

GENEROSO G. ABELLANOSA, CARMENCITA D. PINEDA, BERNADETTE R. LAIGO, MENELIO D. RUCAT, AND DORIS A. SIAO, PETITIONERS, VS. COMMISSION ON AUDIT AND NATIONAL HOUSING AUTHORITY, RESP...

G.R. No. 185806. November 17, 2020

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

For the Court's resolution is the motion[1] filed by petitioners Generoso G. Abellanos (Abellanos), Carmencita D. Pineda (Pineda), Bernadette R. Laigo (Laigo), Menelio D. Rucat (Rucat), and Doris A. Siao (Siao; collectively, petitioners) seeking reconsideration of the Decision[2] dated July 24, 2012 of the Court, which affirmed the Decision No. 2008-102[3] dated October 24, 2008 of the Commission on Audit (COA) upholding the disallowance of incentive allowances in the total amount of P401,284.39.

The Facts

On June 23, 1982, the Board of Directors of the National Housing Authority (NHA), acting pursuant to Presidential Decree No. (PD) 757,[4] issued Resolution No. 464[5] authorizing, inter alia, the grant of incentive allowances equivalent to 20% of basic pay in favor of project personnel who were assigned to regions outside their regular station:

RESOLVED, that to encourage personnel particularly those in technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization, the grant of additional Incentive Benefits to project personnel, to wit:

A. Personnel from one Region assigned to another Region (e.g., Metro Manila to Visayas or Mindanao):

- Incentive Allowance equivalent to 20% of basic pay.
- Air fare (once a quarter).
- Flight Insurance (Not more than P10.00 premium per flight)[.]
- Staff housing.

x x x x[6] (emphases supplied)

The foregoing resolution was then implemented by NHA Memorandum Circular No. 331[7] dated August 17, 1984, reiterating the entitlement of project personnel to incentive allowances if they are "[a]ssigned in a project other than [their] region of original placement." [8]

The subject allowances were, however, discontinued in light of the enactment of Republic Act No. (RA) 6758,[9] otherwise known as the "Compensation and Position Classification Act of 1989." [10] To recount, Section 12 of RA 6758 integrated all allowances and benefits paid to government personnel as part of their standardized

salaries, save for certain exceptions. Consequently, pursuant to Section 23[11] of RA 6758, the Department of Budget and Management (DBM) issued Corporate Compensation Circular (CCC) No. 10 entitled "Rules and Regulations for the Implementation of the Revised Compensation and Position Classification System Prescribed under RA 6758 for Government-Owned and/or Controlled Corporations and Financial Institutions (GFIs)."

Eventually, the NHA resumed payment of the subject allowances after the Court, in its August 12, 1998 ruling in *De Jesus v. COA*,^[12] struck down DBM CCC No. 10 for lack of publication. This prompted petitioners, who were NHA employees stationed at Cagayan de Oro City but assigned to other areas in Mindanao, to demand full back payment of incentive allowances for the period of February 1994 to December 1999, for which they were able to receive the partial sum of P808,645.90.^[13] To further recover the unpaid balance amounting to P1,003,210.96,^[14] petitioners filed claims for payment with the NHA head office. Uncertain about the legality of these claims, the NHA sought clarification from the Commission on Audit (COA).^[15]

Pending clarification, however, on September 19, 2001, Abellanosa, in his capacity as officer-in-charge of the NHA Iligan District Office, authorized the disbursement of the amount of P100,321.10,^[16] representing part of the aforementioned balance, with him and other petitioners as payees.^[17]

On September 18, 2001, the COA issued an adverse opinion relative to the incentive allowances; thus, the NHA informed Abellanosa that the payment of the same should be discontinued for lack of legal basis.^[18] This notwithstanding, on February 20, 2003, Abellanosa, once again, authorized the disbursement of the amount of P300,963.29 as incentive allowances, with him and other petitioners as payees.^[19]

On January 24, 2005, the Legal and Adjudication Office of the COA disallowed^[20] the foregoing disbursements in the total amount of P401,284.39^[21] for lack of legal basis and held petitioners, including a certain Jerry R. Baviera (Baviera), liable in the following capacities: (a) Abellanosa, as approving officer and payee; (b) Laigo, as certifying officer and payee; and (c) Pineda, Rucat, Siao, and Baviera, each as payees.^[22]

Aggrieved, petitioners appealed the notice of disallowance (ND) to the Adjudication and Settlement Board of the COA (ASB-COA), essentially arguing that RA 6758 does not apply to the NHA incentive allowances as the same were authorized prior to the passage of the said law, and pointing out that its implementing issuance, i.e., DBM CCC No. 10, was already struck down by the Court.^[23]

The Ruling of the ASB-COA

In a Decision^[24] dated April 10, 2007, the ASB-COA affirmed the disallowance.^[25] It held that the authorization and payment of the incentive allowances were illegal since the NHA's power to grant such amounts under PD 757 had already been repealed by Section 3^[26] of PD 1597^[27] and Section 16^[28] of RA 6758.^[29]

Dissatisfied, petitioners appealed to the COA proper.

The Ruling of the COA Proper

In a Decision^[30] dated October 24, 2008, the COA affirmed the ruling of the ASB-COA.^[31] In the same vein, it held that the subject allowances granted by the NHA to its displaced employees lacked legal basis.^[32]

Unperturbed, petitioners elevated the matter to the Court via a petition for certiorari under Rule 64, in relation to Rule 65 of the Rules of Court, arguing, among others, that: (a) the grant of incentive allowances was well within the NHA's authority as provided by PD 757; (b) such authority was not repealed by PD 1597 and RA 6758; and (c) the disallowance of the same was unjust.^[33]

Proceedings Before this Court

In a Decision[34] dated July 24, 2012 (July 24, 2012 Decision), the Court affirmed the ruling of the COA.[35] Finding no grave abuse of discretion on the latter's part, the Court ruled that the issuance of NHA Resolution No. 464 had no legal basis as Section 3 of PD 1597 had already repealed all laws permitting the grant of such allowances to government employees. Furthermore, it observed that the grant of the incentives also violated the rule on integration of allowances under Section 12 of RA6758.[36]

On September 19, 2012, petitioners filed the instant motion[37] seeking reconsideration of the Court's July 24, 2012 Decision on the main. At the onset, petitioners reiterated their previous arguments relative to the propriety of the subject allowances. Further, petitioners claimed that, even assuming that the incentives' disallowance was proper, they should not be held liable to refund the same since the amounts were received by them in good faith.

