

**TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY
(TESDA), PETITIONER, VS. THE COMMISSION ON AUDIT,
CHAIRPERSON MA. GRACIA M. PULIDO TAN, COMMISSIONER
JUANITO G. ESPINO, JR.,...**

G.R. No. 204869. March 11, 2014

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari[1] with prayer for issuance of temporary restraining order or writ of preliminary injunction to annul Decision No. 2012-210[2] of the Commission on Audit (COA). The COA disallowed payments of Extraordinary and Miscellaneous Expenses (EME) by the Technical Education and Skills Development Authority (TESDA) to its officials.

The Facts

Upon post audit, the TESDA audit team leader discovered that for the calendar years 2004-2007, TESDA paid EME twice each year to its officials from two sources: (1) the General Fund for locally-funded projects, and (2) the Technical Education and Skills Development Project (TESDP) Fund for the foreign-assisted projects. The payment of EME was authorized under the General Provisions of the General Appropriations Acts of 2004, 2005,[3] 2006 and 2007 (2004-2007 GAAs), subject to certain conditions:

x x x Extraordinary and Miscellaneous Expenses.— Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:

- (a) P180,000 for each Department Secretary;
- (b) P65,000 for each Department Undersecretary;
- (c) P35,000 for each Department Assistant Secretary;
- (d) P30,000 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director;
- (e) P18,000 for each Bureau Regional Director; and
- (f) P13,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari’a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Fifty Thousand Pesos (P50,000) for each of the offices under the above named officials are authorized.[4] (Emphasis supplied)

On 15 May 2008, the audit team issued Notice of Disallowance No. 08-002-101 (04-06)[5] disallowing the payment of EME amounting to P5,498,706.60 for being in excess of the amount allowed in the 2004-2007 GAAs. In addition, the EME were disbursed to TESDA officials whose positions were not of equivalent ranks as authorized by the Department of

Budget and Management (DBM), contrary to the provisions of the 2004-2007 GAAs. Notice of Disallowance No. 08-002-101 (04-06) indicated the persons liable for the excessive payment of EME: the approving officers, payees and the accountants.[6]

On 4 July 2008, TESDA, through its then Director-General Augusto Boboy Syjuco, Jr., filed an Appeal Memorandum[7] arguing that the 2004-2007 GAAs and the Government Accounting and Auditing Manual allowed the grant of EME from both the General Fund and the TESDP Fund provided the legal ceiling was not exceeded for each fund. According to TESDA, the General Fund and the TESDP Fund are distinct from each other, and TESDA officials who were designated as project officers concurrently with their regular functions were entitled to separate EME from both funds.

The Ruling of the Commission on Audit

In a Decision dated 5 September 2008,[8] the COA Cluster Director, Cluster VII, National Government Sector, denied the appeal for lack of merit. The COA Cluster Director ruled that:

On the first issue, the GAA provision on EME is very clear to the effect that payment of EME may be taken from any authorized appropriation but shall not exceed the ceiling stated therein. It had been consistently held that when the language of the law is clear and unequivocal it should be given its common and ordinary meaning. If the legislative intent is to grant officials EME of unlimited amount, no limit or ceiling should have been included in the GAA. On the other hand, the Audit Team Leader stated that the inclusion in TESDA budget for EME in TESDP Fund, which was actually found only in the GAA for FY 2005 could not serve as basis for the grant of EME, should not be treated distinctly and separately from EME provision under the General Provisions of the GAA as the officials who were paid the EME from [TESDP Fund] are the same TESDA officials who were already paid EME out [of the General Fund]. It should be emphasized that the designation of TESDA officials as Project Managers in concurrent capacities to offices under TESDP, forms part only of their additional functions without another appointment. The EME is covered by the compensation attached to his principal office and not for every project handled. x x x.

On the second issue whether officials who are not of equivalent rank as authorized by the DBM, the Audit Team Leader informed that the officials were designated for [positions] which are not included in the Personnel Service Itemization (PSI) and the creation of said positions [was] not supported with authority or approval from the DBM. Neither was there a DBM document identifying the equivalent ranks of these positions as basis for ascertaining the amount of EME to be paid.

On the third issue whether the Regional Directors who were not performing as head of the Bureau or a regional office or organization unit of equal rank, because of their reassignment to the Office of the Director[-]General, the same were not entitled to receive EME since the Director[-]General and its office are already claiming the said amount. There could be no two officials entitled to receive EME although they are listed in the GAA as entitled to receive the same.[9]

On 4 December 2008, TESDA, through its Director-General, filed a petition for review with COA.

In a Decision dated 15 November 2012,[10] COA denied TESDA's petition for lack of merit. The COA adopted the findings of both the TESDA audit team and the COA Cluster Director that the grant of EME exceeded the allowable limit in the 2004-2007 GAAs. The COA emphasized that the provision in the 2004-2007 GAAs that granted EME clearly provided a ceiling for its grant. Accordingly, the COA ruled that the failure of the TESDA officials to adhere to the 2004-2007 GAAs negated their claim of good faith. Thus, the COA ordered them to refund the excess EME they received.

In a Resolution dated 12 March 2013,[11] the Court En Banc resolved to excuse the Office of the Solicitor General from representing the COA due to conflict of interest considering that both COA and TESDA are

government agencies being represented by it.

The Issues

In this petition, TESDA seeks a reversal and raises the following issues for resolution:

- A. THE [COA] GRAVELY ERRED IN DISALLOWING THE PAYMENTS MADE BY TESDA TO ITS OFFICIALS OF THEIR [EME] FROM BOTH [GENERAL FUND] AND [TESDP FUND];
- B. THE [COA] LIKewise GRAVELY ERRED IN HOLDING THE OFFICERS OF TESDA INDIVIDUALLY LIABLE FOR THE TOTAL DISALLOWANCE IN THE AMOUNT OF P5,498,706.60 EVEN IF THEY MAY BE RIGHTFULLY CONSIDERED AS DE FACTO OFFICERS IN GOOD FAITH WHO ARE ENTITLED TO EME FOR ACTUAL SERVICES RENDERED;
- C. THE [COA] LIKewise GRAVELY ERRED IN HOLDING THAT CONSIDERING THE CEILING SET FORTH BY SECTIONS 23[, 25] AND 26 OF THE GENERAL PROVISIONS OF THE [2004-2007 GAAS], THE CONCERNED TESDA OFFICIALS' CLAIMS FOR EME ARE UNAUTHORIZED AND EXCESSIVE;
- D. FINALLY, THE [COA] GRAVELY ERRED IN HOLDING THAT THE CONCERNED TESDA OFFICIALS CANNOT BE CONSIDERED AS DE FACTO OFFICERS IN GOOD FAITH AND IN DISREGARDING THE RELEVANT RULING OF THE SUPREME COURT IN THE CASE OF CA[N]TILLO VS. ARRIETA.[12]

The Ruling of the Court

The petition is partly meritorious.

