

JUDGE TOMAS C. LEYNES, PETITIONER, VS. THE COMMISSION ON AUDIT (COA), HON. GREGORIA S. ONG, DIRECTOR, COMMISSION ON AUDIT AND HON. SALVACION DALISAY, PROVINCIAL AUDITOR, RESPOND...*G.R. No. 143596. December 11, 2003*

Ponente: CORONA, J.

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Before us is a petition for certiorari under Rule 65 in relation to Section 2, Rule 64 of the Rules of Court, seeking to reverse and set aside the decision[1] dated September 14, 1999 of the Commission on Audit (COA), affirming the resolution of COA Regional Director Gregoria S. Ong dated March 29, 1994 which in turn affirmed the opinion dated October 19, 1993 of the Provincial Auditor of Oriental Mindoro, Salvacion M. Dalisay. All three denied the grant of P1,600 monthly allowance to petitioner Judge Tomas C. Leynes by the Municipality of Naujan, Oriental Mindoro.

FACTUAL ANTECEDENTS

Petitioner Judge Tomas C. Leynes who, at present, is the presiding judge of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 40 was formerly assigned to the Municipality of Naujan, Oriental Mindoro as the sole presiding judge of the Municipal Trial Court thereof. As such, his salary and representation and transportation allowance (RATA) were drawn from the budget of the Supreme Court. In addition, petitioner received a monthly allowance of P944 from the local funds[2] of the Municipality of Naujan starting 1984. [3]

On March 15, 1993, the Sangguniang Bayan of Naujan, through Resolution No. 057, sought the opinion of the Provincial Auditor and the Provincial Budget Officer regarding any budgetary limitation on the grant of a monthly allowance by the municipality to petitioner judge. On May 7, 1993, the Sangguniang Bayan unanimously approved Resolution No. 101 increasing petitioner judge's monthly allowance from P944 to P1,600 (an increase of P656) starting May 1993.[4] By virtue of said resolution, the municipal government (the Municipal Mayor and the Sangguniang Bayan) approved a supplemental budget which was likewise approved by the Sangguniang Panlalawigan and the Office of Provincial Budget and Management of Oriental Mindoro. In 1994, the Municipal Government of Naujan again provided for petitioner judge's P1,600 monthly allowance in its annual budget which was again approved by the Sangguniang Panlalawigan and the Office of Provincial Budget and Management of Oriental Mindoro.[5]

On February 17, 1994, Provincial Auditor Salvacion M. Dalisay sent a letter to the Municipal Mayor and the Sangguniang Bayan of Naujan directing them to stop the payment of the P1,600 monthly allowance or RATA to petitioner judge and to require the immediate refund of the amounts previously paid to the latter. She opined that the Municipality of Naujan could not grant RATA to petitioner judge in addition to the RATA the latter was already receiving from the Supreme Court. Her directive was based on the following:

Section 36, RA No. 7645, General Appropriations Act of 1993

Representation and Transportation Allowances. The following officials and those of equivalent rank as may be determined by the Department of Budget and Management (DBM) while in the actual performance of their respective functions are hereby granted monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices, not exceeding the rates indicated below . . .

National Compensation Circular No. 67 dated January 1, 1992, of the Department of Budget and Management

Subject: Representation and Transportation Allowances of National Government Officials and Employees

x x x x x x x x

- Funding Source: In all cases, commutable and reimbursable RATA shall be paid from the amount appropriated for the purpose and other personal services savings of the agency or project from where the officials and employees covered under this Circular draw their salaries. No one shall be allowed to collect RATA from more than one source.[6] (emphasis supplied)

Petitioner judge appealed to COA Regional Director Gregoria S. Ong who, however, upheld the opinion of Provincial Auditor Dalisay and who added that Resolution No. 101, Series of 1993 of the Sangguniang Bayan of Naujan failed to comply with Section 3 of Local Budget Circular No. 53 dated September 1, 1993 outlining the conditions for the grant of allowances to judges and other national officials or employees by the local government units (LGUs). Section 3 of the said budget circular provides that:

Sec. 3 Allowances. — LGUs may grant allowances/additional compensation to the national government officials/employees assigned to their locality at rates authorized by law, rules and regulations and subject to the following preconditions:

- That the annual income or finances of the municipality, city or province as certified by the Accountant concerned will allow the grant of the allowances/additional compensation without exceeding the general limitations for personal services under Section 325 of RA 7160;
- That the budgetary requirements under Section 324 of RA 7160 including the full requirement of RA 6758 have been satisfied and provided fully in the budget as certified by the Budget Officer and COA representative in the LGU concerned;
- That the LGU has fully implemented the devolution of personnel/functions in accordance with the provisions of RA 7160;
- That the LGU has already created mandatory positions prescribed in RA 7160; and
- That similar allowances/additional compensation are not granted by the national government to the officials/employees assigned to the LGU.[7]

Petitioner judge appealed the unfavorable resolution of the Regional Director to the Commission on Audit. In the meantime, a disallowance of the payment of the P1,600 monthly allowance to petitioner was issued. Thus he received his P1,600 monthly allowance from the Municipality of Naujan only for the period May 1993 to January 1994.