The Court's Ruling

The motion is partly meritorious.

Preliminarily, the Court observes that petitioner's contentions anent the propriety of the disallowance in this case are a mere rehash of its arguments already passed upon in the July 24, 2012 Decision. In their motion, petitioners reiterate that the payment of the incentive allowances were duly made in accordance with the NHA's authority under PD 757. However, as correctly held in the main Decision, the grant of such allowances are devoid of legal basis, considering that "Section 3 of [PD] 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees [inconsistent] x x x with the x x x National Compensation and Position Classification Plan"[38] of the government.

Likewise, the Court had aptly ruled that the NHA's power to grant such allowances had already been superseded by Section 12 of RA 6758, which integrated all allowances not specifically exempted into the standardized salary rates of government officials and employees. In this case, the incentive allowances granted under Resolution No. 464 do not fall under the following items provided under Section 12:

- Representation and transportation allowances (RATA);
- Clothing and laundry allowances;
- Subsistence allowances of marine officers and crew on board government vessels;
- Subsistence allowance of hospital personnel;
- Hazard pay;
- Allowance of foreign service personnel stationed abroad; and
- Such other additional compensation not otherwise specified herein as may be determined by the DBM. (Emphasis supplied)

Hence, notwithstanding petitioners' claim that the incentive allowances were incidental to and necessary for the enforcement of the NHA's powers and duties, the same can no longer be granted in light of the express provisions of RA 6758 which, upon its effectivity, rationalized government salary rates in pursuit of similarly noteworthy objectives. As such, the propriety of their disallowance is upheld.

Nevertheless, in view of the recent landmark ruling in *Madera v. COA*[39] (*Madera*), the Court deems it proper to partially reconsider the July 24, 2012 Decision insofar as petitioners' civil liability to return the disallowed amounts is concerned.

In *Madera*, the Court laid down the Rules on Return to be applied in cases involving disallowed personnel

incentives and benefits:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1.

If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2.

If a Notice of Disallowance is upheld, the rules on return are as follows:

a.

Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

b.

Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarity liable to return only the net disallowed amount, which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

c.

Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

d.

The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.[40] (Emphases supplied)

Based on the Madera Rules on Return, the public officers ordinarily held liable under disallowance cases involving personnel incentives and benefits are classified as either (1) an approving/authorizing officer or (2) a payee-recipient. As will be herein explained, their civil liabilities to return are correspondingly governed by distinct legal nuances under two basic frameworks of law.

Civil liability to return of an approving/authorizing officer.

When a public officer is to be held civilly liable in his or her capacity as an approving/authorizing officer, the liability is to be viewed from the public accountability framework of the Administrative Code. This is because the civil liability is rooted on the errant performance of the public officer's official functions, particularly in terms of approving/authorizing the unlawful expenditure. As a general rule, a public officer has in his or her favor the presumption that he or she has regularly performed his or her official duties and functions. For this reason, Section 38 (1), Chapter 9, Book I of the Administrative Code of 1987 requires a clear showing of bad faith, malice, or gross negligence attending the performance of such duties and functions to hold approving/authorizing officer civilly liable:

Section 38. Liability of Superior Officers. - (1) A public officer shall not be civilly liable for acts done in the

performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.
(Emphases and underscoring supplied)

The need to first prove bad faith, malice, or gross negligence before holding a public officer civilly liable traces its roots to the State agency doctrine – a core concept in the law on public officers. From the perspective of administrative law, public officers are considered as agents of the State; and as such, acts done in the performance of their official functions are considered as acts of the State. In contrast, when a public officer acts negligently, or worse, in bad faith, the protective mantle of State immunity is lost as the officer is deemed to have acted outside the scope of his official functions; hence, he is treated to have acted in his personal capacity and necessarily, subject to liability on his own.[41]

Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code of 1987 is clearly established, the liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is solidary together with all other persons taking part therein, as well as every person receiving such payment. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code of 1987, which states:

Section 43. Liability for Illegal Expenditures. – Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received. (Emphases and underscoring supplied)

With respect to "every official or employee authorizing or making such payment" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for amounts they may or may not have received, considering that the payee-recipients would not have received the disallowed amounts if it were not for the officers' errant discharge of their official duties and functions.[42]

Civil liability to return of payee-recipient of personnel incentives/benefits.

On the other hand, when a public officer is to be held civilly liable not in his or her capacity as an approving/authorizing officer but merely as a payee-recipient innocently receiving a portion of the disallowed amount, the liability is to be viewed not from the public accountability framework of the Administrative Code but instead, from the lens of unjust enrichment and the principle of *solutio indebiti* under a purely civil law framework. The reason for this is because the civil liability of such payee-recipient – in contrast to an approving/authorizing officer – has no direct substantive relation to the performance of one's official duties or functions, particularly in terms of approving/authorizing the unlawful expenditure. As such, the payee-recipient is treated as a debtor of the government whose civil liability is based on *solutio indebiti*, which is a distinct source of obligation.

When the civil obligation is sourced from *solutio indebiti*, good faith is inconsequential.[43] Accordingly, previous rulings absolving passive recipients solely and automatically based on their good faith contravene the true legal import of a *solutio indebiti* obligation and, hence, as per Madera, have now been abandoned. Thus, as it stands, the general rule is that recipients, notwithstanding their good faith, are civilly liable to return the disallowed amounts they had individually received on the basis of *solutio indebiti*.

This notwithstanding, the Court in Madera also recognized certain exceptions to the general rule on return. Bearing in mind its underlying premise, which is "the ancient principle that no one shall enrich himself unjustly at the expense of another,"[44] *solutio indebiti* finds no application where recipients were not unjustly enriched[45]

at the expense of the government. Particularly, these pertain to disallowed personnel incentives and benefits which are either: (1) genuinely given in consideration of services rendered (see Rule 2c of the Madera Rules on Return); or (2) excused by the Court to be returned on the basis of undue prejudice, social justice considerations, and other bona fide exceptions as may be determined on a case-to-case basis (see Rule 2d of the Madera Rules on Return).