The Constitution vests COA, as guardian of public funds, with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.[13] The COA is generally accorded complete discretion in the exercise of its constitutional duty and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce.[14]

Only when COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court grant a petition assailing COA's actions. There is grave abuse of discretion 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.[15]

We do not find any grave abuse of discretion when COA disallowed the disbursement of EME to TESDA officials for being excessive and unauthorized by law, specifically the 2004-2007 GAAs, to wit:

x x x Extraordinary and Miscellaneous Expenses.— Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:

- (a) P180,000 for each Department Secretary;
- (b) P65,000 for each Department Undersecretary;
- (c) P35,000 for each Department Assistant Secretary;
- (d) P30,000 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director;
- (e) P18,000 for each Bureau Regional Director; and
- (f) P13,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Fifty Thousand Pesos (P50,000) for each of the offices under

the above named officials are authorized.[16] (Boldfacing and italicization supplied)

The GAA provisions are clear that the EME shall not exceed the amounts fixed in the GAA. The GAA provisions are also clear that only the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them are entitled to claim EME not exceeding the amount provided in the GAA.

The COA faithfully implemented the GAA provisions. COA Circular No. 2012-001[17] states that the amount fixed under the GAA for the National Government offices and officials shall be the ceiling in the disbursement of EME. COA Circular No. 89-300,[18] prescribing the guidelines in the disbursement of EME, likewise states that the amount fixed by the GAA shall be the basis for the control in the disbursement of these funds.

The COA merely complied with its mandate when it disallowed the EME that were reimbursed to officers who were not entitled to the EME, or who received EME in excess of the allowable amount. When the law is clear, plain and free from ambiguity, there should be no room for interpretation but only its application.

However, TESDA insists on its interpretation justifying its payment of EME out of the TESDP Fund. It argues that the 2004-2007 GAAs did not prohibit its officials from receiving additional EME chargeable against an authorized funding, the TESDP Fund in this case, for another office to which they have been designated.

We do not find merit in TESDA's argument.

The TESDA is an instrumentality of the government established under Republic Act No. 7796 or the TESDA Act of 1994. Under Section 33 of the TESDA Act, the TESDA budget for the implementation of the Act is included in the annual GAA; hence, the TESDP Fund, being sourced from the Treasury, are funds belonging to the government, or any of its departments, in the hands of public officials.[19] The Constitution provides, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law." [20] The State Audit Code, which prescribes the guidelines in disbursing public funds, reiterates this important Constitutional provision that there should be an appropriation law or other statutes specifically authorizing payment out of any public funds.[21]

In this case, TESDA failed to point out the law specifically authorizing it to grant additional reimbursement for EME from the TESDP Fund, contrary to the explicit requirement in the Constitution and the law. In *Yap v. Commission on Audit*, [22] we upheld COA's disallowance of medical expenses and other benefits such as car maintenance, gasoline allowance and driver's subsidy due to petitioner's failure to point out the law specifically authorizing the same. There is nothing in the 2004-2007 GAAs which allows TESDA to grant its officials another set of EME from another source of fund like the TESDP Fund. COA aptly pointed out that not even TESDA's inclusion of EME from both the General Fund and the TESDP Fund in the 2005 GAA justified its payment of excessive EME from 2004 up to 2007.[23] The 2005 GAA provided for a ceiling on EME that TESDA still had to comply despite the grant of EME in the 2005 GAA for foreign-assisted projects.

The position of project officer is not among those listed or authorized to be entitled to EME, namely, the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them. The underlying principle behind the EME is to enable those occupying key positions in the government to meet various financial demands.[24] As pointed out by COA, the position of project officer is not even included in the Personnel Service Itemization or created with authority from the DBM.[25] Thus, the TESDA officials were, in fact, merely designated with additional duties, which designation did not entitle them to additional EME. In *Dimaandal v. COA*, [26] we held that designation is a mere imposition of additional duties, which does not entail payment of additional benefits. Since the TESDA officials were merely designated with additional duties, the ruling in *Cantillo v. Arrieta* [27] on de facto officers need not be discussed.

Having settled that COA properly disallowed the payment of excessive EME by TESDA, we proceed to determine whether the TESDA officials should refund the excess EME granted to them.

In *Blaquera v. Alcala*,^[28] the Court no longer required the officials and employees of different government departments and agencies to refund the productivity incentive bonus they received because there was no indicia of bad faith and the disbursement was made in the honest belief that the recipients deserved the amounts. We, however, qualified this *Blaquera* ruling in *Casal v. COA*,^[29] where we held the approving officials liable for the refund of the incentive award due to their patent disregard of the issuances of the President and the directives of COA. In *Casal*, we ruled that the officials' failure to observe the issuances amounted to gross negligence, which is inconsistent with the presumption of good faith. We applied the *Casal* ruling in *Velasco v. COA*,^[30] to wit:

x x x 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 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.^[31] (Emphasis supplied)

Applying by analogy the *Blaquera*, *Casal* and *Velasco* rulings, as well as Section 16 of the 2009 Rules and Regulations on Settlement of Accounts,^[32] we hold the approving officers of TESDA liable for the excess EME received by them.

The TESDA Act provides that the TESDA Secretariat, headed by the Director-General, shall propose the specific allocation of resources for the programs and projects it shall undertake pursuant to approved national technical education and skills development plan.^[33] As chief executive officer of the TESDA Secretariat, the Director-General shall likewise exercise general supervision and control over its technical and administrative personnel.^[34]

In the petition filed before the Court, TESDA alleged that the various memoranda issued by the Director-General authorized the TESDA officials designated as TESDP project officers to claim EME under the TESDP Fund.^[35] TESDA did not cite a specific provision of law authorizing such EME, but claimed that its grant had been an "institutional practice,"^[36] showing the lack of statutory authority to pay such EME. Despite this lack of authority for granting additional EME, the then Director-General still permitted EME in excess of the allowable amount and extended EME to officials not entitled to it, patently contrary to the 2004-2007 GAAs. The then Director-General himself received EME from the TESDP Fund amounting to P809,691.11,^[37] contrary to his claim that only executive directors, regional directors or officials holding equivalent positions assigned by him as project officers were entitled to EME from the TESDP Fund.^[38] The then Director-General likewise insisted on his own interpretation of the 2004-2007 GAAs disregarding the basic principle of statutory construction that when the law is clear, there should be no room for interpretation but only its application. If there was any ambiguity in the law, the then Director-General should have sought clarification from DBM and should not have simply relied on his own interpretation, which was self-serving.

Accordingly, the Director-General's blatant violation of the clear provisions of the Constitution, the 2004-2007 GAAs and the COA circulars is equivalent to gross negligence amounting to bad faith. He is required to refund the EME he received from the TESDP Fund for himself. As for the TESDA officials who had no participation in the approval of the excessive EME, they acted in good faith since they had no hand in the approval of the

unauthorized EME. They also honestly believed that the additional EME were reimbursement for their designation as project officers by the Director-General. Being in good faith, they need not refund the excess EME they received.