On September 14, 1999, the COA issued its decision affirming the resolution of Regional Director Gregoria S. Ong:

The main issue . . . is whether or not the Municipality of Naujan, Oriental Mindoro can validly provide RATA to its Municipal Judge, in addition to that provided by the Supreme Court.

Generally, the grant of (RATA) [sic] to qualified national government officials and employees pursuant to Section 36 of R.A. 7645 [General Appropriations Act of 1993] and NCC No. 67 dated 01 January 1992 is subject to the following conditions to wit:

- Payable from the programmed /appropriated amount and others from personal services savings of the respective offices where the officials or employees draw their salaries;
- Not exceeding the rates prescribed by the Annual General Appropriations Act;
- Officials /employees on detail with other offices or assigned to serve other offices or agencies shall be paid from their parent agencies;
- No one shall be allowed to collect RATA from more than one source.

On the other hand, the municipal government may provide additional allowances and other benefits to judges and other national government officials or employees assigned or stationed in the municipality, provided, that the finances of the municipality allow the grant thereof pursuant to Section 447, Par. 1 (xi), R.A. 7160, and provided further, that similar allowance/additional compensation are not granted by the national government to the official/employee assigned to the local government unit as provided under Section 3(e) of Local Budget Circular No. 53, dated 01 September 1993.

The conflicting provisions of Section 447, Par. (1) (xi) of the Local Government Code of 1991 and Section 36 of the General Appropriations Act of 1993 [RA 7645] have been harmonized by the Local Budget Circular No. 53 dated 01 September 1993, issued by the Department of Budget and Management pursuant to its powers under Section 25 and Section 327 of the Local Government Code. The said circular must be adhered to by the local government units particularly Section 3 thereof which provides the implementing guidelines of Section 447, Par. (1) (xi) of the Local Government Code of 1991 in the grant of allowances to national government officials/employees assigned or stationed in their respective local government units.

Consequently, the subject SB Resolution No. 101 dated 11 May 1993 of the Sangguniang Bayan of Naujan, Oriental Mindoro, having failed to comply with the inherent precondition as defined in Section 3 (e). . . is null and void. Furthermore, the Honorable Judge Tomas C. Leynes, being a national government official is prohibited to receive additional RATA from the local government fund pursuant to Section 36 of the General Appropriations Act (R.A. 7645 for 1993) and National Compensation Circular No. 67 dated 1 January 1992.[8] (emphasis ours)

ASSIGNMENTS OF ERROR

Petitioner judge filed a motion for reconsideration of the above decision but it was denied by the Commission in a resolution dated May 30, 2000. Aggrieved, petitioner filed the instant petition, raising the following assignments of error for our consideration:

I

WHETHER OR NOT RESOLUTION NO. 101, SERIES OF 1993 OF NAUJAN, ORIENTAL MINDORO, WHICH GRANTED ADDITIONAL ALLOWANCE TO THE MUNICIPAL TRIAL JUDGE OF NAUJAN, ORIENTAL MINDORO AND INCREASING HIS CURRENT REPRESENTATION AND TRAVELLING ALLOWANCE (RATA) TO AN AMOUNT EQUIVALENT TO THAT RECEIVED MONTHLY BY SANGGUNIAN MEMBERS IN PESOS: ONE THOUSAND SIX HUNDRED (P1,600.00) EFFECTIVE 1993, IS VALID.

II

WHETHER OR NOT THE POWER OF MUNICIPAL GOVERNMENTS TO GRANT ADDITIONAL

ALLOWANCES AND OTHER BENEFITS TO NATIONAL GOVERNMENT EMPLOYEES STATIONED IN THEIR MUNICIPALITY IS VERY EXPLICIT AND UNEQUIVOCAL UNDER THE LOCAL GOVERNMENT CODE OF 1991 PARTICULARLY SECTION 447 IN RELATION TO SECTIONS 17 AND 22 THEREOF.

III

WHETHER OR NOT THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) CAN, BY THE ISSUANCE OF BUDGET CIRCULARS, RESTRICT A MUNICIPAL GOVERNMENT FROM EXERCISING ITS GIVEN LEGISLATIVE POWERS OF PROVIDING ADDITIONAL ALLOWANCES AND OTHER BENEFITS TO NATIONAL EMPLOYEES STATIONED OR ASSIGNED TO THEIR MUNICIPALITY FOR AS LONG AS THEIR FINANCES SO ALLOW.

