BASES CONVERSION AND DEVELOPMENT AUTHORITY, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 178160. February 26, 2009

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari[1] with prayer for the issuance of a temporary restraining order and a writ of preliminary injunction. The petition seeks to nullify Decision No. 2007-020[2] dated 12 April 2007 of the Commission on Audit (COA).

The Facts

On 13 March 1992, Congress approved Republic Act (RA) No. 7227[3] creating the Bases Conversion and Development Authority (BCDA). Section 9 of RA No. 7227 states that the BCDA Board of Directors (Board) shall exercise the powers and functions of the BCDA. Under Section 10, the functions of the Board include the determination of the organizational structure and the adoption of a compensation and benefit scheme at least equivalent to that of the Bangko Sentral ng Pilipinas (BSP). Accordingly, the Board determined the organizational structure of the BCDA and adopted a compensation and benefit scheme for its officials and employees.

On 20 December 1996, the Board adopted a new compensation and benefit scheme which included a P10,000 year-end benefit granted to each contractual employee, regular permanent employee, and Board member. In a memorandum[4] dated 25 August 1997, Board Chairman Victoriano A. Basco (Chairman Basco) recommended to President Fidel V. Ramos (President Ramos) the approval of the new compensation and benefit scheme. In a memorandum[5] dated 9 October 1997, President Ramos approved the new compensation and benefit scheme.

In 1999, the BSP gave a P30,000 year-end benefit to its officials and employees. In 2000, the BSP increased the year-end benefit from P30,000 to P35,000. Pursuant to Section 10 of RA No. 7227 which states that the compensation and benefit scheme of the BCDA shall be at least equivalent to that of the BSP, the Board increased the year-end benefit of BCDA officials and employees from P10,000 to P30,000. Thus in 2000 and 2001, BCDA officials and employees received a P30,000 year-end benefit, and, on 1 October 2002, the Board passed Resolution No. 2002-10-193[6] approving the release of a P30,000 year-end benefit for 2002.

Aside from the contractual employees, regular permanent employees, and Board members, the full-time consultants of the BCDA also received the year-end benefit.

On 20 February 2003, State Auditor IV Corazon V. Español of the COA issued Audit Observation Memorandum (AOM) No. 2003-004[7] stating that the grant of year-end benefit to Board members was contrary to Department of Budget and Management (DBM) Circular Letter No. 2002-2 dated 2 January 2002. In Notice of Disallowance (ND) No. 03-001-BCDA-(02)[8] dated 8 January 2004, Director IV Rogelio D. Tablang (Director Tablang),

COA, Legal and Adjudication Office-Corporate, disallowed the grant of year-end benefit to the Board members and full-time consultants. In Decision No. 2004-013[9] dated 13 January 2004, Director Tablang "concurred" with AOM No. 2003-004 and ND No. 03-001-BCDA-(02).

In a letter[10] dated 20 February 2004, BCDA President and Chief Executive Officer Rufo Colayco requested the reconsideration of Decision No. 2004-013. In a Resolution[11] dated 22 June 2004, Director Tablang denied the request. The BCDA filed a notice of appeal[12] dated 8 September 2004 and an appeal memorandum[13] dated 23 December 2004 with the COA.

The COA's Ruling

In Decision No. 2007-020,[14] the COA affirmed the disallowance of the year-end benefit granted to the Board members and full-time consultants and held that the presumption of good faith did not apply to them. The COA stated that:

> The granting of YEB x x x is not without x x x limitation. DBM Circular Letter No. 2002-02 dated January 2, 2002 stating, viz:
>
> "2.0
>
> To clarify and address issues/requests concerning the same, the following compensation policies are hereby reiterated:
>
> 2.1
>
> PERA, ADCOM, YEB and retirement benefits, are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid.
>
> 2.2
>
> Members of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law.
>
> 2.3
>
> Department Secretaries, Undersecretaries and Assistant Secretaries who serve as Ex-officio Members of the Board of Directors are not entitled to any remuneration in line with the Supreme Court ruling that their services in the Board are already paid for and covered by the remuneration attached to their office." (underscoring ours)
>
> Clearly, as stated above, the members and ex-officio members of the Board of Directors are not entitled to YEB, they being not salaried officials of the government. The same goes with full time consultants wherein no employer-employee relationships exist between them and the BCDA. Thus, the whole amount paid to them totaling P342,000 is properly disallowed in audit.
>
> Moreover, the presumption of good faith may not apply to the members and ex-officio members of the Board of Directors because despite the earlier clarification on the matter by the DBM thru the issuance on January 2, 2002 of DBM Circular Letter No. 2002-02, still, the BCDA Board of Directors enacted Resolution No. 2002-10-93 on October 1, 2002 granting YEB to the BCDA personnel including themselves. Full time consultants, being non-salaried personnel, are also not entitled to such presumption since they knew from the very beginning that they are only entitled to the amount stipulated in their contracts as compensation for their services. Hence, they should be made to refund the disallowed YEB.[15] (Boldfacing in the original)

Hence, this petition.

