

ALELI C. ALMADOVAR, GENERAL MANAGER ISAWAD, ISABELA CITY, BASILAN PROVINCE, PETITIONER, VS. CHAIRPERSON MA. GRACIA M. PULIDO-TAN, COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 213330. November 16, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for certiorari under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the December 29, 2011 Decision[1] of the Commission on Audit (COA) and the April 4, 2014 Resolution[2] of the COA En Banc which affirmed the October 28, 2010 Decision[3] of the COA Regional Office No. IX (COA Regional Office) regarding Notices of Disallowances (NDs).

Isabela Water District (ISAWAD) is a government owned and controlled corporation (GOCC) created pursuant to the provisions of Presidential Decree (P.D.) No. 198, or the "Provincial Water Utilities Act of 1973" (PWUA), as amended by Republic Act (R.A.) No. 9286.[4] Aleli G. Almadovar (petitioner) is the General Manager (GM) of ISAWAD.[5]

On January 25, 2007, Catalino S. Genel (Genel), Audit Team Leader for ISAWAD, Isabela City, issued the following NDs for ISAWAD's various payments:[6]

ND No.

Particulars

Amount

2006-001

(2005)[7]

Payment of salary increase for the GM, ISAWAD, from P20,823.00 to P35,574-00 per month, from August to December, 2005, without legal basis.

P73,755.00

2006-002(2005)[8]

Payment of legal retainer's fee at P4,000.00 per month for the period from of January to December 2005 without proper authority from the Office of the Government Corporate Counsel (OGCC) and the written concurrence of the COA.

P48,000.00

2006-003(2005)[9]

Payment of honorarium to OGCC Lawyer without express authority from the OGCC, and proof of service

rendered to the ISAWAD

P24,000.00

2006-004(2005)[10]

Payment of Representation and Transportation Allowances (RATA) to the GM, ISAWAD over and above the authorized rate of the Department of Budget and Management (DBM) under Corporate Budget Circular (CBC) No. 18 and National Budget Circular (NBC) No. 498

P6,000.00

On April 26, 2007, petitioner filed an appeal with the Regional Cluster Director, Cluster III-Public Utilities, Corporation Government Sector, which was indorsed to the COA Regional Office. Petitioner insisted that the increase in her salary and her RATA was in accordance with R.A. No. 9286, or the law which amended the PWUA.[11]

Petitioner further claimed that the engagement of a private counsel, Atty. Quirino Esguerra Jr. (Atty. Esguerra), and the designation of OGCC lawyer, Atty. Fortunato G. Operario Jr. (Atty. Operario), were in accordance with the procedure set forth by law. Consequently, the payments made to them were appropriate.[12]

The COA Regional Office Ruling

On October 28, 2010, the COA Regional Office rendered a decision affirming with modification the assailed NDs. It explained that the compensation of the GMs of local water districts (LWDs) was still subject to the provisions of R.A. No. 6758, or the Salary Standardization Law (SSL). Thus, it found that the increase in petitioner's salary was improper as it ran afoul with the provisions of R.A. No. 6758. It also agreed that the disallowance of petitioner's RATA was correct because it exceeded the allowable RATA for her position pursuant to CBC No. 18,[13] dated April 1, 2005, and NBC No. 498,[14] dated November 14, 2000.

The COA Regional Office also agreed that the payment of honoraria to Atty. Operario had no basis because it constituted an unnecessary and excessive expenditure. The disallowed amount in ND No. 2006-002(2005), was reduced from P48,000.00 to P40,000.00 because Atty. Esguerra's services from November to December 2005 were covered by a retainerhip contract duly approved by the OGCC and with the written concurrence of the COA.

The case was automatically elevated for review to the COA pursuant to Section 7, Rule V of the 2009 Revised Rules of Procedures of the COA.

The COA Ruling

On December 29, 2011, the COA rendered the assailed decision affirming the ruling of the COA Regional Office. It stressed that before a private lawyer may be hired by the GOCC, the written conformity of the OGCC and the written concurrence of the COA must first be secured -which also applied in cases of contract renewal. The COA ruled that the payments to Atty. Esguerra from January to October 2005 were improper because his services were retained without the necessary conformity and concurrence of both the OGCC and the COA. Only the retainerhip contract for a period of one year effective on November 1, 2005 was with the conformity and concurrence of both the OGCC and the COA.

Aggrieved, petitioner moved for reconsideration of the decision but her motion was denied by the COA En Banc in its assailed resolution, dated April 4, 2014.

