

**EXECUTIVE DIRECTOR GABRIEL S. CASAL, ACTING DIRECTOR
CECILIO SALCEDO AND LUZVIMINDA B. HERRERA, IN HER
PERSONAL CAPACITY AND IN REPRESENTATION OF THE
RANK-AND-FILE EMPLOYEES OF ...**

G.R. NO. 149633. November 30, 2006

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Challenged via petition for certiorari under Rule 64 vis a vis Rule 65 of the Rules of Court are the Decision dated June 22, 1999 of respondent Commission on Audit (COA) denying the appeal of petitioner Gabriel S. Casal from Notice of Disallowance No. 94-02-101 P(93) and COA Resolution dated August 3, 2001 denying petitioner's motion for reconsideration of said Decision.

Sometime in December 1993, the National Museum granted an incentive award to its officials and employees in the amount of P4,000 each, or a total of P1,162,333.35, pursuant to Provision No. 8 of its Employees Suggestions and Incentive Awards System (ESIAS)[1] approved by the Civil Service Commission (CSC) on December 21, 1992.

The COA Resident Auditor at the National Museum, State Auditor III Fe Marie H. Dorado, subsequently inquired from the Department of Budget and Management (DBM) on whether it granted authority to the National Museum to use its savings from its appropriation for personal services to pay the subject incentive award.

The DBM, through Director Loida S. Abellera of the Budget and Finance Bureau, by letter dated June 7, 1994, informed Resident Auditor Dorado that it had not received any request for such authorization from the National Museum and that, in any event, the grant of such benefits would not be given due course for lack of legal basis, citing Section 7[2] of Administrative Order (A.O.) No. 268 and Section 2[3] of A.O. No. 29 prohibiting the grant of productivity incentive benefits or other allowances of similar nature unless authorized by the Office of the President.

Resident Auditor Dorado thus disallowed the incentive award through Notice of Disallowance No. 94-02-101 P(93) dated July 19, 1994 for being violative of Section 7 of A.O. No. 268 and Section 2 of A.O. No. 29 and also for lack of the requisite authorization from the DBM pursuant to P.D. No. 1177 Section 55.[4]

Named in the Notice of Disallowance as "liable" to reimburse were petitioner Gabriel S. Casal, petitioner Cecilio Salcedo, Mrs. Alma Cabrera, and Mrs. Corbina Vergara, for their respective roles in the approval and release of the 1993 Incentive Award,[5] and all National Museum employees who received the award.

Petitioner Casal appealed the disallowance to the COA. The appeal was denied by COA Decision No. 99-121 dated June 22, 1999. Casal's Motion for Reconsideration was also denied by Resolution dated August 3, 2001, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Motion for Reconsideration of COA Decision No. 99-121 is hereby denied with finality. Accordingly, the liability of the following officials is affirmed.

PERSONS LIABLE

PARTICIPATION

All Recipient Personnel of the N.M.

Recipients/payees who received the 1993 Incentive Award

Mr. Cecilio Salcedo

For approving the payroll and vouchers

Mrs. Alma Cabrera

For certifying that the cash advances drawn for official purposes and expenditures were under her authority/ direction/ supervision

Mrs. Corbina Vergara

For certifying adequate availability of funds, supporting documents appearing legal and proper[6]

On September 17, 2001, petitioner Casal in his capacity as Executive Director of the National Museum, petitioner Salcedo in his capacity as Acting Executive Director in the place of petitioner Casal who by then was on terminal leave, and petitioner Luzviminda B. Herrera, President of the National Museum Rank-and-File Employees Association (NMRFEA), in her personal capacity and as authorized representative of the rank-and-file employees, filed the instant petition[7] which prays for the issuance of a Temporary Restraining Order and Writ of Preliminary Injunction.

This Court, on October 2, 2001, issued a Temporary Restraining Order directing the COA to cease and desist from enforcing its Decision dated June 22, 1999, effective immediately and until further orders.[8]

The Office of the Solicitor General (OSG), which had filed consecutive motions for extension to file comment on the petition, eventually filed a Motion to Admit Attached Manifestation and Motion in Lieu of Comment.[9] In its Manifestation and Motion, the OSG stated that it was unable to sustain the questioned Decision of the COA and thus prayed that the same, as well as the Resolution dated August 3, 2001 and the Notice of Disallowance No. 94-02-101 P(93) dated July 19, 1994, be set aside.

On request of the OSG, this Court gave COA the chance to file its own comment.

