

CARLOS B. LOZADA, RICARDO L. MEDALLA, JR., LLEWELYN A. VILLAMOR, ROWENA DL SAN GABRIEL, AND OCTAVIO F. LINA, PETITIONERS, VS. COMMISSION ON AUDIT AND MANILA INTERNATIONAL AIRPOR...

G.R. No. 230383. July 13, 2021

Ponente: INTING, J.

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INTING, J.:

The present Petition[1] is a direct recourse to the Court filed by Carlos B. Lozada (Lozada), Ricardo L. Medalla, Jr. (Medalla, Jr.), Llewelyn A. Villamor (Villamor), Rowena DL San Gabriel (San Gabriel), and Octavio F. Lina (Lina) (collectively, petitioners) to assail the constitutionality of Section 16.3 of Commission on Audit (COA) Circular No. 006-09, "Prescribing the Use of the Rules and Regulations on Settlement of Accounts." [2]

The Antecedents

It appears from the records of the case that herein petitioners are among the Manila International Airport Authority (MIAA) officials who had been previously adjudged as persons liable for various disbursements disallowed in an audit. Upon finality, the COA sought to execute the judgment in the disallowance cases. [3]

Acting on two COA Orders of Execution (COE), the MIAA proceeded to enforce payment against the concerned MIAA officials. However, at the time of enforcement, a number of the persons involved had already resigned. [4]

MIAA sought to clarify [5] selected matters in relation to the COEs' implementation. In response, the COA [6] pointed out that the liability for the disallowances is solidary. Thus, MIAA may claim the full amount from any one of the persons liable, without prejudice to his right to be reimbursed. [7] It maintained that the disallowances are already final and may no longer be altered. [8]

Later on, MIAA proceeded to withhold directly the payment of the salaries of those who remained as MIAA employees and to refer the collection from resigned officials to its legal department for proper action and enforcement. [9]

In a Letter [10] dated January 12, 2016, MIAA informed Lozada about the impending salary deductions, viz.:

Dear Mr. Lozada:

This has reference to the Notice of Disallowance (ND) No. (CNC) 01-00-101-(99) dated October 8, 2001 (Annex A) issued by the [COA] in disallowing in audit the overpayment of aircraft terminal maintenance services for various periods to Business Royale Services in the Pursuant to the [COE] dated April 30, 2015 (Annex B) issued for the above disallowance, please be informed that as one of the persons named liable therein, the Authority is instructed to withhold the payment of your salaries or any amount due from you for the settlement of your liability, computed to the extent of the disallowed amount where you have participated in as clearly indicated in the [NDs] which amounts to Php 2,659,752.00.

It [has been] advised that the liability of the persons named liable under the said ND shall be solidary, therefore, [MIAA] may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

In compliance with the above COE, the Accounting Division will deduct from your salary x x x an amount that would reduce your net take home pay to Php 1,500.00 per pay day or Php 3,000.00 per month until full settlement of the disallowed amount.

Please give this matter your immediate and preferential attention.

Very truly yours,

[signed]

GRACE D. GULINAO

Officer-in-Charge

Accounting Division[11]

MIAA certified[12] that it began imposing salary deductions on February 15, 2016, as follows:

A)

COE dated April 30, 2015,[13] in relation to Notice of Disallowance (ND) Nos. (CNC) 01-001-101-(99) dated October 8, 2001 disallowing the aggregate amount of P10,318,580.77.

1) Mr. Carlos B. Lozada

Php 158,838.38

2) Mr. Ricardo L. Medalla Jr.

21,318.90

3) Mr. Lllewelyn A. Villamor

160,653.57

4) Mr. Edgardo C. Manda

Referred to Legal Office for collection

5) Mr. Raymund J. Anatalio

Referred to Legal Office for collection

6) Mr. Elpidio L. Mendoza Jr.

Referred to Legal Office for collection

7) Mr. Alfredo V. Patricio

Referred to Legal Office for collection

8) Business Royale Services, Inc.

Referred to Legal Office for collection[14]

B)

COE dated March 13, 2015, in relation to ND No. 2008-01-(08) disallowing the amount of P676,686.78.

1) Mr. Cecilio B. Bobila

Php 15,772.84

2) Ms. Miriam O. Ilarde

10,578.65

3) Mr. Octavio F. Lina

132,752.27

4) Mr. Carlos B. Lozada

17,166.67

5) Mr. Ricardo L. Medalla, Jr.