WHEREFORE, we AFFIRM the Commission on Audit Decision No. 2012-210 dated 15 November 2012 with MODIFICATION. Only the Director-Generals[39] of the Technical Education and Skills Development Authority who approved the excess or unauthorized extraordinary and miscellaneous expenses are ordered to refund the excess extraordinary and miscellaneous expenses which they received for themselves.

SO ORDERED.

Serenio, C.J., Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and Leonen, JJ., concur.

Brion, J., I dissent.

[1] Under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 25-29. Signed by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Juanito G. Espino, Jr., and Commissioner Heidi L. Mendoza.

[3] In Republic Act No. 9336 or the 2005 GAA, there was a specific appropriation for TESDA's confidential, intelligence, extraordinary and miscellaneous expenses amounting to P2,582,000.00 for locally-funded projects and P2,562,000.00 for the foreign-assisted projects.

[4] Republic Act No. 9206 or the 2003 GAA (Reenacted for 2004), Section 23; Republic Act No. 9336 or the 2005-2006 GAAs, Section 25; and Republic Act No. 9401 or the 2007 GAA, Section 26, where the amounts were increased to:

x x x x

- (a) P220,000 for each Department Secretary;
- (b) P90,000 for each Department Undersecretary;
- (c) P50,000 for each Department Assistant Secretary;
- (d) P38,000 for each head of bureau or organization of equivalent rank, and for each head of a Department Regional Office;
- (e) P22,000 for each head of a Bureau Regional Office or organization of equivalent rank; and
- (f) P16,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Sixty Thousand Pesos (P60,000) for each of the offices under the above named officials are herein authorized."

[5] Rollo, pp. 37-39.

[6] Id. at 38-39 and 50. The following persons were determined to be liable as payees and approving officers: Director-Generals Alcestis Guiang and Augusto Boboy Syjuco, Jr. The other payees are: Deputy Director Generals Milagros Dawa Hernandez, Santiago M. Yabut, Jr., Rogelio C. Peyuan, and Pastor Guiao; Executive Directors Augusto A. Capio, Clifford Paragua, Juanito Cuerva, Valerio D. Rola, Gaspar Gayona, Orlando Naag, Marta M. Hernandez, Edwin Gatinao, Noel Villafior, Ma. Susan dela Rama, Ernesto Beltran, Yerma Saulon, Maria Paz Urcia, Agrifina F. Zafra, Washington M. Agustin, Teodoro Sanico, Elmer K. Talavera, Pilar G. de Leon, Irene M. Isaac, Gabriel Genaro Bordado, Cecile B. Gutierrez, Marissa Legaspi, Lourdes T. Reyes, Brenda

Furagganan, Imelda B. Taganas and Antonio B. del Rosario; Assistant Project Director Raul K. Tanchico; Assistant Executive Director Francisco B. Jucar, Jr.; PMO Project Manager Anselmo G. Pegtuan; PMO Project Legal Officer Atty. Marjorie Docdocil; and PMO Deputy Project Manager Ma. Magdalena P. Butad. The accountants liable for certifying that the disbursement vouchers were supported by the necessary documents are: Accounting Division Chiefs Cariza A. Dacuma and Guillermina L. Aguilar.

[7] Id. at 61-67.

[8] Id. at 42-45.

[9] Id. at 43-44.

[10] Id. at 25-29. The dispositive portion of the COA decision reads:

WHEREFORE, in view of the foregoing, the instant petition for review is hereby DENIED for lack of merit. Accordingly, ND No. [08-002-101 (04-06)] dated May 15, 2008 disallowing the payment of EME to TESDA personnel for CYs 2004-2007 amounting to P5,498,706.60 is AFFIRMED.

[11] Id. at 82-A.

[12] Id. at 9.

[13] The 1987 Constitution, Article IX-D, Section 2 provides:

x 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.

[14] Nazareth v. Villar, G.R. No. 188635, 29 January 2013, 689 SCRA 385; Yap v. Commission on Audit, G.R. No. 158562, 23 April 2010, 619 SCRA 154; Sanchez v. Commission on Audit, 575 Phil. 428 (2008).

[15] Yap v. Commission on Audit, *supra* note 14, citing Ferrer v. Office of the Ombudsman, 583 Phil. 50 (2008).

[16] *Supra* note 4.

[17] Dated 14 June 2012.

[18] Dated 21 March 1989.

[19] Professional Video, Inc. v. Technical Education and Skills Development Authority, G.R. No. 155504, 26 June 2009, 591 SCRA 83.

[20] 1987 Constitution, Article VI, Section 29.

[21] Presidential Decree No. 1445, Section 4.

[22] *Supra* note 14.

[23] Rollo, p. 49.

[24] COA Circular No. 89-300.

[25] Rollo, p. 49.

[26] 353 Phil. 525 (1998).

[27] 158 Phil. 714 (1974).

[28] 356 Phil. 678 (1998).

[29] 538 Phil. 634 (2006).

[30] G.R. No. 189774, 18 September 2012, 681 SCRA 102.

[31] *Id.* at 117.

[32] Section 16. Determination of Persons Responsible/Liable.

Section 16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

x x x x

16.1.3 Public officers who approve or authorize expenditures shall be held liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

[33] TESDA Act of 1994, Sections 10 (b), (d) and 11.

[34] TESDA Act of 1994, Section 11.

[35] Rollo, p. 7. TESDA stated: “x x x pursuant to the various memoranda issued by the then TESDA Director-General Augusto L. Syjuco, Jr., in his capacity as TESDP Project Director, TESDA Officials who were designated as TESDP Project Officers were authorized to claim EME under [TESDP Fund] in connection with the discharge of their functions related to the implementation of the TESDP. x x x.”

[36] *Id.* at 11.

[37] *Id.* at 37.

[38] *Id.* at 62.

[39] Director-General Alcestis Guiang and Director-General Augusto Boboy Syjuco, Jr.

CONCURRING AND DISSENTING OPINION

BRION, J.:

The Court once again faces another case where government employees invoke good faith to avoid the refund of illegally and excessively disbursed government funds.

I concur with the ponencia’s ruling disallowing the payment of excess Extraordinary and Miscellaneous Expenses (EME) to the officials and employees of the Technical Education and Skills Development Authority (TESDA). I likewise agree with the ponencia’s conclusion that only the approving officers who acted in bad faith or with gross negligence amounting to bad faith should refund the illegal expenditures of public funds.

I dissent, however, from the ponencia’s ruling that the approving officers’ legal obligation to refund the illegal disbursement shall be limited to the amount that they illegally received. The Court’s finding that the approving

officers acted in bad faith in allowing the unauthorized expenditure of public funds necessarily dictates that these officers be also held liable for the full amount of the disallowance, as expressly prescribed by the Administrative Code in relation to Presidential Decree No. 1445 (PD 1445).