As a supplement to the Madera Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, i.e., amounts genuinely given in consideration of services rendered, the following requisites must concur:

- (a) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and
- (b) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of the Madera Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) – the ponente of Madera – aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood to be limited to disbursements adequately supported by factual and legal basis,[46] but were nonetheless validly disallowed by the COA on account of procedural infirmities. As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations (e.g., matters of form, or inadequate documentation supplied/rectified later on). As Justice Caguioa explains:[47]

Under this rubric, the benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* are limited to compensation authorized by law including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (e.g., honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers.[48] These, to my mind, are the only forms of compensation that can truly be considered "genuinely given in consideration of services rendered," such that their recovery (by the government) which results from a disallowance (again, only because of procedural mistakes that might have been committed by approving and certifying officers) means the government is unjustly enriched (i.e., it benefitted from services received from its employees without making payment for it).

The exception to Rule 2c was not intended to cover all allowances that can be considered "genuinely given in consideration of services rendered" so as to defeat the general rule that payees are liable to return disallowed personnel benefits that they respectively received. (Emphases and underscoring supplied)

Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, there

must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.

The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other bona fide exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: it must constitute a bona fide instance which strongly impels the Court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in highly exceptional circumstances, after taking into account all factors (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.

It is important to rein in Rules 2c and 2d of the *Madera* Rules on Return because their application has a direct bearing on the resulting amount to be returned by erring approving/authorizing officers civilly held liable under Section 38, in relation to Section 43, of the Administrative Code. In *Madera*, the Court explained that when recipients are excused to return disallowed amounts for the reason that they were genuinely made in consideration of services rendered, or for some other bona fide exception determined by the Court on a case to case basis, the erring approving/authorizing officers' solidary obligation for the disallowed amount is net of the amounts excused to be returned by the recipients (net disallowed amount). The justifiable exclusion of these amounts signals that no proper loss should be recognized in favor of the government, and thus, reduces the total amount to be returned to the extent corresponding to such exclusions. Accordingly, since there is a justified reason excusing return, the State should not be allowed a double recovery of these amounts from the erring public officials and individuals notwithstanding their bad faith, malice or gross negligence. Needless to say, even if the civil liability becomes limited in this sense, these erring public officers and those who have confederated and conspired with them^[49] remain subject to the appropriate administrative and criminal actions which may be separately and distinctly pursued against them.^[50]

Application to the case at bar.

After a careful study of this case, the Court discerns that the incentive allowances disallowed herein are in the nature of dislocation allowances. Generally speaking, these allowances are meant as a recompense for the displacement of an employee who is assigned to work in remote or distant areas, the fact of which may entail personal and financial costs. As explicitly stated in NHA Resolution No. 464 and NHA Memorandum Circular No. 331, the subject allowances were given to select NHA personnel "from one [r]egion assigned to another [r]egion,"^[51] particularly, those "[a]ssigned in a project other than [their] region of original placement."^[52]

As the records further show, the incentive allowances equivalent to 20% of the basic pay were paid to petitioners for their deployment to other areas in Mindanao from their original station in Cagayan de Oro City (CDO).^[53] In particular, petitioner Abellanosa was transferred from CDO to Zamboanga and Iligan, Laigo from CDO to Iligan, Pineda from CDO to Zamboanga and Iligan, Rucat from CDO to Iligan, and Siao from CDO to Iligan.^[54] Aside from the NHA shouldering the direct costs appurtenant to their relocation (such as air fare, flight insurance and staff housing), an incentive pay was given in order to convince and encourage these displaced employees, particularly those in the technical/professional category - as petitioners in this case^[55] - to not only seek

assignment but also to stay in these distant and perhaps, even hazardous areas wherein the NHA's mandate, i.e., its housing programs, also needs to be implemented:

RESOLVED, that to encourage personnel particularly those in the technical/professional category to seek assignment with the projects and once there, to make them want to stay in the organization, the grant of additional Incentive Benefits to project personnel, to wit:

A. Personnel from one Region assigned to another Region (e.g., Metro Manila to Visayas or Mindanao):

- Incentive Allowance equivalent to 20% of basic pay.
- Air Fare (once a quarter).
- Flight Insurance (Not more than P10.00 premium per flight)
- Staff Housing.[56]

At this juncture, it is apt to mention that petitioners were actually relocated to different areas outside the region of their original station and that they had implemented the NHA's housing projects in the places they were reassigned to. In fact, in the July 24, 2012 Decision on the main, the Court even recognized "petitioners' professed dedication to their duties despite being sent to allegedly hazardous areas in order to implement the housing programs of the NHA." [57] Thus, by all accounts, there is no gainsaying that the disallowed incentives subject of this case have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions for which said incentives were intended as further compensation.

While the foregoing characterizations satisfy the second requisite of Rule 2c of the Madera Rules on Return as above-mentioned, the Court cannot excuse the return of these benefits on this ground since these benefits had no proper basis in law (first requisite). As keenly observed by Justice Caguioa during the deliberations, "[the] incentive [allowance in this case] is not among the benefits recognized or authorized by law, and was thus properly disallowed." [58] The records are equally bereft of any indication that there is a similar "provision for dislocation or displacement allowance in domestic salary laws and regulations, x x x." [59] In fact, as held in the July 24, 2012 Decision, these displacement incentives were predicated on the NHA officials' mistaken notion that they are justified expenses incidental to and necessary for the enforcement of the NHA's powers and duties. [60] However, the Court held that "Section 3 of [PD] 1597 had already expressly repealed all decrees, executive orders, and issuances that authorized the grant of allowances to groups of officials or employees [inconsistent] x x x with the x x x National Compensation and Position Classification Plan" [61] of the government. Consequently, the benefits were devoid of any legal basis and hence, cannot be considered as "genuinely given in consideration of services rendered."

