

PHILIPPINE DEPOSIT INSURANCE CORPORATION, Petitioner, vs. COMMISSION ON AUDIT, Respondent.

G.R. No. 171548. February 22, 2008

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TINGA, J.:

The Philippine Deposit Insurance Corporation (PDIC) seeks succor from the Court against an alleged infringement of its right to due process on account of Decision No. 2006-005[1] of the Commission on Audit (COA or Commission) dated 19 January 2006 which denied its request to permit the condonation of an audit disallowance.

The following factual antecedents are undisputed:

The former Finance Secretary, Mr. Roberto de Ocampo, in his capacity as ex-officio Chairman of the Philippine Deposit Insurance Corporation (PDIC) Board for the years 1994-1996 received a total amount of P440,068.62 representing Business Policy Development and Enforcement Expenses (BPDEE) and Christmas gift checks. The Auditor thereat issued Notice of Disallowance No. 98-002 (94-96) dated February 17, 1997, disallowing in audit the payment of said expenses on the ground that it partook of the nature of additional compensation or remuneration in violation of the rule on multiple positions proscribed under Section 13, Article VII of the Philippine Constitution and Section 2(9), Republic Act No. 3591, as amended. PDIC sought reconsideration of the subject disallowance but the same was denied in COA Decision No. 2001-015 dated January 23, 2001 and COA Resolution No. 2002-215 dated September 24, 2002.

On appeal by the PDIC to the Supreme Court En Banc, the latter in its Resolutions dated November 12, 2002 and January 21, 2003, respectively, in GR No. 155317 entitled “Philippine Deposit Insurance Corporation (PDIC) v. Commission on Audit” affirmed with finality said COA decision and resolution. Apropos to the finality of the decision of the Supreme Court, the Final Order of Adjudication (FOA) was issued to PDIC for enforcement of the decision pursuant to Sections 1 to 4 Rule XII of the 1997 Revised Rules of Procedure and Item III.A.15 of COA Memorandum No. 2002-053 dated August 26, 2002. However, instead of complying with the Order, PDIC condoned the amount of P413,866.62 invoking its power to condone under Section 8, paragraph 12 of its charter.

On December 22, 2004, the Chairman, this Commission, referred the matter to the Office of the Solicitor General (OSG) requesting assistance in the filing of appropriate action against PDIC officials for failure to comply with the FOA and the final decision of the Supreme Court on the appeal. In a letter dated January 31, 2005, the PDIC thru its counsels, seeks to have its right to appeal reinstated and sought reconsideration of the action taken in view of the fact that it did not allegedly receive any notice of disallowance of the condonation and that its management was deprived of its right to be heard as it was never provided a copy of the Resident Auditor’s Memorandum dated May 14, 2004.[2]

The COA ruled that PDIC cannot feign violation of its right to due process because it fully participated in the appeals process since the time the disbursements were disallowed. It cannot validly invoke its authority under its charter to condone the disallowance because the same had already been affirmed by the Supreme Court. To allow PDIC to condone the disallowance would be tantamount to sanctioning the indirect violation of the prohibition

against double compensation and the final Supreme Court decision. Thus, COA denied PDIC's request to uphold the condonation and to recall COA's letter to the Office of the Solicitor General (OSG) requesting the latter's assistance in the judicial enforcement of the disallowance.

In its Memorandum[3] dated 12 February 2007, PDIC claims that COA Decision No. 2006-005 was an arbitrary exercise of the Commission's discretion because it deprived PDIC of its right to be heard on the validity of the exercise of its right to condone a settled liability. The COA resident auditor allegedly failed to furnish it with notice of the Memorandum dated 14 May 2004 disallowing the condonation, and thereby deprived PDIC of its right to appeal from the disallowance as provided under the 1997 COA Revised Rules of Procedure (COA Rules).[4]

The OSG, on behalf of the Commission, asserts in its Memorandum[5] dated 20 February 2007 that PDIC's right to appeal from the Memorandum dated 14 May 2004 is already barred by *res judicata*. Inasmuch as the validity of the disallowance had already been affirmed by the Supreme Court, PDIC no longer had any recourse but to abide by the judgment. Allowing an appeal from the disallowance of the condonation would mean to delve into the validity of the disallowance of the disbursement once again. The Final Order of Adjudication dated October 7, 2003 was issued as a matter of course to execute the disallowance.

Moreover, the resident auditor was not under obligation to furnish PDIC with a copy of the Memorandum dated 14 May 2004 because the same did not contain any ruling or order but merely informed COA that PDIC condoned the disallowance and referred the matter to the Commission for appropriate action.

