

RUBEN REYNA AND LLOYD SORIA, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 167219. February 08, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

Before this Court is a Petition for certiorari,[1] under Rule 64 of the Rules of Court, seeking to set aside Resolution No. 2004-046,[2] dated December 7, 2004, of the Commission on Audit (COA).

The facts of the case are as follows:

The Land Bank of the Philippines (Land Bank) was engaged in a cattle-financing program wherein loans were granted to various cooperatives. Pursuant thereto, Land Bank's Ipil, Zamboanga del Sur Branch (Ipil Branch) went into a massive information campaign offering the program to cooperatives.

Cooperatives who wish to avail of a loan under the program must fill up a Credit Facility Proposal (CFP) which will be reviewed by the Ipil Branch. As alleged by Emmanuel B. Bartocillo, Department Manager of the Ipil Branch, the CFP is a standard and prepared form provided by the Land Bank main office to be used in the loan application as mandated by the Field Operations Manual.[3] One of the conditions stipulated in the CFP is that prior to the release of the loan, a Memorandum of Agreement (MOA) between the supplier of the cattle, Remad Livestock Corporation (REMAD), and the cooperative, shall have been signed providing the level of inventory of stocks to be delivered, specifications as to breed, condition of health, age, color, and weight. The MOA shall further provide for a buy-back agreement, technology, transfer, provisions for biologics requirement and technical visits and replacement of sterile, unproductive stocks.[4] Allegedly contained in the contracts was a stipulation that the release of the loan shall be made sixty (60) days prior to the delivery of the stocks.[5]

The Ipil Branch approved the applications of four cooperatives. R.T. Lim Rubber Marketing Cooperative (RT Lim RMC) and Buluan Agrarian Reform Beneficiaries MPC (BARBEMCO) were each granted two loans. Tungawan Paglaum Multi-Purpose Cooperative (Tungawan PFMP) and Siay Farmers' Multi-Purpose Cooperative (SIFAMCO) were each granted one loan. Pursuant to the terms of the CFP, the cooperatives individually entered into a contract with REMAD, denominated as a "Cattle-Breeding and Buy-Back Marketing Agreement." [6]

In December 1993, the Ipil Branch granted six loans to the four cooperative borrowers in the following amounts:

Date of Release

Name of
Borrower

Amount of
Loan

Amount of
Livestock
Insurance

Amount Paid to Cattle
Supplier (REMAD)

12-10-93

RTLim RMC P 795,305 P 62,305 P 733,000

12-10-93

BARBEMCO 482,825 37,825 445,000

12-16-93

Tungawan PFMPC 482,825 37,825 445,000

12-22-93

SIFAMCO 983,010 77,010 906,000

12-22-93

RTLim RMC 187,705 14,705 173,000

12-22-93

BARBEMCO 448,105 35,105 413,000

TOTAL

P3,375,775 264,775 3,115,000[7]

As alleged by petitioners, the terms of the CFP allowed for pre-payments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. This Court notes, however, that copies of the CFPs were not attached to the records of the case at bar. More importantly, the very contract entered into by the cooperatives and REMAD, or the "Cattle-Breeding and Buy-Back Marketing Agreement"[8] did not contain a provision authorizing prepayment.

Three checks were issued by the Ipil Branch to REMAD to serve as advanced payment for the cattle. REMAD, however, failed to supply the cattle on the dates agreed upon.

In post audit, the Land Bank Auditor disallowed the amount of P3,115,000.00 under CSB No. 95-005 dated December 27, 1996 and Notices of Disallowance Nos. 96-014 to 96-019 in view of the non-delivery of the cattle.[9] Also made as the basis of the disallowance was the fact that advanced payment was made in violation of bank policies and COA rules and regulations. Specifically, the auditor found deficiencies in the CFPs, to wit:

The Auditor commented that the failure of such loan projects deprived the farmer-beneficiaries the opportunity to improve their economic condition.

From the Credit Facilities Proposals (CFP), the Auditor noted the following deficiencies.

x x x x

4. No. 1 of the loan terms and conditions allowed prepayments without taking into consideration the interest of the Bank. Nowhere in the documents reviewed disclosed about prepayment scheme with REMAD, the

supplier/dealer.

There was no justification for the prepayment scheme. Such is a clear deviation from existing procedures on asset financing under which the Bank will first issue a "letter guarantee" for the account of the borrower. Payment thereof will only be effected upon delivery of asset, inspection and acceptance of the same by the borrower.

The prepayment arrangement also violates Section 88 of Presidential Decree (PD) No. 1445, to quote:

Prohibition against advance payment on government - Except with the prior approval of the President (Prime Minister), the government shall not be obliged to make an advance payment for services not yet rendered or for supplies and materials not yet delivered under any contract therefor. No payment, partial or final shall be made on any such contract except upon a certification by the head of the agency concerned to have effect that the services or supplies and materials have been delivered in accordance with the terms of the contract and have been duly inspected and accepted.

Moreover, the Manual on FOG Lending Operations (page 35) provides the systems and procedures for releasing loans, to quote:

Loan Proceeds Released Directly to the Supplier/Dealer - Proceeds of loans granted for the acquisition of farm machinery equipment; and sub-loan components for the purchase of construction materials, farm inputs, etc. shall be released directly to the accredited dealers/suppliers. Payment to the dealer shall be made after presentation of reimbursement documents (delivery/ official receipts/ purchase orders) acknowledged by the authorized LBP representative that same has been delivered.