COA did file its Comment on June 13, 2002, to which petitioners filed a reply.

The petition faults the COA:

I

. . . IN ORDERING THE OFFICIALS AND EMPLOYEES OF THE NATIONAL MUSEUM TO REFUND THE SUBJECT INCENTIVE AWARDS OR BONUSES EVEN IN THE ABSENCE OF ANY BAD FAITH OR MALICE ON THE PART OF THE MUSEUM'S WORKFORCE[, AND]

II

. . . IN NOT ADHEREING TO AND APPLYING THE DECISION IN THE LEADING CASE OF BLAQUERA VS. ALCALA ON THE NON-REFUND OF BENEFITS OR BONUSES RECEIVED IN GOOD FAITH BY GOVERNMENT PERSONNEL DESPITE "VIOLATIONS" BY THEIR SUPERIOR OFFICIALS OF EXISTING ADMINISTRATIVE ORDERS AND ISSUANCES REGULATING THE GRANT OF SUCH INCENTIVES.

Since petitioners and the OSG claim that *Blaquera v. Alcala*[10] is on all fours with the instant case, hence, decisive of the present controversy,[11] a review of the factual circumstances attendant to that case is in order.

In *Blaquera*, officials and employees of several government departments and agencies were paid incentive benefits for the year 1992. On January 19, 1993, however, A.O. 29 was issued by President Ramos reiterating the prohibition under Section 7 of A.O. No. 268 against granting productivity incentive benefits or similar forms of allowances/benefits without prior approval of the President. The same issuance authorized productivity incentive benefits for 1992 only in the maximum amount of P1,000 for each employee.

In compliance with Section 4 of the same A.O. 29 which directed all departments, offices, and agencies that overpaid incentive benefits to immediately cause the return or refund of the excess amount within a six-month period, deductions began to be made from the salaries and allowances of the petitioner-employees in *Blaquera*. The petitioners sought relief from this Court, praying that A.O. 29 and A.O. 268 be declared void.

The Court upheld both administrative orders as having been issued in the valid exercise of presidential control

over the executive departments. Nonetheless, it held that the therein petitioners could not be required to refund the incentive benefits, there being no indicia of bad faith on the part of all parties involved.[12]

In the present case, petitioners assert that they, too, like those in *Blaquera*, may not be compelled to return or refund the subject incentive benefits since they were released and received by them in good faith.

Particularly with regard to petitioner Casal and the other officers held liable for their participation in approving/authorizing the award ("approving officers"), petitioners claim that their failure to observe the relevant administrative orders were mere lapses which are consistent with the presumption of good faith.[13]

The Court finds that while the *Blaquera* ruling maybe invoked by the employees who received the subject award in good faith, the same provides no refuge for the herein petitioners-approving officers due to significant factual distinctions between *Blaquera* and the instant case.

First, while the incentive benefits in *Blaquera* were for CY 1992 and paid prior to the issuance of A.O. 29 on January 19, 1993, the incentive awards subject of the instant petition were released in December of 1993. When, therefore, the heads of departments and agencies in *Blaquera* erroneously authorized the incentive benefits to the employee, they did not then have the benefit of the categorical pronouncement of the President in A.O. 29 that

[t]he prohibition prescribed under Section 7 of Administrative Order No. 268 is [thereby] reiterated. Accordingly, all heads of government offices/agencies, including government-owned and/or controlled corporations, as well as their respective governing boards are hereby enjoined and prohibited from authorizing/granting Productivity Incentive Benefits or any and all similar forms of allowances/benefits without prior approval and authorization via Administrative Order by the Office of the President.

The same, however, is not the case with respect to the herein petitioners-approving officers since the subject award was released when A.O. 29 had already been in effect for nearly a year. Moreover, unlike in *Blaquera*, the prohibition stated in Section 7 of A.O. 268 was brought to the attention of these approving officers by the CSC even prior to the issuance of A.O. 29.

Thus, in a letter dated December 21, 1992 addressed to petitioner Casal, then CSC Chairman Patricia A. Sto. Tomas, replying to Casal's request for approval of the Museum's ESIAS, stated:

This Commission, after a careful evaluation of the said ESIAS, hereby approves the same, provided that the grant of productivity incentive award under Section 9(e) (sic) thereof be made subject to the result of a comprehensive study being undertaken by the Office of the President in coordination with the Civil Service Commission and the Department of Budget and Management on the matter, as embodied under Section 7 of the Administrative Order No. 268 dated February 21, 1992.[14] (Emphasis and underscoring supplied)

The immediately quoted proviso, it bears emphasis, was annotated on the National Museum's ESIAS itself, just below the name and signature of Chairman Sto. Tomas signifying the CSC's approval of said document.[15]

When petitioner Casal and the approving officers authorized the subject award then, they disregarded a prohibition that was not only declared by the President through A.O. 268, but also brought to their attention by the CSC by a letter specifically addressed to petitioner Casal and by annotation on the Museum's ESIAS. Above all, at the time the same officers approved the award, the prohibition in A.O. 268 had already been reiterated by the President via A.O. 29.