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The Court's Ruling

The Board members and full-time consultants of the BCDA are not entitled to the year-end benefit.

First, the BCDA claims that the Board can grant the year-end benefit to its members and full-time consultants because, under Section 10 of RA No. 7227, the functions of the Board include the adoption of a compensation and benefit scheme.

The Court is not impressed. The Board's power to adopt a compensation and benefit scheme is not unlimited. Section 9 of RA No. 7227 states that Board members are entitled to a per diem:

> Members of the Board shall receive a per diem of not more than Five thousand pesos (P5,000) for every board meeting: Provided, however, That the per diem collected per month does not exceed the equivalent of four (4) meetings: Provided, further, That the amount of per diem for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase. (Emphasis supplied)

Section 9 specifies that Board members shall receive a per diem for every board meeting; limits the amount of per diem to not more than P5,000; and limits the total amount of per diem for one month to not more than four meetings. In Magno v. Commission on Audit,[16] Cabili v. Civil Service Commission,[17] De Jesus v. Civil Service Commission,[18] Molen, Jr. v. Commission on Audit,[19] and Baybay Water District v. Commission on Audit,[20] the Court held that the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the per diem authorized by law and no other. In Baybay Water District, the Court held that:

> By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, x x x the law quite clearly indicates that directors x x x are authorized to receive only the per diem authorized by law and no other compensation or allowance in whatever form.[21]

Also, DBM Circular Letter No. 2002-2 states that, "Members of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law." RA No. 7227 does not state that the Board members are entitled to a year-end benefit.

With regard to the full-time consultants, DBM Circular Letter No. 2002-2 states that, "YEB and retirement benefits, are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid." The full-time consultants are not part of the BCDA personnel and are not paid the basic salary. The full-time consultants' consultancy contracts expressly state that there is no employer-employee relationship between the BCDA and the consultants, and that the BCDA shall pay the consultants a contract price. For example, the consultancy contract[22] of a certain Dr. Faith M. Reyes states:

> SECTION 2. Contract Price. For and in consideration of the services to be performed by the CONSULTANT (16 hours/week), BCDA shall pay her the amount of TWENTY THOUSAND PESOS and 00/100 (P20,000.00), Philippine currency, per month.
>
> x x x x
>
> SECTION 4. Employee-Employer Relationship. It is understood that no employee-employer relationship shall exist between BCDA and the CONSULTANT.
>
> SECTION 5. Period of Effectivity. This CONTRACT shall have an effectivity period of one (1) year, from January 01, 2002 to December 31, 2002, unless sooner terminated by BCDA in accordance with Section 6

below.

> SECTION 6. Termination of Services. BCDA, in its sole discretion may opt to terminate this CONTRACT when it sees that there is no more need for the services contracted for. (Boldfacing in the original)

Since full-time consultants are not salaried employees of BCDA, they are not entitled to the year-end benefit which is a "personnel benefit granted in addition to salaries" and which is "paid only when the basic salary is also paid."

Second, the BCDA claims that the Board members and full-time consultants should be granted the year-end benefit because the granting of year-end benefit is consistent with Sections 5 and 18, Article II of the Constitution. Sections 5 and 18 state:

> Section 5. The maintenance of peace and order, the protection of life, liberty, and property, and the promotion of the general welfare are essential for the enjoyment by all people of the blessings of democracy.
>
> Section 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

The Court is not impressed. Article II of the Constitution is entitled Declaration of Principles and State Policies. By its very title, Article II is a statement of general ideological principles and policies. It is not a source of enforceable rights.[23] In Tondo Medical Center Employees Association v. Court of Appeals,[24] the Court held that Sections 5 and 18, Article II of the Constitution are not self-executing provisions. In that case, the Court held that "Some of the constitutional provisions invoked in the present case were taken from Article II of the Constitution — specifically, Sections 5 x x x and 18 — the provisions of which the Court categorically ruled to be non self-executing."