276.29

6) Ms. Rowena DL San Gabriel

79,686.04

7) Mr. Oscar L. Paras

Referred to Legal Office for collection

8) Mr. Angel. G. Atutubo

Referred to Legal Office for collection

9) Mr. Florencio P. Montalbo, Jr.

Referred to Legal Office for collection

10) Mr. Robert B. Uy

Referred to Legal Office for collection

11) Mr. Alfonso G. Cusi

Referred to Legal Office for collection

12) Mr. Freddie V. Cano

Referred to Legal Office for collection[15]

Aggrieved, Lozada, in his capacity and as attorney-in-fact of his co-petitioners Medalla, Jr., Villamor, San Gabriel, and Lina filed the present petition to strike down Section 16.3 of COA Circular No. 006-09.

The Court's Ruling

The petition must be dismissed.

The assailed rule reads:

SECTION 16. Determination of Persons Responsible/Liable. — x x x

16.3 The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable. (Italics supplied.)

Petitioners mainly criticize the solidary nature of an/a approving/certifying officer's liability over a disallowance, as provided in Section 16.3 of COA Circular No. 006-09 and echoed by the COA and MIAA in the above-quoted correspondences.

For clarity, their averments are reproduced below:

20. That, the reason why this representation filed this present petition for declaration of unconstitutionality of said rule being imposed by Respondent COA, was because, the manner of implementation/s of [the above-mentioned COEs] is/are unbearable to human conscience—as it is against the fundamental rights embodied in Our Constitution.[16]

x x x x

27. Petitioners herein is [sic] of the considered view that: aforesaid implementation of the [COEs], premised on the [above-quoted COA Circular] is too much to bear. Petitioners herein couldn't bear the pain of such an oppressive or worrisome burden, brought about by such application of the rules in question. For it is EXCESSIVE, UNREASONABLE and can be considered an unconscionable to human dignity [sic]. This is against the law, the fundamental law.

28. Petitioners herein have to reiterate the collective bargaining stand on our party that: on equitable grounds, ["solidarily["] means that: the coherence and oneness in nature; relations or interest as a race, class or groups, [etc.], hence, therefore it is but just and fair to consider that [MIAA]'s action to go against all named persons, including those persons who are no longer in service, and/or have resigned or have retired already, but equally liable x x x BUT [sad] to say, Respondents evaded such provisions of the law. The modifications of the meaning of the word ["SOLIDARY["] was the one being imposed. This is against the law. If this is what the [COA Circular] [provides]—or being interpreted by the Respondents, then, the need to declare it unconstitutional.

29. For it is to be considered just and equitable under the premises that: aside from the names of [Lozada, Villamor, Medalla, Jr., San Gabriel, and Lina]; BUT also the names of those who are no longer in service, deceased and/or no longer connected with [the MIAA] should likewise be included and solidarily be held liable in the aforesaid decision—that the [MIAA] may go against.

30. And therefore the names of Mr. Robert Uy, Mr. Florencio Montalbo, Mr. Raymond J. Anatalio, Mr. Freddie Cano, Mr. Antonio Gana, Mr. Oscar Paras, Mr. Edgardo C. Manda, Mr. Elpidio L. Mendoza, Mr. Alfredo V. Patricio—who are no longer in service and the payee Business Royale Services be equally held liable. This is our legal stand.[17] (Italics supplied.)

Stated differently, petitioners find COA/MIAA's decision to enforce the liability only against them—incumbent MIAA officials, to the exclusion of those who have already resigned/retired from service or died—to be unfair and burdensome. According to them, the act violates the constitution inasmuch as it contravenes "solidarity in debt," as defined under the law. Thus, they implore the MIAA/COA to also hold the resigned/retired MIAA officials equally liable.

Notably, petitioners chose to file this case directly before the Court and denominate their effort as a petition for declaration of unconstitutionality,[18] insisting that Section 16.3 of COA Circular No. 006-09 is unconstitutional. In particular, they aver that the COA Circular has been "excessive, unreasonable, and x x x unconscionable to human dignity" and that it is supposedly "against the law." These vague accusations are mere conclusions of

law.[19]

Their allegations' inadequacy is amplified when measured against the well settled rule that every statute or regulation shall be presumed valid. "[T]o justify [a law or regulation's] nullification, there must be a clear and unequivocal breach of the Constitution, and not one that is doubtful, speculative or argumentative." [20] When a party invokes the Court's power "to declare a law [or regulation], or parts thereof, unconstitutional," [21] he is duty-bound to clearly establish the basis for such declaration. [22]

Given this presumption, bare assertions of inconvenience or burden to an individual do not automatically give rise to a prima facie case of a constitutional violation. The averments on the face of his petition must establish that he possessed a constitutionally-protected right by citing the provision he relied upon and alleged with particularity the facts constituting the breach of his fundamental right. To be sure, there can be no "clear and unequivocal breach" if the petition is based on broad allegations that a person or tribunal's oppressive, excessive, or unconscionable acts have violated one's rights.

