

**JUAN B. NGALOB, IN HIS CAPACITY AS VICE-CHAIRMAN OF THE
REGIONAL DEVELOPMENT COUNCIL – CORDILLERA
ADMINISTRATIVE REGION [RDC-CAR] AND FORMER REGIONAL
DIRECTOR OF THE NATIONAL EC...**

G.R. No. 238882. January 05, 2021

Ponente: LOPEZ, J.

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LOPEZ, J.:

This Petition for Certiorari[1] under Rule 64, in relation to Rule 65, of the Revised Rules of Court implores this Court to review respondent Commission on Audit's (COA) Decision No. 2016-335[2] dated November 9, 2016 and Resolution No. 2017-491[3] dated December 28, 2017.

Facts

On August 28, 2009, the Cordillera Administrative Region (CAR) - Regional Development Council (ROC) Executive Committee (ExCom), headed by its Chairman, petitioner Juan B. Ngalob (Ngalob), issued RDC ExCom Resolution No. 73,[4] authorizing the grant of incentives covering January to June 2008, and quarterly releases for the third and fourth quarters of 2009 to compensate RDC-CAR officials and secretariat's "extra work" in implementing the RDC-CAR Work Program on Development and Autonomy. The CAR-RDC disbursed P1,095,000.00 for this purpose.

Similarly, on December 10, 2010, the RDC ExCom issued Resolution No. CAR-103,[5] providing for a year-end incentive to its officers and secretariat, in lieu of honoraria from the ROC Regional Development and Autonomy Fund, to recognize the considerable responsibilities and tasks related to regional autonomy that they undertook over and above their regular functions. This time, P1,080,000.00 was disbursed.

Upon audit, the incentives amounting to P1,095,000.00 were disallowed in Notice of Disallowance (ND) No. 11-001-101(09)[6] dated April 13, 2011, while the year-end incentives amounting to P1,080,000.00 were disallowed in NO No. 11-005-101(10)[7] dated June 21, 2011, both for lack of legal basis. Petitioners were charged liable for the transactions in both NDs:[8]

Name

Position/Designation

Nature of Participation in the Transaction

Juan B. Ngalob

Regional Director

Approved the payment of Staff Incentive

Herminia B. Samuel

Reg'l Accountant

Certified that supporting documents are complete and proper

Paterno C. Laboy

Chief Admin. Officer

Certified that charges are necessary and lawful and supporting documents are valid, proper and legal

All payees in the payroll

Benefited as payees

Ngalob appealed the NDs to the COA-CAR Director. In separate Letters[9] dated August 15, 2011, Ngalob explained that under the General Appropriations Act (GAA) of 2007, P15,000,000.00 was allocated for the RDC-CAR to pursue social preparation of the CAR into an autonomous region. As this task was not among the regular functions of the RDC under Executive Order (EO) No. 325, the RDC-CAR considered it as a special project or an extra work, the undertaking of which entitles its officials and employees to honoraria under Department of Budget and Management (DBM) Circular No. 2007-2[10] and Section 46(e)[11] of RA No. 9524[12] (2009 GAA) and Section 49(e)[13] of RA No. 9970[14] (2010 GAA). Ngalob also claimed that in the determination of the grant, the RDC-CAR was guided by factors laid down in DBM Circular No. 2007-2 such as the nature of work assignments, the level of difficulty of the duties assigned, the extent of productivity, and quality of performance in terms of completed and accepted deliverables in accordance with the timeframes set per project. Finally, Ngalob averred that the incentives were legally sourced from the budget allocated in the 2007 GAA in accordance with DBM Circular No. 2007-2.