Third, the BCDA claims that the denial of year-end benefit to the Board members and full-time consultants violates Section 1, Article III of the Constitution.[25] More specifically, the BCDA claims that there is no substantial distinction between regular officials and employees on one hand, and Board members and full-time consultants on the other. The BCDA states that "there is here only a distinction, but no difference" because both "have undeniably one common goal as humans, that is x x x `to keep body and soul together'" or, "[d]ifferently put, both have mouths to feed and stomachs to fill."

The Court is not impressed. Every presumption should be indulged in favor of the constitutionality of RA No. 7227 and the burden of proof is on the BCDA to show that there is a clear and unequivocal breach of the Constitution.[26] In Abakada Guro Party List v. Purisima,[27] the Court held that:

> A law enacted by Congress enjoys the strong presumption of constitutionality. To justify its nullification, there must be a clear and unequivocal breach of the Constitution, not a doubtful and unequivocal one. To invalidate [a law] based on x x x baseless supposition is an affront to the wisdom not only of the legislature that passed it but also of the executive which approved it.

The BCDA failed to show that RA No. 7227 unreasonably singled out Board members and full-time consultants in the grant of the year-end benefit. It did not show any clear and unequivocal breach of the Constitution. The claim that there is no difference between regular officials and employees, and Board members and full-time consultants because both groups "have mouths to feed and stomachs to fill" is fatuous. Surely, persons are not automatically similarly situated — thus, automatically deserving of equal protection of the laws — just because they both "have mouths to feed and stomachs to fill." Otherwise, the existence of a substantial distinction would become forever highly improbable.

Fourth, the BCDA claims that the Board can grant the year-end benefit to its members and the full-time

consultants because RA No. 7227 does not expressly prohibit it from doing so.

The Court is not impressed. A careful reading of Section 9 of RA No. 7227 reveals that the Board is prohibited from granting its members other benefits. Section 9 states:

> Members of the Board shall receive a per diem of not more than Five thousand pesos (P5,000) for every board meeting: Provided, however, That the per diem collected per month does not exceed the equivalent of four (4) meetings: Provided, further, That the amount of per diem for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase. (Emphasis supplied)

Section 9 specifies that Board members shall receive a per diem for every board meeting; limits the amount of per diem to not more than P5,000; limits the total amount of per diem for one month to not more than four meetings; and does not state that Board members may receive other benefits. In Magno,[28] Cabili,[29] De Jesus,[30] Molen, Jr.,[31] and Baybay Water District,[32] the Court held that the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the per diem authorized by law and no other.

The specification that Board members shall receive a per diem of not more than P5,000 for every meeting and the omission of a provision allowing Board members to receive other benefits lead the Court to the inference that Congress intended to limit the compensation of Board members to the per diem authorized by law and no other. Expressio unius est exclusio alterius. Had Congress intended to allow the Board members to receive other benefits, it would have expressly stated so.[33] For example, Congress' intention to allow Board members to receive other benefits besides the per diem authorized by law is expressly stated in Section 1 of RA No. 9286:[34]

> SECTION 1. Section 13 of Presidential Decree No. 198, as amended, is hereby amended to read as follows:
>
> "SEC. 13. Compensation.— Each director shall receive per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month.
>
> Any per diem in excess of One hundred fifty pesos (P150.00) shall be subject to the approval of the Administration. In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration." (Emphasis supplied)

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what Congress omitted, whether intentionally or unintentionally.[35]

When a statute is susceptible of two interpretations, the Court must "adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective."[36] The Court always presumes that Congress intended to enact sensible statutes.[37] If the Court were to rule that the Board could grant the year-end benefit to its members, Section 9 of RA No. 7227 would become inoperative and ineffective — the specification that Board members shall receive a per diem of not more than P5,000 for every meeting; the specification that the per diem received per month shall not exceed the equivalent of four meetings; the vesting of the power to increase the amount of per diem in the President; and the limitation that the amount of per diem shall not be increased within two years from its last increase would all become useless because the Board could always grant its members other benefits.

With regard to the full-time consultants, DBM Circular Letter No. 2002-2 states that, "YEB and retirement benefits, are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when

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the basic salary is also paid." The full-time consultants are not part of the BCDA personnel and are not paid the basic salary. The full-time consultants' consultancy contracts expressly state that there is no employer-employee relationship between BCDA and the consultants and that BCDA shall pay the consultants a contract price. Since full-time consultants are not salaried employees of the BCDA, they are not entitled to the year-end benefit which is a "personnel benefit granted in addition to salaries" and which is "paid only when the basic salary is also paid."

