

ARNALDO M. ESPINAS, LILIAN N. ASPRER, AND ELEANORA R. DE JESUS, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.*G.R. No. 198271. April 01, 2014*

Ponente: PERLAS-BERNABE, J.

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Assailed in this petition for certiorari[1] is respondent Commission on Audit's (CoA) Decision No. 2011-039[2] dated August 8, 2011 which affirmed Notice of Disallowance No. 09-001-GF(06)[3] dated July 21, 2009 covering petitioners' reimbursement claims for extraordinary and miscellaneous expenses for the period January to December 2006.

The Facts

The Local Water Utilities Administration (LWUA) is a government-owned and controlled corporation (GOCC) created[4] pursuant to Presidential Decree No. (PD) 198,[5] as amended, otherwise known as the "Provincial Water Utilities Act of 1973."

Petitioners are department managers of the LWUA who, together with 28 other LWUA officials, sought reimbursement of their extraordinary and miscellaneous expenses (EME) for the period January to December 2006. According to petitioners, the reimbursement claims were within the ceiling provided under the LWUA Calendar Year 2006 Corporate Operating Budget approved by the LWUA Board of Trustees and the Department of Budget and Management.[6]

On April 16, 2007, the Office of the CoA Auditor, through Priscilla DG. Cruz, the Supervising Auditor assigned to the LWUA (SA Cruz), issued Audit Observation Memorandum (AOM) No. AOM-2006-27,[7] revealing that the 31 LWUA officials were able to reimburse P16,900,705.69 in EME, including expenses for official entertainment, service awards, gifts and plaques, membership fees, and seminars/conferences.[8] Out of the said amount, P13,110,998.26 was reimbursed only through an attached certification attesting to their claimed incurrence ("certification").[9] According to the AOM, this violated CoA Circular No. 2006-01[10] dated January 3, 2006 (CoA Circular No. 2006-01), which pertinently states that the "claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements." [11]

During the CoA Exit Conference held sometime in April 2007, LWUA management officials, including herein petitioners, manifested that they were unaware of the existence of CoA Circular No. 2006-01, particularly during the period January to December 2006.[12]

After the post-audit of the LWUA EME account for the same period, SA Cruz issued Notice of Disallowance No. 09-001-GF(06)[13] dated July 21, 2009, disallowing the EME reimbursement claims of the 31 LWUA officials, in the total amount of P13,110,998.26, for the reason that they "were not supported by receipts and/or [other] documents evidencing disbursements as required under [Item III(3)] of [CoA Circular No. 2006-01]."[14]

Pursuant to the CoA's 2009 Revised Rules of Procedure, petitioners appealed the notice of disallowance to the

CoA Cluster Director (Corporate Sector - Cluster B),[15] contending that the “certification” they attached in support of their EME reimbursement claims was originally allowed under Section 397 of the Government Accounting and Auditing Manual, Volume I (GAAM - Vol. I),[16] which is a reproduction of Item III(4) of CoA Circular No. 89-300[17] dated March 21, 1989 (CoA Circular No. 89-300), viz.:

4. x x x The corresponding claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, or, in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred for any of the purposes contemplated under Section 19 and other related sections of RA 6688 (or similar provision[s] in subsequent General Appropriations Acts) in relation to or by reason of his position. In the case of miscellaneous expenses incurred for an office specified in the law, such certification shall be executed solely by the head of the office. [18] (Emphasis supplied)

Further, petitioners alleged that CoA Circular No. 2006-01 is violative of the equal protection clause since officials of GOCCs, such as the LWUA officials, are, among others, prohibited by virtue of the same issuance from supporting their reimbursement claims with “certifications,” unlike officials of the national government agencies (NGAs) who have been so permitted.[19] To this end, petitioners argued that the employees of NGAs and GOCCs are similarly situated and that there exists no substantial distinction between them.[20]

Finally, petitioners submitted that CoA Circular No. 2006-01 was not duly published in the Official Gazette, or in a newspaper of general circulation and thus, unenforceable.[21]

The CoA Cluster Director’s Ruling

Petitioners’ appeal was denied by CoA Cluster Director IV Divinia M. Alagon (CoA Cluster Director Alagon) in Decision No. 2010-003[22] dated April 13, 2010, thereby affirming Notice of Disallowance No. 09-001-GF(06).

