

GLADYS MINERVA N. BILIBLI, DARROW P. ODSEY, AND ZENAIDA BRIGIDA H. PAWID, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.*G.R. No. 231871. July 06, 2021*

Ponente: LAZARO-JAVIER, J.

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This petition for certiorari[1] seeks to set aside the Decision[2] No. 2016-483 dated December 29, 2016 of the Commission on Audit (COA) which affirmed the Notice of Disallowance No. 2013-001 and held the officers of the National Commission on Indigenous Peoples (NCIP) liable for the amount of P1,462,358.04 which it paid to the Ateneo de Manila University (ADMU) for the tuition fees and miscellaneous fees of twenty four (24) NCIP officials and employees who got admitted to the Ateneo's Masters in Public Management Scholarship Program.[3]

ANTECEDENTS

Under Resolution No. 084-2012 dated December 7, 2012, the members of the NCIP Board of Trustees authorized the NCIP to forge a Memorandum of Agreement (MOA) with the ADMU for admission in the latter's Masters in Public Management Scholarship Program of twenty five (25)[4] NCIP officials and employees whose tuition fees and miscellaneous fees shall be paid by the NCIP in the amount of P3,095,829.25.[5] The number of scholars was later on reduced to twenty four (24).

For the purpose of funding the Scholarship Program, the NCIP Board approved Resolution No. 088-2012 dated December 19, 2012 realigning the agency's unutilized 2011 budget of P13,690,090.88. Of this amount, the NCIP Board allocated P3,095,829.25 for tuition and miscellaneous fees, and transportation expenses of these scholars.[6]

On post-audit, COA Audit Team Leader (ATL) Nelda R. Monteverde and State Auditor (SA) Helenita R. Aguilar sent the following Audit Observation Memorandum No. 2013-02(12) to the NCIP, viz.:

The granting of scholarship privileges to 24 officials and employees of the NCIP was irregular since a) it was not among the mandated functions of the NCIP, b) the funding requirement of P1,462,358.04 (representing 50% of tuition and miscellaneous fees of the scholars) was not appropriated in the Agency Budget Matrix (ABM) of the Commission for CY 2012 and c) the availability of funds for the covering Memorandum of Agreement (MOA) was not certified by the Accountant. Moreover, the expenditure was excessive since the Commission availed the program of Ateneo de Manila University (ADMU) when similar program can be availed from state universities and colleges (SUCs) and the other incidental and transportation expenses were shouldered by the NCIP.[7]

By Letter[8] dated September 16, 2013, the NCIP explained to the COA Audit Team that per its proposed budget for FY 2012, it included as item therein Human Resource Development for its officers and employees. But the Department of Budget and Management (DBM) did not approve it because it was outside the NCIP's priority

projects. The NCIP, nonetheless, went on with the project by realigning its unutilized fund for General Administration and Support Services, i.e. a balance of P10,233,536.18 as of December 31, 2011, to augment the Training and Scholarship Program for FY 2012. The same included tuition fees, miscellaneous fees, and transportation expenses.

The COA Audit Team subsequently issued Notice of Disallowance No. 2013-001 to the extent of P1,462,358.04,[9] the amount thus far paid to the Ateneo. It cited the following grounds:

- The NCIP had no approved Annual Procurement Plan to cover the scholarship program;
- The contract was awarded to the ADMU without an approved budget, public bidding, or at least a recommendation to negotiate from the Board of Awards Committee;
- Some scholars were already Master's Degree holders;
- The NCIP failed to refute Audit Observation Memorandum No. 2013-02(12).[10]

The COA Audit Team also identified the persons liable for the disallowed amount, viz.: [11]

Name Position/Designation Nature of Participation in the Transaction

Aurora M. Tolete

Chief Administrative Officer/Budget Officer V

Allocated funds under Obligation request No. 200-12-1204 dated December 221, 2012 to a non-budgetary NCIP scholarship program

Darrow P. Odsey

Director IV

Certified in the ObR No. 200-12-1204 that the budget was necessary, lawful and under his direct supervision and supporting documents were valid, proper and legal for a non-budgetary NCIP program

Gladys Minerva N. Bilibli

Chief Accountant

Certified the completeness of supporting documents even knowing that she did not issue the required Certificate of Availability of Funds in the MOA