In cases where supplier requires Cash on Delivery (COD), the checks may be issued and the cooperative and a LBP representative shall release the check to the supplier and then take delivery of the object of financing."^[10]

The persons found liable by the Auditor for the amount of P3,115,000.00 which was advanced to REMAD were the following employees of the Ipil Branch:

- Emmanuel B. Bartocillo - Department Manager II
- George G. Hebrona - Chief, Loans and Discounts Division
- Petitioner Ruben A. Reyna - Senior Field Operations Specialist
- Petitioner Lloyd V. Soria - Loans and Credit Analyst II
- Mary Jane T. Cunting^[11] - Cash Clerk IV
- Leona O. Cabanatan - Bookkeeper III/Acting Accountant.^[12]

The same employees, including petitioners, were also made respondents in a Complaint filed by the COA Regional Office No. IX, Zamboanga City, before the Office of the Ombudsman for Gross Negligence, Violation of Reasonable Office Rules and Regulations, Conduct Prejudicial to the Interest of the Bank and Giving Unwarranted Benefits to persons, causing undue injury in violation of Section 3(e) of Republic Act (R.A.) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.^[13]

On January 28, 1997, petitioners filed a Joint Motion for Reconsideration claiming that the issuance of the Notice of Disallowance was premature in view of the pending case in the Office of the Ombudsman. The Motion was denied by the Auditor. Unfazed, petitioners filed an appeal with the Director of COA Regional Office No. IX, Zamboanga City. On August 29, 1997, the COA Regional Office issued Decision No. 97-001 affirming the findings of the Auditor. On February 4, 1998, petitioners filed a Motion for Reconsideration, which was denied by

the Regional Office in Decision No. 98-005[14] issued on February 18, 1998.

Petitioners did not file a Petition for Review or a Notice of Appeal from the COA Regional Office Decision as required under Section 3, Rule VI[15] of the 1997 Revised Rules of Procedure of the COA. Thus, the Decision of the Director of COA Regional Office No. IX became final and executory pursuant to Section 51[16] of the Government Auditing Code of the Philippines. Consequently, on April 12, 1999, the Director of the COA Regional Office No. IX issued a Memorandum to the Auditor directing him to require the accountant of the Ipil Branch to record in their books of account the said disallowance.[17]

On July 12, 1999, the Auditor sent a letter to the Land Bank Branch Manager requiring him to record the disallowance in their books of account. On August 10, 1999, petitioners sent a letter[18] to COA Regional Office No. IX, seeking to have the booking of the disallowance set aside, on the grounds that they were absolved by the Ombudsman in a February 23, 1999 Resolution,[19] and that the Bangko Sentral ng Pilipinas had approved the writing off of the subject loans.

The February 23, 1999 Resolution of the Ombudsman was approved by Margarito P. Gervacio, Jr. the Deputy Ombudsman for Mindanao, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant complaint is hereby dismissed for lack of sufficient evidence.

SO ORDERED.[20]

COA Regional Office No. IX endorsed to the Commission proper the matter raised by the petitioners in their August 10, 1999 letter. This is contained in its February 28, 2000 letter/endorsement,[21] wherein the Director of COA Regional Office No. IX maintained his stand that the time for filing of a petition for review had already lapsed. The Regional Director affirmed the disallowance of the transactions since the same were irregular and disadvantageous to the government, notwithstanding the Ombudsman resolution absolving petitioners from fault.

In a Notice[22] dated June 29, 2000, the COA requested petitioners to submit a reply in response to the letter/endorsement of the Regional Office Director. On August 10, 2000, petitioners submitted their Compliance/Reply[23], wherein they argued that the Ombudsman Resolution is a supervening event and is a sufficient ground for exemption from the requirement to submit a Petition for Review or a Notice of Appeal to the Commission proper. Petitioners also argued that by invoking the jurisdiction of the Commission proper, the Regional Director had waived the fact that the case had already been resolved for failure to submit the required Petition for Review.

On July 17, 2003, the COA rendered Decision No. 2003-107[24] affirming the rulings of the Auditor and the Regional Office, to wit:

WHEREFORE, foregoing premises considered, this Commission hereby affirms both the subject disallowance amounting to P3,115,000 and the Order of the Director, COA Regional Office No. IX, Zamboanga City, directing the recording of subject disallowance in the LBP books of accounts. This is, however, without prejudice to the right of herein appellants to run after the supplier for reimbursement of the advance payment for the cattle.[25]

In denying petitioners request for the lifting of the booking of the disallowance, the COA ruled that after a circumspect evaluation of the facts and circumstances, the dismissal by the Office of the Ombudsman of the complaint did not affect the validity and propriety of the disallowance which had become final and executory.[26]

On August 22, 2003, petitioners filed a Motion for Reconsideration, which was, however, denied by the COA in a Resolution[27] dated December 7, 2004.

Hence, herein petition, with petitioners raising the following grounds in support of the petition, to wit:

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN DECLARING THE PREPAYMENT STIPULATION IN THE CONTRACT BETWEEN THE BANK AND REMAD PROSCRIBED BY SECTION 103 OF P.D. NO. 1445, OTHERWISE KNOWN AS THE STATE AUDIT CODE OF THE PHILIPPINES.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION FOR HOLDING THE PETITIONERS ADMINISTRATIVELY LIABLE FOR HAVING PROCESSED THE LOANS OF THE BORROWING COOPERATIVES IN ACCORDANCE WITH THE BANK'S MANUAL (FOG) LENDING OPERATIONS.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT HELD THE PETITIONERS LIABLE AND, THEREFORE, IN EFFECT LIKEWISE OBLIGATED TO REFUND THE DISALLOWED AMOUNT EVEN AS AMONG OTHER THINGS THEY ACTED IN EVIDENT GOOD FAITH. MORE SO, AS THE COLLECTIBLES HAVE BEEN ALREADY EFFECTIVELY WRITTEN-OFF.[28]

The petition is not meritorious.

I.

