

**FAUSTINO A. SILANG, VENERANDO R. REA, LUZVIMINDA B. CUADRA,
MARIA CIELITO V. ZETA, ESTELITO M. QUERUBIN, LYKA MONIKA J.
OABEL, GINALYN CELESTINO, GENER B. ABORDO, JOY O. TAGUILA...**

G.R. No. 213189. September 08, 2015

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

Assailed in this petition for certiorari[1] under Rule 64 in relation to Rule 65 of the Rules of Court are the Decision[2] dated December 21, 2012 and the Resolution[3] dated March 13, 2014 rendered by the Commission on Audit (COA) En Banc, which upheld Notices of Disallowance (ND) Nos. 2009-001-101-(08) and 2009-002-101-(09) both dated March 6, 2009 in the amounts of P9,230,434.20 and P19,933,510.00 as 2008 and 2009 Collective Negotiation Agreement (CNA) Incentives, respectively, paid to the rank-and-file employees of the local government unit (LGU) of Tayabas, Quezon.

The Facts

On November 13, 2007[4] and February 4, 2008,[5] the LGU of Tayabas, Quezon entered into CNAs with the Unyon ng mga Kawani ng Pamahalaang Lokal ng Tayabas (UNGKAT),[6] an employees' organization of the LGU of Tayabas, Quezon duly registered with the Department of Labor and Employment (DOLE) and the Civil Service Commission (CSC), per Certificate of Registration No. 827[7] dated June 14, 2001, which conferred upon it "the right to be certified" as the sole representative of the LGU of Tayabas, Quezon's rank-and-file employees.[8]

Thereafter, or on February 11, 2008, the local Sanggunian, whose members include herein petitioners Venerando R. Rea, Luzviminda B. Cuadra, Maria Cielito V. Zeta, Estelito M. Querubin, and Lyka Monika J. Oabel,[9] (local Sanggunian members) passed City Ordinance No. 08-03[10] appropriating the amount of P9,230,434.49 for the payment of the 2008 CNA Incentive to the rank-and-file employees of Tayabas, Quezon to be sourced from the LGU's Maintenance and Other Operating Expenses (MOOE) savings for 2007.[11] However, for failure to submit the required documents, the Office of the Auditor of COA, Province of Quezon (Office of the Auditor) issued Notice of Suspension (NS) No. 2008-001-101(08)[12] dated December 17, 2008, anchored on the non-registration of the CNA with the CSC and the absence of cost-cutting measures therein.[13]

Disputing the suspension, petitioner Faustino A. Silang (Silang), City Mayor of Tayabas, Quezon, through a letter[14] dated February 9, 2009, submitted the letter[15] dated January 28, 2009 of then UNGKAT President petitioner Enrico T. Nañez (Nañez).[16] In the letter, Nañez argued that the non-registration of the CNA with the CSC was not a bar to the payment of the 2008 CNA Incentive and that the cost-cutting measures were provided in the Minutes of the Meeting dated September 26, 2007, prior to the CNA-signing on November 13, 2007.[17] However, the Office of the Auditor maintained that: (a) prior registration of the CNA with the CSC; (b) accreditation by CSC of UNGKAT as the sole and exclusive negotiating agent of the LGU concerned, and (c) the identification of cost-cutting measures in the CNA itself are indispensable requisites for the validity of payment of

the 2008 CNA Incentive.[18] Consequently, the Office of the Auditor issued Notice of Disallowance (ND) No. 2009-001-101-(08)[19] dated March 6, 2009 disallowing the amount of P9,230,434.20 representing the 2008 CNA Incentive paid to 156 rank-and-file employees of the LGU of Tayabas, Quezon.[20]

Meanwhile, on February 11, 2009, the local Sanggunian passed Ordinance No. 09-01[21] appropriating the amount of P39,867,161.00 for the payment of the 2009 CNA Incentive to be sourced from the LGU's MOOE savings for 2008.[22] As the 2009 CNA Incentive was suffering from the same infirmities as the 2008 CNA Incentive, among them, the fact that UNGKAT was not accredited by CSC at the time of the execution of the CNA, the Office of the Auditor issued ND No. 2009-002-101-(09)[23] dated March 6, 2009 disallowing the amount of P19,933,510.00 representing the 2009 CNA Incentive.[24]

Aggrieved, the LGU of Tayabas, Quezon, as represented by Silang, appealed[25] the NDs to the Regional Director, COA Regional Office No. IV.[26]