Zenaida Brigida H. Pawid

Chairperson

Approved payment and signed the MOA

24 NCIP Personnel/Scholars (listed below)

Various Positions

Beneficiary of the non-budgetary NCIP scholarship program

ADMU

Payee

Received the disallowed payment

PROCEEDINGS BEFORE THE COA-NATIONAL GOVERNMENT SECTOR (COA-NGS)

On appeal to the COA-National Government Sector (NGS) Cluster 1, the NCIP essentially argued that public bidding^[12] was not required for the scholarship program because it was neither an infrastructure project nor a procurement of goods or consulting services; the unutilized funds from the General Administration and Support Services balance of P10,233,536.18 as of December 31, 2011 were realigned to augment the Training and Scholarship program; the ADMU had a track record of specifically tailoring governance and management courses to the urgent needs of a particular government agency; and, the fact that the scholars may have been overqualified for the scholarship had no bearing on the scholarship program itself which aimed to provide the NCIP officials and employees with appropriate skills based on their technical needs.^[13]

RULING OF THE COA-NGS

By Decision No. 2016-005, the COA-NGS Cluster 1 affirmed with modification, excluding the NCIP scholars and ADMU from liability, viz.:

X X X X

2) NGS Cluster 1 Decision No. 2016-005: the appeal was partially granted by excluding the 22 NCIP scholars and ADMU from liability, while affirming the disallowance. The NCIP scholars were excluded from liability in view of their good faith in accepting the scholarship. As regards the payee, the CD explained that there was no failure on the part of the ADMU in the submission of the required documents; thus, justifying its exclusion from liability. With regard to the other persons liable named in the ND No. 2013-001, they remain liable under the disallowance.^[14] (Emphasis supplied)

RULING OF THE COA EN BANC

On automatic review, the COA En Banc affirmed in full through its assailed Decision No. 2016-483. It ruled that although the funding for activities, programs, or projects already forming part of the original budget of the agency may be augmented through savings, considering, however that the NCIP's scholarship program here did not form part of its 2012 budget, the same may not be legally funded by augmentation from reprogrammed funds.^[15]

It also directed the COA Audit Team to issue a Supplemental Notice of Disallowance on the specific NCIP officers who approved Resolution No. 084-2012, authorizing the MOA to be forged with the ADMU.^[16]

THE PRESENT PETITION

Petitioners now fault the COA with grave abuse of discretion amounting to excess or lack of jurisdiction in rendering its assailed decision. Petitioners aver, in the main:

The NCIP's "General Administration and Support Program" was part of the Agency Budget Matrix for the Fiscal Year 2011. This program included "Training and Scholarship Services" such as the 2012 Masters in Public Management Scholarship Program ^[17]

Despite the fact that the MPM Scholarship Program was administered in 2012, its funding through augmentation from savings was proper considering that the budget therefor was already appropriated in the NCIP's budget for FY 2011.^[18]

They acted in good faith when they affirmed the payment of the tuition fees, etc. to the ADMU In view of the certification issued by the concerned NCIP officers that this expense was necessary, and the supporting documents, valid and complete. Assuming that the disbursement was without legal basis, they had no knowledge of such defect.^[19]

In her separate petition, Zenaida Brigida Pawid additionally asserts that the Supplemental Notice of Disallowance

issued to the members of the NCIP who approved Resolution No. 084-2012 poses a prejudicial question to the issue of whether she and her co-petitioners may be held liable for the disbursement in question. She, therefore, calls for the suspension of the present petition pending resolution of this related case by the COA Proper.[20]

By Resolution[21] dated December 1, 2020, the parties were required to inform the Court of the final disposition of the COA on the aforesaid Supplemental Notice of Disallowance.

In its Compliance[22] dated June 18, 2021, the COA, through the Office of the Solicitor General (OSG) informed the Court that the Supplemental Notice of Disallowance (later identified as No. 2017-001-101-[2013] dated February 14, 2017 had already been resolved with finality in view of the failure of the NCIP involved to file an appeal. As in the present case, the assigned audit team similarly found the other NCIP officers named therein liable for the unauthorized disbursement.[23] The OSG attached copy of the Notice of Finality of Decision dated March 23, 2021 to its Compliance.