THE CASE

TESDA paid its officials and personnel EME amounting to P5,498,706.60 from 2004 to 2007. The EME came from the General Fund for locally-funded projects, and from the Technical Education and Skills Development Project (TESDP) Fund for foreign-assisted projects.

The TESDA audit team disallowed the payment of EME for exceeding the allowable limit in the 2004-2007 General Appropriation Acts (GAAs). Furthermore, the EME was disbursed to the TESDA officials and personnel who were neither enumerated in the GAAs nor considered as project officers occupying equivalent ranks as authorized by the Department of Budget and Management (DBM).[1] Thus, the TESDA audit team ordered the payees and the TESDA approving officials to refund the excess EME.

TESDA appealed the disallowance to the Commission on Audit (COA) Cluster Director, arguing that it did not exceed the ceiling in the GAAs. It pointed out that the GAAs and the Government Accounting and Auditing Manual do not prohibit the charging of the excess EME against the TESDP Fund - an authorized source of funding separate from the General Fund.

The COA Cluster Director, Cluster VII, National Government Sector, affirmed the disallowance, adding that the TESDA officials and personnel (who were designated as project officers) were not included in the Personnel Service Itemization. There was not even a DBM document identifying the equivalent ranks of the designated positions as basis for the disbursement of EME. Subsequently, TESDA appealed the case to the COA.

The COA likewise affirmed the disallowance of the disbursement of EME for being illegal and excessive. It emphasized that the failure of the TESDA officials and personnel to comply with the GAAs negated their claim of good faith. It thus ordered the TESDA approving officials and payees to refund the excess EME that they received.

TESDA went to this Court on certiorari and posited that its officials and personnel should not refund the amount paid to them because they believed in good faith that they deserved the payment, even though the payment turned out to have no legal basis.

THE PONENCIA

The ponencia affirmed the disallowance of the excess EME, but exempted the payees, who did not participate in the approval of the excess EME, from the COA's order of refund. The ponencia found that these payees acted in good faith in receiving the excess EME because they honestly believed that the amount was a reimbursement for the expenses that they incurred as project officers.

In affirming the disallowance, the ponencia ruled that the disbursement of EME to the TESDA officials and personnel was excessive since the GAAs, COA Circular No. 2012-001 and COA Circular No. 89-300 expressly provide the limits for the amounts of EME that may be disbursed.

The ponencia also found the disbursement to be unauthorized by law. The TESDA officials and personnel who received the disallowed amounts were merely designated as project officers, contrary to what the GAA provides - that only those officials named in the GAAs, the officers of equivalent rank as may be authorized by the DBM, and the offices under these officials are entitled to EME. TESDA failed to point to a specific law that allows it to charge the excess EME from the TESDP Fund, contrary to Section 29(1), Article 6 of the 1987 Constitution.[2]

The ponencia likewise ordered TESDA Director Generals Alcestis Guiang and Augusto Boboy Syjuco, Jr., who negligently approved the illegal disbursements, to refund the excess EME that they received. The ponencia observed that the Director Generals personally received the excess EME in the amount of P809,691.11 despite their position that only TESDA officials and personnel designated as project officers were entitled to these payments.

I. Framework of review of the COA's ruling
in disallowance cases: the constitutional remedy
against the COA's ruling and the confines of a
Rule 65 certiorari petition

- Procedural framework: The COA did not
commit any grave abuse of discretion that
would justify the setting aside of its order
to refund

Under the 1935 Constitution,[3] the decisions of the Auditor General of the General Auditing Office – the COA's precursor - "may be appealed to the President whose action shall be final." The 1973 and 1987 Constitutions,[4] however, changed the nature of the remedy by providing that the COA's decision, order or ruling may be brought to the Supreme Court on certiorari. This change of remedy narrowed down the scope and extent of the inquiry that the Court may undertake to what is strictly the office of certiorari as distinguished from review.[5]

A Rule 65 petition is a unique and special rule because it commands a limited review of the question raised. As an extraordinary remedy, its purpose is simply to keep the public respondent within the bounds of its jurisdiction or to relieve the petitioner from the public respondent's arbitrary acts. In this review, the Court is confined solely to questions of jurisdiction whenever a tribunal, board or officer exercising judicial or quasi-judicial functions acts without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction.[6] In concrete terms, the questioned ruling must stand unless there is absolutely no evidence to support the public respondent's finding or unless the evidence does not meet the quantum of proof required by the rules. The commission of mere abuse of discretion and mere errors of judgment does not warrant the issuance of a writ of certiorari to set aside or modify the questioned ruling.

The limitation of the Court's power of review over the COA rulings merely complements its nature as an independent constitutional body that is tasked to safeguard the proper use of the government and, ultimately, the people's property by vesting it with the power to (i) determine whether government entities comply with the law and the rules in disbursing public funds; and (ii) disallow illegal disbursements of these funds.[7]

Unfortunately, I observe that our jurisprudence has not laid down a clear legal framework in treating disallowance cases from a Rule 65 petition perspective. A review of jurisprudence[8] also shows that the Court has not really made a concrete ruling in terms of setting clear and definite standards to determine when good faith exists in disallowance cases. Furthermore, jurisprudence is obscure on the exact amount that the responsible public officers shall refund in disallowances.[9] For these reasons, I submit this Concurring and Dissenting Opinion.

- Substantive framework: Refund of
amounts disallowed in audit is the
legal norm

- Constitutional tenet: The trust
resulting from holding public

office demands accountability
from the public officer

Section 1, Article II of the 1987 Constitution declares that the Philippines is a democratic and republican state where sovereignty resides in the people and all government authority emanates from them. A republican government is a responsible government whose officials hold and discharge their position as a public trust that renders them at all times accountable to the people they are sworn to serve.[10] This principle of accountability proceeds from the constitutional tenet that public office is a public trust[11] and its corollary that the stability of our public institutions relies on the ability of our civil servants to serve their constituencies well.[12]

Public officers are stewards who must use government resources efficiently, effectively, honestly and economically to avoid the wastage of public funds.[13] The prudent and cautious use of these funds is dictated by their nature as funds and property held in trust by the public officers for the benefit of the sovereign trustees – the people themselves – and for the specific public purposes for which they are appropriated.[14] Thus, Article VI, Section 29(1) of the Constitution provides that no money shall be paid out of any public treasury except in pursuance of an appropriation law or other specific statutory authority.

To ensure accountability enforcement in the disbursement of public funds,[15] the 1987 Constitution created the COA as an independent constitutional office charged to audit government financial transactions. The Constitution empowered the COA to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned, held in trust by, or pertaining to, the Government and its instrumentalities. Furthermore, our Constitution exclusively authorized the COA 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.