Courts shall remain to be circumspect in entertaining attempts to invalidate statutes or regulations. Certainly, reliance on emphatic, but unfounded legal conclusions and motherhood statements coupled with the failure to specify the constitutional right or provision violated shall not be sufficient to overcome the presumption of validity in favor of a statute or regulation.

Be that as it may, even if the Court brushes aside the above-discussed defects, the Petition lacks merit.

Petitioners demand the imposition of equal liability among all persons made to answer for the above-mentioned disallowances. Section 16.3 of COA Circular No. 006-09 that appears to have allowed the COA/MIAA to first proceed against them, incumbent MIAA officials, for the satisfaction of the judgment liability illegally modifies the definition of "solidary liability."

The petitioners are mistaken.

Verily, the credit or debt in a single obligation where two or more creditors and/or debtors concur "shall be presumed to be divided into as many equal shares as there are creditors or debtors, the credits or debts being considered distinct from one another x x x" [23]

However, when the law expressly declares an obligation to be solidary, there is only one debt despite the plurality of parties in the same transaction. [24]

Significantly, Section 43, Chapter 5, Book VI of the Administrative Code of 1987 provides:

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

When a disbursement is adjudged to be illegal, the law defines the relationship between and/or among the persons found liable therefor as solidary. The assailed COA Circular merely echoes this principle.

Parenthetically, an approving or certifying officer's civil liability over a disallowance hinges upon a clear showing that his participation in the unlawful transaction is tainted with bad faith, or gross negligence. [25] Absent proof to that effect, civil liability for the disallowance may not be enforced against him, as he is presumed to have performed official duties regularly and in good faith. [26]

Solidarity in debt allows "the creditor [to] proceed against any one of the solidary debtors or some or all of them simultaneously." [27] Thus, there is nothing illegal when a creditor opts to collect from one solidary debtor ahead of any other, as he is expected to do so at his convenience.

In the present case, the MIAA proceeded simultaneously against all personnel found liable for the various disallowed MIAA disbursements, albeit through different modes: by imposing salary deductions against those who remained in office and by collecting/enforcing the judgment from resigned/retired personnel through other legal means.

The first mode allows the government to directly collect the disallowed amounts from those responsible therefor and expedite the execution of judgments in disallowance cases. It is only logical for an agency to prefer imposing salary deductions, when possible, over an independent collection suit, which would only further deplete their resources.

Undeniably, the obligation of solidary debtors is cumbersome. However, they are not without recourse. The debtor who pays the solidary debt has the right to demand reimbursement from his co-debtors in proportion to each one's share therein. [28] While there is but a single debt in a solidary obligation, this proration establishes that the liability among the debtors is fundamentally joint or equal.

The foregoing demonstrates the petition's implausibility, inasmuch as the law and COA circular which petitioners wish to nullify already provide what they demand.

The Court reproduces their prayer below:

WHEREFORE, PREMISES CONSIDERED, it is most respectfully prayed of this Honorable Supreme Court that: the said provisions of Section 16.3 of the 2009 Rules and Regulations on the Settlement of Accounts, as incorporated under COA's Circular No. 2009-006 dated September 15, 2009—BE DECLARED UNCONSTITUTIONAL; thereafter, a RESOLUTION be issued, commanding and directing Respondent-COMMISSION ON AUDIT and the Respondent-MANILA INTERNATIONAL AIRPORT AUTHORITY that: in the manner of implementation of the aforementioned COA Orders of Execution be modified accordingly; by commanding and directing the Respondents that the names of Mr. Robert Uy, Mr. Florencio Montalbo, Mr. Raymond J. Anatalio, Mr. Freddie Cano, Mr. Antonio Gana, Mr. Oscar Paras, Mr. Edgardo C. Manda, Mr. Elpidio L. Mendoza, Mr. Alfredo V. Patricio—who are no longer in service and the payee Business Royale Services be INCLUDED and BE HELD equally liable. [29] (Italics and Underscoring supplied.)