Applying the statutory construction principle of *ejusdem generis*,[23] CoA Cluster Director Alagon held that a certification executed by the official concerned for the purpose of claiming EME cannot be construed to fall under the phrase “other documents evidencing disbursements” as provided under Item III(3) of CoA Circular No. 2006-01.[24] She explained that a certification is not of the same class as a receipt because the latter is issued by a third person, while the former is issued by the claimant, and usually self-serving.[25] Moreover, certifications are not evidence of disbursements but are just assertions made by the claimants that they have spent a fixed amount every month for meetings, seminars, public relations and the like.[26] In this relation, CoA Cluster Director Alagon noted that CoA Circular No. 2006-01 is stricter as it does not mention a certification as an alternative supporting document for the claim for reimbursement.[27] This is based on the observation that boards of GOCCs and government financial institutions (GFIs) are invariably empowered to appropriate through resolutions such amounts as they deem proper for EME.[28] Thus, the exclusion of said certifications in CoA Circular No. 2006-01 is a control measure purposely integrated thereto to regulate the incurrence of these expenditures and to ensure the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures or uses of government funds.[29]

CoA Cluster Director Alagon also opined that there lies no violation of the equal protection clause since GOCCs and GFIs are empowered to appropriate EME through board resolutions, while the EME for NGAs must be provided in a law enacted by Congress (i.e., the General Appropriations Act [GAA]).[30] Accordingly, there is a reasonable classification which is germane to the purpose of CoA Circular No. 2006-01.[31]

Finally, CoA Cluster Director Alagon stated that CoA Circular No. 2006-01 was published in the Manila Standard Today in its February 24, 2006 issue; hence, petitioners’ assertion on this score was found to be baseless.[32]

Unconvinced, petitioners elevated the ruling to the Commission Proper, docketed as CoA CP Case No.

2010-101,[33] averring that: (a) the principle of ejusdem generis does not apply since there is no enumeration of things followed by general words in CoA Circular No. 2006-01;[34] (b) the certifications fall under the category of documents evidencing disbursements under Item III(3) of the same issuance, which, in any case, have been previously allowed under Section 397 of GAAM - Vol. I and CoA Circular No. 89-300;[35] and (c) there exists no valid classification between officials of NGAs and officials of GOCCs and GFIs.[36] Petitioners' previous contention on the circular's lack of publication was no longer raised in their petition to the Commission Proper.

The Commission Proper's Ruling

In its Decision No. 2011-039[37] dated August 8, 2011, the CoA affirmed Notice of Disallowance No. 09-001-GF(06) but differed from CoA Cluster Director Alagon's reasoning.

The CoA agreed with petitioners that the principle of ejusdem generis was not applicable since CoA Circular No. 2006-01 does not contain any enumeration of specific terms which are followed by a general word or phrase. However, it held that the principle's non-applicability does not necessarily buttress petitioners' main argument that the phrase "and/or other documents evidencing disbursements" includes the "certifications" issued to support the claim for EME reimbursement. This is because the "other documents evidencing disbursements" must refer to documents that evidence disbursement, of which the certifications – being mere general statements that the certified amount was used as EME, and is within the prescribed ceiling therefor – are not.[38]

It further debunked petitioners' reliance on the provisions of Section 397 of GAAM - Vol. I and Item III(4) of CoA Circular No. 89-300 as these issuances actually show the contrary intention to include "certifications" in the phrase "other documents evidencing disbursements" as among the documents sufficient to support the claim for EME reimbursement under Item III(3) of CoA Circular No. 2006-01. The "certification" is separate and distinct from the term "other documents evidencing disbursements" whether under Section 397 of GAAM - Vol. I or Item III(4) of CoA Circular No. 89-300. The certification under these issuances is "in lieu of" the receipts and/or other documents evidencing disbursement. Moreover, the CoA observed that if the term "certification" is intended to be included in the term or among the "other documents evidencing disbursements" that will support a claim for EME reimbursement, then Section 397 of GAAM - Vol. I and Item III(4) of CoA Circular No. 89-300 would have stated so; however, the latter provisions did not. Besides, the CoA pointed out that CoA Circular No. 2006-01 specifically applies to GOCCs, GFIs and their subsidiaries, while CoA Circular No. 89-300, from which Section 397 of GAAM - Vol. I was lifted, exclusively applies to NGAs.[39]