IV

WHETHER OR NOT THE LOCAL GOVERNMENT CODE OF 1991 PARTICULARLY SECTION 447 (a) (1) (xi) WAS EXPRESSLY OR IMPLIEDLY REPEALED OR MODIFIED BY REPUBLIC ACT 7645 AND THE GENERAL APPROPRIATIONS ACT OF 1993.

V

WHETHER OR NOT PETITIONER WAS ENTITLED TO RECEIVE THE ADDITIONAL ALLOWANCES GRANTED TO HIM BY THE MUNICIPALITY OF NAUJAN, ORIENTAL MINDORO BY VIRTUE OF ITS RESOLUTION NO. 101, SERIES OF 1993.

POSITION OF COA

Respondent Commission on Audit opposes the grant by the Municipality of Naujan of the P1,600 monthly allowance to petitioner Judge Leynes for the reason that the municipality could not grant RATA to judges in addition to the RATA already received from the Supreme Court.[9] Respondent bases its contention on the following:

- National Compensation Circular No. 67 (hereafter NCC No. 67) dated January 1, 1992 of the Department of Budget and Management (DBM) which provides that (a) the RATA of national officials and employees shall be payable from the programmed appropriations or personal services savings of the agency where such officials or employees draw their salary and (b) no one shall be allowed to collect RATA from more than one source;
- the General Appropriations Act of 1993 (RA 7645) which provided that the RATA of national officials shall be payable from the programmed appropriations of their respective offices and
- Local Budget Circular No. 53 (hereafter LBC No. 53) dated September 1, 1993 of the DBM which prohibits local government units from granting allowances to national government officials or employees stationed in their localities when such allowances are also granted by the national government or are similar to the allowances granted by the national government to such officials or employees.[10]

POSITION OF PETITIONER

Petitioner judge, on the other hand, asserts that the municipality is expressly and unequivocally empowered by RA 7160 (the Local Government Code of 1991) to enact appropriation ordinances granting allowances and other benefits to judges stationed in its territory. Section 447(a)(1)(xi) of the Local Government Code of 1991 imposes only one condition, that is, "when the finances of the municipal government allow." The Code does not impose any other restrictions in the exercise of such power by the municipality. Petitioner also asserts that the DBM

cannot amend or modify a substantive law like the Local Government Code of 1991 through mere budget circulars. Petitioner emphasizes that budget circulars must conform to, not modify or amend, the provisions of the law it seeks to implement.[11]

HISTORY OF GRANT OF ALLOWANCES TO JUDGES

The power of local government units (LGUs) to grant allowances to judges stationed in their respective territories was originally provided by Letter of Instruction No. 1418 dated July 18, 1984 (hereafter LOI No. 1418):

Whereas, the State is cognizant of the need to maintain the independence of the Judiciary;

Whereas, the budgetary allotment of the Judiciary constitutes only a small percentage of the national budget;

Whereas, present economic conditions adversely affected the livelihood of the members of the Judiciary;

Whereas, some local government units are ready, willing and able to pay additional allowances to Judges of various courts within their respective territorial jurisdiction;

Now, therefore, I, Ferdinand E. Marcos, President of the Republic of the Philippines, do hereby direct:

- Section 3 of Letter of Implementation No. 96 is hereby amended to read as follows:

"3.

The allowances provided in this letter shall be borne exclusively by the National Government. However, provincial, city and municipal governments may pay additional allowances to the members and personnel of the Judiciary assigned in their respective areas out of available local funds but not to exceed P1,500.00; Provided, that in Metropolitan Manila, the city and municipal governments therein may pay additional allowances not exceeding P3,000.00. (emphasis ours)"[12]

On June 25, 1991, the DBM issued Circular No. 91-7 outlining the guidelines for the continued receipt of allowances by judges from LGUs:

Consistent with the constitutional provision on the fiscal autonomy of the judiciary and the policy of the National Government of allowing greater autonomy to local government units, judges of the Judiciary are hereby allowed to continue to receive allowances at the same rates which they have been receiving from the Local Government Units as of June 30, 1989, subject to the following guidelines:

- That the continuance of payment of subject allowance to the recipient judge shall be entirely voluntary and non-compulsory on the part of the Local Government Units;
- That payment of the above shall always be subject to the availability of local funds;
- That it shall be made only in compliance with the policy of non-diminution of compensation received by the recipient judge before the implementation of the salary standardization;
- That the subject allowance shall be given only to judges who were receiving the same as of June 30, 1989 and shall be co-terminous with the incumbent judges; and
- That the subject allowance shall automatically terminate upon transfer of a judge from one local government unit to another local government unit. (emphasis ours)

On October 10, 1991, Congress enacted RA 7160, otherwise known as the Local Government Code of 1991.[13] The power of the LGUs to grant allowances and other benefits to judges and other national officials stationed in their respective territories was expressly provided in Sections 447(a)(1)(xi), 458(a)(1)(xi) and 468(a)(1)(xi) of the

Code.

