

CAGAYAN DE ORO CITY WATER DISTRICT, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 213789. April 27, 2021

Ponente: GAERLAN, J.

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GAERLAN, J.:

This is a Petition for Certiorari[1] under Rule 64 in relation to Rule 65 of the Rules of Court seeking to reverse and set aside the Decision[2] dated March 22, 2012 and the Resolution[3] dated April 4, 2014 of the Commission on Audit (COA) in COA CP Case No. 2011-232. The assailed COA Decision and Resolution affirmed the disallowance and ordered the refund of various benefits and allowances granted to the Cagayan de Oro City Water District (COWD) Board of Directors (BOD) and other employees.

The Facts

Previous COA Post-Audit/or Calendar Years 1994-1997

The COA conducted a post-audit of COWD for calendar years 1994-1996 which resulted in the issuance of Certificate of Settlement and Balances (CSB) No. 98-001-001(96) indicating disallowances for various transactions in the aggregate amount of P8,524,660.87.[4]

In another special audit conducted for calendar year 1997, COA issued CSB No. 99-001-101(97) indicating similar disallowances in the aggregate amount of P2,236,099.30.[5]

COWD appealed the CSBs to the Regional Cluster Director (RCD), Regional Legal and Adjudication Office (RLAO) of the Regional Office of COA (RCD-RLOA). The RCD-RLOA denied COWD's appeal in its 1[st] and 2[nd] Indorsements dated September 17, 2003 and February 4, 2004, respectively.[6]

COWD appealed the RCD-RLOA decisions to the COA Legal and Adjudication Office-Corporate (LAO-C). Its appeal was denied in the COA LAO-C Decision No. 2008-039[7] dated June 25, 2008 which affirmed with modification the RCD-RLOA decisions. The LAO-C held that there was no need to refund the per diem, uniform allowance, representation allowance, miscellaneous/representation allowance, rice allowance, and Christmas bonus. However, the amelioration allowance, year-end incentive pay, mid-year incentive pay, honorarium and representation allowance, hazard pay, anniversary bonus, and claim for loss of income were required to be refunded.[8]

COWD filed a Partial Motion for Reconsideration[9] dated July 18, 2008 of the LAO-C Decision No. 2008-039. This was treated as an appeal cognizable by the COA Proper.

Acting on the appeal, the COA Proper rendered its Decision No. 2012-019[10] dated February 17, 2012. The Decision summarized the disallowed items that needed to be refunded and those that did not:

WHEREFORE, in view of the foregoing, the herein appeal is hereby DENIED and LAO-C Decision No. 2008-039 dated June 25, 2008 is hereby AFFIRMED. Accordingly, in view of the Molen, Jr. case, the

members of the BOD, officers and employees of COWD need not refund the following: (a) uniform allowance; (b) representation allowance; (c) miscellaneous representation allowance; (d) rice allowance; and (e) Christmas bonus, in the total amount of P4,354,949.81. However, the increase in per diems granted to members of the BOD without authority, that is, the excess of P50.00 per board meeting attended, to be determined and computed by the COWD Audit Team Leader (ATL), and other allowances received by them amounting to P1,755,230.50 are hereby DISALLOWED, hence, should be refunded.

On the other hand, the disallowance on meal and snack expense, retirement fund contribution, retirement fund, COWD's share in the retirement fund, legal retainer's fee, liquidated damages, repair of vehicle, purchase of 30.35 kilograms of ham for Christmas celebration, and purchase of supplies, materials and other office needs in the total amount of P2,200,165.14 are hereby AFFIRMED, hence, to be refunded in full by concerned COWD officers and employees. However, the disallowance on anniversary bonus, per diems (managers), miscellaneous representation allowance, PHILCARE expense, CAP insurance premium, gasoline allowance, LTO Registration, and car insurance premium in the total amount of P1,712,857.55 are hereby LIFTED insofar as the personnel who were incumbents as of July 1, 1989 are concerned, but are AFFIRMED with respect to those who were not incumbents as of such date. The COWD ATL is hereby instructed to determine those who were and were not incumbents as of July 1, 1989.

In summary, the herein appeal from the various disallowances is disposed in this manner, viz:

TOTAL AMOUNT DISALLOWED

P10,728,443.00

Need not be refunded by members of BOD

Uniform Allowance - BOD

P 17,160.00

Representation Allowance - BOD

269,304.00

Miscellaneous Representation Allowance - BOD

360,000.00

Rice Allowance - BOD

38,000.00

Christmas Bonus - BOD

3,670,485.81

TOTAL

4,354,949.81

Adjusted Amount of Disallowance

P 6,373,493.19

To be refunded in FULL by members of BOD

Amelioration Allowance - BOD

P 337,080.00

Year-End Incentive Pay - BOD

306,312.50

Mid-Year Incentive Pay - BOD

30,000.00

Miscellaneous Allowance - BOD

555,360.00

Honorarium and Representation Allowance - BOD

337,478.00

Incentive Pay - BOD

30,000.00

Hazard Pay - BOD

24,000.00

Anniversary Bonus - BOD

30,000.00

Claim for Loss of Income - BOD

105,000.00

TOTAL

P 1,755,230.50

To be refunded in FULL by Officers and Employees

Meal and Snack Expense

85,682.21

Retirement Fund Contribution

295,884.80

Retirement Fund

1,295,515.34

COWD's share in Retirement Fund

274,777.75

Legal Retainer of Atty. A.G. Maderazo

65,000.00

Liquidated damages of later deliveries of supplies

60,206.95

Repair of vehicle of certain Mr. H. Gomez

19,400.00

Purchase of 30.35 kilos of Ham for Christmas Celebration

7,089.60

Purchase of supplies, materials and other office needs at Water Equipment Supply, Intercontinental Water Treatment Corporation and Data World Computer System

96,608.49

TOTAL

P2,200,165.14

LIFTED insofar as per diems do not exceed P50.00 per meeting attended by members of BOD (to be determined and computed by COWD ATL) 705,240.00

LIFTED insofar as recipient officer/employees are incumbents as of July 1, 1989 (to be determined and computed by COWD ATL) 1,712,857.55

TOTAL P10,728,443.00

In all cases, the solidary relationship of the persons named liable on the disallowance shall be observed in the enforcement of the subject Notices of Disallowance.[11]

COA Post-Audit for Calendar Years 1998 and 1999

In 2002, COA conducted a post audit of COWD for the period of January 1, 1998 to May 31, 1999 which resulted in the issuance of CSB No. 2002-001 (98 & 99). CSB 2002-001 indicated audit disallowances in the aggregate amount of P37,363,278.47,[12] itemized as follows:

Expenditure Item

Recipient

Amount (Php)

1

Honorarium (inclusive of per diem) and Representation Allowance

Board of Directors

930,720.00

2

Miscellaneous Expense

-do-

580,000.00

3

Mid-Year Incentive Pay

-do-

184,240.00

4

Services Incentive Pay

-do-

271,181.25

5

Year-End Incentive Pay

-do-

361,575.00

6

Hazard Pay

-do-

79,200.00

7

Uniform Allowance

-do-

50,000.00

8

Amelioration Allowance

-do-

42,000.00

9

Staple Food Allowance

-do-

36,000.00

10

Cash Gift

-do-

38,000.00

11

Per Diems (Cash Advance for Travel)

-do-

564,871.90

12

Car Plan

-do-

1,779,800.00

13

Per Diems (Cash Advance for Travel)

Managerial/others

112,200.00

14

Cellular Phone Expenses

-do-

132,712.51

15

Car Plan Incidental Expenses (P21,786.35+248,527.26)

-do-

270,295.61

16

Car Plan

-do-

400,000.00

17

Rice Allowance

-do-

908,653.00

18 Extraordinary Miscellaneous Expenses

-do-

560,200.00

19 Mid-Year Incentive Pay

-do-

3,554,890.59

20 Year-End Incentive Pay

-do-

9,053,597.50

21 Service Incentive Pay

-do-

7,654,137.60

22 Hazard Pay

-do-

6,099,000.00

23 Staple Food Incentive

-do-

3,195,900.00

24 Health Care Insurance

-do-

333,927.16

25 Donation

-do-

105,356.35

Total

P37,298,458.47 [13]

COWD sought the reversal of CSB 2002-001 but was denied by the RCD-RLOA in its 11[th] Indorsement dated August 27, 2003 and 2nd Indorsement dated January 23, 2004.[14]

On April 2, 2004, COWD appealed the 11[th] and 2[nd] Indorsements with the COA LAO-C.[15]

As summarized by the COA, COWD argued to reverse the 11[th] and 2[nd] Indorsements on the following grounds:

1.

Allowances and per diems of the Board of Directors (BOD) are legal by virtue of COWD Board Resolution No. 007, S.-95, issued in pursuance of the so-called "rule-making power" of administrative agencies as decided in *Romulo et al. vs. Home Development Mutual Fund* G.R. No. 131082 dated June 19, 2000;

2.

The concerned parties acted in good faith, thus, they need not refund the Representation and Transportation Allowance, Rice Allowance, Productivity Incentive Bonus, Anniversary Bonus, Year-End Bonus, and Cash Gift received per LWUA Board Resolution No. 313, in line with the decision of the Supreme Court in *Rodolfo de Jesus et al. vs. COA* G.R. No. 149154, June 10, 2003;

3.

The General Manager of COWD is not covered by the limited travel allowance embodied in E.O. 248 (Travel Law) but by LWUA Board Resolution No. 313, as amended, which allows receipted actual expenses provided that the "water districts concerned can afford it";

4.

The COWD cellular phones expenses are job related and transaction connected and therefore, considered official and not personal;

5.

COWD is not subsidized by the national government nor by the local government of Cagayan de Oro City, thus, it is not covered by the annual budget law. The COWD enjoys fiscal economy hence, any expenses incurred such as the car plan and its incidental expenses should be passed in audit;

6.

The legal issue on the grant of staple food incentive, health care allowance, rice allowance, mid-year incentive, hazard pay, and extraordinary and miscellaneous expenses was already resolved by the letter dated April 27, 2001 of the Secretary of the Department of Budget and Management (DBM) to Mr. Loreto Limcolioc, President of the Philippine Association of Water Districts (PAWD). Said letter affirmed that disallowances on the subject allowances/fringe benefits which already formed part of the compensation being regularly received by Local Water Districts personnel constitute violation of the established policy on "non-diminution in pay"; and

7.