The Ruling of the COA Regional Director

In a Decision[27] dated November 9, 2010, the COA Regional Director (RD) denied the appeal and sustained the assailed NDs on the grounds, among others, that UNGKAT was not accredited with the CSC at the time of the signing of the CNAs,[28] and non-compliance with the requirement that the savings from which the payment of the 2008 and 2009 CNA Incentives are to be sourced must be reckoned from the date of the signing of the CNAs.[29] The COA RD found that while UNGKAT was registered with DOLE and CSC as of June 14, 2001, such registration did not confer upon it the right to negotiate with management on behalf of its members.[30] Certificate of Registration No. 827 merely conferred upon it the "right to be certified, subject to the conditions prescribed in [Executive Order No. 180] and Implementing Rules, as the sole representative of the rank-and-file employees to negotiate for them." [31] This simply means that after registration, UNGKAT may seek accreditation as the sole negotiating representative of the LGU personnel. As UNGKAT was not accredited with the CSC at the time of the signing of the CNA, as in fact it was only accredited with the CSC on January 14, 2009 under CSC Resolution No. 090087,[32] the COA RD concluded that the 2008 and 2009 CNA Incentives were properly disallowed in view of the requirement under Item No. 5.1 of the Department of Budget and Management (DBM) Budget Circular No. 2006-01,[33] which provides:

5.0 Policy Guidelines

5.1 The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, executed between the representatives of management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.

Moreover, Item 7.0 of the same DBM Circular states:

7.0 Funding Source

7.1 The CNA Incentive shall be sourced solely from savings from released [MOOE] allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such sa'vings were generated out of the cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

X X X X

Further, as the first CNA in this case was signed only on November 13, 2007, the computation of the amount of the actual MOOE savings should commence only from that date. Since the MOOE savings to be used for the 2008 CNA Incentive amounting to P11,538,043.12[34] was saved from September 2007 to December 2007, the said CNA Incentive cannot therefore be allowed, in violation of Item No. 7.1.2 as above-quoted.

Dissatisfied, the LGU of Tayabas, Quezon, as represented by Silang, elevated[35] the case to the COA En Banc, which resolved the issue of the legality of the CNA Incentives.

The Ruling of the COA En Banc

In a Decision[36] dated December 21, 2012, the COA En Banc affirmed the RD November 9, 2010 Decision disallowing the payments for the 2008 and 2009 CNA Incentives. It echoed the RD's finding that at the time of the execution of the CNA, UNGKAT had no CSC accreditation as required in DBM Budget Circular No. 2006-01, as in fact, it was accredited with the CSC only on January 14, 2009.[37] With regard to the reckoning date and computation of savings from which the 2008 CNA Incentive may be sourced, since the same was computed from September 2007, or two (2) months before the first CNA was signed on November 13, 2007, the same cannot be allowed, as the said DBM Circular requires that the savings be reckoned from the date of the signing of the CNA.[38]

The LGU of Tayabas, Quezon's motion for reconsideration was denied by the COA En Banc in the Resolution[39] dated March 13, 2014; hence, this petition.

The Issues Before the Court

The issues advanced for the Court's resolution are whether or not the COA En Banc committed grave abuse of discretion when it: (a) affirmed the disallowance of the 2008 and 2009 CNA Incentives on the ground that UNGKAT was not accredited with the CSC; (b) ruled that the LGU of Tayabas, Quezon's savings, to be considered as CNA Incentives, shall be reckoned from the date of signing of the CNAs; and (c) failed to consider good faith on the part of the management and the union in the granting of the 2008 and 2009 CNA Incentives.

The Court's Ruling

The petition is partly meritorious.

Item No. 5.1 of DBM Budget Circular No. 2006-01 clearly requires accreditation with the CSC for the purpose of collective negotiations prior to the grant of CNA Incentives, to wit:

5.0 Policy Guidelines

5.1 The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, executed between the representatives of management and the employees' organization accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.

In this case, records show that UNGKAT, the rank-and-file employees' organization of the LGU of Tayabas, Quezon, had no CSC accreditation when the CNAs were executed on November 13, 2007 and February 4, 2008. In fact, it was accredited with the CSC only on January 14, 2009, as evidenced by CSC Resolution No. 090087[40] of even date, which states, inter alia:

NOW, THEREFORE, the Commission hereby resolves to accredit the Unyon ng mga Kawani ng Pamahalaang Lokal ng Tayabas (UNGKAT). Accordingly, it is declared as the sole and exclusive representative of the rank-and-file employees of the City Government of Tayabas, City Hall, Tayabas City, Quezon for purposes of collective negotiations with management on terms and conditions of employment not fixed by law.[41]

As such, the 2008 and 2009 CNA Incentives granted to UNGKAT under the CNAs executed on November 13, 2007 and February 4, 2008 must clearly be disallowed for UNGKAT's lack of CSC accreditation at that time.