Anent the first issue raised by petitioners, the same is without merit. Petitioners argue said issue on three points: first, the COA is estopped from declaring the prepayment stipulation as invalid;[29] second, the prepayment clause in the Land Bank-REMAD contract is valid;[30] and third, it is a matter of judicial knowledge that is not unusual for winning bidders involving public works to enter into contracts with the government providing for partial prepayment of the contract price in the form of mobilization funds.[31]

As to their contention that the COA is estopped from declaring the prepayment stipulation as invalid, petitioners argue in the wise:

x x x x

The CATTLE BREEDING AND BUY BACK MARKETING AGREEMENT sample of which is attached as Annex "I" was a Contract prepared by the bank and REMAD, it was agreed to by the cooperatives. It was a standard Contract used in twenty two (22) Land Bank branches throughout the country. It provided in part:

6.1 That the release of the loan shall be made directly to the supplier 60 days prior to the delivery of stocks per prepayment term of REMAD LIVESTOCK COPORATION (supplier). Inspection shall be done before the 60[th] day/delivery of the stocks.

Again, these Contracts were standard bank forms from Land Bank head office. None of the Petitioners participated in the drafting of the same.[32]

In the absence of grave abuse of discretion, questions of fact cannot be raised in a petition for certiorari, under Rule 64 of the Rules of Court. The office of the petition for certiorari is not to correct simple errors of judgment; any resort to the said petition under Rule 64, in relation to Rule 65, of the 1997 Rules of Civil Procedure is limited to the resolution of jurisdictional issues.[33] Accordingly, since the validity of the prepayment scheme is inherently a question of fact, the same should no longer be looked into by this Court.

In any case, even assuming that factual questions may be entertained, the facts do not help petitioners' cause for the following reasons: first, the supposed Annex "I" does not contain a stipulation authorizing a pre-payment scheme; and second, petitioners clearly violated the procedure of releasing loans contained in the Bank's Manual on Field Office Guidelines on Lending Operations (Manual on Lending Operations).

A perusal of the aforementioned Annex "I,"[34] the Cattle-Breeding and Buy-Back Marketing Agreement, would show that stipulation "6.1" which allegedly authorizes prepayment does not exist. To make matters problematic is that nowhere in the records of the petition can one find a document which embodies such a stipulation. It bears stressing that the Auditor noted in his report that, "nowhere in the documents reviewed disclosed about prepayment scheme with REMAD, the supplier/dealer."

Moreover, it is surprising that one of petitioners' defense is that they processed the cooperatives' applications in accordance with their individual job descriptions as provided in the Bank's Manual on Field Office Guidelines on Lending Operations[35] when, on the contrary, petitioners seem to be oblivious of the fact that they clearly violated the procedure in releasing loans which is embodied in the very same Manual on Lending Operations, to wit:

Loan Proceeds Released Directly to the Supplier/Dealer - Proceeds of loans granted for the acquisition of farm machinery equipment; and sub-loan components for the purchase of construction materials, farm inputs, etc. shall be released directly to the accredited dealers/suppliers. Payment to the dealer shall be made after presentation of reimbursement documents (delivery/ official receipts/ purchase orders) acknowledged by the authorized LBP representative that same has been delivered.[36]

However, this Court is not unmindful of the fact that petitioners contend that the Legal Department of Land Bank supposedly passed upon the issue of application of Section 88 of PD 1445. Petitioners argue that in an alleged August 22, 1996 Memorandum issued by the Land Bank, it opined that Section 88 of PD 1445 is not applicable.[37] Be that as it may, this Court is again constrained by the fact that petitioners did not offer in evidence the alleged August 22, 1996 Land Bank Memorandum. Therefore, the supposed tenor of the said document deserves scant consideration. In any case, even assuming arguendo that petitioners are correct in their claim, they still cannot hide from the fact that they violated the procedure in releasing loans embodied in the Manual on Lending Operations as previously discussed.

To emphasize, the Auditor noted that "nowhere in the documents reviewed disclosed about prepayment scheme with REMAD." It is well settled that findings of fact of quasi-judicial agencies, such as the COA, are generally accorded respect and even finality by this Court, if supported by substantial evidence, in recognition of their expertise on the specific matters under their jurisdiction.[38] If the prepayment scheme was in fact authorized, petitioners should have produced the document to prove such fact as alleged by them in the present petition. However, as stated before, even this Court is at a loss as to whether the prepayment scheme was authorized as a review of "Annex I," the document to which petitioners base their authority to make advance payments, does not contain such a stipulation or provision. Highlighted also is the fact that petitioners clearly violated the procedure in releasing loans found in the Manual on Lending Operations which provides that payments to the dealer shall only be made after presentation of reimbursement documents acknowledged by the authorized LBP representative that the same has been delivered.

In addition, this Court notes that much reliance is made by petitioners on their allegation that the terms of the CFP allowed for prepayments or advancement of the payments prior to the delivery of the cattle by the supplier REMAD. It appears, however, that a CFP, even if admittedly a pro forma contract and emanating from the Land Bank main office, is merely a facility proposal and not the contract of loan between Land Bank and the cooperatives. It is in the loan contract that the parties embody the terms and conditions of a transaction. If there is any agreement to release the loan in advance to REMAD as a form of prepayment scheme, such a stipulation should exist in the loan contract. There is, nevertheless, no proof of such stipulation as petitioners had failed to attach the CFPs or the loan contracts relating to the present petition.

Based on the foregoing, the COA should, therefore, not be faulted for finding that petitioners facilitated the

commission of the irregular transaction. The evidence they presented before the COA was insufficient to prove their case. So also, even this Court is at a loss as to the truthfulness and veracity of petitioners' allegations as they did not even present before this Court the documents that would serve as the basis for their claims.

II.

Anent the second ground raised by petitioners, the same is again without merit. Petitioners impute on the COA grave abuse of discretion when it held petitioners administratively liable for having processed the loans of the borrowing cooperatives. This Court stresses, however, that petitioners cannot rely on their supposed observance of the procedure outlined in the Manual on Lending Operations when clearly the same provides that "payment to the dealer shall be made after presentation of reimbursement documents (delivery/official receipts/purchase orders) acknowledged by the authorized LBP representative that the same has been delivered." Petitioners have not made a case to dispute the COA's finding that they violated the foregoing provision. Any presumption, therefore, that public officials are in the regular performance of their public functions must necessarily fail in the presence of an explicit rule that was violated.