Donations to religious and other civic organizations are definitely for public purpose as the same are necessary in the implementation of the objectives of the appellant COWD, which is basically to provide the best water services to the people of Cagayan de Oro City and its neighboring community. Hence, as part of appellant's community involvement, it cannot be denied that requests for donations do come and have to be responded favorably.[16]

The COA LAO-C issued Decision No. 2008-043[17] dated July 29, 2008 which denied COWD's appeal and affirmed CSB 2002-001 but with modifications:

WHEREFORE, foregoing premises considered, the decisions of the Regional Cluster Director, Legal and Adjudication Sector, COA Regional Office No. X, Cagayan de Oro City, under 11[th] Indorsement and 2[nd]

Indorsement dated August 27, 2003 and January 23, 2004, respectively, are hereby AFFIRMED with MODIFICATIONS. The disallowances on honorarium and representation allowance, miscellaneous expenses, per diem, uniform allowance and cash gift granted to the Board of Directors of COWD under LWUA Resolution No. 313 are hereby AFFIRMED with no obligation, however, to refund. The BODs concerned, however, have to refund the mid-year incentive pay, service incentive pay, year-end incentive pay, hazard pay, amelioration allowance, staple food incentive, excess cellular phone expenses, car plan and car plan incidental expenses.

On the benefits and allowances granted to the organic personnel of COWD, the disallowances on the Per Diems (cash advance for travel), Car Plan, Car Plan Incidental Expenses, Rice Allowance, Mid-Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Staple Food Allowance, and Health Care Insurance granted to the organic personnel of COWD who were incumbents as of July 1, 1989 and were receiving such allowances and benefits are hereby LIFTED. On the other hand, the disallowances on such benefits granted to those hired after July 1, 1989 including those hired to the positions vacated by said incumbents, are hereby AFFIRMED.

The disallowances on extraordinary and miscellaneous expenses, hazard pay, cellular phones expenses and donations to religious and civic organizations are likewise AFFIRMED.

Accordingly, the ATL of the COWD is hereby instructed to determine and compute the correct amount of disallowance to be refunded by the members of the BOD, organic personnel and other persons liable and to inform this Office on the settlement made thereon.[18]

The COA LAO-C ordered the COWD BOD to refund the Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Hazard Pay, Amelioration Allowance, Staple Food Allowance, Per Diems (cash advance for travel), and Car Plan and its incidental expenses. However, no refund was ordered for the disallowed Honorarium (inclusive of per diem) and Representation Allowance, Miscellaneous Expense, Uniform Allowance, and Cash Gift.[19]

The COA LAO-C cited *Baybay Water District v. Commission on Audit*[20] (*Baybay Water District*) and *Molen Jr. v. Commission on Audit*[21] (*Molen*) as basis for its order to refund. The disallowances were affirmed pursuant to the doctrine established in *Baybay Water District* that members of the BOD of water districts cannot receive allowances and benefits more than those allowed under Presidential Decree (P.D.) No. 198.[22] As for the obligation to refund, the COA LAO-C stated that under *Molen*, the "no refund doctrine" based on good faith (Good Faith Doctrine)[23] applied only to allowances and benefits granted to members of the BOD specifically enumerated in LWUA Resolution No. 313, series of 1995.[24]

The COA LAO-C also affirmed the disallowances on allowances and benefits granted to COWD personnel based on COA Resolution No. 2004-006 dated September 14, 2004 and the case of *Ambros v. Commission on Audit*. [25] It held that allowances and benefits granted to personnel shall only be allowed for incumbent personnel who were already receiving such allowances and benefits as of July 1, 1989. These items shall be disallowed for personnel hired after July 1, 1989.[26]

The Extraordinary and Miscellaneous Expenses (EME) allowance granted to COWD personnel was also disallowed based on the Letter dated September 6, 1999 of Mr. Nilo B. Buot, Director IV, Department of Budget and Management (DBM), addressed to the Kalibo Water District. It was clarified in the letter that officials of local water districts are not of equivalent rank to any officials under Republic Act (R.A.) No. 8745 for purposes of determining the rates of allowable EME and Representation and Transportation Allowance. The grant of EME to COWD organic personnel was thus disallowed for having no legal basis.[27]

On disallowed Hazard Pay, the COA LAO-C held that COWD failed to prove that its personnel were assigned to any of the types of work areas enumerated under Item No. 3 of DBM-National Compensation Circular No. 76

dated March 31, 1995 to entitle them to such pay.[28] The grant of Hazard Pay therefore did not have factual or legal basis.[29]

On disallowed Cellular Phones Expenses, the COA LAO-C did not rule on the necessity or job-related nature of the expense. The disallowance was based on its excessiveness by P132,712.51 from the allowable rates of cellular phone expenses under COWD's very own Board Resolution No. 069, series of 1995, and Board Resolution No. 037, series of 1998.[30]

Lastly, on the disallowed Donations to Religious and Civic Organizations, the COA LAO-C held that these were not for a public purpose or connected with the discharge of COWD's corporate functions. Hence, these were illegal pursuant to the prohibition in Section 29(2), Article VI of the Constitution limiting the appropriation of public money and property.[31]

COWD moved for reconsideration of LAO-C Decision No. 2008-043, which was treated as an appeal to the COA Proper.

In its Decision No. 2012-036[32] dated March 22, 2012, the COA Proper denied COWD's appeal and affirmed the COA LAO-C Decision No. 2008- 043:

WHEREFORE, in view of the foregoing, the herein appeal is DENIED and COA LAO-Corporate Decision No. 2008-043 dated July 29, 2008 is hereby AFFIRMED.[33]

The COA Proper noted, however, that COA Resolution No. 2005-001 dated February 3, 2005 should not have been used as the basis to disallow the expenses on the procurement of private health insurance. Nevertheless, it was correct to disallow this expense considering that health insurance was already provided by the government to its employees through PhilHealth under R.A. No. 7875. This made the private health insurance procured by COWD for its employees an additional benefit that is proscribed under Section 12 of R.A. No. 6758, otherwise known as the Salary Standardization Law.[34]

COWD moved for reconsideration of Decision No. 2012-036 but was denied by COA Proper in its Letter dated April 4, 2014.[35]

Hence, COWD filed the instant Petition for Certiorari[36] dated August 5, 2014.

COA filed its Comment[37] dated February 2, 2015 to which COWD filed its Reply[38] dated April 12, 2017.

This Court required the parties to submit memoranda.[39] The COA, through the OSG, submitted its Memorandum[40] dated March 26, 2019 while COWD failed to submit.

The Issue

The issue in this case is whether or not COA committed grave abuse of discretion amounting to lack or excess of jurisdiction when it affirmed and ordered the refund of the following disallowances: (1) Mid-Year Incentive Pay, (2) Service Incentive Pay, (3) Year-end Incentive Pay, (4) Hazard Pay, (5) Amelioration Allowance, (6) Staple Food Incentive, (7) Cellular Phone Expenses, (8) Car Plan, (9) Car Plan Incidental Expenses, (10) Benefits granted to those hired after July 1, 1989, including those hired to positions vacated by the said incumbents, (11) Extraordinary and Miscellaneous Expenses, and (12) Donations to Religious and Civic Organizations.[41]

The Court's Ruling

The petition is partly meritorious.

This Court sitting en banc in the recent landmark case of *Madera v. COA*[42] (*Madera*) established once and for

all rules and guidelines to govern the obligation to refund amounts disallowed by the COA. This case is a good opportunity to reiterate and apply the rules laid out in Madera.

Established Rules and Guidelines on the Obligation to Refund Amounts Disallowed by the COA.

The Good Faith Doctrine has been recognized in a long line of cases^[43] to excuse payees from refunding amounts received by them that were subsequently disallowed by the COA. This doctrine has also been extended to benefit approving and certifying officers who acted in good faith when they granted or authorized the disallowed items.^[44]

However, in the case of *Executive Director Casal v. Commission on Audit*,^[45] although the Good Faith Doctrine was applied to favor payees, the approving officers deemed grossly negligent were held solidarily liable to shoulder the refund of the entire amount disallowed. A similar ruling was held in *Silang v. Commission on Audit*^[46] that "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 solidarily liable for their reimbursement."^[47]

This doctrine on approving/certifying officers' liability to refund was further nuanced in the cases of *Manila International Airport Authority v. COA*^[48] (MIAA) and *Technical Education and Skills Development Authority v. Commission on Audit*.^[49] In these cases, although the Good Faith Doctrine was applied for the payees, the approving/certifying officers found to have acted in bad faith were obligated to refund, but only to the extent of the amounts personally received by them.

This Court in Madera, through the ponencia of the esteemed Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa), sought to harmonize the evolving rulings on this matter and establish clear rules and guidelines moving forward.

The ruling in Madera provided a rich discussion on the various legal bases of payees' and approving/certifying officers' liability to refund disallowed allowances and benefits. Tracing back to pertinent provisions of the Administrative Code of 1987 as well as civil law principles, it clarified that recipients of disallowed benefits, regardless of good or bad faith, are generally obliged to refund these to the government on the grounds of unjust enrichment and *solutio indebiti*. However, there are merely recognized bona fide exceptions to this rule consisting of exceptional circumstances as may be determined by this Court on a case-to-case basis:

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. This, as well, is the foundation of the rules of return that the Court now promulgates.

Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipients amounts corresponding to a properly disallowed transaction.

Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility of situations which may constitute bona fide exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered) negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance

incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case bona fide exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. Verily, the Court has applied the principles of social justice in COA disallowances. Specifically, in the 2000 case of *Uy v. Commission on Audit*, (Uy), the Court made the following pronouncements in overturning the COA's decision:

x x x Under the policy of social justice, the law bends over backward to accommodate the interests of the working class on the humane justification that those with less privilege in life should have more in law. Rightly, we have stressed that social justice legislation, to be truly meaningful and rewarding to our workers, must not be hampered in its application by long-winded arbitration and litigation. Rights must be asserted and benefits received with the least inconvenience. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts. Flexibility should not be ruled out. Precisely, what is sought to be accomplished by such a fundamental principle expressly so declared by the Constitution is the effectiveness of the community's effort to assist the economically underprivileged. For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves. To make them suffer, even inadvertently, from the effect of a judicial ruling, which perhaps they could not have anticipated when such deplorable result could be avoided, would be to disregard what the social justice concept stands for. x x x

The pronouncements in *Uy* illustrate the Court's willingness to consider social justice in disallowance cases. These considerations may be utilized in assessing whether there may be an exception to the rule on *solutio indebiti* so that the return may be excused altogether. As Justice Inting correctly pointed out, "each disallowance is unique, inasmuch as the facts behind, nature of the amounts involved, and individuals so charged in one notice of disallowance are hardly ever the same with any other."^[50] (Emphasis and underscoring supplied, italics in the original, citations omitted)

Further on approving/certifying officers' liability, this Court elucidated that the law never intended to impose on them the obligation to shoulder the entire disallowed amount, regardless of their good or bad faith. Requiring these officers to refund amounts they did not personally receive would be an inadvertent injustice:

The history of the [good faith] rule as shown evinces that the original formulation of the "good faith rule" excusing the return by payees based on good faith was not intended to be at the expense of approving and/or certifying officers. The application of this judge made rule of excusing the payees and then placing upon the officers the responsibility to refund amounts they did not personally receive, commits an inadvertent injustice.^[51] (Emphasis and italics in the original)

It was aptly stressed in the ponencia that this would result in an inequitable situation and "if such rule would continue to be the norm in deciding these cases, then the Court may be unsuspectingly playing a role in the chilling effect on current and aspiring government officials, who were previously left to shoulder the entire disallowed amounts to the benefit of recipients."^[52]

Consequently, the liability of approving/certifying officers found guilty of bad faith, malice, or gross negligence, shall be limited to what has been termed as the "net disallowed amount" equivalent to the total disallowed amount minus the amounts excused to be returned by the payees:

With the liability for unlawful expenditures properly understood, payees who receive undue payment,

regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.[53] (Emphasis and underscoring supplied, citations omitted)

To determine the presence of good or bad faith, the Court in *Philippine Economic Zone Authority (PEZA) v. Commission on Audit*[54] defined "good faith" relative to the obligation to refund disallowed benefits and allowances in the following manner:

In common usage, the term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry, an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.[55] (Emphasis and citation omitted)

This Court's pronouncement on good and bad faith in *Lumayna v. Commission on Audit*[56] also remains instructive:

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes x x x[57] (Emphasis supplied, citation omitted)

In *Madera*, the following circumstances or badges for determining officers' good faith and diligence contained in Associate Justice Marvic F. Leonen's (Justice Leonen) Concurring Opinion were adopted by the Court:

x x x To ensure that public officers who have in their favor the un rebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officers exercised the diligence of a good father of a family:

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed

transaction was in the performance of their official duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.[58] (Underscoring supplied, citations omitted)

In the final analysis, this Court in Madera concluded with the following summary of the rules and guidelines on the obligation to refund amounts disallowed by the COA:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1.

If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.

2.

If a Notice of Disallowance is upheld, the rules on return are as follows:

a.

Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

b.

Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidari[ly] liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

c.

Recipients – whether approving or certifying officers or mere passive recipients – are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

d.

The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case[-]to[-]case basis.

Undoubtedly, consistent with the statements made by Justice Inting, the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the

Court as regards the return of disallowed amounts - after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made.

To reiterate, the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will be done by the Court on a case-to-case basis. Moreover, the additional guidelines eloquently presented by Justice Leonen will greatly aid the Court in determining the good faith of officers and resultantly, whether or not they should be held solidarily liable in disallowed transactions.[59] (Citation omitted)

The Madera Rules as Applied in the Instant Case

A.

Disallowed Allowances and Benefits to Members of the COWD BOD – Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Amelioration Allowance, Staple Food Incentive, Per Diems (Cash Advance for Travel), Car Plan, Car Plan Incidental Expenses, and Miscellaneous Expenses.

COWD, in its Petition no longer assailed the legality of the disallowances stated in CSB 2002-001 pertaining to allowances and benefits granted to members of its BOD. It merely insisted that there should have been no order to refund imposed since these were approved and received by the members of the BOD in good faith.

The Petition cites as basis the cases of Bases Conversion and Development Authority v. Commission on Audit,[60] Philippine Ports Authority v. Commission on Audit,[61] Barbo et al. v. Commission on Audit,[62] Abanilla v. Commission on Audit,[63] Lumayna v. Commission on Audit.[64] It was argued that this Court, in these cases, declared that "the concerned government officer and employees need not refund the benefits that they received, whether or not included in LWUA Resolution No. 313, s. 1995, before it decided the case Baybay Water District." [65]

Further, there was allegedly no proof of bad faith on the part of the members of its BOD. It is settled that official acts enjoy the presumption of regularity and that bad faith is never presumed thus the party who alleges it has the burden to prove it.[66]

COWD's arguments are unmeritorious. A blanket claim of good faith is insufficient by itself to excuse the refund of all disallowed amounts received.

This Court concurs with the ruling of the COA Proper disallowing the excess benefits and allowances granted to members of the COWD BOD. The COA Proper Decision pertinently held:

The issue on the legality of the grant of allowances over and above the per diems allowed to the Board of Directors (BOD) of water districts has long been settled in Baybay Water District vs. COA, G.R. Nos. 147248-49, January 23, 2002, wherein the Supreme Court ruled that PD 198 governs the compensation of members of the board of directors of water districts who are authorized to receive only the per diems authorized by law and not to other compensation or allowance in whatever form. Thus, members of the board of directors of water districts cannot receive allowances and benefits more than those allowed by PD 198.[67] (Emphasis and underscoring supplied)

This is further supported by Magno v. Commission on Audit[68] where it was held that Section 13 of P.D. No. 198 governing the compensation of members of the BOD of Water Districts disallowed other allowances and benefits aside from per diems:

It is well-settled that Section 13, Presidential Decree No. 198, as amended, governs the compensation of the members of the Board of Directors of the Local Water Districts; hence, they cannot receive allowances and benefits more than those allowed by the aforesaid law. And in construing Section 13, Presidential Decree No.

198, as amended, the Court said that the members of the Board of Directors of the Local Water Districts are precisely intended to be compensated per diem. Indeed, the words and phrases in a statute must be given their natural, ordinary, and commonly accepted meaning, by thus specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month; and, in the same paragraph, providing "No director shall receive other compensation" than the amount provided for per diem, the law quite clearly indicates that the directors of water districts are authorized to receive only the per diem authorized by law and no other compensation or allowance in whatever form. Section 13 of Presidential Decree No. 198, as amended, is clear enough and it needs no further interpretation. It expressly prohibits the grant of compensation other than the payment of per diems, thus preempting the exercise of any discretion by water districts in paying other allowances and bonuses.[69] (Citations and emphasis omitted)

It was therefore correct to disallow the additional allowances and benefits granted to members of the COWD BOD for having no legal basis.

On the board members' obligation to refund these disallowed allowances and benefits, the COA Proper ordered the refund of the Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Amelioration Allowance, Staple Food Incentive, Per Diems (cash advance for travel), Car Plan, Car Plan Incidental Expenses, and Miscellaneous Expenses. This order was based on *Molen* where it was established that the Good Faith Doctrine as an excuse to refund applied only to allowances and benefits specifically stated under LWUA Resolution No. 313, series of 1995.[70] Hence, there was no legal basis to excuse the refund of other disallowed allowances and benefits not included in the Resolution.

By applying the rules in *Madera*, We affirm the COA Proper Decision. The refund of the Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Amelioration Allowance, Staple Food Incentive, Per Diems (cash advance for travel), Car Plan, Car Plan Incidental Expenses, and Miscellaneous Expenses cannot be excused on the ground of good faith.

This Court concurs and adopts the observations of Associate Justice Estela M. Perlas-Bernabe (Justice Perlas-Bernabe) and Justice Caguioa that the *Molen* ruling, complementing *Madera*, allows good faith to be appreciated as an excuse to refund only for disallowed allowances and benefits included under LWUA Resolution No. 313. These grants can be considered in good faith for having colorable legality and validity. To establish good faith, it must be alleged and proved that the disallowed allowances and benefits fall under those provided in the Resolution.

This Court in *Magno v. Commission on Audit*[71] recognized that good faith is justified under an honest belief of validity under the Resolution:

Therefore, the bonuses, benefits and allowances received by the petitioners pursuant to Resolution No. 313, as amended, must be disallowed. Nevertheless, the petitioners are not required to refund the said bonuses, benefits and allowances because they had no knowledge then that such payment was without legal basis. At the time they received the same, i.e., in the year 1997, the Court had not yet decided *Baybay Water District v. Commission on Audit*, where the Court categorically declared as illegal the payment of additional compensation to members of the water district board of directors, other than the allowed per diem in Section 13 of Presidential Decree No. 198, as amended; thus, petitioners can be considered to have received the said bonuses, benefits and allowances in 1997 in good faith and under the honest belief that Resolution No. 313, as amended, authorized such payment.[72] (Emphasis and underscoring supplied, citations omitted)

In this case, the COWD BOD granted the disallowed allowances and benefits through Board Resolution No. 007, S.-95, which it allegedly believed it could validly issue pursuant to its "rule-making power" as an administrative agency.[73]

However, it is noted that these disallowed allowances and benefits granted to members of the COWD BOD were not among the enumerated allowances and benefits under LWUA Resolution No. 313. No evidence was also adduced to justify these as allowances and benefits falling under the Resolution, or at least even having the same nature and purposes. Hence, there is no basis for this Court to conclude that the grant of such disallowed allowances and benefits had colorable legality and was accomplished in good faith consistent with the Molen and Magno rulings.

The grant of the disallowed allowances and benefits also contravened Section 13 of P.D. No. 198, as amended.[74] Section 13 clearly provides that directors of water districts shall not receive compensation other than a per diem as may be determined by the board:

Sec. 13. Compensation. Each director shall receive a per diem, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diems of four meetings in any given month. No director shall receive other compensation for services to the district.