Back to the present case, in its comment on the petition, the COA points to the admission of NCIP itself that there was no authorized funding allocation for scholarship expenses in its approved Agency Budget Matrix FY 2012. The scholarship program, therefore, cannot be funded from its reprogrammed funds for FY 2011.[24]

The issuance of the Supplemental Notice of Disallowance did not pose a prejudicial question to petitioners' liability for the illegal disbursement since that related case does not pertain to petitioners but to another set of NCIP officers.[25] At any rate, as heretofore stated, the Supplemental Notice of Disallowance had already been resolved with finality.

ISSUES

1)

Did the COA gravely abuse its discretion when it affirmed the Notice of Disallowance?

2)

Are petitioners liable to refund the full disallowed amount?

RULING

At the outset, under Section 1, Rule 65 of the Rules of Court, the petitioner must be able to show, among others, that he or she does not have any other "plain, speedy and adequate remedy in the ordinary course of law."

Section 10, Rule X of the 2009 COA Rules of Procedure provides:

Section 10. Motion for Reconsideration. - A motion for reconsideration may be filed within the time remaining of the period to appeal, on the grounds that the evidence is insufficient to justify the decision; or that the said decision is contrary to law. Only one (1) motion for reconsideration of a decision of the Commission shall be entertained.

The COA Rules of Procedure expressly provides as a remedy the filing of a motion for reconsideration of the COA's adverse decision or resolution. Thus, petitioners' immediate resort to the Court via the present action for certiorari without first seeking a reconsideration from the COA warrants the outright dismissal of the petition. Indeed, a motion for reconsideration is a condition sine qua non to the filing of a petition for certiorari. Its purpose is to grant an opportunity for the court or tribunal to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case.[26]

This notwithstanding, however, it is settled that rules of procedure ought not to be applied in a very rigid or

technical sense, for they are precisely adopted to help secure, not override, substantial justice. Indeed, rules of procedure are mere tools designed to expedite the resolution of cases and other matters pending in court. A strict and rigid application of the rules that would tend to frustrate rather than promote justice must be avoided.[27]

Here, we relax the procedural rules and resolve the case on the merits in the higher interest of substantial justice.

There can be no valid augmentation of
funds for programs, activities, or projects
not included in the General
Appropriations Act for 2012

Sec. 25(5), Art. VI of the 1987 Constitution states:

No law shall be passed authorizing any transfer of appropriations; However, the President, the President of the Senate, The Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of Constitutional Commissions may, by law, be authorized to augment any item in the general appropriations law for their respective offices from savings in other items of their respective appropriations.

Republic Act No. 10147 (RA 10147), otherwise known as the General Appropriations Act (GAA) for FY 2011[28] further ordains:

RELEASE AND USE OF FUNDS

Sec. 59. Use of Savings. The President of the Philippines, the Senate President, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, the Heads of Constitutional Commissions enjoying fiscal autonomy, and the Ombudsman are hereby authorized to augment any item in this Act from savings in other items of their respective appropriations.

Sec. 60. Meaning of Savings and Augmentation. Savings refer to portions or balances of any programmed appropriation in this Act free from any obligation or encumbrance which are: (i) still available after the completion or final discontinuance or abandonment of the work, activity or purpose for which the appropriation is authorized; (ii) from appropriations balances arising from unpaid compensation and related costs pertaining to vacant positions and leaves of absence without pay; and (iii) from appropriations balances realized from the implementation of measures resulting in improved systems and efficiencies and thus enabled agencies to meet and deliver the required or planned targets, programs and services approved in this Act at a lesser cost.

Augmentation implies the existence in this Act of a program, activity, or project with an appropriation, which upon implementation, or subsequent evaluation of needed resources, is determined to be deficient. In no case shall a non-existent program, activity, or project, be funded by augmentation from savings or by the use of appropriations otherwise authorized in this Act.

x x x x (Emphasis supplied)

Pursuant to these provisions, a valid transfer of appropriated funds requires the concurrence of the following conditions:

- 1) There is a law authorizing the President, the President of the Senate, the Speaker of the House of Representatives, the Chief Justice of the Supreme Court, and the heads of the Constitutional Commissions to transfer funds within their respective offices;
- 2) The funds to be transferred are savings generated from the appropriations for their respective offices; and
- 3) The purpose of the transfer is to augment an item in the general appropriations law for their respective

offices.[29]

We focus on the third element, i.e. whether there exists an item in the NCIP's budget for 2012 which was deficient, thus, may be augmented by savings from its 2011 budget.