The Court is confronted with the question of first impression of whether the COA committed grave abuse of discretion when it disallowed the condonation of an audit disallowance.

There is no dispute that the disallowance of the amounts disbursed to former Finance Secretary Roberto De Ocampo had been affirmed by this Court in an *en banc* Resolution dated 12 November 2002 in

Philippine Deposit Insurance Corporation v. Commission on Audit[6] and that such affirmance had already attained finality.[7] Being a final and executory judgment, there was nothing left to be done but to execute the decision in accordance with its terms.

It is a fundamental rule that when a judgment becomes final and executory it becomes immutable and unalterable, the prevailing party can have it executed as a matter of right, and the issuance of a writ of execution becomes a ministerial duty of the court. The writ of execution must conform to the judgment to be executed and adhere strictly to the very essential particulars.[8]

Following this rule, PDIC should have reasonably expected that an order directing the payment or refund of the disallowed amount was forthcoming in accordance with the COA Rules as, in fact, a Final Order of Adjudication[9] was issued on October 7, 2003.

Under Rule XII of the COA Rules, execution shall issue upon a decision that finally disposes of the case. The auditor is tasked to direct the persons liable to pay or refund the amount disallowed, failing which,

an auditor's order shall be issued directing the cashier, treasurer or disbursing officer to withhold the payment of any money due such persons.[10] The final order of adjudication thus functions as the writ of execution in audit proceedings.

Notwithstanding the final order of adjudication, PDIC, invoking Sec. 8, par. 12[11] of its charter, issued Resolution No. 2003-09-157 dated 6 April 2004, condoning the audit disallowance. The Memorandum dated 14 May 2004 of COA Supervising Auditor Virgie A. Paz came in the heels of PDIC Resolution No. 2003-09-157 and

referred the condonation to COA's Legal and Administration Office for appropriate action in view of the supervising auditor's opinion that PDIC cannot condone an audit disallowance which had already been upheld by this Court.

The COA Chairman ultimately referred the matter to the OSG for the filing of the appropriate suit against responsible PDIC officials in accordance with the COA Rules.[12]

The foregoing action taken by the COA was obviously merely an execution of the Court's final decision upholding the audit disallowance. In contrast, PDIC Resolution No. 2003-09-157 appears to have been borne out of a desire to get around the execution of the Supreme Court decision upholding the audit disallowance. This is evident from the language of the resolution which mentions that the PDIC "[B]oard noted that the Supreme Court denied PDIC's petition due to technical reasons and not on the merits." [13]

Whatever may have been the reason for the dismissal of PDIC's petition, the fact remains that the decision upholding the audit disallowance had become final and executory. At the risk of sounding trite, the decision is now unalterable and immutable.[14] It is no longer subject to any revision, modification or appeal.

PDIC, however, claims that it has the right to appeal the 14 May 2004 Memorandum of the supervising auditor under the COA Rules. It proceeds to cite Rule V thereof which pertains to appeals from the auditor to the director.

The appeals process set forth in Rule V pertains to appeals from an order, decision or ruling rendered by the auditor. To be subject to appeal, such an order, decision or ruling must contain a disposition of a case, whether final or interlocutory. A memorandum, such as the one being questioned by PDIC in this case, which does not contain a disposition but merely informs the Commission of the condonation carried out by PDIC and refers the matter to the Commission for appropriate action, is not such an order, decision or ruling that may be appealed under Rule V.

More importantly, Rule V cannot, by any stretch of legal interpretation, be presumed to apply when the question pertains to an incident of execution of a final and executory judgment.

In dismissing the petition and affirming the audit disallowance, this Court effectively declared that the payment of the BPDEE to Secretary De Ocampo is prohibited as it violates the rule against double compensation. This declaration necessarily also means that condonation of the same payment in favor of the same person is likewise prohibited.

To allow an appeal, as PDIC insists, on the issue of the propriety of the condonation would also subject the propriety of the audit disallowance to review because the basis for allowing condonation would be not only that PDIC has the authority to condone in this particular instance but also that Secretary De Ocampo is entitled to receive the amounts paid to him, a question that had already been put to rest in the Court's decision.