This notwithstanding, the Court is strongly impelled to excuse the return based on Rule 2d of the Madera rules. Indeed, were it not for the lack of proper legal basis, the benefits would have been excused under Rule 2c since it is established that the benefits have a clear, direct, and reasonable connection to the actual performance of the petitioners' official work and functions. As above explained, the incentive allowance was meant to convince and encourage personnel belonging in the technical/professional category [62] to seek assignment in NHA projects implemented in other regions, and once there, to make them want to stay. The Court even recognized petitioners' professed dedication to their duties despite being sent to some hazardous areas in order to implement the housing programs of the NHA. Surely, it would be clearly iniquitous to direct petitioners to return the incentives they had received way back in 2003 [63] when these benefits were the material consideration for them to accede to their displacement and in so doing, risk their personal safety just so they could implement the NHA's mandate. Accordingly, this highly exceptional scenario justifies the application of Rule 2d and hence, completely excuses

petitioners' civil liability to return what they had received.

It may not be amiss to point out that among the petitioners, two of them are approving/certifying officers. These are Laigo as certifying officer, and Abellanos, as authorizing officer assigned as officer-in-charge of the NHA Iligan District Office. According to Madera, approving/authorizing officers are solidarity liable to return only the net disallowed amount, upon a showing that they had performed their official duties and functions in bad faith, with malice or gross negligence. To recount, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by the recipients either under Rules 2c or 2d of the Madera Rules on Return.

Here, since the civil liability for the disallowed amounts had already been completely excused under Rule 2d of the Madera rules, there is nothing more to return. Nonetheless, the foregoing pronouncement on petitioners' civil liability notwithstanding, the State may, if so warranted, pursue any other appropriate administrative or criminal actions against any of them (including Abellanos and Laigo) pursuant to existing laws and jurisprudence.

WHEREFORE, the motion for reconsideration is PARTLY GRANTED. The Decision dated July 24, 2012 of the Court is hereby AFFIRMED with MODIFICATION in that petitioners Generoso P. Abellanos, Carmencita D. Pineda, Bernadette R. Laigo, Menelio D. Rucat, and Doris A. Siao are EXCUSED from the civil liability to return the disallowed amount of P401,284.39 under Notice of Disallowance No. NHA-2005-001 (01 and 03) dated 24 January 2005, without prejudice to the finding of any administrative or criminal liability that any of them may have incurred under existing laws and jurisprudence.

SO ORDERED.

Peralta, C.J., Leonen, Gesmundo, Hernando, Carandang, Inting, Zalameda, Lopez, Delos Santos, Gaerlan, and Rosario, JJ., concur.

Caguioa, J., see concurring opinion.

Lazaro-Javier, J., on official leave.

[1] Dated September 7, 2012; rollo, pp. 327-340.

[2] Id. at 310-323.

[3] Id. at 46-54. Signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

[4] See Section 10 of Presidential Decree No. 757, entitled as "CREATING THE NATIONAL HOUSING AUTHORITY AND DISSOLVING THE EXISTING HOUSING AGENCIES, DEFINING ITS POWERS AND FUNCTIONS, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on July 31, 1975, which reads:

Section 10. Organizational Structure of the Authority. The Board shall determine the organizational structure of the Authority in such manner as would best carry out its powers and functions and attain the objectives of this Decree.

The General Manager shall, subject to the approval of the Board, determine and appoint the subordinate officers, other personnel, and consultants, if necessary, of the Authority: Provided, That the regular, professional and technical personnel of the Authority shall be exempt from the rules and regulations of the Wage and Position Classification Office and from the examination and/or eligibility requirement of the Civil Service Commission. Subject to the approval of the Board, the General Manager shall likewise determine the rates of allowances, honoraria and such other additional compensation which the authority is hereby authorized to grant to its officers, technical staff and consultants, including the necessary detailed personnel. (Emphasis

supplied)

[5] Rollo, p. 67.

[6] Id.

[7] Id. at 89-92.

[8] Id. at 90.

[9] Entitled "An Act Prescribing a Revised Compensation and Classification System in the Government and for Other Purposes," approved on August 21, 1989.

[10] See NHA Memorandum dated January 25, 1991; rollo, p. 200.

[11] Section 23. Effectivity. - This Act shall take effect July 1, 1989. The DBM shall, within sixty (60) days after its approval, allocate all positions in their appropriate position titles and salary grades and prepare and issue the necessary guidelines to implement the same. (Emphasis supplied)

[12] 355 Phil. 584 (1998).

[13] Broken down as follows: (1) Abellanos, the amount of P204,407.80; (2) Laigo, the amount of P178,494.20; (3) Pineda, the amount of P171,216.30; (4) Rucat, the amount of P93,310.60; and (5) Siao, the amount of P161,217.00. (See rollo, p. 314.)

[14] See Memorandum dated August 21, 2001; id. at 216.

[15] See id. at 314-3 15.

[16] See Disbursement Voucher No. 092604 dated September 19, 2001; id. at 70.

[17] See id. at 315.

[18] See NHA Memorandum dated September 25, 2001; not attached to the rollo. See also NHA Memorandum dated November 14, 2002; id. at 355-356.

[19] See Disbursement Voucher No. 023146 dated February 20, 2003; id. at 69. See also id. at 315.

[20] See Notice of Disallowance No. NHA-2005-001 (01&03) dated January 24, 2005 issued by Director IV Rogelio D. Tablang; id at 64-65.

[21] Broken down as follows: (1) Abellanos, the amount of P86,854.08; (2) Jerry R. Baviera, the amount of P54,956.80; (3) Laigo, the amount of P65,299.92; (4) Pineda, the amount of P102,847.75; (5) Rucat, the amount of P33,796.64; and (6) Siao, the amount of P57,529.20; see id.

[22] See id. at 316.

[23] See id. at 58 and 60.

[24] Id. 55-63. Signed by Assistant Commissioners Elizabeth S. Zosa, Emma M. Espina, Carmela S. Perez, Jaime P. Naranjo, and Amorsonia B. Escarda.

[25] Id. at 62.