Moreover, as the MOOE savings from which the CNA Incentives may be sourced was computed from September 2007, or two (2) months before the first CNA was signed on November 13, 2007, the 2008 CNA Incentive cannot be granted in view of Item 7.1.2 of DBM Budget Circular No. 2006-01 which requires that the savings be reckoned from the date of the signing of the CNA, to wit:

7.0 Funding Source

7.1 The CNA Incentive shall be sourced solely from savings from released [MOOE] allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such savings were generated out of the cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

x x x x (emphasis supplied)

With respect to the issue of good faith in the allowance and receipt of the 2008 and 2009 CNA Incentives, the Court finds petitioners' contention partly meritorious.

As a general rule, public officials who are directly responsible for the any illegal expenditure of public funds are personally liable therefor. This mandate is consistently stated in the following provisions of law:

(a) Section 52, Chapter 9, entitled "Accountability and Responsibility for Government Funds and Property," Title I, Subtitle B, Book V of Executive Order No. 292, Series of 1987, otherwise known as the "Administrative Code of 1987"[42] (Administrative Code):

Section 52. 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. (Emphasis supplied)

(b) Section 351, Chapter IV, entitled "Expenditures, Disbursements, Accounting and Accountability," Title V, Book II of Republic Act No. 7160, otherwise known as the "Local Government Code 1991"[43] (LGC):

Section 351. General Liability for Unlawful Expenditures. - Expenditures of funds or use of property in violation of this Title and other laws shall be a personal liability of the official or employee responsible therefor. (Emphasis supplied)

(c) Section 103, Chapter 5, entitled "Accountability and Responsibility for Government Funds and Property" of Presidential Decree No. 1445, otherwise known as the "Government Auditing Code of the Philippines"[44] (Auditing Code):

Section 103. 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. (Emphasis supplied)

Section 43, Chapter 5, entitled "Budget Execution," Book VI of the Administrative Code likewise states that every official or employee authorizing or making an illegal payment, or taking part therein, and every person receiving such payment shall 'be jointly and severally liable to the Government for the full amount so paid or received:

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

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal. (Emphasis supplied)

In similar vein, Section 342, Chapter IV, Title V, Book II of the LGC states that the superior officer directing, or the department head participating in the illegal or improper use or application or deposit of government funds or property, shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited.

Section 342. Liability for Acts Done Upon Direction of Superior Officer, or Upon Participation of Other Department Heads or Officers of Equivalent Rank. - Unless he registers his objection in writing, the local treasurer, accountant, budget officer, or other accountable officer shall not be relieved of liability for illegal or improper use or application or deposit of government funds or property by reason of his having acted upon the direction of a superior officer, elective or appointive, or upon participation of other department heads or officers of equivalent rank. The superior officer directing, or the department head participating in such illegal or improper use or application or deposit of government funds or property, shall be jointly and severally liable with the local treasurer, accountant, budget officer, or other accountable officer for the sum or property so illegally or improperly used, applied or deposited. (Emphasis supplied)

Meanwhile, Section 104, Chapter 5 of the Auditing Code provides that the treasurer of the local government unit shall exercise the diligence of a good father of a family in supervising the accountable officers under him; otherwise, he shall be jointly and solidarity liable with them for the loss of government funds or property under their control:

Section 104. Records and reports required by primarily responsible officers. The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be jointly and solidarity liable with the person primarily accountable therefor. The treasurer of the local government unit shall likewise exercise the same degree of supervision over accountable officers under his supervision otherwise, he shall be jointly and solidarity liable with them for the loss of government funds or property under their control. (Emphasis supplied)

Clearly, therefore, public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom - in this case, the disallowed CNA Incentives - shall be solidarity liable for their reimbursement.

By way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits, and other allowances need not refund such disallowed amounts if they received the same in good faith.[45] Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.[46] In *Lumayna v. COA*,^[47] the Court declared that notwithstanding the disallowance of benefits by COA, the affected personnel who received the said

benefits in good faith should not be ordered to refund the disallowed benefits. Similarly, in *Querubin v. Regional Cluster Director, Legal and Adjudication Office, COA Regional Office VI, Pavia, Iloilo City*,^[48] the Court held:

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accept the same with gratitude, confident that they richly deserve such benefits.

xxx Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.^[49]

In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and bona fide members of UNGKAT (named-below)^[50] who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named below, had participated in any of the negotiations or were, in any manner, privy to the internal workings related to the approval of said incentives; hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement. Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit,^[51] as said employees did so believe in this case. Therefore, said petitioners should not be held liable to refund what they had unwittingly received.

