DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. NO. 166933. August 10, 2006

Ponente: PUNO, J.

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PUNO, J.:

Imputing grave abuse of discretion on the part of respondent Commission on Audit (COA), petitioner Development Bank of the Philippines (DBP) has come before this Court via a special civil action for certiorari in accordance with Rule 64 of the Rules of Court to annul and set aside: (a) COA Decision No. 2001-151 dated August 2, 2001[1] which denied petitioner's request for the lifting of the disallowance relative to its purchase in 1988 of nineteen (19) units of motor vehicles amounting to P5,525,000.00, but modified the amount to P5,000,000.00 considering the lifting of the P525,000.00 disallowance with respect to DBP-Baguio Branch's acquisition of two (2) vehicles; and (b) COA Decision No. 2003-052 dated February 27, 2003[2] which denied petitioner's motion for reconsideration.

The records disclose that on various dates in 1988, the petitioner purchased five (5) Mitsubishi L-300 vans and fourteen (14) Mitsubishi Lancer cars which amounted to P5,525,000.00 for its five (5) regional offices and fourteen (14) branches pursuant to its modernization program. During this period, the petitioner was undergoing a process of rehabilitation and the vehicles were utilized to bolster its efforts at fund generation which required the mobilization of its personnel in order to reach out to a wider base of clientele.

In its 1992 Annual Audit Report, the respondent COA included these transactions among its adverse audit findings alleging non-compliance by the petitioner with Letter of Instruction No. 667 and Letter of Implementation No. 29 which require Presidential approval for purchase of transport. While the auditor at the time did not issue a Notice of Disallowance on this audit finding, she, nonetheless, recommended the filing of administrative charges against the responsible officers. The recommendation was never effected for the responsible officers later ceased to be connected with the agency.

On April 23, 1998, the incumbent COA Auditor issued a Notice of Disallowance, as contained in Certificate of Settlement and Balances No. PSMD 98-01(97), on the subject transaction. This impelled the petitioner, through a letter[3] dated July 26, 1999, made by its President and CEO Ms. Remedios Macalincag, to move for the lifting of the disallowance of P5,525,000.00. The purchase was justified as necessary for its modernization program since it was undergoing a process of rehabilitation at the time. According to her, petitioner's branches were in dire need of additional vehicles for improved mobility to support its thrust of providing financial assistance to small and medium enterprises in the countryside to generate employment and spur economic development.

On September 13, 1999, the incumbent COA Auditor recommended the lifting of the audit disallowance. But contrary thereto, the Director, Corporate Audit Office I, issued a Memorandum on February 11, 2000, with the finding that the petitioner wantonly disregarded the requirement of Presidential approval which is a condition sine qua non for the purchase of vehicles under Letter of Instruction No. 667 which provides, inter alia, that:

> When authorized to purchase motor vehicles pursuant to Letter of Implementation No. 29 dated December 5, 1975, national government agencies, including government-owned and controlled corporations and state colleges and universities shall observe the following maximum standard specifications:
>
> x x x x x x x x x
>
> 5.0 Exceptions may be allowed only as specifically authorized by the President.

On July 18, 2000, the incumbent COA Auditor issued a 4th indorsement letter which disclosed that previously, on November 28, 1989, the COA suspended in audit the purchase of two (2) Mitsubishi Lancer cars amounting to P525,000.00 made by the DBP-Baguio Branch. The suspension became a disallowance on February 28, 1990. The letter, however, stated that the COA, in COA Decision No. 98-320 dated August 11, 1998, upon favorable recommendation of the Director, COA Cordillera Administrative Region, granted the request of then DBP-Baguio Branch Manager Margaret Tandoc for the lifting of the disallowance for the purchase of the two (2) vehicles.

On August 2, 2001, respondent issued the assailed COA Decision No. 2001-151[4] which denied petitioner's motion for the lifting of the disallowance, the dispositive portion of which reads:

> WHEREFORE, all premises considered, this Commission affirms the subject disallowance contained in CSB No. PSMD 98-01(97) dated April 23, 1998, but modifying the amount from P5,525,000.00 to P5,000,000.00 for want of prior Presidential approval contrary to Letter of Implementation No. 29 and LOI No. 667.
>
> Accordingly, the herein request is hereby DENIED.

The petitioner received a copy of the decision on August 8, 2001, and on August 16, 2001, it filed its Motion for Reconsideration[5] dated August 15, 2001.

The Motion for Reconsideration was denied in a Resolution[6] of the COA, dated February 27, 2003. It was received on March 12, 2003, through a certain Lolet Toledo. Upon verification, the petitioner learned that the said Lolet Toledo is a personnel of its Resident Corporate Auditor and that no copy of the resolution was served upon any of its departments.

Alleging that it came to know of the resolution of its motion by the respondent only on February 8, 2005, petitioner filed on February 21, 2005 before this Court its Petition for Certiorari[7] pursuant to the Revised Rules of Court.

We shall first determine whether the petition was filed on time.

Section 9 of Rule 13 of the Rules of Court provides:

> SECTION 9. Service of judgments, final orders or resolutions. – Judgments, final orders or resolutions shall be served either personally or by registered mail. When a party summoned by publication has failed to appear in the action, judgments, final orders or resolutions against him shall be served upon him also by publication at the expense of the prevailing party.