[26] Section 3. Repeal of Special Salary Laws and Regulations. - All laws, decrees, executive orders and other issuances or parts thereof, that exempt agencies from the coverage of the National Compensation and Position Classification System as established by P.D. No. 985 and P.D. No. 1285, or which authorize and fix position

classification, salaries, pay rates/ranges or allowances for specified positions, to groups of officials and employees, or to agencies, that are inconsistent with the position classification or rates in the National Compensation and Position Classification Plan, are hereby repealed.

[27] Entitled, "FURTHER RATIONALIZING THE SYSTEM OF COMPENSATION AND POSITION CLASSIFICATION IN THE NATIONAL GOVERNMENT," approved on June 11, 1978.

[28] Section 16. Repeal of Special Salary Laws and Regulations. - All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

[29] See rollo, pp. 58-62.

[30] Id. at 46-54. Signed by Chairman Reynaldo A. Villar and Commissioner Juanito G. Espino, Jr.

[31] Id. at 53.

[32] See id. at 50-53.

[33] See id. at 22-40.

[34] Id. at 310-323.

[35] Id. at 321.

[36] See id. at 319-321.

[37] Dated September 7, 2012. Id. at 327-341.

[38] Id. at 319.

[39] See G.R. No. 244128, September 8, 2020.

[40] See id.

[41] See Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in Madera.

[42] See id.

[43] Good faith cannot be appreciated as a defense against an obligation under solutio indebiti as it is "'forced' by operation of law upon the parties, not because of any intention on their part but in order to prevent unjust enrichment." (See *Philippine National Bank v. Court of Appeals*, 291 Phil. 356, 367 [1993].)

[44] *Ramie Textiles, Inc. v. Mathay, Sr.*, 178 Phil. 482, 487 (1979).

[45] See *Power Commercial and Industrial Corp. v. Court of Appeals*, 340 Phil. 705 (1997).

[46] See *Reflections of Justice Caguioa*, pp. 2-7.

[47] Id. at 3-4.

[48] Citing Total Compensation Chart, Manual on Position Classification and Compensation, Chapter 3, p. 3-3.

[49] As Section 16.1.4 of COA Circular No. 2009-006 provides:

16.1.4 Public officers and other persons who confederated or conspired in a transaction which is

disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom. (Emphases supplied)

[50] See *Madera v. COA*, supra note 39. See also Separate Concurring Opinion of Justice Perlas-Bernabe in *Madera*.

[51] *Rollo*, p. 67.

[52] *Id.* at 91.

[53] See *id.* at 330-335. See also *id.* at 126.

[54] See *id.* at 131-136.

[55] See *id.* at 128, 359, 363, 365, 367, 369, and 371.

[56] *Id.* at 67.

[57] *Id.* at 321.

[58] See Concurring Opinion of Justice Caguioa, p. 10.

[59] *Id.*

[60] See *rollo*, p. 320.

[61] *Id.* at 319.

[62] See *id.* at 128, 359, 363, 365, 367, 369, and 371.

[63] See Disbursement Voucher No. 023146 dated February 20, 2003; *id.* at 69.

CONCURRING OPINION

CAGUIOA, J.:

I agree that the 2012 Decision correctly upheld the Notice of Disallowance.^[1] I write separately only to clarify the difference of Rule 2c and Rule 2d of the Rules on Return in *Madera v. COA*^[2] (*Madera*) as the basis for absolving the petitioners from the liability of returning the disallowed amount of P401,284.39.

I take the opportunity to expound on the proper interpretation of "amounts x x x genuinely given in consideration of services rendered"^[3] which are the proper exceptions to the general rule of Rule 2c — that payees must return disallowed amounts they respectively received, as originally conceived in *Madera*.

On September 8, 2020, the Court promulgated *Madera* which laid down the Rules on Return, thus:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1.

If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2.

If a Notice of Disallowance is upheld, the rules on return are as follows:

a.

Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of a family, are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

b.

Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarity liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

c.

Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

d.

The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.[4]

One of the concepts deliberately stated in broad strokes to await clarification on its proper interpretation in an appropriate case is "amounts x x x genuinely given in consideration of services rendered"[5] as an exception to Rule 2c.

Essence of recalibration by the Madera Rules

At its core, and as exhaustively discussed during the deliberations of Madera, its animating spirit is (1) the return to the proper recognition of the liability for unlawful expenditures as a single solidary obligation of officers and payees,[6] and (2) an appeal to a more predictable application of solutio indebiti across disallowance cases.

This second premise is the foundational principle of Rule 2c of Madera. Recipients of properly disallowed amounts are liable to return the amounts they received under Section 43 of the Administrative Code of 1987 and the principle of solutio indebiti. On the other hand, excuse under Rule 2c was intended to apply only to "true" exceptions to solutio indebiti where a disallowance is upheld, but any procedural mistakes will not justify requiring payees to return what they respectfully received "in consideration of services rendered." Otherwise, unjust enrichment in favor of the Government would result.

In the same manner that contractors in disallowances involving infrastructure or service contracts are allowed to retain amounts representing reasonable compensation for services rendered on the basis of quantum meruit, excuse under Rule 2c was intended to recognize situations where payees may be allowed to retain the amounts they received if there is legal basis for the grant of the benefit, and they are entitled to said amounts for having rendered actual services for which the said benefits were given. To do otherwise would sanction unjust enrichment in favor of the Government, as services are rendered in its favor by payees who are not recompensed.

In Madera, the Court held:

To be sure, the application of the principles of unjust enrichment and solutio indebiti in disallowed benefits

cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognized that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.[7]

The import of Rule 2c is it exempts payees from return when there are legal and factual bases to retain (i.e., that the disallowed benefit was authorized by law, and the payee can show that he rendered actual service so as to be entitled to the said benefit).

To clarify, each Rule in Madera covers distinct situations:

1.

Rule 2a provides for no liability for officers acting in good faith, in the regular performance of official functions, and with the diligence of a good father of a family.

2.

Rule 2b treats of the solidary liability of officers who are clearly shown to have acted in bad faith, malice, or gross negligence.

3.

Rule 2c provides the general rule that payees must return based on *solutio indebiti*, EXCEPT if the return will sanction unjust enrichment.

4.

Rule 2d treats of situations that would otherwise be covered by the general rule in Rule 2c save for the unique circumstances in the case that would prompt the exercise of the Court's discretion to excuse the return on a case-to-case basis.