Finally, the CoA maintained that there is a substantial distinction between the officials of NGAs and the officials of the GOCCs, GFIs and their subsidiaries insofar as their entitlement to EME is concerned. The former's EME is sourced from the annual GAA, while the latter's EME is provided by their corporate operating budget approved by their respective governing boards. In connection therewith, the CoA emphasized that the issuance of CoA Circular No. 2006-01 is pursuant to its exclusive constitutional authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds. It is therefore within the purview of its mandate and the above-stated distinctions that CoA Circular No. 2006-01 must be interpreted.[40]

Dissatisfied, petitioners filed the present certiorari petition, imputing grave abuse of discretion on the part of the CoA.

The Issue Before the Court

The primordial issue for the Court's resolution is whether or not grave abuse of discretion attended the CoA's ruling in this case.

The Court's Ruling

The petition lacks merit.

The CoA's audit power is among the constitutional mechanisms that gives life to the check-and-balance system inherent in our system of government.[41] As an essential complement, the CoA has been vested with the exclusive authority to promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. This is found in Section 2, Article IX-D of the 1987 Philippine Constitution which provides that:

Sec. 2. x x x.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds and properties. (Emphases supplied)

As an independent constitutional body conferred with such power, it reasonably follows that the CoA's interpretation of its own auditing rules and regulations, as enunciated in its decisions, should be accorded great weight and respect. In the recent case of *Delos Santos v. CoA*,[42] the Court explained the general policy of the Court towards CoA decisions reviewed under certiorari[43] parameters:[44]

[T]he CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately, the people's property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

x x x [I]t is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x. (Emphases and underscoring supplied)

The concept is well-entrenched: grave abuse of discretion exists when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.[45] Not every error in the proceedings, or every erroneous conclusion of law or fact, constitutes grave abuse of discretion. The abuse of discretion to be qualified as "grave" must be so patent or gross as to constitute an evasion of a positive duty or a virtual refusal to perform the duty or to act at all in contemplation of law.[46]

Viewed in the foregoing light, the Court finds that the CoA did not commit any grave abuse of discretion as its affirmance of Notice of Disallowance No. 09-001-GF(06) is based on cogent legal grounds.

First off, the Court concurs with the CoA's conclusion that the "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III(3) of CoA Circular No. 2006-01 which pertinently states that a "claim for reimbursement of [EME] expenses shall be supported by receipts and/or other documents evidencing disbursements." Similar to the word "receipts," the "other documents" pertained to

under the above-stated provision is qualified by the phrase “evidencing disbursements.” Citing its lexicographic definition, the CoA stated that the term “disbursement” means “to pay out commonly from a fund” or “to make payment in settlement of debt or account payable.”[47] That said, it then logically follows that petitioners’ “certification,” so as to fall under the phrase “other documents” under Item III(3) of CoA Circular No. 2006-01, must substantiate the “paying out of an account payable,” or, in simple term, a disbursement.[48] However, an examination of the sample “certification”[49] attached to the petition does not, by any means, fit this description. The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners’ reimbursement claims were solely supported by this “certification,” the CoA properly disallowed said claims for failure to comply with CoA Circular No. 2006-01.

