. Shoreline

2

- do -

10,000

Resources

Expert

12. Animal Science

2

- do -

10,000

Specialist

13. Policy/Administrative

4

- do -

20,000

Expert

TOTAL 175,000

Support Services

Research Associates (2) P8,000

Honorarium P1,000/mo. for 4 months

Special Disbursing Officer (1) 4,000

Honorarium P1,000/mo. for 4 months

Enumerators/Data Gatherers 36,000

360 mandays at P100/manday including COLA

Coders/Encoders 30,000

300 mandays at P100/manday including COLA

Cartographer/Illustrator 5,000

50 mandays at P100/manday including COLA

Documentalist 4,500

45 mandays at P100/manday including COLA

Typist 5,000

50 mandays at P100/manday including COLA

T O T A L P92,500"

In addition, the Proposal already provided a list of identified experts:

"EXPERTS

1. Dr. Victorino P. Espero
Enviromental Science/ Ecology
2. Dean Antonio Q. Repollo
Silviculture
3. Prof. Artemio M. Rebugio
Forestry Economics
4. Ms. Naomenida Olermo
Soils
5. Dr. Elvira R. Castillo
Social Forestry
6. Dr. Alfredo F. Aquino
Management
7. Dr. Lydio Calonge
Horticulture
8. Engr. Manolito Bernabe
Engineering
9. Dr. Elmer C. Vingua
Animal Science
10. Prof. Rolando J. Andico
Systems Analyst/ Programming
11. Dr. Eusebio Miclat, Jr.
Statistics/ Instrumentation
12. Dr. Porferio Basilio
Shoreline Resources
13. Dr. Rufino O. Eslao
Policy Administration"

who, together with six (6) staff members namely Henedina M. Tantoco, Alicia A. Angelo, Yolanda Z. Sotelo,

Gregoria Q. Calela, Nora A. Caburnay and Marlene S. Bernebe composed the evaluation project team. At this point, it should be pointed out that the "Budget Estimate" even provides a duration period for the participation of each and every person whether rendering expert or support services.

On the other hand, NCC No. 53 provides:

"3.3.1 The approved organization and staffing shall be valid up to project completion except for modifications deemed necessary by the Project Manager. The Project Manager shall be given the flexibility to determine the timing of hiring personnel provided the approved man-years for a given position for the duration of the project is not exceeded.

x x x x x x x x

3.6 A regular employee who may detailed to any FAPs on a part-time basis shall be entitled to receive honoraria in accordance with the schedule shown in Attachment II hereof.

x x x x x x x x

3.7 Payment of honoraria shall be made out of project funds and in no case shall payment thereof be made out of regular agency fund.

x x x x x x x x

3.10 The total amount of compensation to be paid shall not exceed the original amount allocated for personal services of the individual foreign-assisted projects. Any disbursement in excess of the original amount allotted for personal services of the individual projects shall be the personal liability and responsibility of the officials and employees authorizing or making such payment." (Underscoring supplied)

Attachment II of NCC No. 53 prescribes the monthly rates allowed for officials/employees on assignment to foreign-assisted special projects:

A. Position Level -- Project Manager/Project Director

Responsibility -- x x x

Parttime -- P2,000.00

B Position Level -- Assistant Project Director

Responsibility -- x x x

Parttime -- P1,500.00

C. Position Level -- Project Consultant

Responsibility -- x x x

Parttime -- P1,000.00

D. Position Level -- Supervisor/Senior Staff Member

Responsibility -- x x x

Parttime -- P1,000.00

E. Position Level -- Staff Member

Responsibility -- x x x

Parttime -- P700.00

Administrative and Clerical Support

A. Position Level -- Administrative Assistant

Responsibility -- x x x

Parttime -- P500.00

B. Position Level -- Administrative Support Staff

Responsibility -- x x x

Parttime -- P400.00

From the clear and detailed provisions of the MOA and Project Proposal in relation to NCC No. 53, consent to any extension of the evaluation project, in this instance, must be more concrete than the alleged silence or lack of protest on the part of the DENR. Although tacit acceptance is recognized in our jurisdiction,[24] as a rule, silence is not equivalent to consent since its ambiguity lends itself to error. And although under the Civil Code there are instances when silence amounts to consent,[25] these circumstances are wanting in the case at bar. Furthermore, as correctly pointed out by the respondent COA, the date when the DENR accepted the final project report is by no means conclusive as to the terminal date of the evaluation project. Examination of the MOA (quoted earlier on pages 19-20) reveals that the submission of reports merely served to trigger the phased releases of funds. There being no explicit agreement between PSU and the DENR to extend the duration of the evaluation project, the MOA's "Budget Estimate" which, among others, provides in detail the duration of service for each member of the evaluation project as amended by the rates provided by NCC No. 53 must be the basis of the honoraria due to the evaluation team.

The other arguments of respondent COA appear to us to be insubstantial and as, essentially, afterthoughts. The COA apparently does not agree with the policy basis of NCC No. 53 in relation to CPG No. 80-4 since COA argues that loan proceeds regardless of source eventually become public funds for which the government is accountable. The result would be that any provisions under any [foreign] loan agreement should be considered locally-funded. We do not consider that the COA is, under its constitutional mandate, authorized to substitute its own judgment for any applicable law or administrative regulation with the wisdom or propriety of which, however, it does not agree, at least not before such law or regulation is set aside by the authorized agency of government -- i.e., the courts -- as unconstitutional or illegal and void. The COA, like all other government agencies, must respect the presumption of legality and constitutionality to which statutes and administrative regulations are entitled[26] until such statute or regulation is repealed or amended, or until set aside in an appropriate case by a competent court (and ultimately this Court).

Finally, we turn to petitioner's claim for moral damages and reimbursement of legal expenses. We consider that this claim cannot be granted as petitioner has failed to present evidence of bad faith or tortious intent warranting an award thereof. The presumption of regularity in the performance of duty must be accorded to respondent COA; its action should be seen as its effort to exercise (albeit erroneously, in the case at bar) its constitutional power and duty in respect of uses of government funds and properties.

WHEREFORE, for all the foregoing, the Petition for Certiorari is hereby GRANTED. COA Decisions Nos. 1547 and 2571, respectively dated 18 September 1990 and 16 November 1992, are hereby SET ASIDE. The instant evaluation project being a Foreign-Assisted Project, the following PSU personnel involved in the project shall be paid according to the Budget Estimate schedule of the MOA as aligned with NCC No. 53:

A. For Experts

Expert

Duration of Service (mo.)

Rate/month

(NCC No. 53

Total

1. Dr Rufino O. Eslao

Policy/Administrative Expert*

4

P2,000

P8,000

2. Dr. Victorio P. Espero

Ecologist**

4

1,500

6,000

3. Dean Antonio Q. Repollo

Silviculturist***

3

1,000

3,000

4. Porf. Artemio M. Rebugio

Forestry Economist

4

1,000

4,000

5. Ms.Naomenida Olermo

Soils Expert

2

1,000

2,000

6. Dr. Elvira R. Castillo

Social Forestry Expert

4

1,000

4,000

7. Dr. Alfredo F. Aquino

Management Expert

2

1,000

2,000

8. Dr. Lydio Calonge

Horticulturist

2

1,000

2,000

9. Engr. Manolito Bernabe

Agricultural Engineer

2

1,000

2,000

10. Prof. Rolando J. Andico

Systems Analyst/Programmer

2

1,000

2,000

11. Dr. Eusebio Miclat, Jr.

Statistician

2

1,000

2,000

12. Dr. Porferio Basilio

Shoreline Resources Expert

2

1,000

2,000

13. Dr. Elmer C. Vingua

Animal Science Specialist

2

1,000

2,000

41,000

* Project Manager/ Project Director

** Assistant Project Director

*** Project Consultants

B. For Support Staff

Expert

Duration of Service (man-mo.)*

Rate/month (NCC No. 53)

Total

1. Henedina M. Tantoco

Research Associate**

4

700

2,800

2. Alicia A. Angelo

Research Associate

4

700

2,800

3. Yolanda Z. Sotelo

Documentalist

2.04

700

1,428

4. Gregoria Q. Calela

Special Disbursing Officer

4

700

2,800

5. Nora A. Caburnay

Typist Assistant***

2.27

500

1,135

6. Marlene S. Bernebe

Cashier

2.27

500

1,135

12,098

* Per Attachment to DBM Clarification dated 10 November 1989, Rollo, p. 59.

