

**ELEANOR DELA CRUZ, FEDERICO LUCHICO, JR., SOLEDAD EMILIA CRUZ, JOEL LUSTRIA, HENRY PAREL, HELENA HABULAN, PORFIRIO VILLENA, JOSEPH FRANCIA, CARMELLA TORRES, JOB DAVID, CESAR MEJ...**

*G.R. No. 138489. November 29, 2001*

Ponente: SANDOVAL-GUTIERREZ, J.

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**SANDOVAL-GUTIERREZ, J.:**

This petition for certiorari[1] assails the Decision No. 98-381 dated September 22, 1998, rendered by the Commission on Audit (COA), denying petitioners' appeal from the Notice of Disallowance No. 97-011-061 issued by the NHA Resident Auditor on October 23, 1997. Such Notice disallowed payment to petitioners of their representation allowances and per diems for the period from August 19, 1991 to August 31, 1996 in the total amount of P276,600.00.

Petitioners, numbering 20, were members of the Board of Directors of the National Housing Authority (NHA) from 1991 to 1996.

On September 19, 1997, the COA issued Memorandum No. 97-038[2] directing all unit heads/auditors/team leaders of the national government agencies and government-owned and controlled corporations which have effected payment of any form of additional compensation or remuneration to cabinet secretaries, their deputies and assistants, or their representatives, in violation of the rule on multiple positions, to (a) immediately cause the disallowance of such additional compensation or remuneration given to and received by the concerned officials, and (b) effect the refund of the same from the time of the finality of the Supreme Court En Banc Decision in the consolidated cases of Civil Liberties Union vs. Exexecutive Secretary and Anti-Graft League of the Philippines, Inc. et al. vs. Secretary of Agrarian Reform, et al., promulgated on February 22, 1991.[3] The COA Memorandum further stated that the said Supreme Court Decision, which became final and executory on August 19, 1991,[4] declared Executive Order No. 284 unconstitutional insofar as it allows Cabinet members, their deputies and assistants to hold other offices, in addition to their primary offices, and to receive compensation therefor.

Accordingly, on October 23, 1997, NHA Resident Auditor Salvador J. Vasquez issued Notice of Disallowance No. 97-011-061[5] disallowing in audit the payment of representation allowances and per diems of "Cabinet members who were the ex- officio members of the NHA Board of Directors and/or their respective alternates who actually received the payments." The total disallowed amount of P276,600 paid as representation allowances and per diems to each of the petitioners named below, covering the period from August 19, 1991 to August 31, 1996, is broken down as follows:[6]

"NATIONAL HOUSING AUTHORITY

SCHEDULE OF PAID REPRESENTATION/PER DIEM OF THE BOARD OF DIRECTORS

For the period August 19, 1991 to August 31, 1996

AGENCY

MEMBERS OF BOARD OF DIRECTORS

AMOUNT DISALLOWED

DOF

Eleanor dela Cruz

P25,200.00

(1991-1993)

DTI

Federico Luchico, Jr.

36,450.00

(1991-1992)

DOF

Soledad Emilia Cruz

57,300.00

(1992-1995)

DOLE

Joel Lustria

4,500.00

(1992)

DOLE

Henry Parel

2,250.00

(1992)

DOF

Helena Habulan

4,050.00

(1993-1994)

DOF

Porfirio Villena

6,750.00

(1993)

DTI

Joseph Francia

73,500.00

(1993-1995)

DOLE

Carmela Torres

4,500.00

(1993)

DPWH

Job David

6,750.00

(1993-1994)

DPWH

Cesar Mejia

3,150.00

(1993)

DOF

Ma. Lourdes V. Dedal

2,250.00

(1993)

DTI

Alice Tiongson

900.00

(1994)

DOLE

Reynaluz Conferido

11,250.00

(1994-1995)

DOLE

Philippe Lim

4,500.00

(1994-1995)

DOF

Nerissa Sanchez

2,700.00

(1995)

DOF

Mary Luz Elaine Puracan

1,800.00

(1995)

DOLE

Rodolfo Quimbo

7,200.00

(1995)

DOLE

Tito Genilo

14,400.00

(1995)

DPWH

Oscar Abundo

7,200.00

(1995-1996)

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P276,600.00"

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Petitioners, through then Chairman Dionisio C. Dela Serna of the NHA Board of Directors, appealed from the Notice of Disallowance to the Commission on Audit[7] based on the following grounds:

- The Decision of the Supreme Court in *Civil Liberties Union and Anti-Graft League of the Philippines, Inc.* was clarified in the Resolution of the Court En Banc on August 1, 1991, in that the constitutional ban against dual or multiple positions applies only to the members of the Cabinet, their deputies or assistants. It does not cover other appointive officials with equivalent rank or those lower than the position of Assistant Secretary; and
- The NHA Directors are not Secretaries, Undersecretaries or Assistant Secretaries and that they occupy positions lower than the position of Assistant Secretary.

On September 22, 1998, the COA issued Decision No. 98-381[8] denying petitioners' appeal, thus:

"After circumspect evaluation of the facts and issues raised herein, this Commission finds the instant appeal devoid of merit. It must be stressed at the outset that the Directors concerned were not sitting in the NHA Board in their own right but as representatives of cabinet members and who are constitutionally prohibited from holding any other office or employment and receive compensation therefor, during their tenure (Section 13, Article VII, Constitution; *Civil Liberties Union vs. Executive Secretary*, 194 SCRA 317).