Any per diem in excess of P50 shall be subject to approval of the Administration. (Emphasis and underscoring supplied)

The prohibition in Section 13 is plain and clear. There is no reason for this Court to apply a contrary legal interpretation to justify the legality of the disallowed allowances and benefits. In line with Justice Leonen's discussion on badges of good faith in *Madera*, it cannot be said that there is a question of law in this case that can be subject to a reasonable textual interpretation and serve as basis for good faith. It is apparent that the grant of the disallowed allowances and benefits had no ostensible legal basis.

Consequently, the COA Proper Decision ordering the approving/certifying officers and members of the COWD BOD solidarity liable to refund the disallowed allowances and benefits (i.e., Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Amelioration Allowance, Staple Food Incentive, Per Diems – cash advance for travel, Car Plan, Car Plan Incidental Expenses, and Miscellaneous Expenses) is affirmed.

B.

Disallowed Allowances and Benefits to COWD Officers and Organic Personnel – Mid-Year Incentive Pay, Service Incentive Pay, Year-end Incentive Pay, Staple Food Incentive, Car Plan, Car Plan Incidental Expenses, Per diems (cash advance for travel), Rice Allowance, Healthcare Insurance, and Extraordinary Miscellaneous Expenses.

COWD no longer questioned the legality of the disallowances indicated in CSB 2002-001 pertaining to allowances and benefits granted to organic personnel. However, it argued that based on *Agra v. COA*,[75] there should have been no order to refund considering its employees were recipients in good faith.[76]

This Court affirms the COA Proper's Decision disallowing the additional allowances and benefits granted to COWD personnel. It correctly applied the prevailing doctrine reiterated in *Ambros v. Commission on Audit*[77] that additional allowances and benefits shall be allowed in audit only for incumbent personnel hired and already receiving such allowances and benefits as of July 1, 1989. These, in turn, shall be disallowed for personnel hired after July 1, 1989.

On the order to refund these disallowed allowances and benefits, this Court likewise affirms the COA Proper Decision that a refund is necessary, subject to the parameters as will be discussed below.

Rule 2d in *Madera* provides that the return by recipients of disallowed allowances and benefits may be excused on

social justice considerations as may be determined by this Court:

- d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case[-]to[-]case basis.[78]

This Court in *Abellanosa v. COA*[79] elucidated on the application of Rule 2d in *Madera* as follows:

In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other bona fide exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: it must constitute a bona fide instance which strongly impels the court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in highly exceptional circumstances, after taking into account all factors (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.[80] (Emphasis and underscoring supplied)

This Court thus needs to determine the existence of compelling grounds necessary to prevent inequity and injustice. These grounds should be substantiated and evince the highly exceptional circumstances contemplated by the rule.

This Court shall consider the nature and purposes of the disallowed allowances and benefits. It is recognized that there have been disallowed allowances and benefits granted for humanitarian considerations to help recipients cope with the adverse consequences of emergencies, hazards, and natural calamities. This Court shall evaluate factors such as the legitimacy, necessity, and truthfulness of these purposes, the reasonableness and propriety of the amount granted, and the positions and status of its recipients.

For this ground to be appreciated, this Court adopts Justice Caguioa's proposal to require proof of the purpose and nature of the disallowed allowances and benefits. Recipients shall have the burden to prove with substantial evidence (1) the nature and purpose of the disallowed allowances and benefits, and (2) the existence and truthfulness of the compelling or exigent circumstances (e.g., emergencies, hazards, natural calamities) that served as the basis for its grant. The nature and purpose of the disallowed allowances and benefits can be shown through the Board Resolutions granting these or other pertinent documents or communications. The compelling or exigent circumstances must be proven to specifically affect the recipients, and must not be based on mere general and broad assertions.[81]

This Court shall likewise consider the duration of time that has passed between the recipients' acceptance of the disallowed allowances and benefits, and notice of disallowance or any such similar notice indicating its possible illegality or irregularity. After the lapse of a significant period of time without any notice of illegality or irregularity, it is expected that recipients would have already spent the amount they received in good faith. It would be unfair and unduly burdensome to the recipients, especially rank-and-file employees, to require them to refund the amounts received.

To determine what constitutes a significant period of time for this purpose, this Court adopts the proposal of Justice Perlas-Bernabe and recognizes three (3) years as a reasonable period for recipients to be notified of any illegality or irregularity in the allowances or benefits. The lapse of this period is sufficient to excuse recipients from refunding the amounts received on the grounds of equity and fairness. On the other hand, recipients with notice of the possible illegality or irregularity within this period shall be put on guard that they may be required to

refund. Recipients who choose to spend the amount despite notice do so at their own risk. They are not excused from making a refund should the allowances and benefits be eventually disallowed with finality.[82]

However, this Court concurs with Justice Caguioa's observation that this three (3) year period rule shall not apply in favor of persons found to have actively participated in fraudulent transactions, e.g., those found culpable in Special Audits or Fraud Audits conducted by the COA which involve cases of suspected fraud, deceit, or illegal use of public funds.[83] These rules were not intended to restrict the COA from exercising its mandate to conduct investigations and hold the proper persons liable when warranted.

It bears stressing that the aforementioned grounds to excuse a refund based on Rule 2d of Madera should be applied with restraint by this Court. This is to ensure compliance with the intention of the law and to prevent fiscal leakage that may arise from the abuse of this good faith doctrine.

In sum, this Court pronounces the following considerations in determining whether or not a refund can be excused under Rule 2d of Madera:

- The Court shall evaluate the nature and purpose of the disallowed allowances and benefits. Recipients must prove with substantial evidence (1) the nature and purpose of disallowed allowances and benefits, and (2) the existence and truthfulness of its factual basis. Recipients of disallowed allowances and benefits proved to be granted for legitimate humanitarian and compelling grounds shall be excused from making a refund due to equity and social justice considerations.

- The Court shall consider the lapse of time between the receipt of the allowances and benefits, and the issuance of the notice of disallowance or any similar notice indicating its possible illegality or irregularity. Absent any circumstances the Court may deem sufficient, the lapse of three (3) years without any such notice shall be sufficient to excuse recipients from making a refund.

However, this three (3) year period rule shall not apply in favor of persons found to have actively participated in fraudulent transactions, i.e., those found culpable in Special Audits or Fraud Audits conducted by the COA.

Guided by the foregoing rules, this Court in this case excuses recipient COWD officers and personnel from refunding only the disallowed allowances and benefits (i.e., Mid-Year Incentive Pay, Service Incentive Pay, Year-end Incentive Pay, Staple Food Incentive, Car Plan, Car Plan Incidental Expenses, Per diems - cash advance for travel, Rice Allowance, Healthcare Insurance, and Extraordinary Miscellaneous Expenses) which were granted and received beyond three (3) years from the date of issuance of the notice of disallowance.

The disallowed allowances and benefits were granted and received by COWD officers and organic personnel during the audit period January 1, 1998 to May 31, 1999. CSB No.2 02-001 (98 & 99), which disallowed these items, was issued on January 31, 2002. Thus, when such notice of disallowance was issued, more than three (3) years had passed for the disallowed allowances and benefits granted and received from January 1, 1998 to January 31, 1999. To require recipients to refund these amounts after such period would cause them undue prejudice and be highly inequitable. However, the disallowed allowances and benefits granted and received from February 1, 1999 to May 31, 1999 are still within the three (3) year period and are not excused from being refunded.

As for the approving/certifying officers and members of the BOD of COWD, it cannot be said that they acted in good faith when they granted the allowances and benefits. Our ruling in MIAA is applicable where it was emphasized that the exercise of power by the BOD must always be subject to existing laws, rules, and regulations which they are mandated to know. It was pronounced in MIAA that "they are duty-bound to understand and know the law that they are tasked to implement and their unexplained failure to do so barred them from claiming that they were acting in good faith in the performance of their duty. The presumptions of 'good faith' or 'regular

performance of official duty' are disputable and may be contradicted and overcome by other evidence." [84]

The members of the COWD BOD therefore cannot deny having knowledge of R.A. No. 6758 and pertinent implementing Executive issuances instituting July 1, 1989 as the cut-off date for non-integrated benefits to the compensation of government employees.

All told, this Court holds that the disallowed allowances and benefits granted and received by COWD officers and organic personnel from January 1, 1998 to January 31, 1999 are excused from being refunded due to the lapse of the three (3) year period. On the other hand, the disallowed allowances and benefits granted and received from February 1, 1999 to May 31, 1999 must be determined and refunded. The COWD approving/certifying officers are solidarily liable for the entire amount while recipient COWD officers and organic personnel are individually liable to the extent of the amounts actually received by them.

C.

Excessive Cellular Phone Expenses Granted to COWD Personnel

COWD claims that there is no evidence that the cellular phone expenses disallowed in CSB 2002-001 constituted "excessive expenditures." The fact that these expenses exceeded the "normal rate" set by COWD in its own board resolutions does not ipso facto mean that it is excessive. The COA allegedly "must have a reasonable and/or justifiable comparison before it can declare the same as an 'excessive expenditure.'" [85]

This Court is not persuaded by COWD's contentions and affirms the COA Proper's disallowance of the excess cellular phone expenses. The cellular phone expenses granted were excessive by P132,712.51 compared to the allowable rates prescribed by the COWD BOD itself in Board Resolution No. 069, series of 1995, and Board Resolution No. 037, series of 1998. These rates were set by COWD itself after its own determination of the reasonable amount of cellular phones expenses necessary. These rates were also updated as of the audit year in 1998. Hence, the COA cannot be faulted for ruling that the cellular phone expenses granted by COWD in violation of its own Board Resolution should be disallowed as excessive. [86]

The COA Circular No. 85-55-A defined "Excessive Expenditures" as an "unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price[.] It also includes expenses which exceed what is usual or proper as well as expenses which are unreasonably high, and beyond just measure or amount. They also include expenses in excess of reasonable limits." [87] In this case, the COWD Board Resolution prescribed what is usual or proper, or the reasonable limit of the cellular phone expenses of its own personnel. The COA correctly relied on this basis as comparison and COWD had the burden of proof to justify the excess over its own rates.

