

DR. EMMANUEL T. VELASCO, FORMER CHAIRMAN, TARIFF COMMISSION, EDGARDO B. ABON, CHAIRMAN, JAIME A. CASAS, EPICTETUS PATALINGHUG, ANTHONY R. A. ABAD, ILUMINADA O. BOBADILLA, FLORDE...

G.R. No. 189774. September 18, 2012

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Directives and orders issued by the President in the valid exercise of his power of control over the executive department must be obeyed and implemented in good faith by all executive officials. Acts performed in contravention of such directives merit invalidation.

Challenged via petition for certiorari under Rule 64 vis-à-vis Rule 65 of the Rules of Court is the Decision^[1] dated September 15, 2009 of respondent Commission on Audit (COA) disallowing the Merit Incentive Award and Birthday Cash Gift granted to petitioners.

The Facts

Sometime after the effectivity of the Administrative Code of 1987 (E.O. 292) and in accordance with Section 35,^[2] Chapter 5, Subtitle A, Title I, Book V thereof and its implementing rules, the Tariff Commission established its own Employee Suggestions and Incentives Awards System (ESIAS),^[3] which was approved by the Civil Service Commission (CSC) on December 2, 1993. Subsequently, however, the CSC ordered the Tariff Commission to revise the ESIAS to comply with certain requirements.^[4] On January 24, 1994, the revised ESIAS was submitted to the CSC for approval.^[5]

Without the revised ESIAS having been acted upon by the CSC, the Tariff Commission, through its then Chairman Emmanuel T. Velasco, issued Special Order No. 95-02^[6] on December 12, 1995, granting the subject Merit Incentive Award to its officials and employees in amounts ranging from P1,000.00 to P7,000.00, depending on the date of employment, for a total disbursement of P929,000.00. Subsequently, on December 16, 1996, the Tariff Commission also issued Resolution No. 96-01, as amended by Resolution No. 96-01A,^[7] granting the subject Birthday Cash Gift of P2,000.00 to eligible officials and employees for calendar years 1994, 1995 and 1996, for which it disbursed P794,000.00.^[8]

Upon post-audit conducted by the COA, the grant of the Merit Incentive Award was suspended for “lack of approval of the Office of the President.”^[9] The Birthday Cash Gift was likewise suspended for “lack of legal basis.”^[10] There being no settlement or submission by the Tariff Commission of the requirements for the lifting of both suspensions, the same eventually matured into disallowances.^[11] Thus, Chairman Velasco, in a letter^[12] to the COA, sought reconsideration with a request that if the disallowances are not reconsidered, the Merit Incentive Award be converted instead into “Hazard Pay,” similar to that granted by the National Economic Development Authority (NEDA) to its employees, to dispense with the requirement of a separate approval from

the Office of the President considering that the Tariff Commission is an attached agency of the NEDA.[13] He also informed the COA that the Tariff Commission adopted Resolution No. 96-01A which converted the Birthday Cash Gift into “Amelioration Assistance” to match the same benefit granted to NEDA officials and staff.

In a letter[14] dated March 17, 1999, State Auditor Malaya R. Ochoa denied Chairman Velasco’s request for reconsideration, stating that the grant of the subject incentives was contrary to Presidential Administrative Order No. 161[15] (AO 161) dated December 6, 1994 and Department of Budget and Management (DBM) National Compensation Circular No. 73[16] (NCC 73) dated December 27, 1994, which prohibited heads of departments and agencies from establishing and authorizing a separate productivity and performance incentive award. She also found no legal basis for the conversion of the disallowed payments into other forms of allowances.[17]

The matter was elevated to COA Director IV Juanito Espino, Jr. who affirmed the pronouncements of State Auditor Ochoa, holding that since the revised ESIAS was never approved by the CSC, then the same could not be a valid basis for the grant of the subject incentives.[18]

Hence, the filing of a petition for review with the COA En Banc assailing the disallowance of the subject incentives.[19]

Ruling of the COA

On September 15, 2009, the COA En Banc rendered the assailed Decision[20] upholding the disallowances. It ruled that Section 7 of AO 161 revoked Section 35, Chapter 5, Subtitle A, Title I, Book V of EO 292 and therefore, presidential approval was required for the grant of the Merit Incentive Award. It found that the conversion of the subject incentives did not remove the grant from the coverage of the proscription under AO 161 and NCC 73. Finally, the COA held that the Tariff Commission officers did not act in good faith since they authorized the subject incentives even after AO 161 had already been in effect for more than a year. Thus, they must be held personally liable therefor. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this Commission finds the instant petition undeserving of merit. Accordingly, the subject disallowances and credit notice are hereby AFFIRMED, and the approving officers and recipients of the subject Merit Incentive Award and Birthday Cash Gift are held liable therefor.[21]

Hence, the present petition.[22]

Issues Before The Court

Petitioners fault the COA and raise issues which may be summarized as follows:

- (1) Whether or not the grant to petitioners of the Merit Incentive Award and Birthday Cash Gift has legal basis.
- (2) Whether or not petitioners should refund the subject benefits which they received.