With respect, however, to the other petitioners who, apart from being rank-and-file employees of the LGU of Tayabas, Quezon, were also UNGKAT officers at the time, and who directly participated in the negotiations pertaining to the disallowed CNA incentives, namely, petitioners Nanez, Dr. Cesar Anthony Orias, Aurea S. Resare, Roselle Y. Villaverde, Celina B. Oabel, Aileen R. Ranera, Veronica N. Garcia, Allan C. Zagala, Nelson V. Coladilla, Mary Jane Z. Calupig, Irma C. Ilocario, as well as the members of the Board of Directors of UNGKAT, namely, Raymundo L. Constantino, Edmerlito P. Ybardolaza, Sr., Rolando Z. Olivar, Mario C. Reyes, Jr., Amelia F. Babierra, Nonilon Reyes, Rizalyn Z. Espedido, Marvin Jacela, Joy O. Taguilaso, and Fabian Jaballa,^[52] they cannot be deemed to have acted in good faith. Considering that prior accreditation as sole negotiating agent was required under DBM Budget Circular No. 2006-01, the UNGKAT officers and Board of Directors ought to have known that they were bereft of authority to enter into negotiations on behalf of the rank-and-file employees with respect to the CNA Incentives.

Similarly, such finding of good faith cannot be made to apply to Silang, who, as City Mayor, approved the allowances, as well as the local Sanggunian members, who enacted the ordinances authorizing the payment of the subject CNA Incentives. As City Mayor and members of the local Sanggunian, they are presumed to be acquainted with - and, in fact, even duty bound to have full knowledge of - the requirements under the applicable policies for the valid grant of CNA Incentives, i.e., the requisite accreditation of UNGKAT with the CSC at the time of the signing of the CNA as required under DBM Budget Circular No. 2006-01. Indeed, knowledge of basic procedure is part and parcel of their shared fiscal responsibility under Section 305 (1), Chapter I, Title V, Book II of the LGC, to wit:

Section 305. Fundamental Principles. - The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:

x x x x

(1) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions,

and operations of the local government units; x x x.[53]

Their unexplained failure in this wise, therefore, goes against their claim of good faith in the allowance and payments of the CNA Incentives, especially since the 2008 CNA Incentive had already been disallowed even prior to the approval of Ordinance No. 09-01 authorizing the release of the 2009 CNA Incentive. That they did not receive any amount[54] from the disallowed benefits does not exculpate them from personal and solidary liability for reimbursement therefor, under the legal provisions above-quoted, as receipt of the disallowed benefits is inconsequential, absent any showing of good faith. As aptly pointed out by Associate Justice Arturo D. Brion during the deliberations on this case, the receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of the government officials directly responsible therefor, as in the case of *Maritime Industry Authority v. COA*,[55] where the Court held the approving officers therein who acted in bad faith as solidarity liable to return the disallowed funds, even if they never got hold of them.

In fine, Silang, the City Mayor, as well as the local Sanggunian members, as the approving authority, together with the UNGKAT officers and members of the Board of Directors who actively participated in the negotiations for the approval of the disallowed incentives despite knowledge of UNGKAT's non-accreditation at the time, are solidarity liable to refund the disallowed benefits in this case, without prejudice to any further finding of administrative liability as a consequence of their actions. This pronouncement is also without prejudice to any finding pertaining to any other public official or person who may be held liable for the return of such illegal disbursement but were not impleaded in this case.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated December 21, 2012 and the Resolution dated March 13, 2014 of the Commission on Audit En Banc are hereby **AFFIRMED** with **MODIFICATION** in that the petitioners who are rank-and-file employees of the local government unit of Tayabas, Quezon need not refund the disallowed amounts of P9,230,434.20 and P19,933,510.00 as 2008 and 2009 Collective Negotiation Agreement Incentives (CNA), respectively. However, petitioners Faustino A. Silang, Venerando R. Rea, Luzviminda B. Cuadra, Maria Cielito V. Zeta, Estelito M. Querubin, and Lyka Monika J. Oabel, as approving officers; Enrico T. Nanez, Dr. Cesar Anthony Orias, Aurea S. Resare, Roselle Y. Villaverde, Celina B. Oabel, Aileen R. Ranera, Veronica N. Garcia, Allan C. Zagala, Nelson V. Coladilla, Mary Jane Z. Calupig, Irma C. Ilocario, as officers of the Unyon ng mga Kawani ng Pamahalaang Lokal ng Tayabas (UNGKAT); and Raymundo L. Constantino, Edmerlito P. Ybardolaza, Sr., Rolando Z. Olivar, Mario C. Reyes, Jr., Amelia F. Babierra, Rizalyn Z. Espedido, Marvin Jacela, Joy O. Taguilaso, and Fabian Jaballa, as members of UNGKAT'S Board of Directors, are solidarity liable to refund the disallowed amounts, without prejudice to: (a) any finding of administrative liability for the grant of the disallowed 2008 and 2009 CNA Incentives; and (b) any finding pertaining to any other public official or person who may be held liable for the return of such illegal disbursement but were not impleaded in this case.

SO ORDERED.

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

Brion, J., see concurring opinion.