- Standard of diligence in the
utilization of public funds;
the obligation to return

To maintain inviolate the public trust reposed on them, public officers must exercise ordinary diligence or the diligence of a good father of a family.[16] This means that they should observe the relevant laws and rules as well as exercise ordinary care and prudence in the disbursement of public funds.[17] If they do not, the disbursed amounts are disallowed in audit, and the law[18] imposes upon public officers the obligation to return these amounts.

Section 43, Chapter V, Book VI of the Administrative Code expressly states that the approving public officers and the recipients of illegal disbursements must solidarily refund the disbursed amounts to the government. The obligation to refund also finds support under the principle of *solutio indebiti* which enunciates the rule that the obligation to return arises if something is received when there is no right to demand it, and when it was unduly delivered through mistake.[19]

Despite this clear obligation to refund, the Court, in several cases, has spared the public officers from this duty if they acted in “good faith” in disbursing and/or receiving the illegal disbursements. Decided in 1998, *Blaquera v. Hon. Alcala*[20] was the first instance when the Court used the good faith of the recipients and the approving officers as a consideration in determining whether they should be required to refund the disallowed amounts.

In *Blaquera*, the respondents (*Alcala, et al.*), as heads of several government agencies, caused the deduction from the petitioners’ (government employees) salaries the amounts allegedly in excess of those authorized under the challenged administrative orders pursuant to which the respondents acted. To prevent further deduction, the

petitioners went to this Court and challenged the constitutionality of the administrative orders. The Court upheld the administrative orders and, in effect, gave its approval to the refund that the respondents already carried out. Nonetheless, the Court did not allow further refunds because it found that “all the parties xxx acted in good faith.”[21]

A closer look at *Blaquera* shows that it rests on the following circumstances that justified a ruling against the further refund of the disallowed amounts, without actual regard to the good faith of the recipients in that case: first, *Blaquera* involved numerous petitioners, numbering in several hundreds, that would make a refund very cumbersome; second, it involved small amounts (about P1,000.00 per plaintiff) whose aggregate sum was not commensurate with the administrative costs of enforcing the refund; and third, the Court adopted a policy in favor of labor as a matter of equity. In other words, there were practical and equitable considerations that rendered unnecessary the application of the legal concept of good faith to those who were merely recipients of the disallowed amounts.

On the part of the approving officers, *Blaquera* simply stated that “the officials and chiefs of offices concerned disbursed the incentive benefits in the honest belief that the amounts given were due to the recipients.”[22] In short, *Blaquera* found them to have acted in good faith.

II. Application of the legal norm: balancing with other considerations

A. Direct Responsibility

Interestingly, while the Civil Code provisions on *solutio indebiti*, in general, and Section 43, Chapter V, Book VI of the Administrative Code, in particular, impose upon public officials and employees the solidary obligation to refund the illegal disbursements, Section 52, Chapter 9, Title I-B, Book V of the Administrative Code[23] expressly provides that only persons who are directly responsible for the illegal expenditures of public funds shall be liable:

General Liability for Unlawful Expenditures. - Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

The imposition of this direct responsibility for expenditures in violation of law and/or regulations justified the creation of a jurisprudential exception[24] (from the obligation to refund) in favor of mere payees of amounts disallowed in audit.[25] Notwithstanding the payee’s liability for disallowances, these mere passive recipients of good graces have every right to rely on the presumptions of regularity and good faith accorded to the public officers directly responsible for the disbursement and expenditure of public funds. As mere passive recipients, they could not possibly fail to meet the legal standard of ordinary diligence. The presumption is, in fact, irrelevant to them for the reason that they are merely at the receiving end of the disbursement process. A contrary construction of these interrelated legal provisions and principles would lead to an inequitable and unduly burdensome result that would oblige a mass of public officials and employees to refund amounts received through no fault (direct or indirect) of their own.

Based on these premises, I agree with the ponencia that the COA committed grave abuse of discretion when it ordered the TESDA employees, who were mere passive recipients of the excess EME, to refund the amounts they had received. For the COA to hold these passive recipients liable despite the lack of evidence showing their direct responsibility in the illegal disbursements (much less, the lack of evidence that they had acted in bad faith together with the rest of the TESDA approving officers) is an act of grave abuse of discretion. Indeed, the imprimatur given by the approving officers on the excess EME even gave the disbursement a color of legality

from the perspective of these recipients.[26]

Since mere passive recipients of disallowed amounts are generally exempted from personal liability, direct responsibility can only possibly lie at the upper levels of an agency's administrative structure. These public officers are largely the approving officials who are directly responsible for the disbursement of public funds. The following elements must be established before a public officer can be held personally liable for illegal expenditures of public funds:

- There must be an expenditure of government funds or use of government property;
- The expenditure is in violation of law or regulation; and
- The public officer is directly responsible for the irregular, unnecessary, excessive, extravagant or unconscionable disbursement of public funds.[27]

With respect to the third element, Section 19 of COA Circular No. 94-001 provides the determinants of "direct responsibility":

SECTION 19. DETERMINATION OF PERSONS LIABLE FOR AUDIT DISALLOWANCES OR CHARGES

19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

xxxx

19.1.3. Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

What the statutory requirement of direct responsibility and its determinants show is that personal liability does not automatically attach simply because one took part in the disbursement approval process. Both the public officer's duties and the extent of his participation in the disallowed transaction significantly impact on the possible defenses that he may raise against his potential liability. This means that direct responsibility is anchored on his failure to exercise ordinary diligence.

1. Valid Defense: Public officers enjoy the presumption of regularity in the performance of official duty and of good faith

A finding that a public officer failed to exercise ordinary diligence should not automatically translate into a personal obligation to refund as the public officer, to avoid personal liability, may still invoke the twin presumptions of regularity and good faith in the performance of official duties.[28] These are merely presumptions *juris tantum*, however, and may be rebutted by contrary evidence.

What the presumption of regularity establishes is merely compliance with the ordinary procedures and the usual standards in the processing and approval of a disbursement. On the other hand, the presumption of good faith aids the public officer in establishing substantial or colorable compliance with the law that would exempt him from pecuniary liability even if he had erred in the application of the law or even if he had been found guilty of simple negligence in the performance of his duties. In this respect, good faith denotes freedom from knowledge of

circumstances that ought to put the responsible public officer on inquiry and the honest intention to abstain from taking advantage of another – in the present case, of the government – even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render a transaction irregular.[29]

2. The required diligence of a good father of a family and the presumption of good faith

Should the COA, on audit, find nothing illegal or irregular in the disbursement of public funds, the presumption of good faith in favor of the public officer is deemed confirmed: the COA's finding shows that the public officer had indeed exercised ordinary diligence.

An audit disallowance, however, is an entirely different matter. When the COA issues a notice of disallowance, it disapproves the transaction for being illegal, irregular, unnecessary, excessive, extravagant, or unconscionable, and, determines the persons liable for the disallowed amounts.[30] Two scenarios may arise: first, the Court agrees with the disallowance; and second, the Court disagrees with the disallowance.