There is no grave abuse of discretion on the part of the COA as petitioners were given all the opportunity to argue their case and present any supporting evidence with the COA Regional Director. Moreover, it bears to point out that even if petitioners' period to appeal had already lapsed, the COA Commission Proper even resolved their August 10, 1999 letter where they raised in issue the favorable ruling of the Ombudsman.

III.

Anent, the last issue raised by petitioners, the same is without merit. Petitioners contend that respondent's Order, requiring them to refund the disallowed transaction, is *functus officio*, the amount having been legally written-off.[39]

A perusal of the records would show that Land Bank Vice-President Conrado B. Roxas sent a Memorandum[40] dated August 5, 1998 to the Head of the Ipil Branch, advising them that the accounts subject of the present petition have been written-off, to wit:

We are pleased to inform you that Bangko Sentral ng Pilipinas (BSP) in its letter dated July 20, 1998 has approved the write-off of your recommended Agrarian Reform Loan Accounts and Commercial Loan Accounts as covered by LBP Board Resolution Nos. 98-291 and 98-292, respectively, both dated June 18, 1998 x x x.[41]

The Schedule of Accounts for Write-Off[42] attached to the August 5, 1998 Memorandum shows that the same covered the two loans given to BARBEMCO, the two loans given to RTLIM RMC, and the only loan given to Tungawan PFPMC. The total amount approved for write-off was P2,209,000.00.[43] Moreover, petitioners contend that the last loan given to SIFAMCO was also the subject of a write-off in a similar advice given to the Buug Branch. The total approved write-off in the second Memorandum[44] was for P906,000.00.

In its Comment,[45] the COA argues that the fact that the audit disallowance was allegedly written-off is of no moment. Respondent maintains that Section 66 of PD 1445[46] expressly granted unto it the right to compromise monetary liabilities of the government.[47] The COA, thus, theorizes that without its approval, the alleged write-off is ineffectual. The same argument was reiterated by the COA in its Memorandum.[48]

The COA's argument deserves scant consideration.

A write-off is a financial accounting concept that allows for the reduction in value of an asset or earnings by the amount of an expense or loss. It is a means of removing bad debts from the financial records of the business.

In *Land Bank of the Philippines v. Commission on Audit*,^[49] this Court ruled that Land Bank has the power and authority to write-off loans, to wit:

LBP was created as a body corporate and government instrumentality to provide timely and adequate financial support in all phases involved in the execution of needed agrarian reform (Rep. Act No. 3844, as amended, Sec. 74). Section 75 of its Charter vests in LBP specific powers normally exercised by banking institutions, such as the authority to grant short, medium and long-term loans and advances against security of real estate and/or other acceptable assets; to guarantee acceptance(s), credits, loans, transactions or obligations; and to borrow from, or rediscount notes, bills of exchange and other commercial papers with the Central Bank. In addition to the enumeration of specific powers granted to LBP, Section 75 of its Charter also authorizes it:

12. To exercise the general powers mentioned in the Corporation Law and the General Banking Act, as amended, insofar as they are not inconsistent or incompatible with this Decree.

One of the general powers mentioned in the General Banking Act is that provided for in Section 84 thereof, reading:

x x x x

Writing-off loans and advances with an outstanding amount of one hundred thousand pesos or more shall require the prior approval of the Monetary Board (As amended by PD 71).

It will, thus, be seen that LBP is a unique and specialized banking institution, not an ordinary "government agency" within the scope of Section 36 of Pres. Decree No. 1445. As a bank, it is specifically placed under the supervision and regulation of the Central Bank of the Philippines pursuant to its Charter (Sec. 97, Rep. Act No. 3844, as amended by Pres. Decree No. 251). In so far as loans and advances are concerned, therefore, it should be deemed primarily governed by Central Bank Circular No. 958, Series of 1983, which vests the determination of the frequency of writing-off loans in the Board of Directors of a bank provided that the loans written-off do not exceed a certain aggregate amount. The pertinent portion of that Circular reads:

b. Frequency/ceiling of write-off. The frequency for writing-off loans and advances shall be left to the discretion of the Board of Directors of the bank concerned. Provided, that the aggregate amount of loans and advances which may be written-off during the year, shall in no case exceed 3% of total loans and investments; Provided, further, that charge-offs are made against allowance for possible losses, earnings during the year and/or retained earnings.^[50]

While the power to write-off is not expressly granted in the charter of the Land Bank, it can be logically implied, however, from the Land Bank's authority to exercise the general powers vested in banking institutions as provided in the General Banking Act (Republic Act 337). The clear intendment of its charter is for the Land Bank to be clothed not only with the express powers granted to it, but also with those implied, incidental and necessary for the exercise of those express powers.^[51]

In the case at bar, it is thus clear that the writing-off of the loans involved was a valid act of the Land Bank. In writing-off the loans, the only requirement for the Land Bank was that the same be in accordance with the applicable Bangko Sentral circulars, it being under the supervision and regulation thereof. The Land Bank recommended for write-off all six loans granted to the cooperatives, and it is worthy to note that the Bangko Sentral granted the same. The write-offs being clearly in accordance with law, the COA should, therefore, adhere to the same, unless under its general audit jurisdiction under PD 1445, it finds that under Section 25(1) the fiscal responsibility that rests directly with the head of the government agency has not been properly and effectively discharged.

