BENGUET STATE UNIVERSITY REPRESENTED BY ITS PRESIDENT ROGELIO D. COLTING, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 169637. June 08, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a Petition for Review on Certiorari filed by petitioner Benguet State University (BSU) seeking to nullify Commission on Audit (COA) Decision No. 2003-112[1] and Decision No. 2005-019[2]dated March 17, 2005. COA Decision No. 2003-112 affirmed COA-CAR Decision No. 2000-3, disallowing the rice subsidy and health care allowance to the employees of BSU, while COA Decision 2005-019 denied BSU's motion for reconsideration.

On July 6, 1997, Congress passed Republic Act No. 8292 entitled An Act Providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes, commonly known as the Higher Education Modernization Act of 1997. Pursuant to Section 4 (d) of the said law, the Board of Regents of BSU passed and approved Board Resolution No. 794 on October 31, 1997, granting rice subsidy and health care allowance to BSU's employees. The sums were taken from the income derived from the operations of BSU and were given to the employees at different periods in 1998.

On October 20, 1999, the grant of this rice subsidy and health care allowance in the total amount of P4,350,000.00 was disallowed in audit under Notice of Disallowance No. 99-001-STF (98), stating that R.A. No. 8292 does not provide for the grant of said allowance to employees and officials of the university.[3]

BSU requested the lifting of the disallowance with the COA Regional Office but it was denied in COA-CAR Decision No. 2000-3 dated January 26, 2000.[4] Citing Section 55 (2) of R.A. No. 8522 or the General Appropriation Act of 1998, it held that a non-existent item, project, activity, purpose, or object of expenditure cannot be funded by augmentation from savings or by the use of appropriations. It further held that the grant of said allowances lacked statutory basis, transgressed the constitutional proscription on additional, double, or indirect compensation and ran counter to the provisions of the Salary Standardization Law.

BSU thereafter filed a petition for review of Decision No. 2000-3 with the COA, which petition was denied in Decision No. 2003-112[5] dated July 17, 2003. The Commission ratiocinated:

> Concededly, the provision in Section 8, Article IX-B, 1987 Constitution that, "No elective or appointive public officers or employee shall receive additional, double or indirect compensation, unless specifically authorized by law" allows the payment of additional compensation when specifically authorized by law. In the instant case, BSU alleges that the grant of Rice Subsidy and Health Care allowance to its employees in 1998 is authorized by law, specifically Section 4 of R.A. No. 8292, otherwise known as the Higher Education Modernization Act of 1997. However, a closer perusal of the specific legal provision which reads thus:

> "Sec. 4. Powers and Duties of Governing Boards
>
> x x x
>
> "d) x x x
>
> Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college, from tuition fee and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension or other programs/projects of the university or college x x x"

clearly negate such claim of authority. It is noted that the term "other programs/projects" refers to such programs which the university may specifically undertake in pursuance of its primary objective which is to attain quality higher education The law could not have intended that the term "program/projects" embrace all programs of BSU, for these benefits, though part of the overall operations, are not directly related to BSU's academic program. Under the maxim of ejusdem generis, the mention of a general term after the enumeration of specific matters should be held to mean that the general term should be of the same genus as the specific matters enumerated and, therefore, the "other programs and projects"

should be held to be of the same nature as instruction, research and

extension. The inclusion of an incentive such as Rice Subsidy and Health Care Allowance to its teachers and non-teaching personnel is a patent or blatant disregard of the statutory limitation on the powers of the governing Board of SUCs, as these benefits are indubitably not one of instruction, research or extension.

Furthermore, employment in government service guarantees

salaries and other compensation packages and benefits pursuant to pertinent provisions of the Civil Service Law. Allowing other benefits to be granted in excess of those authorized by law is illegal. As such, BSU's attempt to grant benefits over and above those granted by the Civil Service Law cannot be countenanced.[6]

A motion for reconsideration was filed but was denied in the assailed Decision No. 2005-019 dated March 17, 2005.[7]

Hence, this petition with BSU positing these issues:

> A. Whether or not Petitioner is authorized to grant Health Care Allowance and Rice Subsidy to its employees; and
>
> B. Whether or not the recipients should reimburse the amounts received by them.[8]