In response, the Audit Team Leader maintained that the task of socially preparing the CAR towards autonomy was not a special project because the RDC-CAR was created under EO No. 30[15] precisely to carry out the purposes of the CAR's creation under EO No. 220,[16] i.e., to "[p]repare for the establishment of the autonomous region in the Cordilleras,"[17] among others. The Audit Team Leader also noted that the disallowed incentives were merely based on the RDC ExCom Resolution. This violates COA Decision No. 77-110, which states that the authority to grant additional, double, or indirect compensation to any elective or appointive public officer or employee under Article IX-B, Section 8[18] of the 1987 Constitution pertains to statutes passed by the Legislature. Moreover, under the New Government Accounting System (NGAS), incentives, honoraria, and other allowances are proper charges to the appropriation for Personal Services (PS). Here, the disallowed incentives were improperly charged against the agency's Maintenance and Other Operating Expenses (MOOE) allotment since there was no appropriation for the payment of incentives under the agency's PS account. Lastly, the COA Audit Team Leader explained that the amount given to each payee had no basis as the RDC-CAR erroneously relied upon DBM Circular No. 2007-02, which applies to honoraria and not incentives.[19]

COA-CAR Ruling

In its Decision No. 2012-35[20] dated August 31, 2012, the COA-CAR ruled that the social preparation of the CAR for autonomy is not an additional task, but a regular function of the RDC-CAR because it is in line with one of the functions of the RDCs under Section 4 (j) of EO No. 325,[21] i.e., to "[p]erform other related functions and activities as may be necessary to promote and sustain the socio-economic development of the regions." The COA-CAR also affirmed that there was no appropriation for incentives or honoraria in the RDC-CAR's PS account under the 2009 and 2010 GAAs; hence, the incentives were illegally charged against the agency's MOOE. Further, the COA-CAR observed that while the RDC-CAR asserted that the incentives were given in lieu of honoraria, the basic requirements set forth for the grant of honoraria under Section 46(e)[22] of the 2009 GAA

and Section 49(e)[23] of the 2010 GAA were not complied with. Aside from its general allegation that the incentives were gauged against factors provided in DBM Circular No. 2007-2, the RDC-CAR did not present proof of the approved plan of activities for the alleged special project and proof of target accomplishment and deliverables to support the grant of incentives. Lastly, the COA-CAR ruled that the RDC-CAR has no authority to grant additional allowances, incentives, or compensation.

In all, the COA-CAR found no factual and legal basis for the grant of the incentives and disposed as follows:

WHEREFORE, the herein appeal is denied and the disallowances under ND No. 11-001-101(09) and ND No. 11-005-101(10) dated April 13, 2011 and June 21, 2011, respectively, are AFFIRMED.[24]

Aggrieved, Ngalob filed a Petition for Review[25] before the COA Proper, reiterating the same arguments. In addition, Ngalob invoked good faith and social justice in favor of labor to sustain the grant of the incentives.

COA Proper Ruling

In its Decision No. 2016-335[26] dated November 9, 2016, the COA Proper affirmed the COA-CAR Decision. The COA Proper also found Ngalob's plea of social justice, good faith, and liberal interpretation of the law unavailing due to the patent disregard of the basic and essential requirements of law, thus:

WHEREFORE, premises considered, the petition is hereby DENIED for lack of merit. Accordingly, Commission on Audit - Cordillera Administrative Region Decision No. 2012-35 dated August 31, 2012 and ND Nos. 11-001-101-(09) dated April 13, 2011 and 11-005-101-(10) dated June 21, 2011 on the payment of year-end incentives to Regional Development Council officials and National Economic and Development Authority - Cordillera Administrative Region employees for calendar years 2009 and 2010 in the amounts of [P]1,095,000.00 and [P]1,080,000.00, respectively, are AFFIRMED.[27] (Emphasis in the original.)