On this note, the reliance of respondent on Section 66 of PD 1445 is baseless as a reading thereof would show that

the same does not pertain to the COA's power to compromise claims. Probably, what respondent wanted to refer to was Section 36 which provides:

Section 36. Power to compromise claims. -

1. When the interest of the government so requires, the Commission may compromise or release in whole or in part, any claim or settled liability to any government agency not exceeding ten thousand pesos and with the written approval of the Prime Minister, it may likewise compromise or release any similar claim or liability not exceeding one hundred thousand pesos, the application for relief therefrom shall be submitted, through the Commission and the Prime Minister, with their recommendations, to the National Assembly.
2. The respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters and if in their judgment, the interest of their respective corporations or agencies so requires. When the charters do not so provide, the power to compromise shall be exercised by the Commission in accordance with the preceding paragraph.

x x x x[52]

Under Section 36, the use of the word "may" shows that the power of the COA to compromise claims is only permissive, and not mandatory. Further, the second paragraph of Section 36 clearly states that respective governing bodies of government-owned or controlled corporations, and self-governing boards, commissions or agencies of the government shall have the exclusive power to compromise or release any similar claim or liability when expressly authorized by their charters. Nowhere in Section 36 does it state that the COA must approve a compromise made by a government agency; the only requirement is that it be authorized by its charter. It, therefore, bears to stress that the COA does not have the exclusive prerogative to settle and compromise liabilities to the Government.

The foregoing pronouncements notwithstanding, this Court rules that writing-off a loan does not equate to a condonation or release of a debt by the creditor.

As an accounting strategy, the use of write-off is a task that can help a company maintain a more accurate inventory of the worth of its current assets. In general banking practice, the write-off method is used when an account is determined to be uncollectible and an uncollectible expense is recorded in the books of account. If in the future, the debt appears to be collectible, as when the debtor becomes solvent, then the books will be adjusted to reflect the amount to be collected as an asset. In turn, income will be credited by the same amount of increase in the accounts receivable.

Write-off is not one of the legal grounds for extinguishing an obligation under the Civil Code.[53] It is not a compromise of liability. Neither is it a condonation, since in condonation gratuity on the part of the obligee and acceptance by the obligor are required.[54] In making the write-off, only the creditor takes action by removing the uncollectible account from its books even without the approval or participation of the debtor.

Furthermore, write-off cannot be likened to a novation, since the obligations of both parties have not been modified.[55] When a write-off occurs, the actual worth of the asset is reflected in the books of accounts of the creditor, but the legal relationship between the creditor and the debtor still remains the same - the debtor continues to be liable to the creditor for the full extent of the unpaid debt.

Based on the foregoing, as creditor, Land Bank may write-off in its books of account the advance payment released to REMAD in the interest of accounting accuracy given that the loans were already uncollectible. Such write-off, however, as previously discussed, does not equate to a release from liability of petitioners.

Accordingly, the Land Bank Ipil Branch must be required to record in its books of account the Php3,115,000.00 disallowance, and petitioners, together with their four co-employees,[56] should be personally liable for the said amount. Such liability, is, however, without prejudice to petitioners' right to run after REMAD, to whom they illegally disbursed the loan, for the full reimbursement of the advance payment for the cattle as correctly ruled by the COA in its July 17, 2003 Decision.[57]

On a final note, it bears to point out that a cursory reading of the Ombudsman's resolution will show that the complaint against petitioners was dismissed not because of a finding of good faith but because of a finding of lack of sufficient evidence. While the evidence presented before the Ombudsman may not have been sufficient to overcome the burden in criminal cases of proof beyond reasonable doubt,[58] it does not, however, necessarily follow, that the administrative proceedings will suffer the same fate as only substantial evidence is required, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[59]

An absolution from a criminal charge is not a bar to an administrative prosecution or vice versa.[60] The criminal case filed before the Office of the Ombudsman is distinct and separate from the proceedings on the disallowance before the COA. So also, the dismissal by Margarito P. Gervacio, Jr., Deputy Ombudsman for Mindanao, of the criminal charges against petitioners does not necessarily foreclose the matter of their possible liability as warranted by the findings of the COA.

In addition, this Court notes that the Ombudsman's Resolution relied on an alleged "April 6, 1992 Memorandum of the Field Loans Review Department" which supposedly authorized the Field Offices to undertake a prepayment scheme. On the other hand, the same Ombudsman's Resolution also made reference to a "January 19, 1994 Memorandum of EVP Diaz" and a "May 31, 1994 Memorandum of VP FSD" which tackled the prohibition on advance payment to suppliers. All these documents, however, were again not attached to the records of the case at bar. Particularly, the supposed "April 6, 1992 Memorandum of the Field Loans Review Department" was not even mentioned nor raised by petitioners as a defense in herein petition.

The decisions and resolutions emanating from the COA did not tackle the supposed April 6, 1992 Memorandum of the Field Loans Review Department which allegedly authorized the Field Offices to undertake a pre-payment scheme. While it is possible that such document would have shown that petitioners were in good faith, the same should have been presented by them in the proceedings before the Commission proper - an act which they were not able to do because of their own negligence in allowing the period to file an appeal to lapse. The April 6, 1992 Memorandum of the Field Loans Review Department would have been the best evidence to free petitioners from their liability. It appears, however, that they did not present the same before the COA and it is already too late in the day for them to present such document before this Court.

Petitioners' allegation of grave abuse of discretion by the COA implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of the power in an arbitrary manner by reason of passion, prejudice, or personal hostility; and it must be so patent or 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.[61] It is imperative for petitioners to show caprice and arbitrariness on the part of the COA whose exercise of discretion is being assailed. Proof of such grave abuse of discretion, however, is wanting in this case.

WHEREFORE, premises considered, the petition is DENIED. Decision No. 2003-107 dated July 17, 2003 and Resolution No. 2004-046 dated December 7, 2004, of the Commission on Audit, are hereby AFFIRMED.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Brion, Bersamin, Villarama, Jr., Perez, and Mendoza, JJ., concur.
Velasco, Jr., Leonardo-De Castro, Del Castillo, and Sereno, JJ., joins the dissenting opinion of J. Abad.
Nachura, J., no part. filed pleading as Sol gen.
Abad, J., see my dissenting opinion.