By Letter[30] dated September 16, 2013 addressed to State Auditor Helenita R. Aguilar, NCIP admitted that its scholarship program under its Human Resource Development Plan (HRDP), albeit initially proposed by the agency for its FY 2012 budget, was disapproved by the DBM because it was not a priority project of the agency. Consequently, the HRDP project and the corresponding funds therefor were not among the items approved under the 2012 General Appropriations Act, specifically with respect to the budget of the NCIP.[31] In other words, the proposed HRDP is just that: a mere proposal, sans any funding. Hence, there can be no augmentation from the savings for an item or project that was not included in the approved budget of the agency.

Sanchez v. Commission on Audit[32] is in point:

As regards the requirement that there be an item to be augmented, which is also a sine qua non like the first requirement on the existence of savings, there was no item for augmentation in the appropriation for the Office of the President at the time of the transfers in question. Augmentation denotes that an appropriation was determined to be deficient after the implementation of the project or activity for which an appropriation was made, or after an evaluation of the needed resources. To say that the existing items in the appropriation for the Office of the President already needed augmentation as early as 31 January 1992 is putting the cart before the horse.

x x x x

The absence of any item to be augmented starkly projects the illegality of the diversion of the funds and the profligate spending thereof.

With the foregoing considerations, it is clear that no valid transfer of the Fund to the Office of the President could have occurred in this case as there was neither allegation nor proof that the amount transferred was savings or that the transfer was for the purpose of augmenting the item to which the transfer was made, (emphases added)

In sum, the so called augmentation of the NCIP's scholarship program is utterly devoid of legal basis. Consequently, the COA Proper did not commit grave abuse of discretion when it sustained the Notice of Disallowance No. 2013-001 issued by the COA Audit Team corresponding to P1,462,358.04,[33] the amount paid by NCIP to the ADMU.

While petitioners acted in bad faith when they certified and approved the realignment of funds, they are not required to pay back the amounts disbursed to the scholars and the ADMU because per Decision No. 2016-005 of the COA-NGS Cluster 1, these recipients had already been excused from returning these amounts

In determining whether the certifying, approving, and authorizing officers are liable for the disapproved disbursement, we are guided by the Rules on Return laid down in *Madera v. COA*,[34] viz.:

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.

- 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 Section 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, (emphasis added)

As explained in Madera, Sections 38 and 39,[35] Chapter 9, Book I, of the Administrative Code expressly state that a public officer may only be held civilly liable for acts done in the performance of his or her official duty upon a clear showing that he or she performed such duty with bad faith, malice, or gross negligence. Section 43, Chapter 5, Book IV of the Administrative Code[36] further underscores that guilty officers are jointly and solidarily liable for the disallowed amounts.

Malice or bad faith implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. Gross neglect of duty or gross negligence, on the other hand, refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give

to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.[37]

In contrast, good faith is ordinarily used to describe a state of mind denoting "honesty 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." [38] Nevertheless, this presumption of good faith is overturned when there is a violation of a clear and explicit rule.

The Court has invariably ruled that the presumption of good faith fails when an explicit law, rule, or regulation has been violated, viz.:

In *Reyna v. COA*, [39] the Court affirmed the liability of the public officers, notwithstanding their claim of good faith since their actions violated an explicit rule in the Land Bank of the Philippines' Manual on Lending Operations.

Similarly, in *Casal v. OCA*, [40] the Court noted that despite the prohibition in Section 7 of AO No. 268 and Section 2 of AO No. 29 against the grant of incentive benefits, sans authority from the President, the National Museum officers proceeded to approve and authorize the payment of the assailed incentive award to its officials and employees. The Court, thus, ordained that even if the grant of the incentive award was not for a dishonest purpose, the patent disregard of the issuances of the President amounted to gross negligence, making the approving officers liable for the refund of the disallowed incentive award.

Another. In *Tesda v. COA*, [41] the Court ruled that the blatant violation by the Director-General of the clear provisions of the Constitution, the 2004- 2007 GAAs and the COA circulars equated to gross negligence amounting to bad faith.