While Section 6 of Rule 13 of the Rules of Court provides:

> SECTION 6. Personal service – Service of the papers may be made by delivering personally a copy to the party or his counsel, or by leaving it in his office with his clerk or with a person having charge thereof. If no person is found in his office, or his office is not known, or he has no office, then by leaving the copy, between the hours of eight in the morning and six in the evening, at the party's or counsel's residence, if known, with a person of sufficient age and discretion then residing therein.

Judgments, final orders and resolutions are appealable. It is necessary that they be served personally or, if not

possible, by registered mail accompanied by a written explanation why the service was not done personally,[8] in order that the period for taking an appeal may be computed.

As a rule, personal service of judgments is done by delivering them personally to the party or his counsel, or when they are left in his office, with his clerk or with a person having charge thereof. In case this is not possible, the copy of the judgment may be left at the party's or his counsel's residence with a person of sufficient age or discretion residing therein.

In the case at bar, service of the COA resolution was made to a certain Lolet Toledo on March 12, 2003. Toledo was the resident corporate auditor of the petitioner.

Respondent COA contends that the service of the COA resolution to petitioner's resident corporate auditor is tantamount to a service upon the petitioner itself. Petitioner, on the other hand, argues that the resident corporate auditor is not its employee but that of the respondent.

We agree with the petitioner that the resident corporate auditor of the DBP is neither an official nor an employee of the DBP. He does not come within the definition of "clerk or person having charge" of the office who may be validly served with a copy of the resolution of the respondent as contemplated by the Rules. In fact, the resident corporate auditor is an extension of the respondent COA and no department of the petitioner was actually served with a copy of the resolution. Consequently, petitioner should be considered to have been served with the COA Resolution dated February 27, 2003 only when it was furnished a copy of the same by the COA Office of Legal Affairs on February 8, 2005. Hence, the filing of the petition on February 21, 2005 was within the 30-day period prescribed under Rule 64 of the Rules of Court.

We shall now decide the case on the merits.

The petitioner contends:

> - Respondent COA committed grave abuse of discretion in not considering the urgency and necessity of the subject purchases and the fact that they were made in utmost transparency and regularity.
>
> - Respondent COA committed abuse of discretion in not applying the doctrine it adopted in COA Decision No. 98-320.

We hold that the respondent COA did not commit grave abuse of discretion in disallowing the purchase of motor vehicles by petitioner.

The pertinent provision of Letter of Instruction No. 667, dated February 2, 1978, states:

> When authorized to purchase motor vehicles pursuant to Letter of Implementation No. 29 dated December 5, 1975, national government agencies, including government-owned and controlled corporations and state colleges and universities shall observe the following maximum standard specifications:
>
> x x x x x x x x x
>
> 5.0. Exceptions may be allowed only as specifically authorized by the President.

While Letter of Implementation No. 29 provides:

> Pursuant to Presidential Decree No. 830, dated November 27, 1975 and in connection with Letter of Implementation No. 28 placing the Budget Commission immediately under the President of the Philippines, the Commissioner of the Budget is hereby delegated authority to take final action on the following budgetary matters heretofore referred by this Commission to the Executive Secretary:

> x x x x x x x x x
>
> The following, among others, shall continue to be referred to the President for personal consideration and action:
>
> x x x x x x x x x
>
> - Purchase of transport and construction equipment, books, drugs and medicines, and other items.
>
> x x x x x x x x x

Based on the foregoing provisions, prior Presidential authorization is required before the petitioner, being a government-owned and controlled corporation, could purchase the subject vehicles. Verily, Letter of Instruction No. 667 is not a "mere technicality" as petitioner contends, otherwise, administrative agencies would be free to utilize such funds freely as long as they can justify their use through the mere invocation of laudable purposes. Since the disallowance was made pursuant to the applicable law, it cannot be assailed as an act of grave abuse of discretion. In Tañada v. Angara,[9] this Court ruled that:

> By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. x x x.

To further support its allegation that respondent COA committed grave abuse of discretion, petitioner also points to the fact that respondent did not apply the doctrine it adopted in COA Case No. 98-320. While this Court looks with disfavor upon the respondent's act of deciding COA Case No. 2001-151 differently from COA Case No. 98-320, when both cases involved similar facts and circumstances, this Court cannot find grave abuse of discretion in the case at bar as respondent acted pursuant to law.

IN VIEW WHEREOF, finding no grave abuse of discretion on the part of respondent, the instant petition is DENIED and the assailed COA Decision and Resolution are AFFIRMED. No costs.

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

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[1] Chairman Guillermo N. Carague, and Commissioners Raul C. Flores and Emmanuel M. Dalman, voting unanimously; Annex "A," Petition; rollo, pp. 16-18.

[2] Annex "B," Petition; rollo, pp. 19-20.

[3] Annex "H," Petition; rollo, p. 34.

[4] Annex "A," Petition; rollo, pp. 16-18.

[5] Annex "C," Petition; rollo, pp. 22-24.

[6] Annex "E-1," Petition; rollo, pp. 28-30.

[7] Rollo, pp. 3-15.

[8] Rule 13, Section 11, Revised Rules of Civil Procedure.

[9] G.R. No. 118295, May 2, 1997, 272 SCRA 18, 79.

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