[1] Rollo, pp. 5-33.

[2] Signed by Commissioner Guillermo N. Carague, Chairman, with Commissioners Emmanuel M. Dalman and Reynaldo A. Villar, concurring; id. at 35-38.

[3] Records, p. 67.

[4] Id. at 66.

[5] Rollo, p. 17.

[6] See sample contract, rollo, pp. 93-97.

[7] Rollo, p. 41. (Emphasis supplied.)

[8] Id. at 93-97.

[9] Id.

[10] Lifted from the February 28, 2000 letter/endorsement of the COA Regional Director, rollo, pp. 81-87. It appears that the Auditor's Report does not form part of the records of the case. (Emphasis and underscoring supplied)

[11] Filed a separate petition before this Court docketed as G.R. No. 167437. On April 12, 2005, this Court en banc dismissed the petition for:

(a) failure to fully pay the legal fees in violation of Rule 64, Section 5 (par. 4) and Rule 46, Section 3, in relation to Rule 56, Section 2, the paid legal fees being short of P730.00; and

(b) failure to accompany the petition with a clearly legible duplicate original or certified true copy of the decision dated 17 July 2003 and resolution dated 7 December 2004 in violation of Rule 64, Section 5. (Records, p. 123.)

[12] Rollo, p. 42.

[13] Id. at 41.

[14] Id. at 75.

[15] RULE VI. APPEAL FROM DIRECTOR TO COMMISSION PROPER

Section 1. Who May Appeal and Where to Appeal. - The party aggrieved by a final order or decision of the Director may appeal to the Commission Proper.

Section 2. How Appeal Taken. - Appeal shall be taken by filing a petition for review in seven (7) legible copies, with the Commission Secretariat, a copy of which shall be served on the Director. Proof of service of the petition on the Director shall be attached to the petition.

Section 3. Period of Appeal. - The appeal shall be taken within the time remaining of the six (6) months period

under Section 2, Rule V, taking into account the suspension of the running thereof under Section 9 of the same Rule.

[16] Section 51. Finality of decisions of the Commission or any auditor. A decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, shall be final and executory.

[17] Rollo, p. 43.

[18] Id. at 76-77.

[19] Id. at 47-74.

[20] Id. at 73.

[21] Id. at 81-87.

[22] Id. at 88.

[23] Id. at 89-90.

DISSENTING OPINION

ABAD, J.:

I am unable to agree with the ponencia of Mr. Justice Diosdado M. Peralta that the Commission on Audit was right in holding personally liable some officers and staffs of the Land Bank of the Philippines (Land Bank) for certain agricultural loans they gave out that had gone bad.

The Facts and the Case

Petitioners Ruben Reyna (Reyna) and Lloyd Soria (Soria) are Senior Field Operations Specialist and Loans and Credit Analyst II, respectively, of the Land Bank's branch in Ipil, Zamboanga del Sur. In December 1993 the Ipil Branch received loan applications from four farmers' cooperatives[1] under the bank's cattle financing program.

To process the applications, each cooperative accomplished a Credit Facility Proposal (CFP), which required that they execute a Memorandum of Agreement (MOA) with their proposed cattle supplier, Remad Livestock Corporation (Remad). The CFP provided that the bank may release the proceeds of the loans 60 days prior to the delivery of the stocks. Consequently, after approval of the loan applications, the Ipil Branch issued to Remad three checks totaling P3,115,000.00 as advance payment for the cattle. But, because of foot-and-mouth disease that broke out among its herds, Remad failed to make the deliveries when they fell due.

During a post audit, the Land Bank resident auditor, Belen Oranu-Lu, disallowed the advance payment under CSB 95-005 and Notices of Disallowance 96-014 to 96-019. She pointed out that the Ipil Branch paid for the cattle in advance in violation of the Land Bank Manual on Field Office Group (FOG) Lending Operations and Commission on Audit (COA) rules and regulations. Notably, the disallowance was not on account of evidence of dishonest connivance with the farmers' cooperatives and their cattle supplier.

The bank branch's resident auditor held Reyna and Soria, together with four other employees[2] of the Ipil Branch, personally liable for the disallowed advances. The auditor's action also led to the filing of a criminal complaint against the bank officers and employees with the Office of the Ombudsman (the Ombudsman) in

OMB-MIN-96-0444 for gross negligence, violation of reasonable office rules and regulations, conduct prejudicial to the interest of the bank, and giving unwarranted benefits to persons, causing undue injury in violation of Section 3 (e) of the Republic Act 3019.[3]

Reyna and Soria appealed the notices of disallowance to the Director of the Commission on Audit, Regional Office IX, Zamboanga City (COA Regional Office), which affirmed the findings of the auditor. Meantime, on February 23, 1999 the Ombudsman dismissed the charges against the Ipil Branch officers and employees for lack of sufficient evidence to support a finding of probable cause against them regarding the charges.

On August 10, 1999, prompted by the Ombudsman's dismissal of the charges against them, Reyna and Soria wrote the COA Regional Office, seeking to have the auditor's disallowance of the loan advances set aside. Further, they pointed out that the Bangko Sentral ng Pilipinas already approved the write-off of the loans given to the farmers' cooperatives. Rather than act on Reyna and Soria's letter, the regional office forwarded it to the COA Head Office.

On July 17, 2003 the COA rendered a decision, affirming the findings of its local auditor and the regional office. The COA held that the Ombudsman's dismissal of the charges against the Land Bank officers and employees did not affect the validity of the disallowance which had already become final and executory. Also, it ruled that the criminal case before the Ombudsman was distinct and separate from the disallowance case which was civil in nature. Finally, the COA said that Reyna and Soria violated Section 88 of Presidential Decree (P.D.) 1445[4] and the Land Bank Rules and Regulations prohibiting advance payment on government contracts. Thus, it held petitioners and the other Land Bank employees personally liable for the disallowance, without prejudice to their right to reimbursement from Remad.