Reyes, J., on leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on September 8, 2015, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on September 10, 2015 at 2:00 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[**] Petitioners' names indicated as it appears from the Verification and Certification of Non-Forum Shopping attached to the petition. See rollo, pp. 52-56.

[1] Id. at 20-51.

[2] Id. at 7-13. Signed by Chairperson Ma. Gracia M. Pulido Tan, Commissioner Juanito G. Espino, Jr. and Commissioner Heidi L. Mendoza.

[3] Id. at 14. Issued by Director IV Nilda B. Plaras.

[4] Id. at 73-82-A.

[5] Id. at 83-94.

[6] Id. at 7.

[7] Id. at 72.

[8] See Id. at 24.

[9] Id. at 21.

[10] Id. at 99-103.

[11] Id. at 7.

[12] Id. at 106-108.

[13] Id. at 7-8.

[14] Id. at 109.

[15] Id. at 110-112.

[16] Id. at 159.

[17] Id. at 111. See also id. at 8

[18] Id. at 8.

[19] Id. at 118-120. See also Amended Notice of Disallowance No. 2009-001-101-(08) dated March 3, 2011; id. at 197-201 -A.

[20] Id. at 8 and 159.

[21] Id. at 113-117

[22] Id. at 8.

[23] Id. at 121-123. See also Amended Notice of Disallowance No. 2009-002-101-(09) dated March 3 2011; id. at 202-207.

[24] Id. at 8.

[25] See Appeal Memorandum dated September 11, 2009; id. at 126-157.

[26] See Notice of Appeal dated May 7, 2009 and Minute Resolution No. 09-51 dated May 4, 2009 authorizing the City Mayor to file an Appeal before the COA RD; id. at 124-125-A.

[27] Id. at 158-165. Issued by Regional Director Leonardo J. Jamoralin.

[28] Id. at 162.

[29] Id. at 163.

[30] Id. at 162.

[31] Id. at 72; italics and underscoring supplied.

[32] Id. at 272.

[33] Re: "Grant of Collective Negotiation Agreement (CNA) Incentive" dated February 1, 2006.

[34] Rollo, p. 98.

[35] See Petition filed before the COA on February 18, 2011; id. at 166-196.

[36] Id. at 7-13.

[37] Id. at 11.

[38] Id. at 12.

[39] Id. at 14.

[40] Id. at 272.

[41] Id.

[42] Approved on July 25, 1987.

[43] Approved on October 10, 1991.

[44] Approved on June 11, 1978.

[45] See *Mendoza v. COA*, G.R. No. 195395, September 10, 2013, 705 SCRA 306; *Agra v. COA*, 677 Phil. 608 (2011); *Veloso v. COA*, 672 Phil. 419 (2011); *Singson v. COA*, 641 Phil. 154 (2010); *Lumayna v. COA*, 616 Phil. 929 (2009); *Bases Conversion and Development Authority v. Commission on Audit*, 599 Phil. 455 (2009); *Barbo v. COA*, 589 Phil. 289 (2008); *Magno v. COA*, 558 Phil. 76 (2007); *Benguet State University v. Commission on Audit*, 551 Phil. 878 (2007); *Public Estates Authority v. COA*, 541 Phil. 412 (2007); *Abanilla v. COA*, 505 Phil. 202 (2005); *Home Development Mutual Fund v. COA*, 483 Phil. 666 (2004); *Kapisanan ng mga Manggagawa sa*

Government Service Insurance System v. COA, 480 Phil. 861 (2004); Blaquera v. Alcala, 356 Phil. 678 (1998).

[46] See Justice Arturo J. Brion's Concurring and Dissenting Opinion in Technical Education and Skills Development Authority v. COA, G.R. No. 204869, March 11, 2014, 718 SCRA 402, 441-443.

[47] 616 Phil. 929, 945 (2009).

[48] 477 Phil. 919 (2004).

[49] Id. at 924-925, citing Blaquera v. Alcala, supra note 45, at 765-766.