The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof.[16] The following ruling in

National Electrification Administration v. COA[17] bears repeating:

Executive officials who are subordinate to the President should not trifle with the President's constitutional power of control over the executive branch. There is only one Chief Executive who directs and controls the entire executive branch, and all other executive officials must implement in good faith his directives and orders. This is necessary to provide order, efficiency and coherence in carrying out the plans, policies and programs of the executive branch.

This case would not have arisen had NEA complied in good faith with the directives and orders of the President in implementation of the last phase of the Salary Standardization Law II. The directives and orders are clearly and manifestly in accordance with all relevant laws. The reasons advanced by NEA in disregarding the President's directives and orders are patently flimsy, even ill-conceived. This cannot be countenanced as it will result in chaos and disorder in the executive branch to the detriment of public service. (Emphasis supplied)

As to the employees who received the incentive award without participating in the approval thereof, it cannot be said that they were either in bad faith or grossly negligent in so doing. The imprimatur given by the approving officers on such award certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they cannot, following Blaquera, be compelled to refund the benefits already granted to them.

WHEREFORE, the petition is PARTIALLY GRANTED. The Decision dated June 22, 1999 of respondent COA and its Resolution dated August 3, 2001 are declared INVALID only insofar as they hold liable all National Museum employees who merely received the incentive award for CY 1993.

Accordingly, the Temporary Restraining Order directed to COA which was issued by this Court on October 2, 2001 is hereby made PERMANENT as to the employees who were held liable to reimburse, merely for receiving the incentive award. The same, however, is LIFTED as to the following: Executive Director Gabriel S. Casal,[18] Acting Executive Director Cecilio Salcedo, Mrs. Alma Cabrera, and Mrs. Corbina Vergara.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

[1] The parties are evidently referring to Section IV(B)(8), which states:

"Section IV. Types of Awards

x x x x

B. The incentive award may consist of the following:

x x x x

8. Such other incentive awards (i.e. Publication Award) which the Agency SIAC [Suggestion and Incentive Award Committee] may decide to give, subject to the approval of the director of the National Museum." (Rollo, p. 150)

[2] "RATIONALIZING THE GRANT OF PRODUCTIVITY INCENTIVE BENEFITS FOR CALENDAR YEAR 1991 TO ALL PERSONNEL OF GOVERNMENT AGENCIES," issued on February 21, 1992.

Section 7 thereof states:

"The productivity incentive benefits herein authorized shall be granted only for Calendar Year 1991. Accordingly,

all heads of agencies, including the governing boards of government-owned or -controlled corporations and financial institutions, are hereby strictly prohibited from authorizing/granting productivity incentive benefits or other allowances of similar nature for Calendar Year 1992 and future years pending the result of a comprehensive study being undertaken by the Office of the President in coordination with the Civil Service Commission and the Department of Budget and Management on the matter.

"The formulation of the necessary implementing guidelines for Executive Order No. 486 dated 8 November 1991 establishing a performance-based incentive system for government-owned or -controlled corporations shall likewise be included in the comprehensive study referred to in the preceding paragraph." (Emphasis and underscoring supplied)

[3] "AUTHORIZING THE GRANT OF CY 1992 PRODUCTIVITY INCENTIVE BENEFITS TO GOVERNMENT PERSONNEL AND PROHIBITING PAYMENTS OF SIMILAR BENEFITS IN FUTURE YEARS UNLESS DULY AUTHORIZED BY THE PRESIDENT," issued on January 19, 1993.

Section 2 thereof states:

"The prohibition prescribed under Section 7 of Administrative Order No. 268 is hereby reiterated. Accordingly, all heads of government offices/agencies, including government-owned and/or controlled corporations, as well as their respective governing boards are hereby enjoined and prohibited from authorizing/granting Productivity Incentive Benefits or any and all similar forms of allowances/benefits without prior approval and authorization via Administrative Order by the Office of the President. "Henceforth, anyone found violating any of the mandates in this Order, including all officials/employees and the COA Auditor-in-Charge of such government office/agency found to have taken part thereof, shall be accordingly and severely dealt with it accordance with the applicable provisions of existing penal laws.