Under this rubric, the benefits that the Court may allow payees to retain as an exception to Rule 2c's rule of return on the basis of *solutio indebiti* are limited to compensation authorized by law including: (i) basic pay in the form of salaries and wages; (ii) other fixed compensation in the form of fringe benefits authorized by law; (iii) variable compensation (e.g., honoraria or overtime pay) within the amounts authorized by law despite the procedural mistakes that might have been committed by approving and certifying officers.[8] These, to my mind, are the only forms of compensation that can truly be considered "genuinely given in consideration of services rendered," such that their recovery by the government resulting from a disallowance (again, only because of procedural mistakes that might have been committed by approving and certifying officers) means the government is unjustly enriched (i.e., it benefitted from services received from its employees without making payment for it).

The exception to Rule 2c was not intended to cover all allowances that can be considered "genuinely given in consideration of services rendered" so as to defeat the general rule that payees are liable to return disallowed personnel benefits that they respectively received.

Under the Compensation and Position Classification System,[9] (CPCS) the Total Compensation Chart shows the following recognized benefits termed "extrinsic rewards:"[10]

(see page 4)

The General Provisions of the annual General Appropriations Acts (GAAs) also contain a chapter on Personnel Benefits which enumerates recognized personnel benefits and provides the requirements for their release.[11] Insofar as effective exchange of value is concerned, the direct compensation comprising of salaries and other authorized fringe benefits attached to an employee's position must be the extent of reasonable compensation for services rendered based on quantum meruit.

The exception to Rule 2c (or, in other words, benefits that the Court may allow payees to retain to prevent unjust enrichment on the part of the Government) must be limited to these existing and recognized benefits if we are to uphold the policy of Republic Act No. (RA) 6758 of standardization and maintaining compensation at reasonable levels in proportion to the national budget.

To my mind, a too expansive or broader reading of the exception in Rule 2c of "genuinely given in consideration of services rendered" will unwarrantedly dilute the import of Rule 2c because that qualification already generally applies to all allowances received by government personnel. The inclusion of the government employees' names in the agency's payroll and their rendition of regular or special services furnish the factual basis for the release of the allowances in their favor. However, there must also be legal basis for the grant of the benefits in the first place.

This qualification – i.e., that there must be legal basis for the grant of the benefits in the first place, was also pointed out by Justice Henri Jean Paul B. Inting in his Concurring Opinion in Madera. He cogently explained:

III

The general rule remains to be holding a payee liable for a disallowed amount he has received because it violates the principle against unjust enrichment. It is only in truly exceptional circumstances, as shown and established by the antecedent facts, that the Court may exonerate him from the obligation. The unique exempting circumstance present in the case at bar is the onslaught of the typhoon Yolanda, which justifies the Court's appreciation of social justice considerations.

Also, the ponencia now enunciates to henceforth consider certain employee benefits as bona fide exceptions to the application of solutio indebiti, inasmuch as these were paid in exchange of services rendered.

Parenthetically, that a disallowed payment happened to be in the nature of employee benefits to compensate service rendered should not diminish or extinguish altogether the recipients' obligation to return. In theory, these benefits were given to compensate services rendered. However, is the payment itself supported by law? This virtual exchange of value (disbursement vis-a-vis service rendered by civil servant) should not be the sole consideration in upholding the payment's validity.

For example, merit increases are given for exemplary performance in public office. However, there are cases where the increases are excessive and totally lacking of legal basis because they were computed using a rate or factor in excess of what was provided under the law. In the computation of separation pay, there may be instances where the law clearly provides for a 1.5 multiplier and, yet, an employee nonetheless receives separation pay computed with a different one (e.g., 2.0 or 2.5, etc.), simply because the board of directors or the president took the initiative to reward their employees. Furthermore, there are also instances where employees are given allowances, which were intended to be consumed as part of the performance of their official functions, but clearly in violation of the Salary Standardization Law.[12]

Madera not intended to supersede Section 12 of RA 6758

RA 6758 or the Compensation and Position Classification Act of 1989, enacted on August 21, 1989, advanced the

policy of the State "to provide equal pay for substantially equal work and to base differences in pay upon substantive differences in duties and responsibilities, and qualification requirements of the positions." [13] To standardize salaries by integrating various allowances received by government officials and employees into the basic pay, RA 6758 provides:

Section 12. Consolidation of 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.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Furthermore, RA 6758 reinforced the compliance with the CPCS by providing the repeal of Special Salary Laws. [14]

Oft-repeated by the Court, [15] the policy of Section 12 was explained in the case of *Maritime Industry Authority v. Commission on Audit*: [16]

The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." Thus, the general rule is that all allowances are deemed included in the standardized salary. However, there are allowances that may be given in addition to the standardized salary. These nonintegrated allowances are specifically identified in Section 12, to wit:

- representation and transportation allowances; clothing and laundry allowances;
- subsistence allowance of marine officers and crew on board government vessels;
- subsistence allowance of hospital personnel;
- hazard pay; and
- allowances of foreign service personnel stationed abroad.

In addition to the nonintegrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary. [17] (Citations omitted)

As stated, *Madera* was not intended and cannot supersede Section 12 of RA 6758. Rule 2c, as I understand and penned it, was never intended to authorize exceptions to Section 12 through jurisprudence. To interpret it broadly now would defeat the policy of standardization.

Moreover, *Madera* was also not intended and cannot dispense with the DBM action under Section 12 or the requirement of Presidential approval or provision in a presidential issuance [18] for new and additional benefits granted to government personnel. The reason for this becomes more apparent when we consider that apart from the policy of RA 6758 to standardize salaries, the law specifically states that the CPCS to be established shall be guided by the principle that the total compensation provided for government personnel must be maintained at a reasonable level in proportion to the national budget. [19]

The exception in Rule 2c (i.e., of allowing the payees to retain the amounts they received) only seeks to prevent unjust enrichment on the part of the Government. It was not intended to cover benefits not authorized by law or those in violation of Salary Standardization laws, particularly, Section 12 of RA 6758. Stated differently, Rule 2c cannot cover new or additional allowances that were granted without compliance with legal requirements, as is involved in this case. If it were so, the rules in Madera including the notion of "net disallowed amount" would become a shield for unscrupulous officers who would treat government funds with largesse that they are free to distribute to their employees in the form of unauthorized benefits. If all these benefits are considered "in consideration of services rendered," the Government will not be able to recover any amount under the Madera Rules.