Fifth, the BCDA claims that the Board members and full-time consultants are entitled to the year-end benefit because (1) President Ramos approved the granting of the benefit to the Board members, and (2) they have been receiving it since 1997.

The Court is not impressed. The State is not estopped from correcting a public officer's erroneous application of a statute, and an unlawful practice, no matter how long, cannot give rise to any vested right.[38]

The Court, however, notes that the Board members and full-time consultants received the year-end benefit in good faith. The Board members relied on (1) Section 10 of RA No. 7227 which authorized the Board to adopt a compensation and benefit scheme; (2) the fact that RA No. 7227 does not expressly prohibit Board members from receiving benefits other than the per diem authorized by law; and (3) President Ramos' approval of the new compensation and benefit scheme which included the granting of a year-end benefit to each contractual employee, regular permanent employee, and Board member. The full-time consultants relied on Section 10 of RA No. 7227 which authorized the Board to adopt a compensation and benefit scheme. There is no proof that the Board members and full-time consultants knew that their receipt of the year-end benefit was unlawful. In keeping with Magno,[39] De Jesus,[40] Molen, Jr.,[41] and Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit,[42] the Board members and full-time consultants are not required to refund the year-end benefits they have already received.

WHEREFORE, the petition is PARTIALLY GRANTED. Commission on Audit Decision No. 2007-020 dated 12 April 2007 is AFFIRMED with the MODIFICATION that the Board members and full-time consultants of the Bases Conversion and Development Authority are not required to refund the year-end benefits they have already received.

SO ORDERED.

Quisumbing, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Brion and Peralta, JJ., concur.
Puno, C.J., no part due to relationship.
Ynares-Santiago and Tinga, JJ., on official leave.

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[1] Under Rule 65 of the Rules of Court.

[2] Rollo, pp. 37-44.

[3] Otherwise known as the "Bases Conversion and Development Act of 1992."

[4] Rollo, pp. 45-51.

[5] Id. at 52.

[6] Id. at 67.

[7] Id. at 73.

[8] Id. at 78-81.

[9] Id. at 89-91.

[10] Id. at 92-93.

[11] Id. at 94-98.

[12] Id. at 99.

[13] Id. at 100-110.

[14] Id. at 37-44.

[15] Id. at 42-43.

[16] G.R. No. 149941, 28 August 2007, 531 SCRA 339, 349.

[17] G.R. No. 156503, 22 June 2006, 492 SCRA 252, 260.

[18] G.R. No. 156559, 30 September 2005, 471 SCRA 624, 627.

[19] G.R. No. 150222, 18 March 2005, 453 SCRA 769, 778.

[20] 425 Phil. 326 (2002).

[21] Id. at 337.

[22] Rollo, pp. 158-159.

[23] Pamatong v. Commission on Elections, G.R. No. 161872, 13 April 2004, 427 SCRA 96, 100-101; Tañada v. Angara, 338 Phil. 546, 580-583 (1997).

[24] G.R. No. 167324, 17 July 2007, 527 SCRA 746, 764-765.

[25] Section 1, Article III of the Constitution states that, "No person shall be x x x denied the equal protection of the laws."

[26] British American Tobacco v. Camacho, G.R. No. 163583, 20 August 2008; Central Bank Employees Association, Inc. v. Bangko Sentral ng Pilipinas, 487 Phil. 531, 562 (2004).

[27] G.R. No. 166715, 14 August 2008.

[28] Supra note 16.

[29] Supra note 17.

[30] Supra note 18.

[31] Supra note 19.

[32] Supra note 20.

[33] Romualdez v. Marcelo, G.R. Nos. 165510-33, 28 July 2006, 497 SCRA 89, 107-109; Republic of the Philippines v. Honorable Estenzo, 188 Phil. 61, 65-66 (1980).

[34] An Act Further Amending Presidential Decree No. 198, Otherwise Known As "The Provincial Water Utilities Act of 1973," as amended.

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[35] Canet v. Mayor Decena, 465 Phil. 325, 332-333 (2004).

[36] Sesbreño v. Central Board of Assessment Appeals, 337 Phil. 89, 103-104 (1997).

[37] In re Guariña, 24 Phil. 37, 47 (1913).

[38] Veterans Federation of the Philippines v. Reyes, G.R. No. 155027, 28 February 2006, 483 SCRA 526, 556; Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit, G.R. No. 150769, 31 August 2004, 437 SCRA 371, 390-391.

[39] Supra note 16.

[40] Supra note 18.

[41] Supra note 19.

[42] G.R. No. 150769, 31 August 2004, 437 SCRA 371, 391.

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