Verily, the present Petition leads with a request to nullify a COA circular due to lack of constitutionality. However, a closer reading of the prayer reveals the petitioners' true intention: to assail/resist the COEs that led to the imposition of salary deductions against them.

Why did petitioners not assail directly the orders of execution and/or its implementation?

Petitioners acknowledge the following: (a) COA issued the COEs in question on March 13, 2015 and April 30, 2015; (b) MIAA first informed Lozada about the salary deductions on January 12, 2016; [30] and (c) MIAA started deducting from petitioners' salaries on February 15, 2016. [31] On the other hand, they filed the present petition only on March 27, 2017.

Certainly, more appropriate procedural remedies, if any, would have already prescribed given the time gap of over a year between the COEs' issuance and implementation and petitioners' attempt to resist them. That their last-ditch effort to go to court was belated and vaguely- denominated only suggest that the present petition is a mere afterthought.

WHEREFORE, the instant petition is DISMISSED.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Leonen, Hernando, Carandang, Lazaro-Javier, Zalameda, M. Lopez, Gaerlan, Rosario, and J. Lopez, JJ., concur.

Caguioa, J., see Concurring Opinion.

[*] Spelled as "Lllewelyn" in some parts of the rollo.

[1] Rollo, pp. 3-17.

[2] September 15, 2009.

[3] See Commission on Audit (COA) Order of Execution dated April 30, 2015 and signed by Assistant Commissioner and General Counsel, Isabel D. Agito, id. at 62-64.

[4] Id. at 14.

[5] Id. at 68.

[6] See Letter dated May 26, 2016 of COA Legal Services Sector, id at 68-70.

[7] Id. at 68, 70.

[8] Id. at 70.

[9] Id. at 65.

[10] Id. at 67.

[11] Id., emphasis omitted and italics supplied.

[12] Id. at 65.

[13] Id. at 62.

[14] Id. at 65.

[15] Id.

[16] Id. at 10.

[17] Id. at 13-14.

[18] Id. at 3.

[19] See *Tantuico, Jr. v. Republic of the Phils.*, 281 Phil. 487, 496-497 (1991).

[20] *Arceta v. Judge Mangrobang*, 476 Phil. 106, 115 (2004), citing *Lacson v. The Executive Secretary*, 361 Phil. 251, 263 (1999).

[21] *Abbas v. Commission on Elections*, 258-A Phil. 870, 885 (1989).

[22] Id.

[23] Article 1208, Civil Code of the Philippines.

[24] Article 1207, Civil Code of the Philippines

[25] *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020.

[26] See *National Transmission Corp. v. Commission on Audit*, G.R. No. 232199, December 1, 2020.

[27] Article 1216, Civil Code of the Philippines.

[28] Article 1217, Civil Code of the Philippines.

[29] *Rollo*, pp. 15-16.

[30] *Id.* at 67.

[31] *Id.* at 65.

CONCURRING OPINION

CAGUIOA, J.:

I fully concur with the ponencia's dismissal of the petition seeking to declare unconstitutional Section 16.3[1] of the Rules and Regulations on Settlement of Accounts[2] (RRSA). It is apparent that this direct resort to the Court is a substitute for a lost appeal and relies merely on petitioners' misunderstanding of the solidary nature of the liability for audit disallowances.

Petitioners decry the enforcement of the final disallowance against them through salary deduction and assert that those officers who died, retired, resigned, or were separated from the Manila International Airport Authority (MIAA) and the payee Business Royale Services should be held equally liable.[3] Either they misconstrued or lacked knowledge of the fact that the enforcement of the disallowance against the other officers had been forwarded to the Legal Office for collection.[4]

I join the ponencia's ruling that contrary to petitioners' claims, "MIAA proceeded simultaneously against all personnel found liable for the various disallowed MIAA disbursements, albeit through different modes: by imposing salary deductions against those who remained in office and by collecting/enforcing the judgment from resigned/retired personnel through other legal means." [5]

This succinctly disposes of petitioners' claim that solidary liability under Notices of Disallowance should be "equal," through a cogent discussion of the nature of solidary obligations under the Civil Code vis-à-vis the solidary liability for illegal expenditures under the Administrative Code of 1987[6] (Administrative Code). I fully concur with the ponencia's reliance on Articles 1207 and 1208 of the Civil Code.[7]