"Consequently, all administrative authorization to grant any form of allowances/benefits and all forms of additional compensation usually paid outside of the prescribed basic salary under R.A. No. 6758, the Salary Standardization Law, that are inconsistent with the legislated policy on the matter or are not covered by any legislative action are hereby revoked.

x x x x" (Emphasis and underscoring supplied)

[4] "REVISING THE BUDGET PROCESS IN ORDER TO INSTITUTIONALIZE THE BUDGETARY INNOVATIONS OF THE NEW SOCIETY," issued on July 30, 1977.

Section 55 states:

Authority to Use Savings for Certain Purposes. — Savings in the appropriations provided in the General Appropriations Act may be used for the settlement of the following obligations incurred during a current fiscal year or previous fiscal years as may be approved by the Commissioner [of the Budget] in accordance with rules and procedures as may be approved by the President:

- Claims of officials, employees and laborers who died or were injured in line of duty, including burial expenses as authorized under existing law;
- Commutation of terminal leaves of employees due to retirement, resignation or separation from the service through no fault of their own in accordance with the provisions of existing law, including unpaid claims for commutation of maternity leave of absence; cdtai
- Payment of retirement gratuities or separation pay of employees separated from the service due to government reorganization;

- Payment of salaries of employees who have been suspended or dismissed as a result of administrative or disciplinary action, or separated from the service through no fault of their own and who have been subsequently exonerated and/or reinstated by virtue of decisions of competent authority;
- Cash awards to deserving officials and employees in accordance with the civil service law;
- Salary adjustments of officials and employees as a result of classification action under, and implementation of, the provisions of the Compensation and Position Classification Act, including positions embraced under the Career Executive Service;
- Peso support to any undertaking that may be entered into by the government with international organizations, including administrative and other incidental expenses;
- Covering any deficiency in peso counterpart fund commitments for foreign-assisted projects, as may be approved by the President;
- Priority activities that will promote the economic well-being of the nation, including food production, agrarian reform, energy development, disaster relief, and rehabilitation; cd i
- Repair, improvement and provision of government buildings and infrastructure and other capital assets damaged by natural calamities;
- Expenses in connection with official participation in trade fairs, civic parades, celebrations, athletic competitions and cultural activities, and payment of expenses for the celebration of regular or special official holidays; cd i
- Payment of obligations of the government or any of its departments or agencies as a result of final judgment of the Courts, and
- Payment of valid prior year's obligations of government agencies with any other government office or agency, including government-owned or controlled corporations. (Underscoring supplied)

[5] In particular, the Notice of Disallowance held petitioner Salcedo liable "for approving the payroll and vouchers," Mrs. Alma Cabrera "for certifying that the cash advances drawn for official purposes and expenditures were under her authority/direction/supervision," Mrs. Corbina Vergara "for certifying adequate availability of funds, supporting documents appearing legal and proper," and petitioner Fr. Gabriel Casal as "signatory on the check." (Rollo, p. 26).

[6] Rollo, pp. 24-25.

[7] Id at 6-7.

[8] Id. at 43.

[9] Id. at 93.

[10] 356 Phil. 678 (1998).

[11] The OSG, in fact, states: "THE ONLY ISSUE IN THIS CASE IS WHETHER THE COA ACTED WITH GRAVE ABUSE OF DISCRETION IN REFUSING TO APPLY THE RULING OF THE HONORABLE COURT IN BLAQUERA TO THE PRESENT CASE." (Rollo, p. 101)

[12] "Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices

concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits." (Blaquera v. Alcala, supra, 765-766)

[13] Reply to the Comment of Respondent Commission on Audit, p. 2. (Rollo, p. 166)

[14] Rollo, p. 153.

[15] Id. at 152.

[16] "The actions taken by petitioner involved the very functions he had to discharge in the performance of official duties. He cannot, therefore, be held civilly liable for such acts unless there is a clear showing of bad faith, malice or gross negligence." (Albert v. Gangan, G.R. No. 126557, March 6, 2001)

[17] 427 Phil. 464, 485 (2002).

[18] In view of petitioner Casal's demise during the pendency of this case, his liability shall be charged against his estate (Vide Petralba v. Sandiganbayan, G.R. No. 81337, August 16, 1991, 200 SCRA 644).

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