On March 15, 1994, the DBM issued Local Budget Circular No. 55 (hereafter LBC No. 55) setting out the maximum amount of allowances that LGUs may grant to judges. For provinces and cities, the amount should not exceed P1,000 and for municipalities, P700.

On December 3, 2002, we struck down the above circular in *Dadole, et al. vs. COA*.^[14] We ruled there that the Local Government Code of 1991 clearly provided that LGUs could grant allowances to judges, subject only to the condition that the finances of the LGUs allowed it. We held that "setting a uniform amount for the grant of allowances (was) an inappropriate way of enforcing said criterion." Accordingly, we declared that the DBM exceeded its power of supervision over LGUs by imposing a prohibition that did not jibe with the Local Government Code of 1991.^[15]

ESTABLISHED PRINCIPLES INVOLVED

From the foregoing history of the power of LGUs to grant allowances to judges, the following principles should be noted:

- the power of LGUs to grant allowances to judges has long been recognized (since 1984 by virtue of LOI No. 1418) and, at present, it is expressly and unequivocally provided in Sections 447, 458 and 468 of the Local Government Code of 1991;
- the issuance of DBM Circular No. 91-7 dated June 25, 1991 and LBC No. 55 dated March 15, 1994 indicates that the national government recognizes the power of LGUs to grant such allowances to judges;
- in Circular No. 91-7, the national government merely provides the guidelines for the continued receipt of allowances by judges from LGUs while in LBC No. 55, the national government merely tries to limit the amount of allowances LGUs may grant to judges and
- in the recent case of *Dadole, et al. vs. COA*, the Court upheld the constitutionally enshrined autonomy of LGUs to grant allowances to judges in any amount deemed appropriate, depending on availability of funds, in accordance with the Local Government Code of 1991.

OUR RULING

We rule in favor of petitioner judge. Respondent COA erred in opposing the grant of the P1,600 monthly allowance by the Municipality of Naujan to petitioner Judge Leynes.

DISCUSSION OF OUR RULING

Section 447(a)(1)(xi) of RA 7160, the Local Government Code of 1991, provides:

(a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants . . . , and shall:

(1) Approve ordinances and pass resolutions necessary for an efficient and effective municipal government, and in this connection shall:

x x x x x x x x

(xi) When the finances of the municipal government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the municipality; (emphasis ours)

Respondent COA, however, contends that the above section has been repealed, modified or amended by NCC No. 67 dated January 1, 1992, RA 7645 (the General Appropriations Act of 1993) and LBC No. 53 dated September 1, 1993.[16]

It is elementary in statutory construction that an administrative circular cannot supersede, abrogate, modify or nullify a statute. A statute is superior to an administrative circular, thus the latter cannot repeal or amend it.[17] In the present case, NCC No. 67, being a mere administrative circular, cannot repeal a substantive law like RA 7160.

It is also an elementary principle in statutory construction that repeal of statutes by implication is not favored, unless it is manifest that the legislature so intended. The legislature is assumed to know the existing laws on the subject and cannot be presumed to have enacted inconsistent or conflicting statutes.[18] Respondent COA alleges that Section 36 of RA 7645 (the GAA of 1993) repealed Section 447(a)(l)(xi) of RA 7160 (the LGC of 1991). A review of the two laws, however, shows that this was not so. Section 36 of RA 7645 merely provided for the different rates of RATA payable to national government officials or employees, depending on their position, and stated that these amounts were payable from the programmed appropriations of the parent agencies to which the concerned national officials or employees belonged. Furthermore, there was no other provision in RA 7645 from which a repeal of Section 447(a)(l)(xi) of RA 7160 could be implied. In the absence, therefore, of any clear repeal of Section 447(a)(l)(xi) of RA 7160, we cannot presume such intention on the part of the legislature.

Moreover, the presumption against implied repeal becomes stronger when, as in this case, one law is special and the other is general.[19] The principle is expressed in the maxim *generalia specialibus non derogant*, a general law does not nullify a specific or special law. The reason for this is that the legislature, in passing a law of special character, considers and makes special provisions for the particular circumstances dealt with by the special law. This being so, the legislature, by adopting a general law containing provisions repugnant to those of the special law and without making any mention of its intention to amend or modify such special law, cannot be deemed to have intended an amendment, repeal or modification of the latter.[20]

In this case, RA 7160 (the LGC of 1991) is a special law[21] which exclusively deals with local government units (LGUs), outlining their powers and functions in consonance with the constitutionally mandated policy of local autonomy. RA 7645 (the GAA of 1993), on the other hand, was a general law[22] which outlined the share in the national fund of all branches of the national government. RA 7645 therefore, being a general law, could not have, by mere implication, repealed RA 7160. Rather, RA 7160 should be taken as the exception to RA 7645 in the absence of circumstances warranting a contrary conclusion.[23]

The controversy actually centers on the seemingly sweeping provision in NCC No. 67 which states that "no one shall be allowed to collect RATA from more than one source." Does this mean that judges cannot receive allowances from LGUs in addition to the RATA from the Supreme Court? For reasons that will hereinafter be discussed, we answer in the negative.