2a. The Court agrees with the disallowance and/or the finding of bad faith

For emphasis, at any time before the final approval of the disbursement, a public officer must exercise ordinary diligence in ensuring that the disbursement is in accordance with the laws.[31] However, once the COA disallows the disbursement, the presumption of good faith[32] assumes significance as a matter of defense. The public officer can claim that he exercised ordinary diligence in the performance of his official duties to avoid liability. If he is shown to have exercised the diligence required of him, then no personal liability will attach. However, if he is shown to have failed to exercise ordinary diligence, then the public officer can rely on the presumption of good faith that is consistent with simple negligence. To reiterate, the public officer's failure to exercise ordinary diligence does not automatically mean that he has acted in bad faith because good faith is a presumption of law. If the COA's findings show that the required diligence has not been observed, then the Court, on certiorari, must consider whether the presumption of good faith has also been overcome based on the COA's findings.

If there is a clear COA finding, express or implied, that the public officer acted with bad faith or was guilty of gross negligence amounting to bad faith that resulted in the illegal disbursement of public funds, then the defense of presumption of good faith should be deemed completely rebutted.[33] If this element of bad faith is established, then the public officer's mantle of immunity is removed because his act is considered to be outside the scope of his official duties.[34]

2b. If the Court disagrees with the disallowance

If the Court finds that the COA gravely abused its discretion in disallowing the disbursement, it necessarily follows that any discussion of good faith is irrelevant since there would be no order of refund. Similarly, if the Court finds that the COA gravely abused its discretion in concluding that bad faith existed for lack of factual and legal bases, then the issue of refund cannot possibly arise since the presumption of good faith should rightfully come to the public officer's aid.

3. The valid defenses vis-à-vis the legal consequence of the COA's disallowance: its interface under a certiorari petition

In resolving a petition of this nature, the Court must proceed on the premise that the COA's finding of an illegal disbursement coupled with its finding of bad faith on the part of the approving officers should give rise to their personal obligation to refund the disallowed amounts. Since a petitioner in a certiorari proceeding has the burden

of proving the public respondent's grave abuse of discretion, then to the petitioner likewise falls the burden of re-establishing his good faith that has already been rebutted by the COA's findings. Simply stated, the petitioner's perfunctory reliance on the presumption of good faith would not warrant the setting aside of the COA's disallowance.

III. The TESDA approving officials should be held personally and solidarily liable for the full amount of the disallowed amounts

A. The point of concurrence

Based on these discussions, I agree with the ponencia that no reason exists to find that the COA capriciously and whimsically exercised its judgment when it found bad faith on the part of the approving officers and, consequently, ordered these TESDA officials to refund the amount disallowed in audit.

The COA emphasized that the GAAs clearly provide a ceiling for the grant of EME and expressly state that only officials named in the GAAs, officers of equivalent rank as may be authorized by the DBM, and offices under these officials are entitled to EME. In other words, the COA did not abuse its discretion but merely applied the clear provisions of the law that the TESDA approving officials patently violated. These are very clear standards where violations are not difficult to determine and which the COA, in fact, fully accounted for and determined.

B. The point of dissent

However, contrary to the ponencia's conclusion, I submit that the approving officers should be held personally liable for the full amount of the disallowance. My disagreement with the ponencia's ruling on the approving officers' extent of liability stems from the observation that the ponencia departed from the clear provisions of the law.

To reiterate, Section 43, Chapter V, Book VI of the Administrative Code expressly provides that every official or employee authorizing or making an illegal payment and every person receiving the illegal payment shall be jointly and severally liable to the Government for the full amount so paid or received. This provision should be interpreted in relation with Section 52, Chapter IX, Title I-B, Book V of the Administrative Code and Section 103 of PD 1445 which state that illegal expenditures of public funds shall be a personal liability of the official or employee found to be directly responsible for the illegal disbursements. As the ponencia itself ruled, this direct responsibility only attaches to public officers who actively and maliciously participated in the illegal disbursement of funds. In the present case, the ponencia correctly found that only the approving officers (among them, the Director Generals) are liable for the disbursement of the excess EME.

A plain reading of Section 42, Chapter V, Book VI of the Administrative Code shows that this provision does not qualify that the approving officer must first receive the illegal disbursement as a necessary prerequisite for his personal and solidary liability in disallowances. This provision unequivocally holds a public officer personally and solidarily liable with other responsible officers for merely authorizing or making an illegal payment of public funds. That the approving officer must receive a portion of the disallowed amount is not an element of liability under the Administrative Code. The ponencia's conclusion in this regard is plainly and patently incorrect.

I also stress that Section 42, Chapter V, Book VI of the Administrative Code used the phrase "the full amount so paid or received." This phrase directly refers to the earlier phrase "every person receiving the illegal payment." Indisputably, the law holds the public officer who merely authorized the illegal payment personally liable for the full amount of the illegal expenditures. The law clearly intended to hold the approving officers liable, not just for the amount that they received, if any, but also for the illegal payments that the payees have received. In fact, the

law characterizes the responsible officers' pecuniary liability as direct, personal and solidary; this strict pecuniary liability embodies the spirit and intent of the law to subject the public officers to the highest standards of accountability and service. He who occupies public office should render service to the people and must not abuse the public trust as a means to promote his personal interests.

My disagreement with the ponencia's imposition of limited civil liability arises from the observation that this conclusion has no legal or jurisprudential basis. The ponencia's requirement that the approving officers must have received an amount from an illegal expenditure and limiting his solidary liability to this amount does not find any support in the law. By adding this requirement, the ponencia ignored the basic principle in statutory construction that where the language of the law is clear and unequivocal, it must be given its literal application and applied without additional interpretation.[35]

If any distinction should be made between the approving officials who received a portion of the disallowed amounts and those who did not, the former should bear the additional liability of paying legal interests on the disallowed amount received, as provided by law.[36] The Court should not give an "incentive" to a public official to care less in approving the disbursement of public funds by exempting him from the obligation to refund simply because he did not receive any amount, however grossly negligent he may have been.

I fear that the Court dangerously treads in judicial legislation by deviating from the clear mandate of the law. This case sets a dangerous precedent that the approving officers would have to receive an illegal disbursement first before they can be made civilly liable in disallowance cases. This subverts the clear provisions of the law and would render inutile the COA disallowances in cases where the grossly negligent approving officers do not receive any portion of the illegal disbursement and where the payees are mere passive recipients. Under this scenario, no public officer shall refund the government for the unwarranted wastage of its coffers. Furthermore, this ruling ignores the reality that the approving officers can easily evade liability by merely ordering or colluding with others so that their receipt of the portion of the illegal disbursement is not documented. I believe that the law does not intend the approving officers to go scot-free for their acts or omissions that are detrimental to the public interest. This offends the very core of the law on public officers that public office exacts the highest standards of accountability and service.