Ngalob's motion for reconsideration was likewise denied in the COA Proper Decision No. 2017-491:[28]

WHEREFORE, premises considered, the Motion for Reconsideration of Mr. Juan B. Ngalob, former Vice Chairman, Regional Development Council (RDC) - Cordillera Administrative Region (CAR), and Regional Director, National Economic and Development Authority (NEDA) - CAR, et al., is hereby DENIED for lack of merit. Accordingly, Commission on Audit (COA) Decision No. 2016-335 dated November 9, 2016, which denied the Petition for Review of COA-CAR Decision No. 2012-35 dated August 31, 2012 and affirmed Notice of Disallowance Nos. 11-001-101(09) dated April 13, 2011 and 11-005-101(10) dated June 21, 2011, on the payment of year-end incentives to RDC officials and NEDA - CAR employees for calendar years 2009 and 2010, in the amounts of [P]1,095,000.00 and [P]1,088,000.00, respectively, is AFFIRMED.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is directed to forward the records of the case to the Office of the Ombudsman for investigation and filing of appropriate charges considering the possible violation of the provisions of the Revised Penal Code against the approving officers.[29]

Hence, this Petition, raising the following issues:

(1)

Whether the COA acted with grave abuse of discretion upholding the disallowance; and

(2)

Whether the COA acted with grave abuse of discretion affirming petitioners' liability.

Ruling

The Petition lacks merit.

Propriety of the Disallowance

At the outset, we emphasize the basic rule that the burden of proving the validity or legality of the grant of allowance, benefits, or compensation is with the government agency or entity granting, or the employee claiming them.[30] Here, petitioners cite DBM Circular No. 2007-2 and DBM Circular No. 2007-510[31] as authorization to grant incentives to their employees and officials for a special project that was allegedly undertaken. They argue that the mandate to pursue social preparation in the CAR for regional autonomy is a special project because it is not a part of the RDC-CAR's regular and permanent functions, entitling its officials and employees to additional incentives. They also claim that the grant was in accordance with the guidelines set forth in these circulars.

Petitioners are mistaken. The general averment of "pursuing social preparation of the CAR into an autonomous region" does not suffice to prove that a "project" was undertaken to warrant disbursements for the payment of honoraria. Paragraph 2.2 of DBM Circular No. 2007-2 defines a "special project" as "a duly authorized inter-office or intra-office undertaking of a composite group of government officials and employees which is not among the regular and permanent functions of their respective agencies. Such undertaking x x x is reform-oriented or developmental in nature, and is contributory to the improvement of service delivery and enhancement of the performance of the core functions of an agency or member agencies." Conformably, under the Administrative Code of 1987,[32] a "project" is defined as "a component of a program covering a homogenous group of activities that results in the accomplishment of an identifiable output,"[33] while a "program" refers to the functions and activities necessary for the performance of a major purpose for which a government agency is established."[34] Paragraph 4.3 of DBM Circular No. 2007-2 is explicit in requiring that a special project plan should be "prepared in consultation with all personnel assigned to a project and approved by the department/agency/lead agency head," containing the following:

- title of the project;
- objectives of the project, including the benefits to be derived therefrom;
- outputs or deliverables per project component;
- project timetable;
- skills and expertise required;
- personnel assigned to the project and the duties and responsibilities of each;
- expected deliverables per personnel assigned to the project per project component at specified timeframes; and
- cost by project component, including the estimated cost for honoraria for each personnel based on man-hours to be spent in the project beyond the regular work hours; personnel efficiency should be a prime consideration in determining the man-hours required.

Moreover, paragraph 4.5 of DBM Circular No. 2007-2 was emphatic in requiring that:

4.5

Payment of honorarium shall be made only upon completion and acceptance by the agency head of the deliverable per project component. (Emphasis supplied.)

Similar conditions for the grant of honoraria to officials and employees assigned to special projects are imposed in the 2009 and 2010 GAAs, i.e., aside from the special project entailing rendition of additional work over and above

their regular workload, the special project should be "reform-oriented or developmental, contribute[s] to the improvement of service delivery and enhancement of the performance of the core functions of the agency, and ha[s] specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year; x x x." [35]

In this case, while petitioners put forward an identifiable output, i.e., to socially prepare the CAR for regional autonomy, only general principles on the concept of special project and honorarium were presented. Petitioners did not show any approved plan of activities or undertakings for the accomplishment of such goal. Despite several opportunities before the Audit Team, the COA-CAR, the COA Proper, and even before this Court, the RDC-CAR consistently disregarded its burden to prove the validity or legality of the disallowed incentives by failing to present an approved special project plan in accordance with paragraph 4.3 of DBM Circular 2007-2. Thus, absent a specific project and its supporting documents contemplated under the rules, we find no reason and basis to rule on whether such project can be considered as a regular function of the RDC-CAR.