Before addressing the issues raised in the present petition, it bears noting that what was filed before this Court is a petition captioned as a Petition for Review on Certiorari. We point out that a petition for review on certiorari is not the proper mode by which the COA's decisions are reviewed by this Court. Under Rule 64, Section 2 of the 1997 Rules of Civil Procedure, a judgment or final order of the COA may be brought by an aggrieved party to this Court on certiorari under Rule 65.[9] Thus, it is only through a petition for certiorari under Rule 65 that the COA's decisions may be reviewed and nullified by us on the ground of grave abuse of discretion or lack or excess of jurisdiction.[10]

However, though captioned as a Petition for Review on Certiorari, we treat this petition as a petition for certiorari under Rule 65 for it alleges "grave abuse of discretion" and "reversible legal error." The averments in the complaint, not the nomenclature given by the parties, determine the nature of the action.[11] Likewise, in previous

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rulings, We have treated differently labeled actions as special civil actions for certiorari under Rule 65 for reasons such as justice, equity, and fair play.[12]

BSU ascribes legal error and grave abuse of discretion to the COA in affirming the disallowance of the rice subsidy and health care benefits. Relying on R.A. No. 8292, BSU maintains that it can grant said benefits to its employees. It argues that the said law vests state universities and colleges with fiscal autonomy, and grants them ample leeway in the appropriation and disbursement of their funds. BSU adds that the grant did not contravene the constitutional prohibition on additional compensation because the allowances are granted as an incentive in appreciation of services rendered and in recognition of the economic plight of the employees. Also, the amounts used were taken from income generated by its operation and retained by the university which, under R.A. No. 8292, may be disbursed by its Governing Board in a manner it may determine to carry out its programs. Finally, it argues that the Salary Standardization Law does not expressly prohibit the benefits, because the said allowances are in the nature of a financial assistance and not an additional income.

We affirm the assailed Decisions.

BSU's contention that it is authorized to grant allowances to its employees is based on Section 4 (d) of R.A. No. 8292. The provision reads:

> SECTION 4. Powers and Duties of Governing Boards. – The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:
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> x x x x x x x x x
>
> d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.
>
> Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: Provided, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.
>
> Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.
>
> If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college;

x x x x x x x x x

Similarly, Commission on Higher Education (CHED) Memorandum No. 03-01, the Revised Implementing Rules and Regulations (IRR) for R.A. No. 8292, provides:

RULE V

Powers and Duties of the Governing Boards

> SECTION 18. Powers and Duties of Governing Boards (GBs). – The GBs of chartered SUCs shall have the following powers and duties, in addition to its general powers of administration and the exercise of all the powers granted to a Board of Directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the "Corporation Code of the Philippines," thus:
>
> x x x x x x x x x
>
> (d) to fix the tuition fees and other necessary charges, such as, but not limited, to matriculation fees, graduation fees and laboratory fees, as they may deem proper to impose, after due consultations with the involved sectors.
>
> Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interest that shall accrue therefrom shall be part of the same fund for the use of the university or college: Provided, that income derived from university or college hospitals shall be exclusively earmarked for the operations of the hospitals.
>
> Any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by its GB for instruction, research, extension, or other programs/projects of the university or college: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.
>
> If, for reasons beyond its control, the university or college shall not be able to pursue any project for which funds have been appropriated and allocated under its approved program of expenditures, its GB may authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the university or college;

x x x x x x x x x

What is clear from Section 4 (d) of R.A. No. 8292 cited by BSU as legal basis of its claim as well as from its implementing rules is that income generated by the university may be disbursed by its Governing Board for "instruction, research, extension, or other programs/projects of the university or colleges."

BSU theorizes that the phrase "other programs/projects of the university or college" in Section 4 (d) covers all projects and programs of the university, including those designed to uplift the economic plight of the employees. It is not limited to those programs which the university may specifically undertake in pursuance of its primary objective to achieve quality education, contrary to the interpretation of the COA.

We disagree.

Under the principle of ejusdem generis, where a statute describes things of a particular class or kind accompanied by words of a generic character, the generic word will usually be limited to things of a similar nature with those particularly enumerated, unless there be something in the context of the statute which would repel such inference.[13] The COA correctly ruled that the "other programs/projects" under R.A. No. 8292 and its Implementing Rules should be of the same nature as instruction, research, and extension. In BSU's case, the disbursements were for rice subsidy and health care allowances which are, in no way, intended for academic programs similar to instruction, research, or extension. Section 4 (d) cannot, therefore, be relied upon by BSU as the legal basis for the grant of the allowances.