[50] Namely: Ginalyn Celestino, Gener B. Abordo, German L. Jamilano, Rolando P. Borromeo, Renato Tabernilla, Romeo G. Cariaga, Romeo O. Gamboa, Adelmo m. Abesamis, Roel O. Tadosa, Ruperto R. Zarsaga, Joselito C. Talabong, Emmanuel L. Averilla, Mario G. Quesea, Felix T. Marquez, Marcelito R. Ayala, Dionisio N. Sombrero, Reynaldo J. Maderal, Carlos G. Abanto, Esmeraldo Z. Rivere, Regalado O. Romero, Romeo S. Bombani, Marcelino U. Contreras, Manuel S. Abragon, Gerardo S. Edresa, Esmeraldo V. Madronio, Teodoro V. Rivadenera, Rodrigo A. Magtibay, Michael Castillo, Roberto S. Villa, Alexander A. Olivar, Odilon O. Pineda, Rufino N. Cabula, Arlene O. Ayala, Lorna S. Bombani, Josefina O. Perez, Necias C. Pataunia, Ermelo A. Escobinas, Rizalino O. Aguas, Antonio Z. Salvan, Maide D. Jader, Isadora G. Reyes, Dalmacia Aizele P. Rafa, Ronaldo Q. Carillo, Nancy N. Babies, Esperanza E. Cabriga, Luisa Rosan B. Abulencia, Marilou D. Villanueva, Sonia C. Tabi, Melanie C. Talabong, Ma. Cecilia R. Potestades, Remedios A. Villoria, Armando Tabernilla, Benilda O. De Guzman, Narciso P. Ramallosa, Cristino V. Zagala, Roy Z. Suministrado, Paz V. Javal, Gallardo N. Ebina, Brenda B. Sumalabe, Erlito A. Obdianela, Hector D. Oabel, Evangelina L. Lavadia, Manolo G. Romero, Susana V. Anonuevo, Cristeta O. Bajar, Erlinda C. Tagulinao, Rosita M. Amoyo, Mercedita C. Reyes, Letecia B. Sandoval, Isabel S. Carandang, Marian Joy Ines N. Abadilla, Laarni Q. Luna, Lorena D. Padua, Marochelle S. Abas, Ma. Veronica C. Naca, Lorenzo Guano, Avelina S. Marinay, Veneration R. San Juan, Maridel C. Ballard, Lilia D. Lacotte, Remedios Z. Juacalla, Josefina N. Mantes, Delia S. Tabernilla, Jocelyn S. Cadavido, Florence O. Cagauan, Concepcion C. Cabriga, Leovina C. Flores, Herminia V. Ladines, Rommel N. Abuyan, Abner A. Zubieta, Daniel A. Lavado, Miguel O. Quinsanos, Ruelito O. Afioso, Radito C. Labita, Rodel M. Cademia, Eladio V. Manzano, Jr., Gilbert T. Oabel, Efren A. Zarsuelo, Ruben S. Ablafia, Iluminada R. Cuevas, Virgilio A. Cabanas, Renato M. Manlulu, Ramon M. Valdeavilla, Florencia E. Remolona, Isagani C. Requiso, Arnel V. Ratuiste, Fredie R. Flores, Lord R. Quinto, Warren A. Obena, and Belen D. Pandez.

[51] Manila International Airport Authority v. COA, 681 Phil. 644, 669 (2012).

[52] See Minutes of the Meeting dated September 26, 2007, rollo, pp. 276-278. Note that while Arlene Rodillas and Nonilon Reyes also appears as directors, they were not, however, impleaded in this case.

[53] See Garcia, Jr. v. Ombudsman, G.R. No. 197567, "November 19, 2014.

[54] See Schedule 2, Schedule of Payees, Amended Notice of Disallowance No. 2009-001-101 -(08), rollo, pp. 199-201 -A; and Schedule 2, Schedule of Payees, Amended Notice of Disallowance No. 2009-001 - 101-(09), id. at 204-207.

[55] See G.R. No. 185812, January 13, 2015.

CONCURRING OPINION

BRION, J.:

I write this Concurring Opinion to highlight the liabilities of officers of local government units in the disbursement of public funds, a topic I have pursued in many other cases. In so doing, I express my support for the ponencia's decision to partially modify the respondent Commission on Audit's (COA) Resolution dated March 13, 2014, which upheld the Notices of Disallowance Nos. 2009-0001-101-(08) and 2009-002-101(09).

I point out at the outset that a local government has the authority and prerogative to negotiate and to enter into a Collective Negotiation Agreement (CNA) with its employees. ' In implementing its negotiated CNA, the local government necessarily has to disburse and use funds to support the agreed CNA terms.

That the law authorizes the use of its funds, however, does not automatically make the disbursement legal. The use of public funds must be in accordance with the requirements of law - in this case, DBM Circular No. 2006-1. The release of funds without fully complying with DBM Circular No. 2006-1 results into an illegal expenditure that can lead to possible liability, a solidary one to refund the disbursed funds by the responsible government officials and employees, as what had happened in the present case.

The Case

Before us is a petition for certiorari assailing the Resolution issued by the Commission on Audit (COA), which upheld the Notices of Disallowance Nos. 2009-0001-101-(08) and 2009-002-101(09). These NDs disallowed the CNA Incentives paid to the rank-and-file employees of the local government unit (LGU) of Tayabas, Quezon, for the years 2008 and 2009.

On November 13, 2007, and February 4, 2008, the LGU of Tayabas, Quezon, entered into CNAs with the Unyon ng mga Kawani ng Pamahalaang Lokal ng Tayabas (UNGKAT), an employee's organization of the LGU of Tayabas, Quezon, duly registered with the Department of Labor and Employment (DOLE) and with the Civil Service Commission (CSC)..