Ruling of the Court

The petition is partly meritorious.

AO 161 was issued to rationalize the grant of productivity incentive benefits under a uniform set of rules. It sought to address the dissension and dissatisfaction – which came about when some department heads granted incentive benefits of varying amounts to their officials and employees based on the provisions of Sections 31, 35 and 36 (2), Chapter 5, Subtitle I, Book V of the Administrative Code of 1987 – among those government employees who received less or no benefits due to lack of funds. It recognized the need to have a “standard system of incentive pay based on productivity and performance among officials and employees of the Government.”[23]

In accordance with its stated purposes, AO 161 prohibited the establishment of separate productivity and performance incentive awards. It also expressly revoked all administrative authorization/decrees relative to the grant of incentive award or bonus pursuant to Sections 31,[24] 35 and 36 (2),[25] Chapter 5, Subtitle A, Title I, Book V of EO 262. The pertinent provisions of AO 161 read:

Sec. 7. Prohibition from Establishing/Authorizing a Separate Productivity and Performance Incentive Award. Heads of departments, agencies, governing boards, commissions, offices including government-owned and/or controlled corporations and government financial institutions, and local government units, are hereby prohibited from establishing and authorizing a separate productivity and performance incentive award or any form of the same or similar nature;

Accordingly, all administrative authorization/decrees issued to select government offices/agencies, government-owned and/or controlled corporations and government financial institutions, and local government units, relative to grant of any Incentive Award or Bonus; administrative, memorandum and/or any order issued authorizing the grant of Incentive Award or Bonus or any form of similar nature pursuant to the provisions of Sections 31, 35 and 36(2), Chapter 5, Subtitle A, Title I, Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987; and executive orders providing for the grant of said Incentive Award or Bonus that are not consistent with this Order are hereby revoked.

Subsequently, on December 27, 1994, and conformably with the provisions of AO 161, the DBM issued NCC 73[26] which, echoing the presidential issuance, prohibited the different government agencies from establishing separate productivity and performance incentive awards.

On this score, it bears pointing out that while the Tariff Commission's ESIAS, which the CSC approved on December 2, 1993, established the general basis for allowing the Merit Incentive Award and Birthday Cash Gift, the specific grant and release of these cash benefits, however, were authorized only through Special Order 95-02 and Resolution No. 96-01 (as amended by Resolution No. 96-01A) dated December 12, 1995 and December 16 (17), 1996, respectively. Notably, when these authorizations were issued, AO 161 and NCC 73 were already in effect.[27]

Considering these antecedents, the Court cannot therefore give credence to petitioners' argument that the Tariff Commission's ESIAS provides the legal basis for the grant of the subject benefits,[28] and that AO 161 finds no application to their existing ESIAS as the said presidential issuance prohibits only the future establishment of separate incentive awards.[29]

The Tariff Commission's ESIAS cannot be implemented independently and without regard to subsequent presidential administrative orders such as AO 161. In *Blaquera v. Alcala*,[30] the Court comprehensively discussed the effects of an administrative order similar to AO 161 on the implementation of the ESIAS. It ruled that in issuing an administrative order to regulate the grant of productivity incentive benefits, the President was only exercising his power of control, thus:

Specifically, implementation of the Employee Suggestions and Incentive Award System has been decentralized to the President or to the head of each department or agency –

Section 35. Employee Suggestions and Incentive Award System. - There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.

In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishment, and other personal efforts contribute to the efficiency, economy, or other

improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

The President is the head of the government. Governmental power and authority are exercised and implemented through him. His power includes the control over executive departments-

“The president shall have control over all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed.” (Section 17, Article VII, 1987 Constitution)

Control means “the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.” It has been held that “[t]he President can, by virtue of his power of control, review, modify, alter or nullify any action, or decision of his subordinate in the executive departments, bureaus, or offices under him. He can exercise this power *motu proprio* without need of any appeal from any party.”

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The President issued subject Administrative Orders to regulate the grant of productivity incentive benefits and to prevent discontentment, dissatisfaction and demoralization among government personnel by committing limited resources of government for the equal payment of incentives and awards. The President was only exercising his power of control by modifying the acts of the respondents who granted incentive benefits to their employees without appropriate clearance from the Office of the President, thereby resulting in the uneven distribution of government resources. In the view of the President, respondents [made] a mistake which had to be corrected. In so acting, the President exercised a constitutionally-protected prerogative-

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Neither can it be said that the President encroached upon the authority of the Commission of Civil Service to grant benefits to government personnel. [The subject AOs] did not revoke the privilege of employees to receive incentive benefits. The same merely regulated the grant and amount thereof.