Applying the Madera rules, We hold that the date of the grant and receipt by COWD personnel of these Excessive Cellular Phones Expenses must be determined. If this benefit was granted and received by COWD personnel between January 1, 1998 to January 31, 1999, it shall be exempt from refund on account of the lapse of time and for social justice considerations. The approving/certifying officers, or members of the COWD BOD shall also not be liable to refund said amounts which are excluded from the net disallowed amount they are liable for. However, if this benefit was granted and received by COWD personnel between February 1, 1999 to May 31, 1999, the amount of such benefit for this period must be determined and refunded. The COWD approving/certifying officers are solidarily liable for the entire amount while recipient COWD officers and organic personnel are individually liable to the extent of the amounts actually received by them.

D.

Hazard Pay Granted to COWD BOD and Personnel

COWD attempted to justify its grant of hazard pay claiming that "Northern Mindanao was greatly affected by the hazard of E[L] NIÑO/LA NIÑA phenomenon at the time hazard pay was given." [88] Regardless of the validity and correctness of this justification, it further claimed that no refund should have been required based on the cases of *Philippine Ports Authority v. Commission on Audit* [89] and *Kapisanan ng mga Manggagawa sa GSIS (KMG) v. COA*. [90]

COWD's arguments are without merit. This Court affirms the disallowance of the Hazard Pay but holds that only members of the COWD BOD are solidarily liable to refund the amounts of Hazard Pay received by them. The other recipient COWD officers and employees are excused from refunding the Hazard Pay they received.

The COA Proper correctly ruled that the COWD's grant of Hazard Pay had no factual and legal basis. By its very nature, the law clearly intended Hazard Pay to be given to a limited group of government employees with peculiar working conditions. Item No. 3 of DBM-National Compensation Circular No. 76 dated March 31, 1995 thus enumerated the work areas which qualify for Hazard Pay. These include areas such as embattled or strife torn work areas, sites of armed encounters, difficult/distressed work areas, work areas affected by volcanic activity or offer risks of danger to health and safety. Clearly the workplace of COWD does not fall within the scope of the law on Hazard Pay. COWD cannot justify its grant of Hazard Pay on an unsubstantiated claim that its workplace was affected by the El Niño or La Niña phenomenon.

On the obligation to refund, We rule that the date of the grant and receipt by COWD personnel of the Hazard Pay must be determined. If this benefit was granted and received by COWD personnel between January 1, 1998 to January 31, 1999, it shall be exempt from refund on account of the lapse of a protracted length of time and social justice considerations. However, if this benefit was granted and received by COWD personnel between February 1, 1999 to May 31, 1999, the amount of such benefit for this period must be determined and refunded. The COWD approving/certifying officers are solidarily liable for the entire amount while recipient COWD officers and organic personnel are individually liable to the extent of the amounts actually received by them.

As for the members of the COWD BOD and approving/certifying officers, We rule that they cannot be deemed in good faith when they granted the hazard pay. They cannot deny knowledge of the law and Executive issuances governing the grant of Hazard Pay. They likewise failed to present any proof to justify their approval and grant of Hazard Pay.

Consequently, applying the rules in *Madera*, We hold that the members of the COWD BOD acted in bad faith and/or gross negligence in granting the hazard pay, and are solidarily liable to refund to the government the total amount of Hazard Pay personally received by them.

Donations to Religious and Civic Organizations

COWD did not question the legality of the disallowance of its donations to religious and civic organizations but claimed that there should be no order to refund as these were made in good faith. [91]

We deny COWD's argument and affirm the COA Proper's Decision disallowing this item for having no legal basis. The COA LAO-C, as affirmed by the COA Proper, correctly held that this expense was not validly justified as one with a public purpose or connected with the discharge of COWD's corporate functions. This was also illegal under the prohibition in Section 29(2), Article VI of the Constitution limiting the appropriation of public money and property.

It is further noted that under COA Circular No. 2012-003, elaborating on the cases enumerated and contemplated under COA Circular No. 85-55-A (1985), donations and contributions to civic organizations were included as examples of Irregular Expenses which the COA is mandated to disallow and prevent:

Cases that are considered 'Irregular' Expenditures or Uses of Government Funds and Property

x x x x

11. Donations, contributions, grants and gifts, except if said activities are undertaken pursuant to the mandate of the donor-agency (A.O. No. 103, dated August 31, 2004).

Similar case that may also fall under this category follows:

11.1. Release of funds as financial assistance to civic organizations such as Rotary, Jaycees and Lions, non-stock non-profit corporations/foundations and private corporations.[92]

The approving/certifying officers and members of the COWD BOD responsible for granting these donations cannot deny knowledge of the prohibition under the Constitution, pertinent laws, and Executive issuances on the matter. They therefore acted in bad faith and/or gross negligence in making these donations. Necessarily, they are solidarily liable to refund the total amount of these disallowed donations pursuant to Section 52 of Book V, Title I, Chapter 9 of the Administrative Code[93] which established the general rule that "[e]xpenditures 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."

Similarly, the donee religious and civic organizations should ideally be held liable to refund. This is pursuant to the equitable principle of *solutio indebiti* which applies regardless of the good faith of passive donees. Although there are bona fide exemptions to the principle of *solutio indebiti* as may be determined by this Court, there is insufficient information on the donations in question to enable this Court to make a proper determination. Various factors such as the purposes, operations, and financial circumstances of the donee institutions, as well as the purposes and nature of the donations must be considered. Absent any proof of the foregoing, the donee religious and civic organizations should be held solidarily liable to the extent of the amounts received by them.

However, this Court stresses that it cannot rule on the liability to refund of these donee religious and civic organizations in this case considering they were not impleaded as parties. This Court did not acquire jurisdiction over them to render a judgment prejudicial to their rights. It is well-established that no party shall be affected by any proceeding to which he/she is a stranger, and strangers to a case are not bound by a judgment rendered by the court.[94] This conforms to the Constitutional guarantee of due process of law.[95] Hence, any decision against these donee religious and civic organizations in this case would be null and void insofar as it affects their rights.[96] Their liability, if any, can best be determined in a different case where they are properly impleaded as parties and have their day in court to present all available defenses.

The Case Should be Remanded to the COA to Determine the Identities and Specific Liabilities of Approving and Certifying COWD-BOD Members and Officers.

This Court from its discussion has established that the following disallowed items must be refunded:

- The approving/certifying officers and members of the COWD-BOD are solidarily liable to refund the following disallowed allowances and benefits received by COWD-BOD: Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Amelioration Allowance, Staple Food Incentive, Per Diems (Cash Advance for Travel), Car Plan, Car Plan Incidental Expenses, Miscellaneous Expenses, and Hazard Pay.
- The approving/certifying officers and members of the COWD-BOD are solidarily liable to refund the following

disallowed allowances and benefits granted and received by COWD officers and organic personnel from February 1, 1999 to May 31, 1999 – Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Staple Food Incentive, Car Plan, Car Plan Incidental Expenses, Per diems (cash advance for travel), Rice Allowance, Healthcare Insurance, and Extraordinary Miscellaneous Expenses. Recipient COWD officers and organic personnel are individually liable to the extent of the amounts received by them.

- The approving/certifying officers and members of the COWD-BOD are solidarily liable to refund the Excessive Cellular Phone Expenses and Hazard Pay, granted and received by COWD organic personnel from February 1, 1999 to May 31, 1999. Recipient COWD officers and organic personnel are individually liable to the extent of the amounts received by them.

- The approving/certifying officers and members of the COWD-BOD are solidarily liable to refund the unlawful Donations to Religious and Civic Organizations.

The disallowances of these items are hereby declared final for being contrary to law and administrative issuances, and ordered to be refunded to the government for not falling under any of the exceptional grounds recognized in *Madera*.

However, this Court is unable to simply order a refund at this point considering that the records cannot establish with certainty when these disbursements were approved and certified by the COWD-BOD or officers, or provide the specific identities of the recipients and members of COWD-BOD and approving/certifying officers. This Court is therefore constrained to remand the case to the COA to determine the identities of the persons liable and compute the correct amount of their respective liabilities in accordance with the parameters discussed in this Decision.

On a final note, this Court would like to emphasize that the rules and guidelines laid out in *Madera* pertain only to the civil liability to refund audit items disallowed by the COA. This is clearly distinct from and has no bearing on the potential criminal or administrative liability of concerned government employees or members of the BOD of Government-Owned and Controlled Corporations, that may be warranted in relation to anomalous budget items disallowed by the COA.

WHEREFORE, premises considered, the Petition for Certiorari is **PARTIALLY GRANTED**. The Decision No. 2012-036 dated March 22, 2012 of the Commission on Audit Proper, affirming the COA LAO Corporate-Decision No. 2008-043 dated July 29, 2008, is hereby **REVERSED** insofar as it ordered the refund of the following disallowed allowances and benefits:

1. Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Staple Food Incentive, Car Plan, Car Plan Incidental Expenses, Per Diems (cash advance for travel), Rice Allowance, Healthcare Insurance, and Extraordinary Miscellaneous Expenses granted to and received by COWD officers and organic personnel from January 1, 1998 to January 31, 1999.
2. Excessive Cellular Phone Expenses and Hazard Pay of COWD personnel granted and received from January 1, 1998 to January 31, 1999.

The foregoing Decision is **AFFIRMED** insofar as it ordered the refund of the following:

1. Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Amelioration Allowance, Staple Food Incentive, Per Diems (Cash Advance for Travel), Car Plan, Car Plan Incidental Expenses, and Miscellaneous Expenses granted to and received by members of the COWD Board of Directors.
2. Mid-Year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Staple Food Incentive, Car Plan, Car

Plan Incidental Expenses, Per Diems (cash advance for travel), Rice Allowance, Healthcare Insurance, Extraordinary Miscellaneous Expenses, Excessive Cellular Phone Expenses, and Hazard Pay granted to and received by COWD organic personnel from February 1, 1999 to May 31, 1999.

3. Hazard Pay received by members of the COWD Board of Directors.

4. Donations to Religious and Civic Organizations.

The case is hereby REMANDED to the Commission on Audit to determine the specific identities of the persons liable and compute their respective liabilities in accordance with the parameters discussed in this Decision.

SO ORDERED.

Gesmundo, C.J., Leonen, Caguioa, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, M. Lopez, Delos Santos, Rosario, and J. Lopez, JJ., concur.

Perlas-Bernabe, J., please see concurring opinion.

[1] Rollo, pp. 4-22.