Furthermore, a reading of the entire provision supports the COA's interpretation that the authority given to the Governing Board of state universities and colleges is not plenary and absolute. It is clear in Section 4 that the powers of the Governing Board are subject to limitations. This belies BSU's claim of plenary and absolute

authority.

Neither can BSU find solace in the academic freedom clause of the Constitution. Academic freedom as adverted to in the Constitution and in

R.A. No. 8292 only encompasses the freedom of the institution of higher learning to determine for itself, on academic grounds, who may teach, what

may be taught, how it shall be taught, and who may be admitted to study.[14] The guaranteed academic freedom does not grant an institution of higher learning unbridled authority to disburse its funds and grant additional benefits sans statutory basis. Unfortunately for BSU, it failed to present any sound legal basis that would justify the grant of these additional benefits to its employees.

Section 8, Article IX-B of the 1987 Constitution, is clear that:

> No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of Congress, any present, emolument, office or title of any kind from any foreign government.
>
> Pensions or gratuities shall not be considered as additional, double or indirect compensation.

Besides, Section 12 of R.A. No. 6758 or the Salary Standardization Law already provides for consolidation of allowances in the standardized salary rates, thus:

> SEC. 12. Consolidation of All Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

The benefits excluded from the standardized salary rates are the "allowances" which are usually granted to officials and employees of the government to defray or reimburse the expenses incurred in the performance of their official functions.[15] Clearly, the rice subsidy and health care allowance granted by BSU were not among the allowances listed in Section 12 which State workers can continue to receive under R.A. No. 6758 over and above their standardized salary rates. Hence, no abuse of discretion was committed by the COA in disallowing the disbursement of funds.

As regards the refund of the disallowed benefits, this Court holds that the employees need not refund the benefits they received based on our ruling in Philippine Ports Authority v. Commission on Audit.[16] In that case, the COA disallowed the payment of hazard duty pay and birthday cash gifts to its employees. This Court sustained the disallowance because the grant was without legal basis. However, this Court ruled against the refund holding that:

> x x x Petitioners received the hazard duty pay and birthday cash gift in good faith since the benefits were authorized by PPA Special Order No. 407-97 issued pursuant to PPA Memorandum Circular No. 34-95 implementing DBM National Compensation Circular No. 76, series of 1995, and PPA Memorandum Circular No. 22-97, respectively. Petitioners at the time had no knowledge that the payment of said benefits lacked legal basis. Being in good faith, petitioners need not refund the benefits they received.[17]

The ruling in Philippine Ports Authority applies to this case. The BSU employees received the rice subsidy and health care allowances in good faith since the benefits were authorized by Board Resolution No. 794, series of

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1997. They had no knowledge that the grant of said benefits lacked statutory basis. Therefore, a refund is unnecessary.

WHEREFORE, the instant petition is DENIED. Commission on Audit Decisions No. 2003-112 and No. 2005-019 are AFFIRMED but with MODIFICATION that BSU employees need not refund the rice subsidy and health care allowance received per Board Resolution No. 794, series of 1997.

No pronouncement as to costs.
SO ORDERED.

Puno, C.J., on official leave.
Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr. JJ., concur.
Carpio-Morales, J., on leave.

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[1] Annex "B," rollo, pp. 21-25.

[2] Annex "A," id. at 17-20.

[3] Annexes "C" to "C-1," id. at 26-28.

[4] Annex "D," id. at 29-30.

[5] Supra note 1.

[6] Id. at 23-24.

[7] Supra note 1.

[8] BSU's Memorandum, p. 5.

[9]SEC. 2. Mode of review. - A judgment or final resolution of the Commission of Election and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on Certiorari under Rule 65, except as herein provided.

[10]Reyes v. Commission on Audit, G.R. No. 125129, March 29, 1999, 305 SCRA 512, 517.

[11] Partido ng Manggawa v. Commission of Elections, G.R. No. 164702, March 15, 2006, 484 SCRA 671, 684-685.

[12] Id.

[13]Ching v. Salinas, G.R. No. 161295, June 29, 2005, 462 SCRA 241, 261.

[14] Vide: Camacho v. Coresis, G.R. No. 134372, August 22, 2002, 387 SCRA 628, 637.

[15] Philippine International Trading Corporation v. Commission on Audit, G.R. No. 152688, November 19, 2003, 416 SCRA 245, 249.

[16] G.R. No. 159200, February 16, 2006, 482 SCRA 490, 498.

[17] Id. at 500.

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