Also, Section 102 of PD 1442 provides that the agency head directing any illegal disposition of funds or property shall be immediately and primarily responsible for all government funds and property pertaining to his agency. Similar to the Administrative Code, PD 1442 unequivocally holds the agency head responsible for all illegally disposed funds and property.

The approving officers in this case are not ordinary public employees. The TESDA Director General is the chief executive officer of the TESDA Secretariat; he occupies one of the highest positions in TESDA. He exercises general supervision and control over TESDA's technical and administrative personnel. He also heads the TESDA Secretariat which proposes the specific allocation of its resources. In other words, the Director General, as the head of a government agency, is charged with the duty of diligently supervising the accountable officers and other subordinates to prevent the loss of government funds or property.[37] His approval or disapproval to the disbursement of TESDA's funds is a core function that he has to discharge in the performance of his official duties. Pursuant to Section 102 of PD 1442, the Director General's functions dictate that he be immediately and primarily liable for the full amount of the excess EME.

The consequences for the government of any contrary ruling are to deplete the government's coffers and to render the COA's auditing functions meaningless. In blunter terms, notices of disallowance would eventually serve no practical purpose if the Court limits the refund of disallowed disbursements to the amounts that the responsible

officer has received. This kind of ruling would result in impunity for those who did not receive but carelessly approved the illegal expenditures, not to mention the level of comfort it would add to those who, in case of doubt, would allow the payment of public funds because the Court would ultimately not order any refund anyway.

In these lights, due deference and respect for the Constitution and the laws demand that we strictly scrutinize the good faith defense before us vis-à-vis the COA's own finding of bad faith before we recognize this type of defense in disallowance cases. In other words, any disbursement contrary to the provisions of the law should be declared illegal and the parties responsible for the illegal disbursement should refund the full amount of the disallowance. It is only in those clearly meritorious cases where the COA's own findings are not inconsistent with good faith or where the COA gravely abused its discretion in concluding, expressly or impliedly, that bad faith exists that they may be relieved from the obligation to refund. As for mere passive recipients, they are generally not liable to refund the amount they received unless they themselves participated in the illegal disbursement.

[1] Extraordinary and Miscellaneous Expenses. – Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:

- (a) P180,000.00 for each Department Secretary;
- (b) P65,000.00 for each Department Undersecretary;
- (c) P35,000.00 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director
- (d) P18,000.00 for each Bureau Regional Director; and
- (e) P13,000.00 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Fifty Thousand Pesos (P50,000.00) for each of the offices under the above named officials are authorized.

[2] No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

[3] Article XI, General Auditing Office, Section 3.

[4] Section 2(2), Article XII-D of the 1973 Constitution reads:

xxx Unless otherwise provided by law, any decision, order, or ruling of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within days from his receipt of a copy thereof. [italics ours]

[5]

Aratuc v. Comelec,

177 Phil. 205, 223 (1979).

[6] RULES OF COURT, Rule 65, Section 1.

[7] De Jesus v. Commission on Audit, 451 Phil. 812, 818-819 (2003), citing Caltex Philippines, Inc. v. Commission on Audit, G.R. No. 92585, May 8, 1992, 208 SCRA 726. See 2009 REVISED RULES OF PROCEDURE OF THE COMMISSION ON AUDIT, Rule 2, Section 1(a).

[8] The following summarizes some of the relevant disallowance cases that followed after the Court's promulgation of Blaquera:

In De Jesus v. Commission on Audit (supra), the Catbalogan Water District's interim Board of Directors awarded themselves additional allowances and bonuses pursuant to a resolution they issued. The Court disallowed the

disbursements for being illegal. However, the Court did not order a refund because the board members honestly believed that they were entitled to these amounts under the resolution and because the Court had not yet decided *Baybay Water District v. COA* – where the Court ruled that the water district’s board members were only entitled to per diems - when the grant was made. (See *Magno v. COA*)

In *HDMF v. COA*, the HDMF entered into three successive contracts (1995, 1996 and 1997 Contracts) with DBP Service Corporation (DBPSC) for manpower services. In mid-1997, the HDMF Board of Trustees approved a resolution granting amelioration allowance to DBPSC personnel that were assigned to the HDMF’s head office and charged it against the HDMF’s 1996 approved budget. The Court disallowed the payment to DBPSC personnel for lack of legal basis. It also held that the HDMF could not invoke the 1997 Contract to justify the disbursement for 1996. However, the Court did not order the refund of the disbursed amounts despite its finding that the HDMF trustees were negligent in not examining the 1996 Contract. It also found that the DBPSC personnel acted in good faith because they performed the work of regular government employees and received the amount in the belief that they were entitled to the allowance.

In *Philippine Ports Authority (PPA) v. COA* (517 Phil. 677 [2006]), the PPA granted hazard pay to its officials and employees from January 1, 1997 to June 30, 1997 through a special order, issued pursuant to PPA Memorandum Circular No. 34-95 and DBM National Compensation Circular No. 76. The Court disallowed the disbursement because President Ramos had vetoed the hazard pay provision in the GAA. However, the disbursement was done in good faith because President Ramos only vetoed the hazard pay provision on February 2, 1997. Furthermore, the DBM only issued DBM Circular Letter No. 13-97 apprising the government entities of the presidential veto on December 15, 1997. Thus, the officials and employees honestly believed that the grant was authorized by PPA Special Order No. 407-97.

In *Lumayna v. Commission on Audit* (G.R. No. 185001, September 25, 2009, 601 SCRA 163), the DBM issued Local Budget Circular No. 74 (LBC 74) authorizing a 5% adjustment in the salaries of local government personnel. Subsequently, the Sangguniang Bayan of Mayoyao, Ifugao appropriated the salaries for newly created positions in Resolution No. 41. The Sangguniang Panlalawigan of the Province of Ifugao declared the appropriations operative subject to certain conditions. Thereafter, the Sangguniang Bayan approved Resolution No. 66 implementing the salary increase for its personnel. The Court found that the salary increase exceeded the total allowable appropriations under the law. However, the municipality personnel disbursed the amount under the color of resolutions that were issued pursuant to LBC No. 74. Furthermore, the approving officers disbursed the amount only after the Sangguniang Panlalawigan had declared the appropriations operative. (See also *Singson v. COA*, *Veloso v. COA*, *Kapisanan ng mga Manggagawa (KMG) v. COA*)

In *Nazareth v. Villar* (G.R. No. 188635, January 29, 2013, 689 SCRA 385), the Department of Science and Technology (DOST) Regional Office released Magna Carta benefits to its officials and employees despite the absence of a specific appropriation in the GAA and without prior authority from the President to utilize the DOST’s savings. After the COA disallowed the payment of benefits, the OP authorized the DOST to utilize its savings to pay the benefits. The Court held that the payment of benefits without a specific item in the GAA and without the President’s prior authority was repugnant to Republic Act No. 8439 (RA 8439), the 1987 Constitution, and the GAA. However, the approving officers and the recipients acted in good faith because they honestly believed that Section 7 of RA 8439 allowed the payment of these benefits. Furthermore, the DOST earnestly asked for authorization from the OP after the disallowance.