Applying *Reyna*, *Casal*, and *Tesda* here, petitioners' invocation of good faith must fail. For they all participated in approving and authorizing the payment of funds for a non-existent item in the FY 2012, in clear violation of the Constitution and the 2011-2012 GAAs. [42]

Nonetheless, petitioners are not required to pay back the amount paid to the scholars and the ADMU because these recipients had been excused from paying what they received under the scheme. As held in *Abellanosa v. COA*: [43]

It may not be amiss to point out that among the petitioners, two of them are approving/certifying officers. These are Laigo as certifying officer, and Abellanosa, as authorizing officer assigned as officer-in-charge of the NHA Iligan District Office. According to Madera, approving/authorizing officers are solidarily liable to return only the net disallowed amount, upon a showing that they had performed their official duties and functions in bad faith, with malice or gross negligence. To recount, the net disallowed amount is the total disallowed amount minus the amounts excused to be returned by the recipients either under Rules 2c or 2d of the Madera Rules on Return.

Here, since the civil liability for the disallowed amounts had already been completely excused under Rule 2d of the Madera rules, there is nothing more to return. Nonetheless, the foregoing pronouncement on petitioners' civil liability notwithstanding, the State may, if so warranted, pursue any other appropriate administrative or criminal actions against any of them (including Abellanosa and Laigo) pursuant to existing laws and jurisprudence, (emphasis added)

And in *Pastrana v. COA*: [44]

Rule 2b of the Madera Rules on Return states that the 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 excludes the amounts excused under Rules 2c and 2d. Senior Associate Justice Estela M. Perlas-Bernabe defines the term – net disallowed amount – as the total disallowed amount minus the amounts excused to be returned by the payees.

Generally, Rule 2c of the Madera Rules obligates the recipients, whether approving or certifying officers or mere passive recipients, to return the disallowed amounts respectively received by them, subject to certain exceptions. However, considering that the payee-recipients in this case had already been absolved from liability by the COA EnBanc in its January 30, 2018 Resolution and that said Resolution had already attained finality, the amounts respectively received by said payee-recipients shall be discounted in the determination of the civil liability of the petitioners as approving/certifying officers. (emphasis added)

As aptly observed by Senior Justice Perlas-Bernabe here:

Hence, since the entire disallowed amount received by the payees had already been excused at the COA level, the solidary liability of petitioners, who were not recipients of any portion of the disallowed amount, has been practically reduced to zero (0), effectively negating liability on their part.

It should be stressed, however, that the fact that petitioners are effectively excused from civil liability for the disallowed amount does not relieve them from any appropriate administrative case that may be filed against them for their gross negligence. (emphasis added)

Additionally, it cannot be denied that the disbursement was intended to upgrade the quality of the human resource of the NCIP, specifically in terms of further studies and training; and ultimately to improve the efficiency and effectiveness of NCIP in the discharge of its mandate under the law. In the end, the ultimate beneficiaries of this funding would be the indigenous peoples who NCIP seeks to serve.

Notably, the Court, in Abellanosa, cautioned that the excuse to return disallowed amounts under Rule 2d of the Madera Rules "must constitute a bona fide instance which strongly impels the Court to prevent a clear inequity arising from a directive to return."

In this case, the disallowed amounts ultimately redounded to the benefit of the NCIP, more particularly, as payment of its 24 officials and employees/scholars. It is discerned that NCIP is a sui generis government agency that came about as a result of the promise of the State to recognize indigeneity with both respect and pride as a fundamental element of nation building and national consciousness and as a social justice measure to correct past mistakes of prejudice and discrimination against indigenous peoples. The protection of the rights of indigenous peoples carries with it significant social justice considerations, which, in turn, necessitates the development and empowerment of NCIP's officials, at least insofar as the peculiar facts of this case are concerned.

This salutary facet of the unfortunately unauthorized funding is not lost upon this Court and may fall within Madera's Rule 2d which allows the Court to "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."

ACCORDINGLY, the petition is GRANTED IN PART and the assailed Decision No. 2016-483 dated December 29, 2016 of the Commission on Audit, REVERSED and SET ASIDE IN PART. Petitioners Gladys Minerva N. Bilibli, Darrow P. Odsey and Zenaida Brigida H. Pawid are EXCUSED FROM returning the disallowed amount of P1,462,358.04.

SO ORDERED.

Gesmundo, C.J., Perlas-Bernabe, Caguioa, Hernando, Carandang, Inting, Zalameda, M. Lopez, Gaerlan, Rosario, and J. Lopez, JJ., concur.

Leonen, J., I concur. See separate opinion.

[1] Under Rule 64 of the Revised Rules of Court.

[2] Rollo, pp 80-89.