** Staff Member

*** Administrative Assistants.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, and Mendoza, JJ., concur.

Cruz and Bidin, JJ., on official leave.

[1] Annex 'A' of Petition, Rollo, pp. 24-49.

[2] Bamboo Pilot Plantation Project (Infanta); Bamboo Plantation Project (Mangatarem); Bamboo Pilot Project (Natividad); Mangrove Revegetation Project (Anda/Bolinao/Alaminos); Manleluag Reforestation Project (Mangatarem); Support to PIADP (Cacaoiten/Mangatarem); Support to PIADP (San Nicolas/Natividad); Support to PIADP (Siwasiw/Sual); San Nicolas Reforestation Project (San Nicolas); Urban Forestry Project (Dagupan City) and Villaverde Trail Revegetation Project (San Nicolas)

[3] Annex 'B' of Petition, Rollo, p. 49.

[4] Annex 'C' of Petition, Rollo, p. 50.

[5] Annex 'D' of Petition, Rollo, p. 51.

[6] Annex 'E' of Petition, Rollo, p. 52.

[7] Annexes 'F', 'G' and 'H', Rollo, pp. 53-55.

[8] Annex "I" of Petition, Rollo, p. 56. The Notice reads:

"July 6, 1989

Mr. Rufino Eslao

University President, PSU Main

Lingayen, Pangasinan

Sir/Madam:

This is to inform you that in our audit of 8902007 (Pres. Rufino O. Eslao and Co.) the amount of P70,375.00 has been disallowed for the following reasons:

Amount paid per payroll..... P 70,375.00

Amount allowed in audit..... 5,450.00

Difference to be refunded.... 64,925.00

Amount paid in excess of the authorized rates under CPG 80-4 dated August 7, 1980 is disallowed.

and you have been determined as one to be jointly and severally liable therefor.

In view of this, you are hereby directed to settle immediately the above disallowance. Failure to do so may compel this Office to adopt the necessary measures to enforce settlement hereof.

Very truly yours,

(SGD) Bonifacio Icu"

[9] Annex 'J' of Petition, Rollo, p. 57.

[10] Annex 'K' of Petition, Rollo, pp. 58-59. The letter reads:

"November 10, 1989

Hon. Rufino O. Eslao

President, Pangasinan State University

Lingayen, Pangasinan

Dear President Eslao,

This pertains to your request for authority to pay the honoraria of Pangasinan State University (PSU) personnel detailed to the Department of Environment and Natural Resources - PSU Project under the ADB assisted Forestry Sector Loan (889/890 PHI).

The honoraria rates of the detailed personnel should not be based on Compensation Policy Guidelines No. 80-4, which pertains to locally funded projects. Since the funding source for this activity come from loan proceeds, National Compensation Circular No. 53 should apply.

It should be pointed out that the provisions of your Memorandum of Agreement with the DENR cannot prescribe higher honoraria rates than that authorized under existing rules and regulations.

In view of the foregoing, attached is the authority to grant honoraria to PSU personnel at the rates prescribed.

We hope that this clarifies the issues in your letter.

Very truly yours,

(SGD.)

for Guillermo N. Carague"

(Underscoring supplied)

[11] Annex 'L' of Petition, Rollo, p. 60. COA Decision NO. 1547 reads:

"September 18, 1990

Mr. Victorino P. Espero

Officer in Charge and

Vice President for Research

and Development

Pangasinan State University

Lingayen, Pangasinan

Sir:

This pertains to your letter dated October 9, 1989, seeking reconsideration of the decision of this Commission contained in a 2nd Indorsement dated May 10, 1989, denying the claim for honoraria and per diems of some personnel of the Pangasinan State University assigned at the DENR Reforestation Project in Pangasinan in excess of those provided under Compensation Policy Guidelines 80-4 dated April 7, 1980.