The pertinent provisions of NCC No. 67 read:

- Rules and Regulations:

3.1.1 Payment of RATA, whether commutable or reimbursable, shall be in accordance with the rates prescribed for each of the following officials and employees and those of equivalent ranks, and the conditions enumerated under the pertinent sections of the General Provisions of the annual General Appropriations Act (GAA):

x x x x x x x x

- Funding Source:

In all cases, commutable and reimbursable RATA shall be paid from the amount appropriated for the purpose and other personal services savings of the agency or project from where the officials and employees covered under this Circular draw their salaries. No one shall be allowed to collect RATA from more than one source. (emphasis ours)

In construing NCC No. 67, we apply the principle in statutory construction that force and effect should not be narrowly given to isolated and disjoined clauses of the law but to its spirit, broadly taking all its provisions together in one rational view.[24] Because a statute is enacted as a whole and not in parts or sections, that is, one part is as important as the others, the statute should be construed and given effect as a whole. A provision or section which is unclear by itself may be clarified by reading and construing it in relation to the whole statute.[25]

Taking NCC No. 67 as a whole then, what it seeks to prevent is the dual collection of RATA by a national official from the budgets of "more than one national agency." We emphasize that the other source referred to in the prohibition is another national agency. This can be gleaned from the fact that the sentence "no one shall be allowed to collect RATA from more than one source" (the controversial prohibition) immediately follows the sentence that RATA shall be paid from the budget of the national agency where the concerned national officials and employees draw their salaries. The fact that the other source is another national agency is supported by RA 7645 (the GAA of 1993) invoked by respondent COA itself and, in fact, by all subsequent GAAs for that matter, because the GAAs all essentially provide that (1) the RATA of national officials shall be payable from the budgets of their respective national agencies and (2) those officials on detail with other national agencies shall be paid their RATA only from the budget of their parent national agency:

Section 36, RA 7645, General Appropriations Act of 1993:

Representation and Transportation Allowances. The following officials and those of equivalent rank as may be determined by the Department of Budget and Management (DBM) while in the actual performance of their respective functions are hereby granted monthly commutable representation and transportation allowances payable from the programmed appropriations provided for their respective offices, not exceeding the rates indicated below, which shall apply to each type of allowance:

x x x x x x x x

Officials on detail with other offices, including officials of the Commission of Audit assigned to serve other offices or agencies, shall be paid the allowance herein authorized from the appropriations of their parent agencies. (emphasis ours)

Clearly therefore, the prohibition in NCC No. 67 is only against the dual or multiple collection of RATA by a national official from the budgets of two or more national agencies. Stated otherwise, when a national official is on detail with another national agency, he should get his RATA only from his parent national agency and not from the other national agency he is detailed to.

Since the other source referred in the controversial prohibition is another national agency, said prohibition clearly does not apply to LGUs like the Municipality of Naujan. National agency of course refers to the different offices, bureaus and departments comprising the national government. The budgets of these departments or offices are fixed annually by Congress in the General Appropriations Act.[26] An LGU is obviously not a national agency. Its annual budget is fixed by its own legislative council (Sangguniang Bayan, Panlungsod or Panlalawigan), not by Congress. Without doubt, NCC No. 67 does not apply to LGUs.

The prohibition in NCC No. 67 is in fact an administrative tool of the DBM to prevent the much-abused practice of multiple allowances, thus standardizing the grant of RATA by national agencies. Thus, the purpose clause of NCC No. 67 reads:

This Circular is being issued to ensure uniformity and consistency of actions on claims for representation and transportation allowance (RATA) which is primarily granted by law to national government officials and employees to cover expenses incurred in the discharge or performance of their duties and responsibilities.

By no stretch of the imagination can NCC No. 67 be construed as nullifying the power of LGUs to grant allowances to judges under the Local Government Code of 1991. It was issued primarily to make the grant of RATA to national officials under the national budget uniform. In other words, it applies only to the national funds administered by the DBM, not the local funds of LGUs.