Reyna and Soria moved for reconsideration but the COA denied the same, hence, this petition.

The Issues Presented

Two issues are presented in this case:

1. Whether or not the petition is barred by res judicata; and
2. If it may be given due course, whether or not the COA was justified in requiring Reyna, Soria, and the other Land Bank employees with them to personally pay for the disallowed advances to the cattle supplier of the farmers' cooperatives.

Discussion

One. The ponencia points out that the decision of the COA Regional Office which found Reyna, Soria, and the other Land Bank employees personally liable had become final and executory since they failed to appeal to the COA. Consequently, their subsequent appeal to the latter is already barred by res judicata.

True, the appeal may have been late and the COA may have been within its authority to ignore it altogether. But it did not. Exercising its review powers, the COA in fact proceeded to rule on the merits of petitioners' appeal. This proves that petitioners raised important and substantial issues that, to the COA's mind, warranted more than just a minute resolution dismissing their appeal for being late. The Court has itself done this at times, minimizing technical rules to do justice to the parties.[5]

Quite importantly, the resident auditor instituted a complaint with the Ombudsman, charging petitioners and the others with them with gross negligence, violation of reasonable office rules and regulations, conduct prejudicial to the interest of the bank, and giving unwarranted benefits to persons, causing undue injury in violation of Section 3

(e) of the Republic Act 3019. After hearing, the Ombudsman completely absolved petitioners and the others of any wrongdoing in connection with the release of the proceeds of the loans to Remad.

The COA which initiated the complaint and was, therefore, a party to it should be bound by the Ombudsman's decision. If a judgment of acquittal by the Sandiganbayan warrants the reinstatement of and payment of back wages to the public officers accused in a case,[6] there is no justification for maintaining the punitive sanction that the resident auditor had imposed on petitioners after they have been cleared by the Ombudsman of any wrongdoing.

The revised ponencia of course points out that the assailed COA resolutions dealt only with the effect of the dismissal of the Ombudsman case on the propriety of the disallowance and nothing more. But this is inaccurate. The COA delved extensively into the merits of the case in both resolutions. In fact, apart from addressing the effect of the dismissal of the Ombudsman case, the COA also discussed the issues relative to the disallowance. It held that the bank's employees appeared to have violated P.D. 1445 and the bank's rules that prohibited advance payment on government contracts. Further, the COA even modified the order of disallowance. It held that the subject bank employees may seek reimbursement from Remad. If only because of this modification, the right of the bank employees to appeal from the COA resolution should be deemed reinstated.

Two. The COA ruled that petitioners Reyna and Soria violated Section 88 of P.D. 1445 which prohibits the government from making advance payments for services not yet rendered or for supplies and materials not yet delivered under any contract. For instance, a government agency has no business paying the supplier long in advance for an air condition unit that is yet to be delivered. That would be truly irregular.

Here, however, the Land Bank Ipil branch did not buy live cattle for the use or consumption of the bank. The bank was in the business of lending money, not just for profit but more so for inducing agricultural productivity among farmers. It would be quite unusual for a government bank not to give out a loan before it is paid what it lends.

Actually, it was not Remad who borrowed money from Land Bank but the four farmers' cooperatives in Zamboanga del Sur. It is not disputed that Remad was a regular cattle supplier with some track record in its business. It failed to deliver in this case because of a disastrous foot-and-mouth disease epidemic that hit its herds. The advance payment to Remad was part of the CFP terms that the cooperatives signed and submitted to the bank. And the Land Bank main office approved of this lending scheme.

The P3.1 million in loans would have benefited a number of farmers in four agricultural cooperatives and made more meat available for the populace had it proceeded as anticipated. It would be the height of unfairness to make the bank employees pay for those loans after they had gone bad without their fault. There is no hint in this case that petitioners and the other bank employees profited from the grant of the advances against the approved farmers' loans.

Land Bank is not just a government-owned corporation. It also does business like other privately owned commercial banks except that it may be given missions consistent with promoting economic growth in the countryside. For this reason it must lend money to farmers, perhaps assuming greater risks than ordinary banks would. The COA ruling in this case would have a chilling effect on bank officers who approve loans, placing in jeopardy the Land Bank's mission.

The COA cites Section 103 of P.D. 1445:

Sec. 103. General liability for unauthorized expenditures. -- expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

But this speaks of unauthorized expenditures of government money. The Bangko Sentral, which approved the write-off of the debts after examination of the records, had the right perspective, being an institution tasked with closely supervising banks. It did not regard the loan, like COA did, as a government expense that cannot be incurred until the goods or the services are delivered. It was a loan that, like any other loan, is given in consideration of a promise to pay. It can be written off when every reasonable effort at collection has failed.

It should be noted that the Ipil Branch used the same CFP that all other Land Bank branches used for the bank's nationwide cattle financing program. Therefore, in the absence of proof of bad faith, malice or gross negligence, the presumption of regularity in the performance of official duties should stand.

The revised ponencia suggests that there is no proof that the standard CFP in use by the bank contains a provision that authorizes prepayment to the supplier since no copy of the CFP is found in the case records. The ponencia points out that the Cattle Breeding and Buy-Back Agreement between Remad and the cooperatives did not contain such a provision on prepayment.

It may be so, but only because none of the parties had questioned the fact that the CFP allowed such prepayment. Indeed, the COA has never denied it. Quite the contrary, the COA Regional Director himself said in his February 28, 2000 endorsement that the resident auditor found the CFP flawed precisely because "No. 1 of the loan terms and conditions allowed prepayments without taking into consideration the interest of the bank." [7] Thus, although the agreement with Remad did not carry a prepayment provision, the auditor conceded that the Land Bank's standard CFP terms and conditions, which governed the grant of the cattle loan, provided for such prepayments.