[2] Id. at 181-187; penned by COA Chairperson Ma. Gracia M. Pulido-Tan, Commissioners Juanito G. Espino, Jr., and Heidi L. Mendoza.

[3] Id. at 84.

[4] Id. at 47.

[5] Id.

[6] Id. at 48.

[7] Id. at 99-110; penned by Director Janet D. Nacion.

[8] Id. at 109.

[9] Id. at 35-45.

[10] Id. at 47-64; penned by Chairperson Ma. Gracia M. Pulido-Tan, Commissioners Juanito G. Espino, Jr., and Heidi L. Mendoza.

[11] Id. at 61-63.

[12] Id. at 26.

[13] Id. at 26-28.

[14] Id. at 28.

[15] Id.

[16] Id. at 28-29.

[17] Id. at 26-34; penned by COA Director Janet D. Nacion.

[18] Id. at 33-34.

[19] Id. at 29-31.

- [20] 425 Phil. 326 (2002).
- [21] 493 Phil. 874 (2005).
- [22] Baybay Water District v. Commission on Audit, *supra* at 340.
- [23] Molen, Jr. v. Commission on Audit, *supra* at 885.
- [24] Rollo, pp. 29-30.
- [25] 501 Phil. 255 (2005).
- [26] Rollo, pp. 30-31.
- [27] *Id.* at 31.
- [28] *Id.* at 31-32.
- [29] *Id.* at 32.
- [30] *Id.* at 32-33.
- [31] *Id.* at 33.
- [32] *Id.* at 181-187.
- [33] *Id.* at 187.
- [34] *Id.* at 185.
- [35] *Id.* at 84.
- [36] *Id.* at 4-22.
- [37] *Id.* at 142-177.
- [38] *Id.* at 222-226.
- [39] *Id.* at 232-233.
- [40] *Id.* at 234-262.
- [41] *Id.* at 7.
- [42] G.R. No. 244128, September 8, 2020.
- [43] Blaquera v. Alcala, 356 Phil. 678 (1998); De Jesus v. Commission on Audit, 451 Phil. 812 (2003); Kapisanan ng mga Manggagawa sa GSIS (KMG) v. COA, 480 Phil. 861 (2004); Home Development Mutual Fund v. Commission on Audit, 483 Phil. 666 (2004).
- [44] Lumayna v. Commission on Audit, 616 Phil. 929, 941 (2009); Querubin v. The Regional Cluster Director, 477 Phil. 919, 924-925 (2004).
- [45] 538 Phil. 634, 644 (2006).
- [46] 769 Phil. 327 (2015).
- [47] *Id.* at 346.
- [48] 681 Phil. 644 (2012).

- [49] 729 Phil. 60 (2014).
- [50] Madera v. COA, supra note 42.
- [51] Id.
- [52] Id.
- [53] Id.
- [54] 690 Phil. 104 (2012). See also Maritime Industry Authority v. Commission on Audit, 750 Phil. 288 (2015).
- [55] Id. at 115. See also Development Bank of the Philippines v. Commission on Audit, 827 Phil. 818 (2018).
- [56] Supra note 44.
- [57] Id. at 944-945.
- [58] Madera v. COA, supra note 42.
- [59] Id.
- [60] 599 Phil. 455 (2009).
- [61] 517 Phil. 677 (2006).
- [62] 589 Phil. 289 (2008).
- [63] 505 Phil. 202 (2005).
- [64] Supra note 44.
- [65] Rollo, p. 8.
- [66] Id. at 14.
- [67] Id. at 29.
- [68] 558 Phil. 76 (2007).
- [69] Id. at 88.
- [70] Rollo, pp. 29-30.
- [71] Supra note 68.
- [72] Id. at 88-89.
- [73] Rollo, pp. 28-29.
- [74] As amended by Presidential Decree No. 768, August 15, 1975.
- [75] 677 Phil. 608 (2011).
- [76] Rollo, pp. 15-16.
- [77] Supra note 25.
- [78] Supra note 42.
- [79] G.R. No. 185806, November 17, 2020.

[80] Id.

[81] As suggested by Associate Justice Caguioa during the deliberations.

[82] See concurring opinion of Justice Perlas-Bernabe, pp. 10-11.

[83] See COA Circular No. 2020-05, January 31, 2020 and COA Service Charter Manual.

[84] Manila International Airport Authority v. COA, supra note 48 at 669-670.

[85] Rollo, p. 18.

[86] Id. at 32-33.

[87] Section 3.3, COA Circular No. 85-55-A dated September 8, 1985. Emphasis and underscoring supplied.

[88] Rollo, p. 18.

[89] Supra note 61.

[90] Supra note 43.

[91] Rollo, p. 19.

[92] COA Circular No. 2012-003.

[93] EXECUTIVE ORDER NO. 292.

[94] National Housing Authority v. Evangelista, 497 Phil. 762, 764 (2005).

[95] PHILIPPINE CONSTITUTION, Article III, Section 1.

[96] Dare Adventure Farm Corp. v. Court of Appeals, 695 Phil. 681, 690-691 (2012); Munoz v. Atty. Yabut, Jr., 665 Phil. 488, 510-511 (2011).

CONCURRING OPINION

PERLAS-BERNABE, J.:

I concur.

This case involves the disallowance of various allowances, incentives, and benefits authorized by petitioner Cagayan de Oro Water District (COWD) for the period of January 1, 1998 to May 31, 1999 in the aggregate amount of P37,298,458.47,[1] by virtue of Certificate of Settlement and Balances (CSB) No. 2002-001 (98 and 99) dated January 31, 2002 issued by the Commission on Audit (COA),[2] summarized as follows:

Expenditures Disallowed

Payee-Recipients

Total Amount

Ground for Disallowance

- Honorarium;

- Representation Allowance;

- Mid-Year Incentive Pay;
- Service Incentive Pay;
- Year-End Incentive Pay
- Uniform Allowance
- Amelioration Allowance;
- Staple Food Allowance;
- Cash Gift;
- Per Diems in the form of cash advances for travel;
- Car Plans and their incidental expenses; and
- Miscellaneous Expenses

COWD Board of Directors (COWD-BOD)

P4,838,388.15

Violation of Section 13 of Presidential Decree No. (PD) 198,[3] otherwise known as the "Provincial Water Utilities Act of 1973," as amended, and lack of legal basis.

- Mid-Year Incentive Pay;
- Year-End Incentive Pay;
- Service Incentive Pay;
- Staple Food Incentive;
- Health Care Insurance;
- Per Diems in the form of cash advances for travel;
- Car Plans and their incidental expenses; and
- Extraordinary Miscellaneous Expenses
- Rice Allowance

COWD personnel

P26,043,801.46

Violation of Section 12 of Republic Act No. (RA) 6758 and lack of legal basis.

Cellular Phone Expenses

COWD personnel

P132,712.51

Violation of COWD Board Resolution No. 069, series of 1995, and Board Resolution No. 037, series of 1998.

Hazard Pay

COWD-BOD and personnel

P6,178,200.00

Violation of DBM National Compensation Circular No. 76 dated 31 March 1995 and lack of factual and legal basis.

Donation

Various religious and charitable organizations

P105,356.35

Violation of Section 29(2), Article VI of the Constitution for lack of public purpose.

Aggrieved, the COWD appealed the disallowance before the Regional Cluster Director – Regional Legal and Adjudication Office of the COA, but was denied.[4] The matter was then elevated to the COA Legal and Adjudication Office – Corporate (COA LAO-C) for further review.

On appeal, the COA LAO-C affirmed the propriety of the disallowance.[5] However, it absolved the members of COWD's Board of Directors (COWD-BOD) from refunding the disallowed Honorarium, Representation Allowance, Miscellaneous Expense, Uniform Allowance, and Cash Gift, finding that the same were specifically enumerated and hence, found ostensible legal basis under Local Water Utilities Administration (LWUA) Resolution No. 313, series of 1995, which was only struck down later on January 23, 2002 in the case of Baybay Water District v. COA (Baybay).[6] In this regard, the COA LAO-C cited *Molen v. COA* (Molen),[7] wherein the Court had previously excused the return of the same kinds of incentives/allowances on the basis of good faith. However, it directed the refund of "the Mid-year Incentive Pay, Service Incentive Pay, Year-End Incentive Pay, Hazard Pay, Amelioration Allowance, Staple Food Allowance, Per Diems (cash advance for travel), and Car Plan and its incidental expenses," as they were not enumerated in LWUA Resolution No. 313, series of 1995:[8]

Applying the ratiocination of the *Molen* case to the case at hand, the "no-refund doctrine" applies only to allowances and benefits granted to the BODs which are specifically enumerated under LWUA Resolution No. 313, series of 1995. Otherwise stated, if the disallowed benefits granted to the BOD are not within the enumerations under the said resolution, the same should be refunded. Thus, only the disallowed Honorarium (inclusive of per diem) and Representation Allowance, Miscellaneous Expense, Uniform Allowance, and Cash Gift need not be refunded. They have to refund, however, the Mid-year Incentive Pay, Service incentive Pay, Year-End Incentive Pay, Hazard Pay, Amelioration Allowance, Staple Food Allowance, Per Diems (cash advance for travel), and Car Plan and its incidental expenses.[9] (Emphases and underscoring supplied)

The COA LAO-C then remanded the case to the Audit Team Leader (ATL) to determine and compute the correct amount to be refunded by the members of the COWD-BOD, approving/certifying officers, and COWD personnel:

Accordingly, the ATL of the COWD is hereby instructed to determine and compute the correct amount of disallowance to be refunded by the members of the BOD, organic personnel and other persons liable and to inform this Office on the settlement made thereon.[10] (Emphasis supplied)

Dismayed, the COWD moved for reconsideration of the COA LAO-C ruling, which was treated as an appeal to

the COA-Proper. Later, in a Decision dated March 22, 2012, the COA-Proper affirmed the decision of the COA LAO-C.[11]

In its petition before the Court, the COWD argues that the approving/certifying officers and respective payee-recipients of the disallowed amounts should not be held civilly liable for their return on account of their good faith in the grant and/or receipt thereof.[12]

Nonetheless, following the guidelines recently instituted in the landmark case of *Madera v. Commission on Audit* (Madera),[13] the defense of good faith cannot be appreciated in this case.[14]

I.