[9] In at least two cases, however, the Court ordered a refund of the amount on the basis of bad faith. In *Home Development Mutual Fund (HDMF) v. COA* (483 Phil. 666 [2004]), the HDMF granted productivity incentive bonus to all its personnel pursuant to Republic Act No. 6971 (RA 6971) and its implementing rules. The Court

disallowed the disbursement on the ground that RA 6971 does not cover government-owned and controlled corporations (GOCC) with original charter as stated in jurisprudence. The Court also ordered the refund of the disbursed amounts because the HDMF still granted the bonus despite the DBM's advice to await a definite ruling on this matter. In *Casal v. COA*, the National Museum granted an incentive award to its officials and employees pursuant to Provision No. 8 of Employees Suggestions and Incentive Awards System which the CSC had approved. The Court disallowed the award for being illegal. However, the Court distinguished on who should refund the disallowed amounts. Accordingly, the approving officers should refund the disallowed amounts for acting in bad faith in allowing the disbursements. In so ruling, the Court made factual distinctions between *Casal* and *Blaquera*. In *Blaquera*, the incentive benefits were paid prior to the issuance of AO No. 29. In *Casal*, these benefits were released subsequent to the issuance of AO 29. Moreover, the CSC notified the National Museum of the prohibition in AO No. 268. On the other hand, the Court ruled that the recipients who did not participate in the approval of the award should not refund the amounts they received. The approving officers' imprimatur gave the award a color of legality.

[10] Isagani Cruz, *Philippine Political Law*, 1998 ed., p. 52.

[11] 1987 CONSTITUTION, Article XI, Section 1.

[12] *Office of the Ombudsman v. Andutan, Jr.*, G.R. No. 164679, July 27, 2011, 654 SCRA 539, 557.

[13] REPUBLIC ACT NO. 6713, Section 4.

[14] *Rosalinda Dimapilis-Baldoz, etc. v. Commission on Audit, etc.*, G.R. No. 199114, July 16, 2013.

[15] *Veloso v. Commission on Audit*, G.R. No. 193677, September 6, 2011, 656 SCRA 767, 776.

[16] PD 1445, Section 104. See also Section 8, par. 3, Rule 6 of the Rules Implementing the Code of Conduct and Ethical Standards for Public Officials and Employees.

[17] *Al-Amanah Islamic Investment Bank of the Phils. v. Civil Service Commission*, G.R. No. 100599, April 8, 1992, 207 SCRA 801, 812.

[18] THE ADMINISTRATIVE CODE OF 1987, Book VI, Chapter V, Section 43.

[19] CIVIL CODE, Article 2154.

[20] 356 Phil. 678 (1998).

[21] *Id.* at 765.

[22] *Id.* at 766.

[23] Section 103 of PD 1445 similarly provides:

General liability for unlawful expenditures. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

[24] See *MIAA v. COA*, G.R. No. 194710, February 14, 2012, 665 SCRA 655, 677-678.

[25] Payees of disallowed disbursements may, however be held liable to return the amount they have received based on the other grounds stated in COA Circular 2009-006, to wit:

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.

16.1.5. The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact. [emphases ours]

[26] Executive Director Casal v. Commission on Audit, 538 Phil. 634, 801 (2006).

[27] Albert v. Gangan, 406 Phil. 231, 245 (2001).

[28] The presumption is indulged by law for the following reasons: first, innocence, and not wrongdoing, is to be presumed; second, an official oath will not be violated; and third, a republican form of government cannot survive long unless a limit is placed upon controversies and certain trust and confidence reposed in each governmental department or agent by every other such department or agent, at least to the extent of such presumption. The presumption evidences a rule of convenient public policy, without which great distress would spring in the affairs of men. (People v. De Guzman, G.R. No. 106025, February 9, 1994, 229 SCRA 796, 798-799.)

[29] Philippine Economic Zone Authority (PEZA) v. Commission on Audit, et al., G.R. No. 189767, July 3, 2012, 657 SCRA 514, 524.

[30] COA Circular 2009-006, Sec. 4.17.

[31] The fact that a disbursement turns out to be illegal does not automatically mean that all of the approving officials did not exercise ordinary diligence. For instance, the mere fact that a public officer is the head of an agency does not necessarily mean that he is inescapably liable in case of disallowance of expenses for questionable transactions of his agency. Personal liability for the disallowed amounts does not automatically attach simply because the public officer was the final approving authority of the transaction in question and that the erring officers/employees who processed the same were directly under his supervision. As stated in the seminal case of *Arias v. Sandiganbayan* (259 Phil. 797 [1989]), practical necessity affords all heads of offices the right to rely to a reasonable extent on their subordinates and on the good faith of those who took part to consummate the disbursement of public funds. *Arias* requires that -

There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of document, letters and supporting paper that routinely pass through his hands. The number in bigger offices or departments is even more appalling. (Id. at 801-802.)

The Court has since applied the *Arias* ruling to determine not only criminal (*Magsuci v. Sandiganbayan*, 310 Phil. 14 [1995], a case involving estafa through falsification of public documents) civil (*Leycano, Jr. v. Commission on Audit*, 517 Phil. 426 [2006]; and *Albert v. Gangan*, supra note 27), and administrative (*Alfonso v. Office of the President*, G.R. No. 150091, April 2, 2007, 520 SCRA 64) liability, but even the existence of probable cause to file an information (*Sistoza v. Desierto*, 437 Phil. 117 [2002]), in the context of an allegation of conspiracy. In this instance, what constitutes reliance to a “reasonable extent” thus depends on a case-to-case basis.

[32] If an approving official has exercised ordinary diligence in the performance of his official duties, his good faith would enjoy a stronger presumption. If he failed to exercise ordinary diligence, however, this does not mean that his good faith presumption becomes weaker. Presumption of good faith stands unless rebutted by evidence to the contrary.

[33] See *Lumayna v. Commission on Audit*, supra note 8, at 182-183; and *Albert v. Gangan*, supra note 27, at 245-246.

[34] *Meneses v. Court of Appeals*, G.R. Nos. 82220, 82251 and 83059, July 14, 1995, 246 SCRA 162, 174.

[35] *Bolos v. Bolos*, G.R. No. 186400, October 20, 2010, 634 SCRA 429, 437.

[36] CIVIL CODE, Art. 2159. Whoever in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved, or shall be liable for fruits received or which should have been received if the thing produces fruits.

He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

[37] PD 1445, Sections 104 and 105.

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