Besides, the Court cannot ignore the criminal action that the COA itself instituted before the Ombudsman's office in OMB-MIN 96-0444. The bank employees brought it up in their appeal that the COA Regional Office elevated to the head office. The Ombudsman noted in its February 23, 1999 Resolution the fact that "per CFP terms, the release of the loan shall be made sixty (60) days prior to the delivery of stocks." [8] It also added that the prepayment scheme is in the CFPs of all cooperative borrowers and that the CFPs are embodied in a standard and prepared form provided by the Land Bank's Main Office. [9] Quite importantly, the Ombudsman found that the Land Bank management approved the prepayment scheme. [10] Actually, the COA's main concern was not the non-existence of a provision on prepayment but that, in its view, the scheme in the CFPs deviated from existing law and bank procedures, and that the bank employees erred in implementing the same. [11]

True, the Ombudsman's office said that the memoranda of Land Bank EVP Diaz dated January 19, 1994 and that of its VP FSD dated May 31, 1994 prohibited advance payments to a supplier. But, as found by the Ombudsman, it is evident that the bank's head office released these memoranda as a response to the subsequent problems encountered with Remad and after the bank had earlier authorized the scheme under the April 6, 1992 Memorandum of the Field Loans Review Department. [12]

That the CFP and the above memoranda were not presented to form part of the record of this case is of no moment. The COA initiated the case before the Ombudsman and, therefore, it should be bound by the findings of that office. Notably, the COA did not appeal the Ombudsman's dismissal of its complaint against the bank's Ipil Branch employees.

The ponencia claims that the Ombudsman's dismissal of the case against the bank employees was for lack of sufficient evidence and not for their good faith. But a reading of the Ombudsman's resolution will show that its finding of insufficiency of evidence is essentially based on the absence of bad faith or malicious intent on the part of the employees to cause damage to the government.

First, the Ombudsman found that Remad was an active supplier from 1990 to 1993 and that its subsequent failure

to deliver cattle was because of the outbreak of foot-and-mouth disease. Second, given that Remad was an active supplier since 1990, it cannot be said that the Land Bank employees gave it unwarranted benefits or that they could have foreseen the non-delivery of cattle. Third, the problem of non-delivery was not exclusive to the Ipil Branch as it also affected the Zamboanga, Catarman, and Tacloban branches. Consequently, it was unconscionable to hold the employees of the Ipil Branch liable for the failure of the Cattle Breeding Program. Fourth, the Land Bank is not without recourse in recovering the loan. And, fifth, the Land Bank management approved the prepayment scheme.[13]

From the foregoing, it is clear that the bank employees acted in good faith and, therefore, should not be made personally liable for the advance payments. Even the COA itself implicitly recognized that the employees were not at fault when it allowed them to seek reimbursement from Remad. In previous cases,[14] this Court has affirmed disallowances made by the COA without requiring the refund or payment of the disallowed amounts on the ground of good faith. The same principle can be applied here. In fact, it is perfectly reasonable to do so in this case because the Land Bank is not without recourse.

Justice Antonio T. Carpio correctly said that write-off is not a condonation of the debt and that the obligation remains, subject to future collection if possible. But it does not follow that Reyna, Soria, and the other employees with them should pay for the debt that they did not contract for themselves. The Cattle Breeding and Buy-Back Marketing Agreement between Remad and the cooperatives provides that "both parties shall be liable to Land Bank of the Philippines for whatever breach of contract entered into by the cooperative and REMAD LIVESTOCK CORPORATION in relation to the loan with the bank." [15] Consequently, the Land Bank may still institute a civil suit for collection against the proper parties to recover the loss.

Finally, as a general rule, the reversal of a judgment on appeal is binding only on the parties in the appealed case and not on those who did not join the appeal. An exception may be granted, however, where the rights and liabilities of all of them are so interwoven and dependent on each other as to be inseparable. In such case, a reversal as to one operates as a reversal as to all.[16]

Here, the COA resident auditor ordered Reyna, Soria and other subordinate Land Bank employees collectively liable for facilitating the advance payment to Remad. In fairness, such other employees should be granted the same relief.

ACCORDINGLY, I vote to GRANT the petition.

[1] R.T. Lim Rubber Marketing Cooperative, Buluan Agrarian Reform Beneficiaries MPC, Tungawan Paglaum Multi-Purpose Cooperative, and Siay Farmers' Multi-Purpose Cooperative.

[2] Emmanuel B. Bartocillo (Department Manager II), George G. Hebrona (Chief, Loans and Discounts Division), Mary Jane T. Cunting (Cash Clerk IV), and Leona O. Cabanatan (Bookkeeper III/Acting Accountant).

[3] Anti-Graft and Corrupt Practices Act.

[4] State Audit Code.

[5] Just to name a few of the most recent: *Barnes v. Padilla*, 482 Phil. 903, 915 (2004); *Manotok IV v. Heirs of Homer L. Barque*, G.R. Nos. 162335 & 162605, December 18, 2008, 574 SCRA 468; *Tan Tiac Chiong v. Cosico*, A.M. No. CA-02-33, July 31, 2002, 385 SCRA 509.

[6] Section 13, Republic Act 3019.

[7] Ponencia, p. 4.

[8] Rollo, p. 52.

[9] Id. at 53.

[10] Id. at 73.

[11] Id. at 60.

[12] Id.

[13] Id. at 71-73.

[14] Magno vs. Commission on Audit, G.R. No. 149941, August 28, 2007, 531 SCRA 339, 350; Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City, G.R. No. 159299, July 7, 2004, 433 SCRA 769, 771-773.

[15] Rollo, p. 95.

[16] Dadizon v. Bernadas, G.R. No. 172367, June 5, 2009, 588 SCRA 678, 684.

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