The local Sanggunian subsequently passed Ordinance No. 08-03 appropriating P9.23 million for the payment of the 2008 CNA. The implementation of the ordinance was ordered suspended by the Office of the COA Auditor, Province of Quezon. Eventually, a Notice of Disallowance was issued against it.

In the meantime, the Sanggunian passed Ordinance No. 09-01, which appropriated P39.86 million for the 2009 CNA. This was also subsequently disallowed, for the same reasons given in disallowing Ordinance No. 08-03.

The Office of the Auditor of the Province of Quezon disallowed these appropriations for the following reasons:

(1)

The CNAs lacked prior registration with the CSC;

(2)

UNGKAT is not accredited by the CSC as the sole and exclusive negotiation agent of the LGU concerned; and

(3)

Cost-cutting measures in the CNA had not been identified.

The LGU of Tayabas, as represented by its mayor, Faustino Silang, contested the suspension and subsequent disallowance of these ordinances. The COA Regional Director and COA en bane affirmed the Notices of

Disallowance for the following reasons:

(1)

UNGKAT was not accredited as the sole and exclusive negotiation agent of the LGU of Tayabas at the time the LGU entered into CNAs with them, contrary to Item No. 5.1 of Department of Budget and Management (DBM) Circular No. 2006-1. At the time UNGKAT entered into the CNAs, it was merely registered with the DOLE, which gives it the right to be certified as the LGU's exclusive negotiating representative; and

(2)

Funding for the 2008 CNA was sourced from the LGU's savings two months before it was signed; this violated Item 7.1.2 of DBM Circular No. 2006-1.

Thus, Silang and the rank-and-file employees of the LGU of Tayabas filed the present petition for certiorari, imputing grave abuse of discretion on the COA en bane's acts of affirming the Notices of Disallowance.

I agree with the ponencia's decision to affirm the COA en bane's resolution upholding the Notices of Disallowance, and to partially modify the civil liabilities of the local government officials and employees involved.

As the ponente observed, these NDs merely followed the requirements of DBM Circular No. 2006-1. It was thus proper to order the disallowances as the ordinances - appropriating funds for the CNAs - did not comply with the requirements.

I now proceed to discuss my reasons for the liabilities of the local government officials and employees involved.

Liability of government employees
directly responsible for illegal
expenditures

Section 52, Chapter 9, Title I-B, Book V of the Administrative Code expressly provides that 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. [Emphasis supplied]

This liability of government employees and officials for illegal expenditures similarly finds support in the Local Government Code, which imputes personal liability for unlawful expenditures against the official or employee responsible for it, viz:

Section 351. General Liability for Unlawful Expenditures. -Expenditures of funds or use of property in violation of this Title and other laws shall be a personal liability of the official or employee responsible therefor. [Emphasis supplied]

Book VI, Chapter V, Section 43 of the Administrative Code expounds on what direct responsibility for illegal expenditures entails, particularly the extent of personal liability for reimbursement that each participating public employee would bear:

Liability for Illegal Expenditures. - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving

such payment shall be jointly and severally liable to the Government for the full amount so paid or received.
[Emphasis supplied]

Thus, the law in clear terms expressly provides that public employees directly responsible for an illegal expenditure regardless of his or her part in authorizing its release, in making the payment, or in otherwise taking part shall be solidarity liable for its reimbursement. Also solidarity liable are the persons who received payment from an illegally disbursed public fund.

As an exception, jurisprudence absolves public employees who acted in good faith in approving, releasing, or receiving these funds. The Court, for practical and equitable reasons, no longer requires them to reimburse the funds already disbursed. Good faith in this case meant that the government employees and officers acted in "the honest belief that the amounts given were due to the recipients."

Under these legal principles, I join the ponencia in finding that the approving officers, i.e., the Mayor and the members of the Sanggunian, have been directly responsible for the illegal expenditure of CNA incentives. Also responsible are the officers of the UNGKAT who directly participated in the negotiations for these incentives.

None of them can invoke the honest belief that the requirements of DBM Circular No. 2006-1 on CNA incentives were complied with; as the government officers and employees directly authorized to negotiate, to agree on, and to release these funds, they carry the duty to know and comply with the rules applicable to these transactions.

Liability of approving officers

Under the local government code, an ordinance is necessary for the use of local funds.[2]

The local chief executive prepares the budget proposal,[3] which is the basis for the budget to be enacted by the local Sanggunian.[4]

As a rule, savings generated from the annual budget revert back to the general fund.[5] DBM Circular No. 2006-1 authorizes the local chief executive and the Sanggunian to use savings from released Maintenance and Other Operating Expenses (MOOE) funds to grant cash incentives to rank-and-file employees of the local government, through a CNA.[6]

In the present case, the Mayor and the Sanggunian exceeded their authority to grant cash incentives under a CNA, as they (7) entered into a CNA with a union that had not been accredited as the sole and exclusive negotiating agent of the local government employees of Tayabas; and (2) with regard to the 2008 CNA, they had used savings incurred two months before the CNA was signed.