To rule against the power of LGUs to grant allowances to judges as what respondent COA would like us to do will subvert the principle of local autonomy zealously guaranteed by the Constitution.[27] The Local Government Code of 1991 was specially promulgated by Congress to ensure the autonomy of local governments as mandated by the Constitution. By upholding, in the present case, the power of LGUs to grant allowances to judges and leaving to their discretion the amount of allowances they may want to grant, depending on the availability of local funds, we ensure the genuine and meaningful local autonomy of LGUs.

We now discuss the next contention of respondent COA: that the resolution of the Sangguniang Bayan of Naujan granting the P1,600 monthly allowance to petitioner judge was null and void because it failed to comply with LBC No. 53 dated September 1, 1993:

Sec. 3 Allowances. — LGUs may grant allowances/additional compensation to the national government officials/employees assigned to their locality at rates authorized by law, rules and regulations and subject to the following preconditions:

- That the annual income or finances of the municipality, city or province as certified by the Accountant concerned will allow the grant of the allowances/additional compensation without exceeding the general limitations for personal services under Section 325 of RA 7160;
- That the budgetary requirements under Section 324 of RA 7160 including the full requirement of RA 6758 have been satisfied and provided fully in the budget as certified by the Budget Officer and COA representative in the LGU concerned;
- That the LGU has fully implemented the devolution of personnel/functions in accordance with the provisions of RA 7160;
- That the LGU has already created mandatory positions prescribed in RA 7160.
- That similar allowances/additional compensation are not granted by the national government to the officials/employees assigned to the LGU.

Though LBC No. 53 of the DBM may be considered within the ambit of the President's power of general supervision over LGUs,[28] we rule that Section 3, paragraph (e) thereof is invalid. RA 7160, the Local Government Code of 1991, clearly provides that provincial, city and municipal governments may grant allowances to judges as long as their finances allow. Section 3, paragraph (e) of LBC No. 53, by outrightly prohibiting LGUs from granting allowances to judges whenever such allowances are (1) also granted by the national government or (2) similar to the allowances granted by the national government, violates Section 447(a)(1)(xi) of the Local Government Code of 1991.[29] As already stated, a circular must conform to the law it seeks to implement and should not modify or amend it.[30]

Moreover, by prohibiting LGUs from granting allowances similar to the allowances granted by the national government, Section 3 (e) of LBC No. 53 practically prohibits LGUs from granting allowances to judges and, in effect, totally nullifies their statutory power to do so. Being unduly restrictive therefore of the statutory power of LGUs to grant allowances to judges and being violative of their autonomy guaranteed by the Constitution, Section 3, paragraph (e) of LBC No. 53 is hereby declared null and void.

Paragraphs (a) to (d) of said circular, however, are valid as they are in accordance with Sections 324[31] and 325[32] of the Local Government Code of 1991; these respectively provide for the budgetary requirements and general limitations on the use of provincial, city and municipal funds. Paragraphs (a) to (d) are proper guidelines for the condition provided in Sections 447, 458 and 468 of the Local Government Code of 1991 that LGUs may grant allowances to judges if their funds allow.[33]

Respondent COA also argues that Resolution No. 101 of the Sangguniang Bayan of Naujan failed to comply with paragraphs (a) to (d) of LBC No. 53, thus it was null and void.

The argument is misplaced.

Guidelines (a) to (d) were met when the Sangguniang Panlalawigan of Oriental Mindoro approved Resolution No. 101 of the Sangguniang Bayan of Naujan granting the P1,600 monthly allowance to petitioner judge as well as the corresponding budgets of the municipality providing for the said monthly allowance to petitioner judge. Under Section 327 of the Local Government Code of 1991, the Sangguniang Panlalawigan was specifically tasked to review the appropriation ordinances of its component municipalities to ensure compliance with Sections 324 and 325 of the Code. Considering said duty of the Sangguniang Panlalawigan, we will assume, in the absence of proof to the contrary, that the Sangguniang Panlalawigan of Oriental Mindoro performed what the law required it to do, that is, review the resolution and the corresponding budgets of the Municipality of Naujan to make sure that they complied with Sections 324 and 325 of the Code.[34] We presume the regularity of the Sangguniang Panlalawigan's official act.

Moreover, it is well-settled that an ordinance must be presumed valid in the absence of evidence showing that it is not in accordance with the law.[35] Respondent COA had the burden of proving that Resolution No. 101 of the Sangguniang Bayan of Naujan did not comply with the condition provided in Section 447 of the Code, the budgetary requirements and general limitations on the use of municipal funds provided in Sections 324 and 325 of the Code and the implementing guidelines issued by the DBM, i.e., paragraphs (a) to (d), Section 3 of LBC No. 53. Respondent COA also had the burden of showing that the Sangguniang Panlalawigan of Oriental Mindoro erroneously approved said resolution despite its non-compliance with the requirements of the law. It failed to discharge such burden. On the contrary, we find that the resolution of the Municipality of Naujan granting the P1,600 monthly allowance to petitioner judge fully complied with the law. Thus, we uphold its validity.