Sound management and effective utilization of financial resources of government are basically executive functions, not the Commission's. Implicit is this recognition in EC 292, which states:

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Conformably, it is the President or the head of each department or agency who is authorized to incur the necessary expenses involved in the honorary recognition of subordinate officers and employees of the government.” It is not the duty of the Commission to fix the amount of the incentives. Such function belongs to the President or his duly empowered alter ego. (underscoring supplied)

In the present case, and in line with the pronouncements in *Casal v. Commission on Audit*[31] and *Blaquera v. Alcala*,[32] the Court finds that AO 161 was issued in the valid exercise of presidential control over the executive departments, which Chairman Velasco was duty bound to observe. “Executive officials who are subordinate to the President should not trifle with the President's constitutional power of control over the executive branch. There is only one Chief Executive who directs and controls the entire executive branch, and all other executive officials must implement in good faith his directives and orders. This is necessary to provide order, efficiency and coherence in carrying out the plans, policies and programs of the executive branch.”[33]

Considering, therefore, that Special Order 95-02 and Resolution No. 96-01 as amended by Resolution No. 96-01A, were issued in direct contravention of the prohibition in AO 161, it follows that the grant of the incentive awards therein were invalid and lacked legal basis.

Even prior to the issuance of AO 161, the subject incentive awards could not have been validly granted in the absence of prior approval from the Office of the President, pursuant to Section 2 of Administrative Order No. 103 (AO 103),^[34] which states:

Sec. 2. All heads of government offices/agencies, including government-owned and/or controlled corporations, as well as their respective governing boards are hereby enjoined and prohibited from authorizing/granting Productivity Incentive Benefits or any and all similar forms of allowances/benefits without prior approval and authorization via Administrative order by the Office of the President. Henceforth, anyone found violating any of the mandates in this Order, including all officials/agency found to have taken part thereof, shall be accordingly and severely dealt with in accordance with the applicable provisions of existing administrative and penal laws.

Consequently, all administrative authorizations to grant any form of allowance/benefits and all forms of additional compensation usually paid outside of the prescribed basic salary under R.A. No. 6758, the Salary Standardization Law, that are inconsistent with the legislated policy on the matter or are not covered by any legislative action are hereby revoked. (Underscoring supplied)

AO 103, which took effect on January 14, 1994, enjoins heads of government agencies from granting incentive benefits without prior approval of the President and, like AO 161, is also a valid exercise of the President's constitutional^[35] power of control and authority over executive departments. Thus, without the imprimatur of the Office of the President as required by AO 103, the grant of the subject incentives is null and void.

On the other hand, petitioners contend that even if the grant of the subject incentives were invalidated, they should not be made to refund the same because the benefits were given to, and received by, them in good faith.

Indeed, a public officer is presumed to have acted in good faith in the performance of his duties.^[36] However, public officials can be held personally accountable for acts claimed to have been performed in connection with official duties where they have acted beyond their scope of authority or where there is a showing of bad faith.^[37] Thus, in the case of *Casal v. Commission on Audit*,^[38] the Court held liable the approving officers who authorized the grant of productivity award in complete disregard of the prohibition declared by a presidential issuance, ratiocinating that:

The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof.

Similarly in the present case, the blatant failure of the petitioners-approving officers to abide with the provisions of AO 103 and AO 161 overcame the presumption of good faith. The deliberate disregard of these issuances is equivalent to gross negligence amounting to bad faith. Therefore, the petitioners-approving officers are accountable for the refund of the subject incentives which they received.

However, with regard to the employees who had no participation in the approval of the subject incentives, they were neither in bad faith nor were they grossly negligent for having received the benefits under the circumstances. The approving officers' allowance of the said awards^[39] certainly tended to give it a color of legality from the perspective of these employees. Being in good faith, they are therefore under no obligation to refund the subject benefits which they received.^[40]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated September 15, 2009 of respondent COA is **AFFIRMED** with **MODIFICATION**. Only the approving officers are directed to return the amounts which they received as Merit Incentive Award under Special Order No. 95-02 and Birthday Cash Gift under

Resolution No. 96-01 as amended by Resolution No. 96-01A.

SO ORDERED.

Sereno, CJ., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, VillPerez, Mendoza, and Reyes, JJ., concur.

Villarama, Jr., J., on official leave.

[1] Rollo, pp. 89-95.