This is precisely why these unauthorized benefits, while they can be loosely described as "given in consideration of services rendered," cannot be considered as the exception to solutio indebiti under Rule 2c as they are not benefits authorized by law. Any such allowances that the Court may allow payees to retain are excused under Rule 2d on a case-to-case basis, and not under Rule 2c.

Application of Rule 2c

As an illustrative example of a situation covered by Rule 2c, the case of *Province of Camarines Sur v. COA*[20] (CamSur) is on point. In this case, Commission on Audit (COA) noted infirmities in the establishment of the extension classes and disallowed the payments made by the Province of Camarines Sur to the temporary teaching and non-teaching personnel of the Department of Education-Division of Camarines Sur hired to teach extension classes. The Court quoted therein the following violations noted by COA in its Notice of Disallowance:

1.

The payments for allowances of locally funded teachers were in violation of the provisions of Section 272 of RA 7160 which explicitly provide that the proceeds of Special Education Fund shall be allocated for the operation and maintenance of public schools and DECS-DBM- DILG Joint Circular No. 01, s[.] of 1998 dated April 14, 1998, clarified under JC No. 01-A dated March 14, 2000 and JC No. 01-B dated June 25, 2001 which state that payments of salaries, authorized allowances and personnel-related benefits are only for hired teachers that handle new classes as extension of existing public elementary [or] secondary schools established and approved by DepEd;

2.

The allowances was taken up in the Special Education Fund (SEF) books as "Donations" (878) instead of taking it up to the General Fund books[;]

3.

No Memorandum of Agreement and Accomplishment Report attached [;]

4.

The payments of payrolls on JEV Nos. 200-08-10-185(1-5) and 200-08-10-188 were not approved by the Provincial Governor[;]

5.

The Journal Entry of Payrolls on JEV Nos. 200-08-09-165(12), 200-08-185(1-5) and 200-08-10-188 were not approved by the Provincial Accountant[;]

6.

The OBR on JEV No. 200-08-09-165(12) was not approved by the Provincial Budget Officer (PBO)[;]

7.

There were no certifications coming from the Head Teachers that the recipient-teacher indeed served in a particular school at a given time[;]

8.

There was no certification from the HRMO of the [p]rovince regarding the authenticity of each claim.[21]

Reflecting upon the ratiocination of an early draft that there is no competent evidence that actual services were rendered by the payees, I wrote to suggest that the principle of solutio indebiti be applied to require the return of the disallowed amounts not only from the approving and certifying officers, but also from the payees themselves. After much deliberation, and relying upon the views offered by Justices Marvic M.V.F. Leonen and Amy C. Lazaro-Javier, the Court accepted the certification offered by the petitioners to prove the rendition of actual services by payees. It sought to find a way to allow payees to retain the amounts they received despite the noted infirmities that led to the disallowance. The Court ultimately held:

Our concurrence with respondent on this point, notwithstanding, still we find that petitioner is not liable to pay for the disallowed funds.

Under the principle of quantum meruit, a person may recover a reasonable value for the thing he delivered or the service that he rendered. Literally meaning "as much as he deserves," this principle acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.

Here, there is no question that the Provincial Human Resource Management Officer (PHRMO) and the Schools Division Superintendent (SDS) of Camarines Sur certified that locally-funded teachers actually rendered their services for calendar year 2008.

While COA argues that the joint certification of the PHRMO and SDS should be rejected, as it was impossible that they personally witnessed the daily attendance of all the personnel listed in the payroll, we find such imputation of malfeasance on the part of the concerned government officials to be warrantless, baseless and contrary to the presumption of regularity in the performance of official duties. We, therefore, give weight to the certification that the concerned personnel who received the questioned allowances actually rendered services for the period stated.

It is apparent, based on the rulings of the COA, COA-RO V, Auditor and ATL that, the disallowance was made not because no service was rendered by the concerned recipients. Rather, it was due to the failure of petitioners to comply with the mandatory requirements of DECS-DBM-DILG JCs particularly as to: (1) the prior approval of DECS (now DepEd) Secretary of the extension classes; and (2) the recommendation of the

DECS Regional Director. It is only the third requirement, certification by the division superintendent as to the necessity and urgency of establishing extension classes in the LGUs, which petitioners were able to meet.

In light of the principles of quantum meruit and unjust enrichment, we find that it would be the height of injustice if the personnel who rendered services for the period in question would be asked to return the honoraria and allowances they actually worked for, simply because the approving officers failed to comply with certain procedural requirements. By necessary implication, it would also be inequitable if the approving officers would be required to shoulder the return of the disallowed funds, even though such were given for actual service rendered.

x x x x

In summary, we find that a reversal of the COA Decision and Resolution is in Order as petitioner, through its approving officers, is not liable to refund the same. Actual services were rendered by the concerned recipients, teaching and non-teaching personnel alike, and no bad faith may be imputed on the approving officers.[22] (Emphasis in the original; underscoring supplied)

The situation in *CamSur* best exemplifies, in my view, the proper situation covered by Rule 2c's exception - in that were it not for the procedural missteps committed by the approving and certifying officers in the establishment of the extension classes and the recording and approval of the payments made, the amounts paid to the teachers should not have been disallowed. Notwithstanding the infirmities, the teachers' allowances should be retained by them because they were "genuinely given in consideration of services rendered," such that their recovery would result in the Government being unjustly enriched. The rendition of actual services justifies the retention of reasonable amounts received for the said services because this is a situation not covered by *solutio indebiti*.

This is the import of the exception in Rule 2c.

The situation in *CamSur* is different from cases involving new or additional benefits that are not direct compensation for actual services rendered. For these new and additional benefits, Rule 2c ordering the return on the basis of *solutio indebiti* applies.

As applied to this case

In this case, the "incentive allowance" equivalent to 20% of basic pay disallowed in this case is not covered by the exception in Rule 2c; hence, the excuse *pro hac vice* under Rule 2d.