At the onset, it should be pointed out that, as correctly held by the COA,[15] the disbursement of MIP, SIP, YIP, Amelioration Allowance, Staple Food Allowance, Per Diems in the form of cash advances for travel, and Car Plans and their incidental expenses granted by the COWD-BOD in their own favor violated the clear prohibition of Section 13 of PD 198, as amended,[16] which reads:

Section 13. Compensation. – Each director shall receive a per diem, to be determined by the board, for each meeting of the board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month. No director shall receive other compensation for services to the district.

Any per diem in excess of P50 shall be subject to approval of the Administration. (Emphases and underscoring supplied)

Indeed, the prohibition under Section 13 of PD 198 that "[n]o director shall receive other compensation for services to the district," except per diems, is plainly worded and straightforward; as such, there should be no reasonable legal interpretation to the contrary. In this regard, the Court in *Madera*, adopting Associate Justice Marvic M.V.F. Leonen's badges of good faith, held that:

For one to be absolved of liability [on account of good faith,] the following requisites [may be considered] : (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.[17] (Emphases and underscoring supplied)

Since the COWD-BOD had not only violated a clear provision of law but also failed to provide any reasonable legal interpretation to justify the same, their disbursement of the MIP, SIP, YIP, Amelioration Allowance, Staple Food Allowance, Per Diems in the form of cash advances for travel, and Car Plans and their incidental expenses in their own favor is tainted with bad faith or gross negligence. This therefore warrants the COWD-BOD's solidary liability to return the same under Rule 2b of the *Madera* Rules on Return, to wit:

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.[18] (Emphasis and underscoring supplied)

At this juncture, it is noteworthy that the Court in *Molen* and other similar cases[19] had previously acknowledged the defense of good faith with respect to amounts paid to members of a water district's board of directors even though they were disbursed in violation of PD 198, considering that they were made prior to the *Baybay* ruling wherein the Court did not anymore accept LWUA Resolution No. 313, series of 1995 as basis to justify the grant of other compensation other than per diems. The pertinent discussion in *Molen* relative to *Baybay* as well as its application of the good faith excuse based on *De Jesus v. COA* is hereby reproduced for reference:

In *Baybay Water District v. Commission on Audit*, it was held that the prohibition in Section 13 of P.D. No. 198, as amended by P.D. No. 768, against the grant of additional compensation to board members has not been repealed by R.A. No. 6758. x x x

x x x x

It is, therefore, clear that P.D. No. 198 is the legal basis for determining whether or not the members of the board of directors of MIWD are entitled to the subject benefits. Nowhere in the said law are board of directors granted any other benefits except per diem compensation, found in Section 13 thereof, as amended by P.D. No. 768. By specifying the compensation which a director is entitled to receive and by limiting the amount he/she is allowed to receive in a month, and, in the same paragraph, providing "No director shall receive other compensation" than the amount provided for per diems, the law quite clearly indicates that directors of water districts are authorized to receive only the per diem authorized by law and no other compensation or allowance in whatever form.

Consequently, there is no legal basis for petitioners' assertion that the Local Water Utilities Administration (LWUA) is vested with authority under P.D. No 198," as amended by P.D. Nos. 768 and 1479, to allow local water districts to grant the disallowed benefits to the members of their board of directors by virtue of LWUA Resolution No. 313, series of 1995.

x x x x

Nevertheless, in *De Jesus v. Commission on Audit*, it was held that the benefits granted under LWUA Resolution No. 313, series of 1995, to the petitioners therein, who were members of the interim board of directors of the Catbalogan Water District, need not be refunded because at the time they received the benefits, the Court had not yet decided *Baybay Water District*. Petitioners therein had no knowledge that such payment was without legal basis. Good faith was thus considered by the Court in holding that the recipients of the allowances and bonuses disallowed by the COA need not refund the same.

Petitioners herein also received the benefits granted under LWUA Resolution No. 313, series of 1995, in 1995, before the decision in *Baybay Water District*, which was promulgated in 2002; hence, the aforesaid ruling in *De Jesus v. Commission on Audit* applies to the instant case.[20]

However, as may be gleaned from *Molen* itself and as correctly observed by the COA, the appreciation of good faith in the said case and other such rulings is relative only to those amounts specifically included in LWUA Resolution No. 313, series of 1995, i.e., "rata, travel allowance, extraordinary and miscellaneous expense, Christmas bonus, cash gift, uniform allowance, rice allowance, medical/dental benefits and productivity incentive bonus,"[21] since they were disbursed by approving/authorizing officers acting under the honest, yet mistaken, belief that the issuance was lawful.

Conversely, good faith cannot be appreciated for amounts not granted under any ostensible legal basis.[22] Therefore, the ponencia is correct in holding that good faith did not attend the grant of the MIP, SIP, YIP, Amelioration Allowance, Staple Food Allowance, Per Diems in the form of cash advances for travel, and Car Plan and their incidental expenses by the COWD-BOD in their own favor, as they were not specifically included in the said issuance.[23]

Furthermore, it is well to note that the return of the said amounts cannot also be excused on the basis of Rule 2c of the Madera Rules on Return, i.e., for being genuinely given in consideration of services rendered.

In the recent case of *Abellanosa v. COA (Abellanosa)*,^[24] the Rule 2c exception was clarified. Accordingly, the Court laid down two (2) requisites for its application, none of which attend in this case:

[I]n order to fall under Rule 2c, i.e., amounts genuinely given in consideration of services rendered, the following requisites must concur:

(a) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and

(b) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of the Madera Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) - the ponente of Madera - aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood to be limited to disbursements adequately supported by factual and legal basis, but were nonetheless validly disallowed by the COA on account of procedural infirmities. x x x

x x x x

Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover. (Emphases and underscoring supplied)

In particular, the first requisite does not obtain since, as herein explained, the said disbursements lack proper basis in law and were not disallowed based on mere procedural missteps or infirmities.

Likewise, the second-requisite does not attend since the COWD-BOD are not strictly employees of the water district, whose receipt of such incentives/benefits have a clear, direct, and reasonable connection to actual work performed. As opposed to officers and employees performing regular services for the institution, members of a water district's board of directors do not engage – as they are prohibited from engaging – in the management of the affairs of the COWD. As per Section 18^[25] of PD 198, their functions are limited to policy making.^[26]

In fine, the MIP, SIP, YIP, Amelioration Allowance, Staple Food Allowance, Per Diems in the form of cash advances for travel, and Car Plans and their incidental expenses granted by the COWD-BOD in their favor, which amounts were not excused by the COA, should be solidarily returned by said approving/authorizing officers.

II.

On the other hand, with respect to the MIP, SIP, YIP, Staple Food Incentive, Car Plans and their incidental expenses, Extraordinary Miscellaneous Expenses, Per Diems in the form of cash advances for travel, Health Care Insurance, and Rice Allowance granted by the COWD to its personnel, the defense of good faith is equally unavailing for the approving/certifying officers, considering that they were also disbursed in patent violation of the law and/or administrative issuances.[27] While the illegality of the said benefits given to the COWD-BOD stems from a violation of Section 13 of PD 198 which states that no director shall receive other compensation for services to the district, except per diems, on the other hand, the illegality of the benefits given to COWD personnel stems from a violation of Republic Act No. 6758,[28] also known as the Salary Standardization Law, Section 12 of which reads:

Section 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay[29]; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Hence, following Rule 2b of the Madera Rules on Return, the approving/certifying officers, having acted with bad faith or gross negligence in the disbursement of the aforementioned amounts, should also be held solidarily liable for their return.

Meanwhile, anent the civil liability of the COWD personnel as payee-recipients, the defense of good faith likewise does not obtain. As per Madera, notwithstanding their innocence in receiving the disallowed benefits, they are still individually accountable for the return of the amounts they respectively received on the basis of the principle of *solutio indebiti*.

During the deliberations of this case, it was argued that the inordinate period in which this case has been pending as well as the adverse effects of the current COVID-19 pandemic may possibly justify the COWD personnel's retention of the aforementioned amounts innocently received on undue prejudice and social justice considerations under Rule 2d of the Madera Rules on Return.

However, in *Abellanosa*, the Court had already clarified that an excuse of civil liability under Rule 2d should be viewed under the following stringent prism:

In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other bona fide exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: it must constitute a bona fide instance which strongly impels the Court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in highly exceptional circumstances, after taking into account all factors (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss.[30] (Emphases and underscoring supplied)

Thus, bearing in mind Rule 2d's exacting parameters as held in *Abellanosa*, the Court has adopted my submission that a bare invocation of the aforesaid general circumstances, without more, is insufficient to excuse a return of

unlawfully disbursed public funds.

To expound, during the deliberations, I highlighted that the above-stated proffered reasons (i.e. the inordinate period that a case has been pending and the adverse effects of the current COVID-19 pandemic) are not peculiar to this case alone but may very well loosely apply to all pending COA cases for the Court's resolution in general. As such, the Court eventually adopted the view that an indiscriminate application of these general circumstances should not be made so as to secure the refund of disallowed amounts under Rule 2d of the Madera Rules on Return. For one, the Court's docket is rife with numerous petitions seeking the review of COA disallowances issued several years or even decades ago against government officers and personnel. These cases are still currently pending before the Court, some of which are expected to be resolved during the present pandemic, which baneful subsistence remains indefinite. For another, the COVID-19 pandemic is a circumstance that affects everyone, including the fiscal agencies of our government which rely on public funds to implement its health policies and protocols. To cite this situation as an excuse under Rule 2d will therefore negate recovery while the pandemic subsists.

Instead of the aforementioned general circumstances, it has been my (and now, the ponencia's) position that the protracted period of three [3] years from the time of disbursement up until the issuance of a notice of disallowance, suspension, or any equivalent notice informing the agency of a possible defect in the disbursement may be considered as a form of undue prejudice under Rule 2d. In this scenario, the innocent payees, most especially the rank and file, would not have been notified at all – even at the first instance – of any alleged illegality/irregularity attending the disbursement; hence, it is natural for them to have already spent the said amounts in good faith for their own personal use during this time period. To my mind, in this niche situation, it would be highly inequitable and unfair to still demand the return.