Hence, this present petition.

ISSUES

- 1] Whether or not the disbursements under the NDs were improper.
- 2] In the event the disbursements were improper, whether or not petitioner liable to refund the same.

Petitioner insists that her salary increase was proper because LWDs were exempt from the coverage of the SSL as Section 23 of R.A. No. 9286, a later law, empowered the board of directors of LWDs to fix the salary of its GM, thereby impliedly repealing R.A. No. 6758; that her salary was within the scale provided by the Office of the Philippine Association of Water Districts, Inc.; and that she need not refund the alleged overpaid RATA because she acted in good faith as she stopped claiming the same after the NDs were issued.[15]

Petitioner also claims that the payments to Atty. Esguerra from January to October 2005 were valid because the OGCC concurred with the retainerhip contract for one year effective from November 1, 2004. She faults the COA for belatedly acting upon the request for conformity. Likewise, petitioner posits that the written concurrence of the COA only applies to the engagement or hiring of a private lawyer and not the renewal of the retainerhip. She argues that the retainerhip of Atty. Esguerra had been effected on a yearly basis starting November 1, 2003, which necessarily follows that subsequent renewal should be in November of the succeeding year.[16]

Petitioner also faults the OGCC for the delay in issuing the necessary authority for Atty. Operario, baring that as early as 2004 the board of directors of ISAWAD already requested from the OGCC the necessary authority, but it was given only on July 11, 2006. She avers that denying the lawyers the remuneration for their services will be tantamount to unjust enrichment.[17]

Citing *Mendoza v. COA*[18] (*Mendoza*), petitioner claims that she acted in good faith in making all the disbursements and, therefore, she should not be made to refund them because they were given under an honest belief that the payees were entitled to the said remunerations and these were in consideration for their services rendered. Petitioner likewise prays for the issuance of a Writ of Preliminary Injunction and/or TRO because she stands to suffer grave injustice and great irreparable injury.

In its Comment,[19] dated July 28, 2014, the COA countered that LWDs were covered by R.A. No. 6758 or the SSL. R.A. No. 9286 did not expressly repeal it, and an implied repeal, as claimed by petitioner, was disfavored by law.

The COA also contended that the renewal of retainerhip contracts required the written concurrence of the COA. It also insisted that the payments of honorarium made to Atty. Operario were improper because at the time he rendered his services, the OGCC had yet to issue any authority. It noted that the OGCC approval and the COA concurrence were required to ensure that there was basis for the engagement of a private lawyer.

The COA argued that petitioner could not claim good faith because the case cited by her, allowing the defense of good faith, was premised on the fact that there was no prior case or rule that settled the applicability of R.A. No. 6758 to LWDs. Finally, the COA opined that petitioner failed to state factual allegations to support the issuance of a writ of Preliminary Injunction and/or TRO.

In her Reply,[20] dated March 13, 2015, petitioner merely reiterated her previous arguments.

The Court's Ruling

R.A. No. 6758 covers local water districts

The increase in the salary of the petitioner was correctly disallowed because it contravened the provisions of the SSL. In *Mendoza*,[21] the Court ruled that the salaries of GMs of LWDs were subject to the provision of the SSL,

to wit:

The Salary Standardization Law applies to all government positions, including those in government-owned or controlled corporations, without qualification. The exception to this rule is when the government-owned or controlled corporation's charter specifically exempts the corporation from the coverage of the Salary Standardization Law. xxx

We are not convinced that Section 23 of Presidential Decree No. 198, as amended, or any of its provisions, exempts water utilities from the coverage of the Salary Standardization Law. In statutes subsequent to Republic Act No. 6758, Congress consistently provided not only for the power to fix compensation but also the agency's or corporation's exemption from the Salary Standardization Law. If Congress had intended to exempt water utilities from the coverage of the Salary Standardization Law and other laws on compensation and position classification, it could have expressly provided in Presidential Decree No. 198 an exemption clause similar to those provided in the respective charters of the Philippine Postal Corporation, Trade Investment and Development Corporation, Land Bank of the Philippines, Social Security System, Small Business Guarantee and Finance Corporation, Government Service Insurance System, Development Bank of the Philippines, Home Guaranty Corporation, and the Philippine Deposit Insurance Corporation.

Congress could have amended Section 23 of Presidential Decree No. 198 to expressly provide that the compensation of a general manager is exempted from the Salary Standardization Law. However, Congress did not. Section 23 was amended to emphasize that the general manager "shall not be removed from office, except for cause and after due process."