You allege that the project in question does not fall under the contemplation of Compensation Policy Guideline (sic) No. 80-4 since it is a foreign-assisted project. We find your position to be meritless. It bears stress that the purpose of the guideline is to rationalize the rates of additional compensation of officials on assignment to special projects and to ensure uniform practice therein. Thus, it is believed that CPG No. 80-4 remains to be the present guideline on the matter since it does not qualify whether or not the same is applicable only to locally funded special projects. Where the law does not distinguish, no distinction should be made.

Premises considered, the herein request for reconsideration has to be, as it is hereby, denied.

Very truly yours,

(SGD.) Eufemio C. Domingo

Chairman

(SGD.) Bartolome C. Fernandez

Commissioner"

[12] Annex 'M' of Petition, Rollo, p. 61.

[13] Annex 'N' of Petition, Rollo, p. 62. The Certification reads:

"28 September 1990

C E R T I F I C A T I O N

This is to certify that the review and evaluation of DENR reforestation projects undertaken by State Universities and Colleges, one of which is Pangasinan State University, is one of the components of the ADB/OECF Forestry Sector Program Loan which is funded by the loan. It is therefore a foreign-assisted project.

(SGD.) Celestino B. Ulep

Assistant Program Director

National Program Coordinating Office"

(Underscoring supplied)

[14] Annex 'O' of Petition, Rollo, p. 63.

[15] Annex 'P' of Petition, Rollo, p. 64.

[16] Annex 'Q' of Petition, Rollo, p. 65. The Certificate reads:

"December 29, 1992

CERTIFICATE OF SETTLEMENT AND BALANCES

To: Dr. Rufino O. Eslao - University President

Ms. Marlene S. Benebe - Cashier III

PSU, Lingayen, Pangasinan

Attention: Mrs. Gregoria Galela - Accountant

We have audited in accordance with prescribed auditing procedures, the accounts of Dr. Rufino O. Eslao and Ms. Marlene S. Benebe as University President and Cashier III respectively for the period from October 16, 1990 to January 31, 1991 and arrived at a balance of P92,350.00 as of January 31, 1991 with disallowances and suspensions amounting to P92,350.00 as indicated in detail in Sections 1.A.1 and 1.A.2 respectively hereof. Items disallowed are charges against the persons held liable therefore, while items suspended and not settled within 90 days after receipt of the Notice of Suspension (NS) shall become disallowances.

Prompt settlement of all suspensions and disallowances is mandatory. The necessary action to settle the suspension is indicated in the individual NS issued.

x x x x x x x x

(SGD.) Bonifacio B. Ico

State Auditor IV

(Auditor-in-charge)"

[17] Rollo, pp. 90-97.

[18] Per the Project Proposal, the evaluation project team was composed of thirteen (13) experts and a support staff of at least eight (8) personnel. Per Annexes "F," "G" and "H," the team actually consisted of nineteen (19) persons -- thirteen (13) experts and six (6) support staff members, all nineteen (19) persons being drawn exclusively from the PSU.

[19] Rollo, p. 72.

[20] Rollo, pp. 111-112.

[21] Book IV, Title XVII, Chapter 3, Sec. 7(3).

[22] 159 SCRA 387 (1988) citing Espanol v. Philippine Veterans Administration, 135 SCRA 314 (1985).

[23] NCC No. 53 is allegedly a classification (a) that is based on the source of funding which is not substantial; (b) that is violative of the standardization of compensation clause of the Constitution; (c) that is not germane to the purpose of the law, i.e. it serves no legitimate social, economic or political goals and (d) provides no justification to discriminate against local capital.

[24] Article 1319-1320 of the Civil Code.

[25] Articles 1670, 1870-1973 of the Civil Code.

[26] Fernandez v. Torres, 215 SCRA 489 (1992); Garcia v. The Executive Secretary, et al, 211 SCRA 219 (1992); Gonzales v. Land Bank of the Philippines, 183 SCRA 520 (1990); Philippine Association of Service Exporters, Inc. v. Drilon, 163 SCRA 386 (1988); Espanol v. Chairman, Philippine Veterans Administration, 137 SCRA 314 (1985); Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila, 20 SCRA 849

(1967).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.