To settle the matter once and for all, the audit disallowance is not subject to condonation following the principle that what is prohibited directly is also prohibited indirectly. The audit disallowance cannot be circumvented and legitimized by resorting to condonation. *Quando aliquid prohibetur ex directo, prohibetur et per obliquum.*

We agree with the COA's ruling that the authority of PDIC to condone applies only to ordinary receivables, penalties and surcharges and must be submitted to the Commission before it is implemented. This procedure would enable the Commission to inquire into the propriety of the condonation and to determine whether the same will not prejudice the government's interest, consistent with COA's constitutional mandate to examine, audit and settle all accounts of the government, its subdivisions, agencies and instrumentalities, including government-owned and controlled corporations.

Furthermore, PDIC's authority to condone under its charter is circumscribed by the phrase "to protect the interest of the Corporation."^[15] This authority does not include the power to condone a liability that arises from a violation of law. With greater reason, the condonation of a liability that arise from a violation of no less than the Constitution, as in this case, is not encompassed by PDIC's charter. It is not in the interest of PDIC to forego audit disallowances as it is neither its mandate nor its task to perpetuate breaches of law.

We are not inclined to put much stock to PDIC's allegations of denial of due process. Due process simply demands an opportunity to be heard and this opportunity was not denied PDIC.^[16] PDIC fully participated in the proceedings pertaining to the audit disallowance up until the same was finally upheld by this Court. It was also given sufficient opportunity to defend the validity of its exercise of its authority to condone.

In its letter to the COA dated 31 January 2005,^[17] PDIC raised the issue of whether it had validly exercised its authority under its charter to condone the disallowance of the BPDEE paid to Secretary De Ocampo.

The Commission resolved the issue in the negative, decreeing that an audit disallowance which had been affirmed by this Court with finality can no longer be the subject of condonation. Otherwise, the constitutional prohibition against double compensation would be violated.

The fact that PDIC was heard on the issue of the validity of the condonation already suffices. Denial of due process is the total lack of opportunity to be heard. Such a situation does not obtain in this case.

WHEREFORE, the petition is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, Chico-Nazario, Velasco, Jr., Reyes, and Leonardo-De Castro, JJ., concur.
Nachura, J., no part; signed pleadings as Sol Gen.

[1] Rollo, pp. 35-40.

[2] Id. at 35-36.

[3] Id. at 197-211.

[4] Id. at 191-212.

[5] Id. at 213-237.

[6] G.R. No. 155317.

[7] Rollo, p. 101; Resolution dated January 21, 2003.

[8] *Buenviaje v. Court of Appeals*, 440 Phil. 84, 94 (2002).

[9] Rollo, pp. 103-104.

[10] Commission on Audit Revised Rules of Procedure (1997), Rule XII.

Section 1. Execution of Decision.—Execution shall issue upon a decision that finally disposes of the case. Such execution shall issue as a matter of right upon the expiration of the period to appeal therefrom if no appeal has been fully perfected.

Section 2. Notification of Person(s) Liable.—The Auditor shall issue an order directing the person(s) liable to

pay/refund the amount disallowed within five (5) days from the lapse of the period to appeal.

Section 3. Withholding of money due.— In case of failure of the person(s) liable to refund the amount disallowed/charged within the period specified in the preceding section, the Auditor shall issue the Auditor's Order directing the Cashier/Treasurer/Disbursing Officer to withhold the payment of any money due such person(s).

[11]Twelfth—To compromise, condone or release, in whole or in part, any claim or settled liability to the Corporation, regardless of the amount involved, under such terms and conditions as may be imposed by the Board of Directors to protect the interest of the Corporation. [An Act Establishing The Philippine Deposit Insurance Corporation, Defining Its Powers And Duties And For Other Purposes]

[12] Commission on Audit Revised Rules of Procedure (1997), Section 4. Non-compliance with the Auditor's Order.—In case of failure by the Cashier/Treasurer/Disbursing Officer to comply with the Auditor's Order, the Auditor shall notify the agency head concerned of the non-compliance except where the agency head himself is one of the persons held liable for the disallowance. At the same time the Auditor shall report the matter to the COA Director concerned recommending any or all of the following actions:

- (a) Recommendation to the Commission Proper to cite defaulting party in contempt;
- (b) Referral of the matter to the Solicitor General for the filing of appropriate civil suit;
- (c) Referral to the Ombudsman for the filing of appropriate administrative or criminal action.

[13]Rollo, p. 102.

[14] *Honoridez v. Mahinay*, G.R. No. 153762, August 12, 2005, 416 SCRA 646, 655.

[15] *Supra* note 11.

[16] *J.D. Legaspi Construction v. NLRC*, 439 Phil. 13, 20 (2002).

[17] Rollo, pp. 109-111.

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