[3] Jonathan D. Adaci, Jose D. Agayo, Randy Q. Bernales, Gladys Minerva N. Bilibli, Joylyn F. Buhong, Eduardo H. Delfin, Owen M. Ducena, Jose P. Enciso III, Adelita S. Gawilan, Dominador M. Gomez, Caridad Katherine P. Gullunan, Rizalyn C. Jimenez, Karen Joy N. Kalaw, Lilibeth D. Malabanan, Johanna I. Mambuay, Ricardo Mateo V, Jonie Mitchell D. Minguillan, Gina D. Naimes, Pinky Grace P. Pabelic, Anabel T. Pinkihan, Leonor O. Quintayo, Ma. Theresa A. Santos, Aurora M. Tolete, and Perlita C. Tumindog.

[4] Later, only twenty-four (24) NCIP officers and employees qualified as scholars.

[5] Rollo, p. 4.

[6] Id.

[7] Id. at 204-205.

[8] Id. at 177-182.

[9] The amount represents payment of fifty (50%) of tuition fees and miscellaneous fees, was disallowed.

[10] Rollo, pp. 81 and 169

[11] Id. at 82, 169-170.

[12] Under RA 9184 otherwise known as "Government Procurement Reform Act" of 2003.

[13] Rollo, pp. 83-84.

[14] Id. at 84.

[15] Id. at 86.

[16] Id. at 88.

[17] Id. at 12.

[18] Id. at 13.

[19] Id. at 15.

[20] Id at 163.

[21] Id. at 238-239

[22] Id. at 252-253.

[23] Id. at 264.

[24] Id. at 211.

[25] Id. at 217.

[26] See *Novateknika Land Corporation v. PNB*, 706 Phil. 414, 421-422 (2013).

[27] See *Malixi v. Baltazar*, 821 Phil. 423, 440 (2017); *Durban Apartments Corporation v. Catacutan*, 514 Phil. 187, 195 (2005).

[28] Republic Act No. 10147 "An Act Appropriating Funds For The Operation of The Government of The Republic of The Philippines From January One To December Thirty One, Two Thousand And Eleven, And For Other Purposes."

[29] *Verceles, Jr. v. COA*, 794 Phil. 629, 654 (2016).

[30] *Rollo*, pp. 177-182.

[31] Id. at 179-180.

[32] 575 Phil. 428, 462-463 (2008).

[33] The amount represents payment of fifty (50%) of tuition fees and miscellaneous fees, was disallowed.

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

[35] Section 38. Liability of Superior Officers. —

1)

A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

2)

Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.

3)

A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

Section 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

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

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and

should he fail to remove such official or employee, the President may exercise the power of removal.

[37] Securities and Exchange Commission v. COA, G.R. No. 252198, April 27, 2021.

[38] See *Sambo v. COA*, 811 Phil. 344, 355-356 (2017).

[39] See 657 Phil. 209, 228 (2011).

[40] 538 Phil 634, 644 (2006), cited in *Delos Santos v. COA*, 716 Phil. 322, 336 (2013).

[41] 729 Phil. 60, 78 (2014).

[42] *Casal v. COA*, *supra*.

[43] G.R. No. 185806, November 17, 2020.

[44] G.R. No. 242082, June 15, 2021.

CONCURRING OPINION

LEONEN, J.:

Petitioners in this case are officials and employees of the National Commission on Indigenous Peoples (NCIP), who had a lofty goal: the development of skills and competencies for the NCIP to better serve indigenous peoples.

A scholarship program was provided for these officials and employees. However, the Commission on Audit issued a Notice of Disallowance on the ground that there was no basis for the NCIP to allocate funds for the scholarship program.

I join the very enlightened ponencia of my esteemed colleague, Justice Amy Lazaro-Javier, in excusing the recipients of the scholarship funds, as well as the approving and certifying officers, from their duty to return the disallowed amounts.

I just add that this case involves facts which warrants the application of Rule 2(d) of the rules in *Madera v. Commission on Audit*,^[1] to wit:

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

....

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.

The proper interpretation and application of Rule 2d was explained in *Abellanosa v. COA*^[2]

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.^[3] (Emphasis in the original).

Social justice considerations and other bona fide reasons exist in this case. First, it involves officials and employees of the NCIP. Some of these officials and employees may possibly be members of indigenous cultural communities.[4] Second, the knowledge gained by the recipients of the scholarship program would help in the capacity-building of the NCIP.