This incentive is not among the benefits recognized or authorized by law, and was thus properly disallowed. Given that it is not a recognized benefit and the legal requirement for its grant was not complied with, the payment to the petitioners was undue. Their situation is covered by *solutio indebiti* and no unjust enrichment results in the Government recovering the payments made.

The Resolution describes the nature of the allowances in this case as being in the nature of dislocation allowance. In this regard, there appears no similar provision for dislocation or displacement allowance in domestic salary laws and regulations, whether for civilian personnel or military and uniformed personnel. Hence, the "additional incentive benefit" is clearly an additional benefit that could not have been validly granted without appropriate authorization either from the Department of Budget and Management or the Office of the President or through legislative issuances. Thus, the disallowance on that ground is valid, and the return is called for under Rule 2c.

The unanimous main decision which affirmed the COA decision assailed by petitioners already correctly held:

Petitioners also argue that the alleged reopening of the settled, audited accounts of petitioners with respect to the incentive allowance paid was contrary to existing audit rules; and that the subsequent disallowance was an

act tainted with injustice, fraud, and bad faith. While we commend petitioners' professed dedication to their duties despite being sent to allegedly hazardous areas in order to implement the housing programs of the NHA, the law must stand.

In *Baybay Water District v. Commission on Audit*, this Court stated that public officers' erroneous application and enforcement of the law do not estop the government from making a subsequent correction of those errors. Where there is an express provision of law prohibiting the grant of certain benefits, the law must be enforced even if it prejudices certain parties on account of an error committed by public officials in granting the benefit. Practice, without more—no matter how long continued—cannot give rise to any vested right if it is contrary to law.^[23]

As the grant of this additional "incentive benefit" allowance violates Section 12 of RA 6758, the Court's resolution to excuse the return in this case could only be justified by "exempting circumstance[s]"^[24] cited by the ponencia, which are properly included under Rule 2d, and not as an exception in Rule 2c.

Accordingly, I join the ponencia in resolving to PARTLY GRANT the Motion for Reconsideration.

[1] Notice of Disallowance No. NHA-2005-001 (01 and 03) dated January 24, 2005.

[2] G.R. No. 244128, September 8, 2020.

[3] *Id.* at 36.

[4] *Id.* at 35-36.

[5] Emphasis supplied.

[6] Such that retention by payees of the disallowed personnel benefits extinguishes the obligation of officers solidarily liable.

[7] *Supra* note 2, at 27. The citation for the quoted portion reads: See *Melchor v. Commission on Audit*, G.R. No. 95398, August 16, 1991, 200 SCRA 704, 714, citing *Eslao v. Commission on Audit*, G.R. No. 89745, April 8, 1991, 195 SCRA 730, 739. This case applies the same principle of unjust enrichment in cases where the contractor seeks payment to this case where reimbursement is sought from the official concerned; see also *Andres v. Commission on Audit*, G.R. No. 94476, September 26, 1991, 201 SCRA 780.

[8] See Manual on Position Classification and Compensation, Chapter 3, Total Compensation Chart, p. 3-3.

[9] See RA 6758; See generally, Joint Resolution No. 4, s. 2009 (JOINT RESOLUTION AUTHORIZING THE PRESIDENT OF THE PHILIPPINES TO MODIFY THE COMPENSATION AND POSITION CLASSIFICATION SYSTEM OF CIVILIAN PERSONNEL AND THE BASE PAY SCHEDULE OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES), Executive Order No. 201, s. 2016 (MODIFYING THE SALARY SCHEDULE FOR CIVILIAN GOVERNMENT PERSONNEL AND AUTHORIZING THE GRANT OF ADDITIONAL BENEFITS FOR BOTH CIVILIAN AND MILITARY AND UNIFORMED PERSONNEL), Joint Resolution No. 1, s. 2018 (JOINT RESOLUTION AUTHORIZING THE INCREASE IN BASE PAY OF MILITARY AND UNIFORMED PERSONNEL IN THE GOVERNMENT, AND FOR OTHER PURPOSES), and National Budget Circular No. 574 dated January 10, 2018 (IMPLEMENTATION OF THE INCREASE IN BASE PAY OF THE MILITARY AND UNIFORMED PERSONNEL (MUP) IN THE GOVERNMENT BEGINNING JANUARY 1, 2018, AND OTHER PROVISIONS OF CONGRESS JOINT RESOLUTION (JR) NO. 1, s. 2018).

[10] Manual on Position Classification and Compensation, *supra* note 8.

[11] See, e.g., RA 11465, 2020 GAA, Volume 1-B, Sec. 41 to 59, pp. 592-597.

[12] Concurring Opinion in *Madera v. COA*, supra note 2, at 11-12.

[13] Sec. 2.

[14] Section 16. Repeal of Special Salary Laws and Regulations. - All laws, decrees, executive orders, corporate charters, and other issuances or parts thereof, that exempt agencies from the coverage of the System, or that authorize and fix position classification, salaries, pay rates or allowances of specified positions, or groups of officials and employees or of agencies, which are inconsistent with the System, including the proviso under Section 2, and Section 16 of Presidential Decree No. 985 are hereby repealed.

[15] See *Gubat Water District v. Commission on Audit*, G.R. No. 222054, October 1, 2019, pp. 9-10, *Solito Torcuator v. Commission on Audit*, G.R. No. 21063 1, March 12, 2019, p. 7, and *Balayan Water District v. Commission on Audit*, G.R. No. 229780, January 22, 2019, p. 5.

[16] G.R. No. 185812, January 13, 2015, 745 SCRA 300.

[17] *Id.* at 321-322.

[18] DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT, Administrative Order No. 103, August 31, 2004.

[19] Sec. 3(c).

[20] G.R. No. 227926, March 10, 2020.

[21] *Id.* at 3.

[22] *Id.* at 12-15.

[23] *Abellanos v. Commission on Audit*, G.R. No. 185806, July 24, 2012, 677 SCRA 371, 383.

[24] To borrow the phrase of Justice Inting in his Concurring Opinion, supra note 2, at 11 in *Madera*.

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