In sum, we hereby affirm the power of the Municipality of Naujan to grant the questioned allowance to petitioner Judge Leynes in accordance with the constitutionally mandated policy of local autonomy and the provisions of the Local Government Code of 1991. We also sustain the validity of Resolution No. 101, Series of 1993, of the Sangguniang Bayan of Naujan for being in accordance with the law.

WHEREFORE, the petition is hereby GRANTED. The assailed decision dated September 14, 1999 of the Commission of Audit is hereby SET ASIDE and Section 3, paragraph (e) of LBC No. 53 is hereby declared NULL and VOID.

No costs.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.

[1] Penned by Chairman Celso D. Gañgan and Commissioners Raul C. Flores and Emmanuel M. Dalman.

[2] Respondent COA erroneously considered the P944 monthly allowance as RATA from the Supreme Court in its Comment dated October 23, 2000 and Memorandum dated June 26, 2001. Rollo, pp. 53, 103.

[3] Annex "D," Certification of the Office of the Municipal Accountant; Petition for Certiorari, p. 5.

[4] Annex "E," Resolution No. 101, Series of 1991, Rollo, p. 35.

[5] Petition for Certiorari, p. 4.

[6] Rollo, p. 38.

[7] Rollo, pp. 40-42.

[8] Rollo, pp. 22-25.

[9] Respondent COA erroneously considered the P944 monthly allowance being received by petitioner judge from the local funds of the municipality since 1984 as RATA from the Supreme Court. Thus, in 1993 when the municipality increased said allowance to P1,600 (an increase of P656), COA opposed the grant of the whole P1,600 monthly allowance because the municipality supposedly could not grant RATA to petitioner judge in addition to the RATA already granted by the Supreme Court. See Comment dated October 23, 2000 and Memorandum dated June 26, 2001, Rollo, pp. 53, 103.

[10] Rollo, pp. 22-25, 31-33, 36-38, 57-64.

[11] Rollo, pp. 10-17.

[12] In *Allarde vs. Commission on Audit*, 218 SCRA 227 [1993], we ruled that the use of the word "may" in LOI No. 1418 signifies that the allowance may not be demanded as a matter of right, but is entirely dependent on the will of the municipality concerned. It should be treated as an honorarium, an amount that is "given not as a matter of obligation but in appreciation of services rendered, a voluntary donation in consideration for services which admit of no compensation in money (*Santiago vs. Commission on Audit*, 199 SCRA 128, 130)."

[13] The law took effect on January 1, 1992.

[14] G.R. No. 125350, December 3, 2002.

[15] Instead of filing a comment on behalf of respondent COA in this case, the Solicitor General filed a manifestation supporting the position of petitioner judges. The Solicitor General argued that (1) DBM only enjoyed the power to review and determine whether disbursement of funds were made in accordance with the ordinance passed by a LGU while (2) the COA had no more than auditorial visitation powers over the LGUs pursuant to Section 348 of RA 7160 which provides for the power to inspect at any time the financial accounts of LGUs. Moreover, the Solicitor General opined that "the DBM and the respondent are only authorized under RA 7160 to promulgate a Budget Operations Manual for LGUs, to improve and systematize methods, techniques and procedures employed in budget preparation, authorization, execution and accountability" pursuant to Section 354 of RA 7160. The Solicitor General pointed out that LBC 55 was not exercised under any of the aforementioned

provisions.

[16] Rollo, pp. 22-25.

[17] China Banking Corporation vs. Court of Appeals, 265 SCRA 327 [1996].

[18] U.S. vs. Palacio, 33 Phil 208 [1916]; Maceda vs. Macaraeg, 197 SCRA 771 [1991].

[19] Manila Railroad Co. vs. Rafferty, 40 Phil 224 [1919]; Commissioner of Internal Revenue vs. Court of Appeals, 207 SCRA 487 [1992].

[20] De Villa vs. Court of Appeals, 195 SCRA 722 [1991].

[21] A special law is one which relates to particular persons or things of a class, or to a particular portion or section of the state only. U.S. vs. Serapio, 23 Phil 584 [1912].

[22] A general law is one which affects all people of the state or all of a particular class of persons in the state or embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class. U.S. vs. Serapio, 23 Phil 584 [1912]; Valera vs. Tuason, 80 Phil 823 [1948]; Villegas vs. Subido, 41 SCRA 190 [1971].

[23] Villegas vs. Subido, 41 SCRA 190 [1971].

[24] Araneta vs. Concepcion, 99 Phil 709 [1956]; Sotto vs. Sotto, 43 Phil 688 [1922].