Our Constitution specifically recognizes indigenous cultural communities as a vulnerable sector. It is a state policy to recognize and promote "the rights of indigenous cultural communities within the framework of national unity and development." [5] Several provisions in the Constitution also mention indigenous cultural communities.[6] This acknowledges the lack of opportunities for many of their marginalized communities.

As recognized in the ponencia, the scholarship program for post-graduate studies of the officials and employees of the NCIP would "upgrade the quality of the human resource... and ultimately improve the efficiency and effectiveness of NCIP," [7] as the government agency tasked to protect and promote the interests of indigenous cultural communities.[8]

The NCIP's act of providing a scholarship program for its officials and employees is laudable. It would be inequitable for this Court to require the return of the disallowed amount because in the long run, the skills and competencies gained by the recipients of the NCIP scholarship program will be utilized in further promoting and protecting the indigenous cultural communities it serves.

This, among the other cases penned by the esteemed ponente, puts more spirit into our Constitution's device to erase the injustices we have done in the past.

Without reservations, I concur.

[1] G.R. No. 244128, September 8, 2020, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435>> [Per J. Caguioa, En Banc].

[2] G.R. No. 185806, November 17, 2020, < <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/6672>> [Per J. Perlas-Bernabe, En Banc].

[3] Id.

[4] Republic Act No. 8371 (1997), sec. 41 requires that the Chair and the Commissioners of the National Commission on Indigenous Peoples be "bona fide members of the ICCs/IPs as certified by his/her tribe."

[5] CONST., art. 2, sec. 22 which provides:

SECTION 22. The State recognizes and promotes the rights of indigenous cultural communities within the framework of national unity and development.

[6] See also CONST., art. VI, sec. 5(2); art. 12, sec. 5; art. 13, secs. 1 and 6; art. 14, secs. 2, 10 and 17; and art. XVI, sec. 12.

ARTICLE VI

The Legislative Department
SECTION 5.

....

(2) The party-list representatives shall constitute twenty per centum of the total number of representatives including those under the party list. For three consecutive terms after the ratification of this Constitution, one-half of the seats allocated to party-list representatives shall be filled, as provided by law, by selection or election from

the labor, peasant, urban poor, indigenous cultural communities, women, youth, and such other sectors as may be provided by law, except the religious sector.

ARTICLE XII

National Economy and Patrimony

SECTION 5. The State, subject to the provisions of this Constitution and national development policies and programs, shall protect the rights of indigenous cultural communities to their ancestral lands to ensure their economic, social, and cultural well-being.

The Congress may provide for the applicability of customary laws governing property rights or relations in determining the ownership and extent of ancestral domain.

ARTICLE XIII

Social Justice and Human Rights

SECTION 1. The Congress shall give highest priority to the enactment of measures that protect and enhance the right of all the people to human dignity, reduce social, economic, and political inequalities, and remove cultural inequities by equitably diffusing wealth and political power for the common good.

SECTION 6. The State shall apply the principles of agrarian reform or stewardship, whenever applicable in accordance with law, in the disposition or utilization of other natural resources, including lands of the public domain under lease or concession suitable to agriculture, subject to prior rights, homestead rights of small settlers, and the rights of indigenous communities to their ancestral lands.

The State may resettle landless farmers and farmworkers in its own agricultural estates which shall be distributed to them in the manner provided by law.

ARTICLE XIV

Education, Science and Technology, Arts, Culture, and Sports

SECTION 2. The State shall:

....

(4) Encourage non-formal, informal, and indigenous learning systems, as well as self-learning, independent, and out-of-school study programs particularly those that respond to community needs;

SECTION 10. Science and technology are essential for national development and progress. The State shall give priority to research and development, invention, innovation, and their utilization; and to science and technology education, training, and services. It shall support indigenous, appropriate, and self-reliant scientific and technological capabilities, and their application to the country's productive systems and national life.

SECTION 17. The State shall recognize, respect, and protect the rights of indigenous cultural communities to preserve and develop their cultures, traditions, and institutions. It shall consider these rights in the formulation of national plans and policies.

ARTICLE XVI

General Provisions

SECTION 12. The Congress may create a consultative body to advise the President on policies affecting indigenous cultural communities, the majority of the members of which shall come from such communities.

[7] Ponencia, p. 13.

[8] Republic Act No. 8371 (1997).

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