The foregoing, however, should be contrasted with the scenario where only a short span of time has elapsed from the time of disbursement and issuance of a notice of suspension/disallowance, regardless of the protracted length of time that the case has been pending resolution. In this instance, no undue prejudice exists since the payees are already informed at the first instance of an alleged illegality/irregularity attending the disbursement; hence, their personal expenditure thereof notwithstanding such notice is at their own risk irrespective of the time that the case remains pending before the various adjudicating tribunals. In this other respect, the scales of equity impel that these recipients – who are already put on notice of a possible anomaly attending the funds they have received – be held accountable to the government should the disallowance be eventually affirmed by final judgment.

III.

As a final point, it must be stressed that the other amounts in issue before the Court – namely: (1) Hazard Pay given to the COWD-BOD; (2) Hazard Pay and Excessive Cellular Phone Expenses given in favor of the COWD personnel; and (3) Donations given to various religious and charitable organizations – should also be returned by the erring approving/certifying officers. As correctly observed by the ponencia, solidary liability obtains against them as good faith cannot also be appreciated insofar as such amounts are concerned since they were similarly disbursed in patent violation of law and/or administrative issuances. In turn, the respective recipients of such sums, as indicated in the CSB, are individually liable for their return in accordance with the Madera Rules on Return, subject to the application of the aforementioned three (3) year period in favor of innocent payees under Rule 2d when proper.

The above pronouncements notwithstanding, the Court cannot, as of yet, simply direct the members of the COWD-BOD at that time to refund all the amounts disbursed to them and the payees. This is because records fail to clearly show that the multiple types of disbursements were all approved/authorized by the COWD-BOD;

neither do they disclose the identities of the other approving/certifying officers and payees held liable by the COA for the disallowance. As such, a remand of this case is proper to determine the respective identities of the actual persons to be held liable. This is consistent with the COA LAO-C's directive to the ATL:

Accordingly, the ATL of the COWD is hereby instructed to determine and compute the correct amount of disallowance to be refunded by the members of the BOD, organic personnel and other persons liable and to inform this Office on the settlement made thereon.[31] (Emphasis supplied)

Once the proper personalities have been determined, civil liability should be exacted based on the rules established in the Madera landmark decision:

E. The Rules on Return

In view of the foregoing discussion, the Court pronounces:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
 - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
 - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
 - c. Recipients - whether approving or certifying officers or mere passive recipients - are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
 - d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.

Thus, as specifically applied in this case:

- (1) The members of the COWD-BOD are solidarily liable to return the MIP, SIP, YIP, Amelioration Allowance, Staple Food Allowance, Car Plan and their incidental expenses, Hazard Pay, and Per Diems in the form of cash advances for travel granted by them in their own favor as approving/authorizing officers acting with bad faith/gross negligence pursuant to Madera Rule 26;
- (2) Meanwhile, the Honorarium, Representation Allowance, Miscellaneous Expense, Uniform Allowance, and Cash Gift granted by the COWD-BOD in their favor, which was not anymore put at issue, and in fact, already excused by the COA, should not anymore be recovered;
- (3) Only those approving and certifying officers, who may include the members of the COWD-BOD, based on the proper identification of the COA upon remand, who acted with bad faith/gross negligence in granting the: (a) MIP, SIP, YIP, Staple Food Incentive, Car Plans and their incidental expenses, Extraordinary Miscellaneous Expenses, Hazard Pay, Excessive Cellular Phone Expenses, Per Diems in the form of cash advances for travel, Health Care Insurance, and Rice Allowance to COWD personnel; and (b) Donations to various religious and charitable organizations are solidarily liable for their return pursuant to Madera Rule 2b; and

(4) The payees of each of the disbursements listed in the immediately preceding item 3 above, as identified in the CSB, are individually liable for the return of the amounts they respectively received pursuant to Madera Rule 2c.

The return of a particular amount, however, may be completely excused if it is shown that three (3) years have already elapsed from the time of disbursement up until the issuance of the CSB, or any equivalent notice informing the COWD of the illegality of the disbursement. Without prejudice to the findings of the COA upon remand, this equitable excuse under Madera Rule 2d may apply to the allowances/benefits released in favor of the COWD personnel, as innocent payee-recipients, from the period of January 1, 1998 to January 31, 1999, considering that CSB No. 2002-001 was dated more than three (3) years thereafter, or on January 31, 2002. Conversely, as pointed out in the ponencia, those allowances/benefits received by such personnel from February 1, 1999 to May 31, 1999, are not excused.[32]

ACCORDINGLY, I vote to PARTIALLY GRANT the petition and AFFIRM the assailed Commission on Audit ruling with MODIFICATION, holding: (1) the members of petitioner Cagayan de Oro Water District's Board of Directors (COWD-BOD) who have acted in bad faith or with gross negligence, solidarily liable for the return of the MIP, SIP, YIP, Amelioration Allowance, Staple Food Allowance, Car Plan and their incidental expenses, Hazard Pay, and Per Diems in the form of cash advances for travel granted by them in their own favor; (2) the identified approving/certifying officers of the Cagayan de Oro Water District (COWD), which may include the COWD-BOD, who have acted in bad faith or with gross negligence, solidarily liable for the return of the (a) MIP, SIP, YIP, Staple Food Incentive, Car Plans and their incidental expenses, Extraordinary Miscellaneous Expenses, Hazard Pay, Excessive Cellular Phone Expenses, Per Diems in the form of cash advances for travel, Health Care Insurance, and Rice Allowance given to the COWD personnel, with the exception of those amounts released during the period of January 1, 1998 to January 31, 1999 which may be excused based on Rule 2d of the Madera Rules on Return as discussed in this Opinion; as well as (b) Donations to various religious and charitable organizations; and (3) the payees of the amounts in item 2 as identified in the CSB, individually liable for the amounts they respectively received, with the exception of those amounts given to the COWD personnel from the period of January 1, 1998 to January 31, 1999 which may be excused as discussed. The case should be REMANDED to the Commission on Audit as herein stated.

[1] Notably, records show that the disallowance actually amounted to a sum total of P37,298,458.47 (see rollo, p. 28), albeit the amount of P37,363,278.47 was indicated in the subject-heading and opening paragraph of COA LAO-C Decision No. 2008-043 dated July 29, 2008 (see rollo, p. 26).

[2] Rollo, p. 26.

[3] Entitled "DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICTS; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER UTILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES," approved on May 25, 1973.

[4] See ponencia, p. 2.

[5] See rollo, pp. 29-34. See also ponencia, pp. 6-8.

[6] 425 Phil. 326 (2002).

[7] 493 Phil. 874 (2005).

[8] See rollo, p. 30.

[9] Id.

[10] Id. at 34.

[11] See ponencia, pp. 7-9.

[12] Rollo, pp. 4-22.

[13] See G.R. No. 244128, September 8, 2020.

[14] See ponencia, pp. 17-28.

[15] See rollo, pp. 29-30.

[16] By Presidential Decree No. 768, entitled "AMENDING PRESIDENTIAL DECREE No. 198 ENTITLED "DECLARING A NATIONAL POLICY FAVORING LOCAL OPERATION AND CONTROL OF WATER SYSTEMS; AUTHORIZING THE FORMATION OF LOCAL WATER DISTRICTS AND PROVIDING FOR THE GOVERNMENT AND ADMINISTRATION OF SUCH DISTRICT; CHARTERING A NATIONAL ADMINISTRATION TO FACILITATE IMPROVEMENT OF LOCAL WATER FACILITIES; GRANTING SAID ADMINISTRATION SUCH POWERS AS ARE NECESSARY TO OPTIMIZE PUBLIC SERVICE FROM WATER UTILITY OPERATIONS, AND FOR OTHER PURPOSES," approved on August 15, 1975.

[17] See *Madera v. COA*, supra, citing Associate Justice Leonen's Separate Concurring Opinion, pp. 8 and 13.

[18] See *Madera v. COA*, supra.

[19] See: *Barbo v. COA*, 589 Phil. 289 (2008); *Magno v. COA*, 558 Phil. 76 (2007); *Querubin v. COA*, 477 Phil. 919 (2004); *De Jesus v. COA*, 466 Phil. 912 (2004); *De Jesus v. COA*, 451 Phil. 812 (2003).

[20] *Molen v. COA*, supra note 7.

[21] *Molen v. COA*, id. See also: *Barbo v. Commission on Audit*, supra note 19; and *Catindig v. People*, 616 Phil. 718-739 (2009).

[22] See *Oriondo v. Commission on Audit*, G.R. No. 211293, June 4, 2019, where the Court ruled that:

The present case is different from *Blaquera v. Alcala* and *De Jesus v. Commission on Audit* where this Court enjoined the refund of the disallowed amounts. Both cases had ostensible legal bases on which the recipients honestly believed that the disallowed amounts paid were due to them.

x x x x

x x x In *De Jesus*, Local Water Utilities Administration's Resolution No. 313, series of 1995 ostensibly authorized the payment of the allowances and bonuses.

Unlike in *Blaquera* and *De Jesus*, no such ostensible legal basis was presented in this case. There was no reason for petitioners to honestly believe that another set of honoraria and cash gifts, by reason of their ex-officio positions in Corregidor Foundation, Inc., were due them. It cannot be said that they received the disallowed amounts in good faith. (Emphasis and underscoring supplied)

[23] See rollo, pp. 29-30.

[24] See G.R. No. 185806, November 17, 2020.

[25] Section 18. Functions limited to Policy-Making. - The function of the board shall be to establish policy. The Board shall not engage in the detailed management of the district. (Emphasis supplied)

[26] See *Baybay Water District v. COA*, supra note 6.

[27] See ponencia, pp. 19-22.

[28] Entitled "AN ACT PRESCRIBING A REVISED COMPENSATION AND POSITION CLASSIFICATION SYSTEM IN THE GOVERNMENT AND FOR OTHER PURPOSES," otherwise known as the "Compensation and Position Classification Act of 1989," approved on August 21, 1989.

[29] Hazard pay in this case, while listed in Section 12 of RA 6758, was further denied because of lack of factual basis; see ponencia, p. 21.

[30] *Abellanosa v. COA*, supra note 24.

[31] *Rollo*, p. 34.

[32] See ponencia, pp. 28-29.

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