Furthermore, even assuming that a legitimate special project was undertaken, the RDC-CAR failed to present a transparent and fair "performance evaluation plan that considers timeliness, quality outputs, and other applicable work efficiency determinants," required under paragraph 4.7 [36] of DBM Circular No. 2007-2 to be the basis of the computation of the "honoraria." The 2009 and 2010 GAAs mandated that "the rate of honoraria [be dependent upon] the level of responsibilities, nature of work rendered, and extent of individual contribution to produce the desired outputs: PROVIDED, [t]hat [the] total honoraria received from all special projects shall not exceed [25%] of the annual basic salaries." [37] Petitioners failed to adduce evidence of accomplishments or deliverables upon which the computation of incentives may have been based. Interestingly, RDC ExCom Resolution No. CAR-103 itself required the RDC secretariat to make a determination of the incentives on the basis of additional tasks given to the RDC staff and officers, the burden of accountability, and other criteria that the secretariat head deemed appropriate. [38] Yet, the records bare no proof that the secretariat complied with such determination before petitioners-officers approved and certified the release of the incentives granted.

What is more, the COA appropriately observed that the disallowed incentives were illegally charged against the agency's MOOE as there was no specific appropriation in the RDC-CAR's PS account under the 2009 and 2010 GAAs for the payment of honoraria or incentives to officers and employees assigned to a special project. All government agencies were prescribed to use the NGAS effective January 1, 2002 under COA Circular No. 2001-004. [39] The NGAS Manual provides that "basic pay, all authorized allowances bonus, cash gifts, incentives and other personnel benefits of officials and employees of the government" are expenses chargeable against the agency's PS account, not the MOOE, which only "include expenses necessary for the regular operations of an agency like, among others, travelling expenses, training and seminar expenses, water, electricity, supplies expense, maintenance of property, plant and equipment, and other maintenance and operating expenses." [40] Concomitantly, DBM Circular No. 2007-2 provides that the amounts necessary for payment of honoraria shall be "charged against [the national government agencies'] respective appropriations in the annual GAA." [41] As well, DBM Circular No. 2007-510 provides that the honoraria should be "charged against the appropriations for the purpose in the annual GAA." [42] Thus, the COA correctly ruled that these DBM circulars necessarily required that there should have been a specific appropriation for incentives or honoraria under the RDC-CAR's PS account in the 2009 and 2010 GAAs. This is consistent with Section 29(1), Article VI of the 1987 Constitution which firmly declares that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." We have explained before that this constitutional edict requires that the GAA be purposeful, deliberate, and precise in its provisions and stipulations. The requirement under the DBM circulars that the amounts to fund the honoraria were to be appropriated by the GAA only meant that such funding must be purposefully, deliberately, and precisely included in the GAA. [43] Hence, Section 57 [44] of the 2009 GAA and

Section 58[45] of the 2010 GAA state that even the grant of personnel benefits authorized by law shall be deemed unauthorized if not supported by specific appropriations.

In sum, we find no grave abuse of discretion that can be imputed against the COA in affirming the NDs. The RDC-CAR utterly failed to discharge its burden to establish the legal and factual basis of its grant of incentives in 2009 and 2010.

Liability to Refund the Disallowed Amounts

In the recent case of *Madera v. Commission on Audit*,[46] the Court clarified the jurisprudential variations in the refund of disallowed amounts and formulated rules for the liabilities of the persons involved, viz.:

E. The Rules on Return

x x x x

2.