On this score, I take the opportunity to expound upon, and accordingly clarify, the unqualified and often mistaken notion that solidary liability for unlawful expenditures should be equal in terms of amount. I submit that this must be qualified by a proper understanding of what constitutes "every payment" and "full amount so paid or received" for which persons are held solidarily liable in Section 43, Book VI of the Administrative Code. Said Section 43 provides:

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

received.

x x x x

The text expressly states that solidary liability is based on and is delimited by each person's participation. The "full amount so paid or received" is based on each transaction and refers to every payment (each payment being an expenditure in itself) in which an official, employee, or person "t[ook] part." This obligation to pay the full amount to the Government is the solidary liability which attaches to an officer or employee who participated in and a payee or different payees who received the payment. Thus, the solidary liability under Section 43 may, but neither automatically nor often, correspond to the whole amount stated in the Notice of Disallowance (ND). This state of being "unequal" obtains in cases where not all persons held liable participated in the same transactions (e.g., where an authorizing officer did not authorize all payments in the ND, a certifying officer did not certify all the payments in the ND, or the payment to a particular payee is not equal to the entire amount stated in the ND).

I advanced this same proposition during the deliberations in *Madera v. COA*[8] — that Section 43 and the COA Rules admit of no possibility that a payee whose only participation in the disallowed transaction is the receipt of payment (i.e., the amount he or she actually and individually received) could be deemed solidarily liable for an amount received by another payee in the same ND because those payments are distinct transactions resulting in separate solidary obligations despite being disallowed in the same document.

COA's contemporaneous interpretation of Section 43 echoed in Section 16 of the RRSA confirms that the solidary liability attaches to persons who participated in a transaction — however many actions or transactions for which a person might have participated in, and not necessarily for the aggregate amount of the ND. Thus, there may be as many discrete solidary obligations in a single ND as there are payees or separate transactions where there is concurrence of participation by more than one person — which supplies the plurality of debtors characteristic of a solidary obligation.

To illustrate: In a disallowance where the approving officer and certifying officer who participated in the whole disbursement and two payees who received payment equal to the entire amount of the ND were held liable, more than one solidary obligation concur in the single ND: separate solidary obligations for the full payment received by each payee. In this example, each payee is solidarily liable with the authorizing and certifying officer for the payment of the full amount he received. The two payees who had no participation in the payment received by the other are thus not solidary co-debtors of each other. For the authorizing and certifying officers, they are solidarily liable with the two payees in separate solidary obligations for the full amount of the two payments — which incidentally corresponds to the aggregate amount of the ND. Disallowances are rarely this simple, however.

In this case, the same interpretation is reflected in the MIAA Notice of Salary Deduction[9] which informed petitioner Lozada that he is held solidarily liable for P2,659,752.00 pursuant to the April 30, 2015 COA Order of Execution (COE) in relation to the October 8, 2001 ND No. (CNC) 01-00-101-(99) which disallowed the aggregate amount of P10,318,580.77. In no uncertain terms, the Notice explained that this amount of liability was "computed to the extent of the disallowed amount where you have participated in as clearly indicated in the [NDs]."[10] Consequently, the salary deductions were determined as separate and unequal amounts in enforcing petitioners' liability under the two (2) COEs.[11]

Thus, I reiterate that the proper understanding of the solidary nature of the liability of unlawful expenditures under Section 43 cannot be divorced from the determination of the extent of participation of each person held liable.

Accordingly, I vote to DISMISS the Petition.

[1] SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/LIABLE.

x x x x

16.3

The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

[2] COA Circular No. 2009-006, PRESCRIBING THE USE OF THE RULES AND REGULATIONS ON SETTLEMENT OF ACCOUNTS, September 15, 2009.

[3] Petition, pp. 13-14 as cited in the ponencia, pp. 5-6.

[4] Ponencia, pp. 3-4.

[5] Id. at 8. Italics in the original.

[6] Executive Order No. 292. INSTITUTING THE "ADMINISTRATIVE CODE OF 1987," July 25, 1987.

[7] ART. 1207 The concurrence of two or more creditors or of two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestation. There is a solidary liability only when the obligation expressly so states, or when the law or the nature of the obligation requires solidarity.

ART. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, the credit or debt shall be presumed to be divided into as many shares as there are creditors or debtors, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits.

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

[9] Ponencia, pp. 2-3.

[10] Id. at 3.

[11] Id. at 3-4.

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