"It may be conceded that the directors concerned occupy positions lower than Assistant Secretary which may exempt them from the prohibition (under) the doctrine enunciated in *Civil Liberties Union vs. Executive Secretary*, supra. However, their positions are merely derivative; they derive their authority as agents of the authority they are representing; their power and authority is sourced from the power and authority of the cabinet members they are sitting for. Sans the cabinet members, they are non-entities, without power and without personality to act in any manner with respect to the official transactions of the NHA. The agent or representative can only validly act and receive benefits for such action if the principal authority he is representing can legally do so for the agent can only do so much as his principal can do. The agent can never be larger than the principal. If the principal is absolutely barred from holding any position in and absolutely prohibited from receiving any remuneration from the NHA or any government agency, for that matter, so must the agent be. Indeed, the water cannot rise above its source."[9]

Hence, this petition.

Presidential Decree No. 757 is the law "Creating the National Housing Authority and dissolving the existing housing agencies, defining its powers and functions, providing funds therefor, and for other purposes." Section 7 thereof provides:

"SEC. 7. Board of Directors. - The Authority shall be governed by a Board of Directors, hereinafter referred to as the Board, which shall be composed of the Secretary of Public Works, Transportation and Communication, the Director-General of the National Economic and Development Authority, the Secretary of Finance, the Secretary of Labor, the Secretary of Industry, the Executive Secretary and the General Manager of the Authority. From among the members, the President will appoint a chairman. The members of the Board may have their respective alternates who shall be the officials next in rank to them and whose acts shall be considered the acts of their principals with the right to receive their benefit: Provided, that in the absence of the Chairman, the Board shall elect a temporary presiding officer. x x x (Emphasis ours)

It bears stressing that under the above provisions, the persons mandated by law to sit as members of the NHA Board are the following: (1) the Secretary of Public Works, Transportation and Communications, (2) the Director-General of the National Economic and Development Authority, (3) the Secretary of Finance, (4) the Secretary of Labor, (5) the Secretary of Industry, (6) the Executive Secretary, and (7) the General Manager of the NHA. While petitioners are not among those officers, however, they are "alternates" of the said officers, "whose acts shall be considered the acts of their principals".

On this point, Section 13, Art. VII of the 1987 Constitution, provides:

"SEC. 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during their tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

"The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not during his tenure be appointed as Members of the Constitutional Commissions, or the Office of Ombudsman, or as Secretaries, Undersecretaries, Chairmen, or heads of bureaus or offices, including government-owned or controlled corporations and their subsidiaries."

Interpreting the foregoing Constitutional provisions, this Court, in *Civil Liberties Union and Anti-Graft League of the Philippines, Inc.*,<sup>[10]</sup> held:

"The prohibition against holding dual or multiple offices or employment under Section 13, Article VII of the Constitution must not, however, be construed as applying to posts occupied by the Executive officials specified therein without additional compensation in an ex-officio capacity as provided by law and as required by the primary functions of said officials' office. The reason is that these posts do not comprise 'any other office' within the contemplation of the constitutional prohibition but are properly an imposition of additional duties and functions on said officials. x x x

x x x x x x x x

"To reiterate, the prohibition under Section 13, Article VII is not to be interpreted as covering positions held without additional compensation in ex-officio capacities as provided by law and as required by the primary functions of the concerned official's office. The term ex-officio means 'from office; by virtue of office'. It refers to an 'authority derived from official character merely, not expressly conferred upon the individual character, but rather annexed to the official position.' Ex-officio likewise denotes an 'act done in an official character, or as a consequence of office, and without any other appointment or authority than that conferred by the office.' An ex-officio member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment. To illustrate, by express provision of law, the Secretary of Transportation and Communications is the ex-officio Chairman of the Board of the Philippine Ports Authority, and the Light Rail Transit Authority.

x x x x x x x x

"The ex-officio position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an ex-officio member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary banking matters, which come under the jurisdiction of his department. For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism. By whatever name it is designated, such additional compensation is prohibited by the Constitution."

x x x x x x x x

(Emphasis ours)

Since the Executive Department Secretaries, as ex-officio members of the NHA Board, are prohibited from receiving "extra (additional) compensation, whether it be in the form of a per diem or an honorarium or an allowance, or some other such euphemism," it follows that petitioners who sit as their alternates cannot likewise be entitled to receive such compensation. A contrary rule would give petitioners a better right than their principals.

We thus rule that in rendering its challenged Decision, the COA did not gravely abuse its discretion.

WHEREFORE, the petition is DISMISSED.

**SO ORDERED.**

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Pardo, Ynares-Santiago, De Leon, Jr., and Carpio, JJ., concur.

Quisumbing, J., no part. Former DOLE Secretary.

Buena, J., on official leave.

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[1] Filed under Rule 65 of the 1997 Rules of Civil Procedure, as amended.

[2] Annex "B" of Petition; Rollo, pp. 24-25.

[3] G.R. No. 83896 and G.R. No. 83815, 194 SCRA 317 (1991).

[4] Annex "B" of Petition, *supra*.

[5] Annex "C" of Petition, *supra*, pp. 26-27.

[6] P. 2 of Annex "C" of Petition, *ibid.*, p. 27.

[7] Pursuant to NHA Board Resolution No. 3819 dated Nov. 20, 1997 authorizing its Chairman to file the appeal (Annex "D", Petition, Rollo, p. 28).

[8] Annex "A" of Petition, *supra*, pp. 21-23.

[9] *Ibid.*, p. 22.

[10] *Supra*.

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