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

- 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.
- 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.
- 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.
- 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 civil liability of approving or certifying officers provided under Sections 38[47] and 39,[48] Chapter 9, Book I of the Administrative Code of 1987, and the treatment of such liability as solidary under Section 43,[49] Chapter 5, Book VI of the same Code, are grounded upon the manifest bad faith, malice, or gross negligence of public officers, who have in their favor the presumption of good faith and regularity in the performance of official duty.[50] On the other hand, the payees' obligation in a disallowed transaction is grounded upon the civil law principles of *solutio indebiti*[51] and unjust enrichment.[52] Thus, while the officers' good faith or bad faith is determinative of their liability, such state of mind is immaterial with regard to the recipients' obligation to return in disallowance cases. By way of exception, the recipients do not incur liability to refund when they can prove their entitlement to what they received as a matter of fact and law because in such situation, there is no undue payment and the government incurs no loss. Additionally, certain justifications that may excuse a recipient's liability to return may be recognized such as undue prejudice, social justice considerations, and other bona fide exceptions depending on the purpose and nature of the disallowed amount relative to the attending circumstances.[53]

In this case, no badge[54] of good faith can be appreciated in favor of the approving and certifying officers considering the blatant disregard of the rules and laws that they themselves invoked and relied upon. By

jurisprudence, the palpable disregard of laws and other applicable directives amounts to gross negligence which betrays the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.[55] Hence, the approving and certifying officers are solidarily liable to refund the disallowed amount.

As for the payees, petitioners cite the case of *Silang, et al. v. Commission on Audit*,[56] wherein the Court considered the payees' good faith to justify the excuse of their liability in the disallowed transaction. To stress, we have exhaustively elucidated in *Madera* that such justification is unwarranted because mere receipt of public funds without valid basis or justification, regardless of good faith or bad faith, is already undue benefit that gives rise to the obligation to return what was unduly received. Notably, petitioners failed to proffer evidence of actual service rendered or work accomplished to rationalize the incentives received. Neither is there any genuine and bona fide justification that would warrant the application of equitable considerations to absolve the recipients' civil obligation to the government. Thus, all the recipients are individually liable to return the amounts that they received.

FOR THESE REASONS, the Petition is DISMISSED. Decision No. 2016-335 dated November 9, 2016 and Resolution No. 2017-491 dated December 28, 2017 of the Commission on Audit are AFFIRMED with MODIFICATION. The approving and certifying officers are solidarity liable for the return of the disallowed incentives, while all payees are individually liable to return the amounts that they received.

SO ORDERED.

Peralta, C. J., Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Delos Santos, Gaerlan, and Rosario, JJ., concur.

[1] Rollo, pp. 23-45.

[2] Id. at 87-92.

[3] Id. at 50-54.

[4] Id. at 55-56.

[5] Id. at 57-58.

[6] Id. at 59.

[7] Id. at 60.

[8] Id. at 59-60.

[9] Id. at 61-63 and 64-66.

[10] "Guidelines on the Grant of Honoraria Due to Assignment in Government Special Projects."

[11] SEC. 46. Honoraria. - The respective agency appropriations for honoraria shall only be paid to the following:

x x x x

(e) Officials and employees assigned to special projects, subject to the following conditions:

(i) Said special projects are reform-oriented or developmental, contribute to the improvement of service delivery and enhancement of the performance of the core functions of the agency, and have specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year; and

(ii) Such assignment entails rendition of work in addition to, or over and above, their regular workload. In these instances, rate of honoraria shall depend on the level of responsibilities, nature of work rendered, and extent of individual contribution to produce the desired outputs: PROVIDED, That total honoraria received from all special projects shall not exceed twenty-five percent (25%) of the annual basic salaries; x x x.

[12] 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 NINE, AND FOR OTHER PURPOSES; approved on March 12, 2009.