This does not mean that water utilities cannot fix the compensation of their respective general managers. Section 23 of Presidential Decree No. 198 clearly provides that a water utility's board of directors has the power to define the duties and fix the compensation of a general manager. However, the compensation fixed must be in accordance with the position classification system under the Salary Standardization Law. xxx[22]

[Emphases Supplied]

Petitioner claims that R.A. No. 9286, being a later law, repealed the SSL. The Court, however, notes that R.A. No. 9286 did not expressly repeal the SSL. Neither did R.A. No. 9286 impliedly repeal the SSL because repeal by implication is not favored by law and is only resorted to in case of irreconcilable inconsistency and repugnancy between the new law and the old law.[23] As clearly pointed out in *Mendoza*, there is no irreconcilable inconsistency between R.A. No. 9286 and the SSL. It is conceded though that the board of directors has full discretion in fixing the salary of the GM, but it is always subject to the limits under the SSL, unless the charter of the LWD exempts it from the coverage of the said law.

Engagements of Atty. Esguerra
and Atty. Operario were unauthorized

COA Circular No. 95-011, dated December 4, 1995, provides that in the event that the need for the legal services of a private lawyer cannot be avoided or is justified under extraordinary or exceptional circumstances, the written conformity and acquiescence of the OGCC and the written concurrence of the COA shall first be secured. The failure to secure the written concurrence makes the engagement of the private lawyer or law firm unauthorized.[24]

In the case at bench, petitioner does not deny that there was no written concurrence from the COA when Atty. Esguerra, a private lawyer, rendered legal services from January to October 2005. She, instead, argues that it is not mandatory to secure the written concurrence of COA because it only applies to the hiring or employment of a lawyer and not the renewal of a retainerhip contract. Further, petitioner blames the COA because it belatedly acted on the request of ISAWAD for a written concurrence.

The arguments of petitioner fail to persuade.

ISAWAD first engaged Atty. Esguerra under a retainership contract[25] for a period of one year effective November 1, 2003, with the written concurrence of the OGCC and the COA. The following year, another retainership contract[26] was executed, effective one year from November 1, 2004, with the concurrence of the OGCC but not the COA. Again, in the following year, a retainership contract[27] was executed for another one year effective on November 1, 2005, with the written concurrence of both the OGCC and the COA.

ISAWAD engaged Atty. Esguerra under a general retainer for a specific length of time, which was regularly renewed after its termination. Each renewal constituted the hiring of Atty. Esguerra because after the lapse of one year, the engagement was terminated; and each renewal for another one-year term required the written conformity of the COA.

Petitioner likewise faults the COA for failing to act on time on the request for concurrence. This, however, is a bare assertion as petitioner failed to provide any document showing that a request for the COA's written concurrence was even made. Petitioner only presented the OGCC's written approval,[28] dated September 5, 2005, of the retainership contract effective November 1, 2004. The letter significantly reminded ISAWAD to seek the conformity of the COA - which it failed to do.

With regard to Atty. Operario, Executive Order (E.O.) No. 878, series of 1983, allows any member of the OGCC's legal staff to be designated in a concurrent capacity to act as a corporate officer of the GOCC being serviced by the OGCC when the exigency of the service so requires, provided that the Government Corporate Counsel approves the designation.

Petitioner admits that it was only on July 11, 2006 that the authority of Atty. Operario to render services for ISAWAD was issued. Obviously, he had no authority to provide legal services to ISAWAD prior to the approval of the OGCC. Consequently, Atty. Operario was not entitled to the honorarium given for the alleged services he had rendered.

Petitioner cannot argue that disallowing the payments made to Atty. Esguerra and Atty. Operario is tantamount to unjust enrichment. In *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA*,[29] the Court, notwithstanding the fact that actual services had been rendered, upheld the disallowance of payment made to a law firm, which was unauthorized to act in behalf of a GOCC, for failure to secure the COA's concurrence. In the case at bench, there is no unjust enrichment because the NDs directed the responsible officers of ISAWAD, who made the disbursements (including petitioner), and not the lawyers engaged, to make the refund.

Refund not necessary if the
disbursements were made
in good faith

In *Mendoza*, the Court excused the erring officials therein from refunding the amounts subject of the ND, to wit:

The salaries petitioner Mendoza received were fixed by the Talisay Water District's board of directors pursuant to Section 23 of the Presidential Decree No. 198. Petitioner Mendoza had no hand in fixing the amount of compensation he received. Moreover, at the time petitioner Mendoza received the disputed amount in 2005 and 2006, there was no jurisprudence yet ruling that water utilities are not exempted from the Salary Standardization Law.