The CoA also correctly rejected petitioners’ invocation of the provisions of Section 397 of GAAM - Vol. I and CoA Circular No. 89-300 since, at the outset, such rules are applicable only to NGAs, and not to GOCCs, GFIs and their subsidiaries which are specifically governed by CoA Circular No. 2006-01.[50] A perusal of CoA Circular No. 89-300, from which Section 397 of GAAM - Vol. I was merely reproduced, clearly indicates in Item II thereof, captioned “Scope and Coverage,” that the rules thereunder applies to “appropriations authorized under [the GAA of 1989] for National Government agencies [that] may be used for incurrence of extraordinary and miscellaneous expenses at the rates and by the offices and officials specified therein for, among others x x x.”[51] A similar inference may be reached from a reading of Item I of CoA Circular No. 89-300, captioned as “Rationale,” which states that the circular was made in response to the “increasing number of queries and requests for clarification as to the real import and true intent of [the provisions of the GAA of 1989] authorizing the use by certain national government officials of appropriations authorized for their agencies for extraordinary and miscellaneous expenses.”[52] On the other hand, Item II of CoA Circular No. 2006-01, captioned as “Scope and Coverage,” explicitly states that “[t]his circular shall be applicable to all GOCCs, GFIs and their subsidiaries” and shall cover their “extraordinary and miscellaneous expenses and other similar expenses.”[53] Item I of CoA Circular No. 2006-01, captioned as “Rationale,” also mentions the CoA’s declared policy to “prescribe rules and regulations specifically for government corporations to regulate the incurrence of these expenditures and ensure the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds” considering that “[g]overning boards of [GOCCs/GFIs] are invariably empowered to appropriate through resolutions such amounts as they deem appropriate for extraordinary and miscellaneous expenses.”[54] Based on the foregoing, it is readily apparent that petitioners’ reliance on Section 397 of GAAM - Vol. I and Item III(4) of CoA Circular No. 89-300 was improper, hence, the CoA’s apt dismissal of the same.

Lastly, the Court upholds the CoA’s finding that there exists a substantial distinction[55] between officials of NGAs and the officials of GOCCs, GFIs and their subsidiaries which justify the peculiarity in regulation. Since the EME of GOCCs, GFIs and their subsidiaries, are, pursuant to law, allocated by their own internal governing boards, as opposed to the EME of NGAs which are appropriated in the annual GAA duly enacted by Congress, there is a perceivable rational impetus for the CoA to impose nuanced control measures to check if the EME disbursements of GOCCs, GFIs and their subsidiaries constitute irregular, unnecessary, excessive, extravagant, or unconscionable government expenditures. Case in point is the LWUA Board of Trustees which, pursuant to Section 69 of PD 198, as amended, is “authorized to appropriate out of any funds of the Administration, such amounts as it may deem necessary for the operational and other expenses of the Administration including the purchase of necessary equipment.” Indeed, the Court recognizes that denying GOCCs, GFIs and their subsidiaries the benefit of submitting a secondary-alternate document in support of an EME reimbursement, such as the “certification” discussed herein, is a CoA policy intended to address the disparity in EME disbursement

autonomy. As pertinently stated in CoA Circular No. 2006-01, the consideration underlying the rules and regulations contained therein is the fact that “[g]overning boards of [GOCCs/GFIs] are invariably empowered to appropriate through resolutions such amounts as they deem appropriate for extraordinary and miscellaneous expenses.”[56] Hence, in due deference to the CoA’s constitutional prerogatives, the Court, absent any semblance of grave abuse of discretion in this case, respects the regulation, and consequently dismisses the petition. With these pronouncements, the Court finds it unnecessary to delve on the other ancillary issues raised by the parties in their pleadings. Notice of Disallowance No. 09-001-GF(06) dated July 21, 2009 is therefore upheld and the persons therein held liable are ordered to duly return the disallowed amount of P13,110,998.26.

WHEREFORE, the petition is DISMISSED. Accordingly, Notice of Disallowance No. 09-001-GF(06) dated July 21, 2009 is hereby AFFIRMED.

SO ORDERED.

Sereno, C.J. Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Reyes, and Leonen, JJ., concur.

Mendoza, J., on official leave.

[1] Filed under Rule 64 in relation to Rule 65 of the Rules of Court; rollo, pp. 3-18.

[2] Id. at 21-28. Signed by Chairperson Ma. Gracia M. Pulido-Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

[3] Id. at 38-47.