[25] Maddumba vs. Ozaeta, 82 Phil 345 [1948]; Lopez vs. El Hogar Filipino, 47 Phil 249 [1925].

[26] National agencies included in the national budget are Congress, Office of the President, Office of the Vice-President, DA, DAR, DBM, DECS, DENR, DOF, DFA, DOH, DILG, DOJ, DOLE, DND, DPWH, DOST, DSWD, DOT, DTI, DOTC, NEDA, Office of the Press Secretary, the Judiciary, Constitutional Offices, Commission on Human Rights, State Universities and Colleges and Autonomous Regions. See the GAA of 1993 as example.

[27] Section 25, Article II; Section 2, Article X, 1987 Constitution.

[28] The LBC No. 53 was issued by the DBM by virtue of Administrative Order No. 42 which clarified the role of the DBM in the administration of the compensation and position classification systems in the LGUs and mandated it, among other things, to provide guidelines for the grant of allowances and additional forms of compensation by the LGUs. AO No. 42 was issued by the President by virtue of his power of general supervision over the LGUs under Section 25 of the Local Government Code of 1991.

[29] Also Section 458(a)(1)(xi) and Section 468(a)(1)(xi), Local Government Code of 1991.

[30] Supra note 17.

[31] Section 324. Budgetary Requirements. - The budgets of local government units for any fiscal year shall comply with the following requirements:

(a)

The aggregate amount appropriated shall not exceed the estimates of income;

(b)

Full provision shall be made for all statutory and contractual obligations of the local government unit concerned: Provided, however, that the amount of appropriations for debt servicing shall not exceed twenty percent (20%) of

the regular income of the local government unit concerned;

(c)

In the case of provinces, cities, and municipalities, aid to component barangays shall be provided in amounts of not less than One thousand pesos (P1,000.00) per barangay; and

(d)

Five percent (5%) of the estimated revenue from regular sources shall be set aside as an annual lump sum appropriation for unforeseen expenditures arising from the occurrence of calamities: Provided, however, that such appropriation shall be used only in the area, or a portion thereof, of the local government unit or other areas declared in a state of calamity by the President.

[32] Section 325. General Limitations. - The use of the provincial, city and municipal funds shall be subject to the following limitations:

(a)

The total appropriations, whether annual or supplemental, for personal services of a local government unit for one (1) fiscal year shall not exceed forty-five (45%) in the case of first to third class provinces, cities, and municipalities, and fifty-five percent (55%) in the case of fourth class or lower, of the total annual income from regular sources realized in the next preceding fiscal year. The appropriations for salaries, wages, representation and transportation allowances of officials and employees of the public utilities and economic enterprises owned, operated, and maintained by the local government unit concerned shall not be included in the annual budget or in the computation of the maximum amount for personal services. The appropriations for the personal services of such economic enterprises shall be charged to their respective budgets;

(b)

No official or employee shall be entitled to a salary rate higher than the maximum fixed for his position or other positions of equivalent rank by applicable laws or rules and regulations issued thereunder;

(c)

No local fund shall be appropriated to increase or adjust salaries or wages of officials and employees of the national government, except as may be expressly authorized by law;

(d)

In cases of abolition of positions and the creation of new ones resulting from the abolition of existing positions in the career service, such abolition or creation shall be made in accordance with pertinent provisions of this code and the civil service law, rules and regulations;

(e)

Positions in the official plantilla for career positions which are occupied by incumbents holding permanent appointments shall be covered by adequate appropriations;

(f)

No changes in designation or nomenclature of positions resulting in a promotion or demotion in rank or increase or decrease in compensation shall be allowed, except when the position is actually vacant, and the filling of such positions shall be strictly made in accordance with the civil service law, rules and regulations;

(g)

The creation of new positions and salary increases or adjustments shall in no case be made retroactive; and

(h)

The annual appropriations for discretionary purposes of the local chief executive shall not exceed two percent (2%) of the actual receipts derived from basic real property tax in the next preceding calendar year. Discretionary funds shall be disbursed only for public purposes to be supported by appropriate vouchers and subject to such guidelines as may be prescribed by law. No amount shall be appropriated for the same purpose except as authorized under this Section.

[33] Paragraph (a) should be read in conjunction with the recent circular of the DBM, Local Budget Circular No. 75 dated July 12, 2002 entitled Guidelines on Personal Services Limitation. Section 5.5 thereof entitled Honoraria of National Government Personnel provides: "The appropriation intended to be granted as honoraria and similar benefits to national government personnel shall be classified as Maintenance and Other Operating Expenses (MOOE) since these are not personal services costs of the local government unit."

[34] *Figuerres vs. Court of Appeals*, 305 SCRA 206 [1999].

[35] *Ibid.*

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