These requirements are clearly stated in DBM Circular No. 2006-1, which provides the procedure for negotiating and entering into a CNA. As the approving officers vested with the authority to negotiate and enter into a CNA, the Mayor and Sanggunian members are directly responsible for the negotiation and release of the public funds involved and are thus solidarily liable for their illegal expenditure of these funds for noncompliance with the requirements.

Further, as the ponente had correctly observed, the Mayor and the Sanggunian could not invoke their good faith to absolve them from their solidary liability. Good faith, as earlier pointed out, involves the honest belief that one is legally entitled to the fund received.

The Mayor's and the Sanggunian members' roles in initiating, negotiating, and approving CNAs vest them with the responsibility to comply with the requirements of DBM Circular No. 2006-1; part of this responsibility is to know these requirements and to act as dictated by these requirements.

Moreover, I find it highly suspect that these approving officers continued to push for a second ordinance involving CNA incentives after the first ordinance had already been suspended by the provincial auditor. The second ordinance involved more money for the payment of CNA incentives and suffered from the same infirmities and noncompliance with DBM Circular No. 2006-1 as the first ordinance.

To my mind, the enactment of the second ordinance shows a reckless disregard for DBM Circular No. 2006-1. With the second ordinance, the approving officers ignored the reasons behind the earlier order of suspension of the first ordinance, particularly the failure to comply with DBM Circular No. 2006-1. This disregard for the DBM Circular most definitely could not qualify as good faith compliance with what had been shown to them that must be observed.

That these approving officers did not receive any of these funds is not sufficient justification to absolve them from liability. The receipt or non-receipt of illegally disbursed funds is immaterial to the solidary liability of government officials directly responsible therefor. We had the occasion to rule on this point in the recent case *Maritime Industry Authority v. COA*,^[7] where the Court en banc held the approving officers who acted in bad faith to be solidarily liable for the return of the disallowed funds even if they did not receive any part of the fund.

Liability of UNGKAT officers who
directly participated in the negotiations

Aside from the Mayor and the Sanggunian, UNGKAT officers who directly participated in the negotiations also share responsibility for the illegal disbursement of the released funds. They are responsible and liable as the funds were released after the negotiations where they had taken part; the CNAs were between UNGKAT (that they led and represented) and the local government.

Too, the reason behind the illegality of the CNAs is UNGKAT's failure to register as the exclusive negotiation agent of the LGU of Tayabas' rank-and-file employees. UNGKAT's officers, as the leaders and representatives of the LGU employees, have the duty to comply with the procedures and requirements that allow the union to represent the LGU employees in a CNA.

That the union in a CNA must be accredited as the sole negotiating agent is not a new requirement under DBM Circular No. 2006-1. As early as 2002, Public Sector Labor Management Council Resolution No. 01 Series of 2002 already required the registration of government employees' unions with the DOLE and their accreditation with the CSC before they are allowed to enter collective negotiations with management.

Thus, by the time UNGKAT started negotiations with the LGU of Tayabas in 2008, the requirement of prior accreditation had been in place for at least six years. Noncompliance with a requirement that had been in effect for this long can no longer be considered an act of good faith; such omission is an utter disregard of the laws involving the CNA negotiations.

Ordinary rank-and-file employees
and UNGKAT members with no
participation in the CNAs are not
liable for the return of the CNA
incentives.

Thus, the only set of employees who are not obliged to reimburse the illegally disbursed funds in the present case are its passive recipients, i.e., the ordinary rank-and-file employees of the LGU of Tayabas, including the UNGKAT members and officers who had no direct participation in the negotiations.

The reason for this conclusion is that they had been mere passive recipients of good graces and they had (and still have) every right to rely on the presumptions of regularity and good faith accorded to public officers responsible for the disbursement and expenditure of public funds. In particular, as mere passive recipients, they did not actively take part in the CNA, had no responsibility to undertake in carrying out the requirements for union registration and accreditation, and could not have known the taints of irregularities that the funds released to them carried.

[1] See Public Sector Labor Management Council Resolution No. 04, Series of 2002.

[2] Title V, Chapter 1, Section 305, Local Government Code.

[3] Title V, Chapter 1, Section 318, Local Government Code.

[4] Title V, Chapter 1, Section 319, Local Government Code.

[5] Title V, Chapter 1, Section 322, Local Government Code.

[6] Section 7.0, DBM Circular No. 2006-1.

[7] G.R. No. 185812, January 13, 2015.

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