Pursuant to *de Jesus v. Commission on Audit*, petitioner Mendoza received the disallowed salaries in good faith. He need not refund the disallowed amount.

In this case, the Court is of the view that the payment of the erroneous increase in petitioner's salary was nonetheless made in good faith. The increase was computed in accordance with the scale provided by the Office of the Philippine Association of Water Districts, Inc., which also made an erroneous opinion that R.A. No. 9286 repealed the SSL. Further, at the time the disbursement was made, no categorical pronouncement, similar to Mendoza, that the LWDs are subject to the provisions of the SSL, had been issued.

Good faith, however, cannot be appreciated in petitioner's other disbursements. Petitioner knowingly approved the payments to Atty. Esguerra and Atty. Operaria in spite of the lack of the necessary approval by the government offices concerned. Further, petitioner's failure to claim her excessive RATA after the NDs were issued does not evince good faith because, at that time, CBC No. 18 and NBC No. 498 already provided for the allowable RATA to be given to GMs of LWDs.

No basis for the issuance of a writ of injunction

In *Calawag v. University of the Philippines Visayas*,^[30] the Court ruled that the right sought to be protected must not be doubtful in order for an injunctive relief to be issued, to wit:

To be entitled to a writ of preliminary injunction, xxx the petitioners must establish the following requisites: (a) the invasion of the right sought to be protected is material and substantial; (b) the right of the complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage, xxx When the complainant's right is thus doubtful or disputed, he does not have a clear legal right and, therefore, the issuance of injunctive relief is improper.

[Emphasis Supplied]

Here, petitioner failed to show sufficient reasons to justify the issuance of the injunctive relief. It has been thoroughly discussed that the disbursements were without legal basis as they either were in excess of the limits provided for by law or were issued without authority.

WHEREFORE, the December 29, 2011 Decision of the Commission on Audit is **AFFIRMED** with **MODIFICATION** in that petitioner be absolved from refunding the amount paid in the increase of her salary.

SO ORDERED.

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

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on November 16, 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 December 15, 2015 at 1:35 p.m.

Very truly yours,

(SGD)

FELIPA G. BORLONGAN-ANAMA

Clerk of Court

[1] Rollo, pp. 25-28.

[2] Id. at 29.

[3] Penned by Regional Director Roberto T. Marquez; id. at 121-124.

[4] Id. at 6.

[5] Id. at 13.

[6] Id. at 121.

[7] Id. at 125.

[8] Id. at 126.

[9] Id. at 127.

[10] Id. at 128.

[11] Id. at 121-122.

[12] Id.

[13] Annex A thereof provides for equivalent ranks of LWD officials to national government officials entitled to RATA. The following are the equivalent ranks of GMs of LWDs depending on its category: (1) Very Large LWDs- Bureau Director; (2) Large LWDs- Assistant Bureau Director; (3) Big LWDs- Bureau Regional Director; (4) Medium LWDs- Assistant Bureau Regional Director; and (5) Average and Small LWDs- Division Chief.

[14] The following are the monthly rates of RATA for each national government official: (1) Bureau Directors, Department Regional Directors and those of equivalent ranks- P5,000; (2) Assistant Bureau Directors, Department Assistant Regional Directors, Bureau Regional Directors, Department Service Chiefs and those of equivalent ranks- P4,500; (3) Assistant Bureau Regional Directors and those of equivalent ranks- P4,000; and (4) Chiefs of Division identified as such in the Personal Services Itemization and Plantilla of Personnel and those of equivalent ranks- P3,000.

[15] Id. at 14-15.

[16] Id. at 15-16.

[17] Id. at 19.

[18] G.R. No. 195395, September 10, 2013, 705 SCRA 306.

[19] Rollo, pp. 89-120.

[20] Id. at 185-201.

[21] Supra note 18.

[22] Id. at 332-333.

[23] *Philippine International Trading Corporation v. COA*, 635 Phil. 447, 459 (2010).

[24] *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. COA*, G.R. No. 185544, January 13 2015.

[25] Rollo, pp. 59-61.

[26] Id. at 65-68.

[27] Id. at 72-75.

[28] Id. at 63.

[29] Supra Note 24.

[30] Resolution, G.R. No. 207412, August 7, 2013, 703 SCRA 373.

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