[2] Section 35. Employee Suggestions and Incentive Award System. - There shall be established a government-wide employee suggestions and incentive awards system which shall be administered under such rules, regulations, and standards as may be promulgated by the Commission.

In accordance with rules, regulations, and standards promulgated by the Commission, the President or the head of each department or agency is authorized to incur whatever necessary expenses involved in the honorary recognition of subordinate officers and employees of the government who by their suggestions, inventions, superior accomplishment, and other personal efforts contribute to the efficiency, economy, or other improvement of government operations, or who perform such other extraordinary acts or services in the public interest in connection with, or in relation to, their official employment.

[3] Rollo, pp. 32-36.

[4] Id. at 6.

[5] Id. at 5-6.

[6] Id. at 37-40.

[7] Id. at 89.

[8] Id. at 6.

[9] Id. at 89.

[10] Id.

[11] Presidential Decree No. 1445 states:

Section 82. Auditor's notice to accountable officer of balance shown upon settlement. The auditor concerned shall, at convenient intervals, send a written notice under a certificate of settlement to each officer whose accounts have been audited and settled in whole or in part by him, stating the balances found due thereon and certified, and the charges or differences arising from the settlement by reason of disallowances, charges, or suspensions. The certificate shall be properly itemized and shall state the reasons for disallowance, charge, or suspension of credit. A charge of suspension which is not satisfactorily explained within ninety days after receipt of the certificate or notice by the accountable officer concerned shall become a disallowance, unless the Commission or auditor concerned shall, in writing and for good cause shown, extend the time for answer beyond ninety days.

[12] Rollo, pp. 689-690.

[13] Id. at 90.

[14] Id. at 691-692.

[15] Prescribing a Standard Incentive Pay System Based on Productivity and Performance, for all Officials and Employees of the Government, National and Local Including those of Government-Owned and/or Controlled Corporations and Government Financial Institutions and For Other Purposes. (1994)

[16] Grant of Productivity Incentive Benefit (PIB) for CY 1994 and Years Thereafter. (1994)

[17] Rollo, pp. 691-692.

[18] Id. at 90.

[19] Id. at 9.

[20] Id. at 89-95.

[21] Id. at 95.

[22] See Section 2, Rule 64, Rules of Court, which states: "A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on certiorari under Rule 65, except as hereinafter provided." Also see Section 50, PD 1445: "The party aggrieved by any decision, order or ruling of the Commission may within thirty days from his receipt of a copy thereof appeal on certiorari to the Supreme Court in the manner provided by law and the Rules of Court. When the decision, order, or ruling adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency."

[23] Sec. 1, AO 161.

[24] "Section 31. Career and Personnel Development Plans. - Each department or agency shall prepare a career and personnel development plan which shall be integrated into a national plan by the Commission. Such career and personnel development plans which shall include provisions on merit promotions, performance evaluation, in-service training, including overseas and local scholarships and training grants, job rotation, suggestions and incentive award systems, and such other provisions for employees' health, welfare, counseling, recreation and similar services. (Underscoring supplied)

[25] (2) Every Secretary or head of agency shall take all proper steps toward the creation of an atmosphere conducive to good supervisor-employee relations and the improvement of employee morale.

[26] Supra note 16.

[27] Sec.11 of AO 161 states that it takes effect on January 1, 1995.

[28] Rollo, p. 89.

[29] Id.

[30] G.R. No. 109406, September 11, 1998, 295 SCRA 366, 442-446.

[31] G.R. No. 149633, November 30, 2006, 509 SCRA 138, 150, citing *National Electrification Administration v. COA*, 427 Phil. 464, 485.

[32] Supra.

[33] *Casal v. Commission on Audit*, supra.

[34] Authorizing the Grant of CY-1993 Productivity Incentive Benefits to Government Personnel and Prohibiting Payments of Similar Benefit in Future Years Unless Duly Authorized by the President (1994).

[35] Section 17, Article VII of the Constitution, to wit:

Section 17. The President shall have control of all executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed. (Underscoring supplied)

[36] *Saber v. Court of Appeals*, G.R. No. 132981, August 31, 2004; *Mendiola v. People*, G.R. No. 89983-84, March 6, 1992, 207 SCRA 85, 98.

[37] *Wylie v. Rarang*, G.R. No. 74135, May 28, 1992, 209 SCRA 357, 368, citing *Chavez v. Sandiganbayan*, G.R. No. 91391, January 24, 1991, 193 SCRA 282, 289.

[38] G.R. No. 149633, November 30, 2006, 509 SCRA 138.

[39] *Id.*

[40] *Id.* at 150, *Philippine Ports Authority v. Commission on Audit*, G.R. No. 159200, February 16, 2006, 482 SCRA 490, 500.

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