[4] Section 49 of PD 198, as amended, provides as follows:

SEC. 49. Charter. - There is hereby chartered, created and formed a government corporation to be known as the ‘Local Water Utilities Administration’ which is hereby attached to the Office of the President. The provisions of this Title shall be and constitute the charter of the Administration.

[5] Entitled “Declaring A National Policy Favoring Local Operation And Control Of Water Systems; Authorizing The Formation Of Local Water Districts And Providing For The Government And Administration Of Such Districts; Chartering A National Administration To Facilitate Improvement Of Local Water Utilities; Granting Said Administration Such Powers As Are Necessary To Optimize Public Service From Water Utility Operations, And For Other Purposes.”

[6] Citing LWUA Board of Trustees Resolution No. 225, series of 2005, dated November 30, 2005 which was issued pursuant to Section 69 of PD 198, as amended, authorizing the LWUA Board to appropriate such amounts as it may deem necessary for its operational expenses. (See rollo, pp. 4-5.)

[7] Id. at 32-34.

[8] Id. at 5-6.

[9] Id. at 6.

[10] Entitled “Guidelines On The Disbursement Of Extraordinary And Miscellaneous Expenses And Other Similar Expenses In Government-Owned And Controlled Corporations/Government Financial Institutions And Their Subsidiaries,” id. at 35-37.

[11] Id. at 32-33; emphases and underscoring supplied.

[12] Id. at 6.

[13] Id. at 38-47.

[14] Id. at 38.

[15] Id. at 48-66.

[16] Id. at 50-51

[17] Id. at 91-92.

[18] Id. at 92.

[19] Id. at 58-63.

[20] Id. at 59-60.

[21] Id. at 63-64.

[22] Id. at 68-71.

[23] “The basic statutory construction principle of ejusdem generis states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase is to be construed to include – or to be restricted to – things akin to or resembling, or of the same kind or class as, those specifically mentioned.” (Liwag v. Happy Glen Loop Homeowners Association, Inc., G.R. No. 189755, July 4, 2012, 675 SCRA 744, 754.)

[24] Rollo, pp. 69-70

[25] Id. at 70.

[26] Id.

[27] Id.

[28] Id.

[29] Id. at 70.

[30] Id. at 71.

[31] Id.

[32] Id.

[33] Id. at 72-90.

[34] Id. at 77-78.

[35] Id. at 79-81.

[36] Id. at 81-87.

[37] Id. at 21-28.

[38] Id. at 24.

[39] Id. at 24-26.

[40] Id. at 26-27.

[41] Dimapilis-Baldoz v. CoA, G.R. No. 199114, July 16, 2013.

[42] G.R. No. 198457, August 13, 2013.

[43] “Under Rule 64, Section 2 of the 1997 Rules of Civil Procedure, a judgment or final order of the COA may be brought by an aggrieved party to this Court on certiorari under Rule 65. Thus, it is only through a petition for certiorari under Rule 65 that the COA's decisions may be reviewed and nullified by us on the ground of grave abuse of discretion or lack or excess of jurisdiction.” (Benguet State University v. CoA, 551 Phil. 878, 883 [2007]).

[44] Delos Santos v. CoA, supra note 42.

[45] Id.; citations omitted.

[46] Dimapilis-Baldoz v. CoA, supra note 41; citations omitted.

[47] Rollo, p. 24.

[48] Id., citing BLACK’S LAW DICTIONARY, 6[th] Ed., p. 463.

[49] Id. at 67.

[50] Id. at 26.

[51] Id. at 91.

[52] Id.

[53] Id. at 36.

[54] Id. at 35.

[55] “Substantial distinctions” is a requirement for valid classification. As held in the landmark case on the subject of equal protection, *People v. Cayat* (68 Phil. 12, 18 [1939]):

It is an established principle of constitutional law that the guaranty of the equal protection of the laws is not violated by a legislation based on reasonable classification. And the classification, to be reasonable, (1) must rest on substantial distinctions; (2) must be germane to the purposes of the law; (3) must not be limited to existing conditions only; and (4) must apply equally to all members of the same class. (Emphasis supplied; citations omitted)

[56] Rollo, p. 35.

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