[13] SEC. 49. Honoraria. - The respective agency appropriations for honoraria shall only be paid to the following:

x x x x

(e) Officials and employees assigned to special projects, subject to the following conditions:

(i) Said special projects are reform-oriented or developmental, contribute to the improvement of service delivery and enhancement of the performance of the core functions of the agency, and have specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year; and

(ii) Such assignment entails rendition of work in addition to, or over and above, their regular workload. In these instances, rate of honoraria shall depend on the level of responsibilities, nature of work rendered, and extent of individual contribution to produce the desired outputs: PROVIDED, That total honoraria received from all special projects shall not exceed twenty-five percent (25%) of the annual basic salaries; x x x.

[14] 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 TEN, AND FOR OTHER PURPOSES; approved on January 1, 2010.

[15] "Providing for a Regional Development Council in the Cordillera Administrative Region and for other Purposes;" approved on July 30, 2001.

[16] "Creating the Cordillera Administrative Region, Appropriating Funds Therefor and for other Purposes;" approved on July 15, 1987.

[17] Executive Order (EO) No. 220, Section 3 (c); signed on July 15, 1987.

[18] SEC. 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.

Pensions or gratuities shall not be considered as additional, double, or indirect compensation. (Emphasis supplied.)

[19] Rollo, pp. 67-68.

[20] Id. at 132-137.

[21] "Reorganization of the Regional Development Councils Repealing Executive Order No. 308, Series of 1987, as amended by Executive Order Nos. 318, (S. of 1988), 347 (S. of 1989), 455 (S. of 1991) and 505 (S. of 1992);" approved on April 12, 1996.

[22] Supra note 11.

[23] Supra note 13.

[24] Rollo, p. 137.

[25] Id. at 77-86.

[26] Id. at 87-92.

[27] Id. at 91.

[28] Id. at 50-54.

[29] Id. at 52-53.

[30] *Maritime Industry Authority v. Commission on Audit*, 750 Phil. 288, 331 (2015).

[31] "Guidelines on the Grant of Honoraria to the Governing Boards of Collegial Bodies," May 8, 2007.

[32] EO No. 292 (1987).

[33] EO No. 292 (1987), Book VI, Chapter 1, Section 2(13).

[34] EO No. 292 (1987), Chapter 1, Book VI, Section 2(12).

[35] Republic Act (RA) No. 9524, Section 46(e)(i); and RA No. 9970, Section 49(e)(i). (Emphasis supplied.)

[36] 4.7. For rating purposes, the project management shall formulate a performance evaluation plan that is transparent and fair, and considers timeliness, quality of outputs, and other applicable work efficiency determinants.

[37] RA No. 9524, Section 46(e); RA No. 9970, Section 49(e)(ii); and DBM Circular No. 2007-2, paragraph 4.9.

[38] Rollo, p. 58.

[39] October 30, 2001.

[40] COA Circular No. 2002-002 (2002), Volume III, Chapter 1 Section 7(a) and (b).

[41] DBM Circular No. 2007-2, par. 5.1.

[42] DBM Circular No. 2007-510, par. 6.1.

[43] See *Nazareth v. Han. Villar, et al.*, 702 Phil. 319, 338 (2013).

[44] SEC. 57. Personal Liability of Officials or Employees for Payment of Unauthorized Personal Services Cost. - No official or employee of the national government, LGUs, and GOCCs shall be paid any personnel benefits charged against the appropriations in this Act, other appropriations laws or income of the government, unless specifically authorized by law. Grant of personnel benefits authorized by law but not supported by specific appropriations shall also be deemed unauthorized.

The payment of any unauthorized personnel benefit in violation of this section shall be null and void. The erring officials and employees shall be subject to disciplinary action under the provisions of Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of EO No. 292, and to appropriate criminal action under existing penal laws. (Emphasis supplied.)

[45] SEC. 58. Personal Liability of Officials or Employees for Payment of Unauthorized Personal Services Cost. - No official or employee of the National Government, GOCCs and LGUs, shall be paid any personnel benefits charged against the appropriations in this Act, other appropriations laws or income of the government, unless specifically authorized by law. Grant of personnel benefits authorized by law but not supported by specific

appropriations shall also be deemed unauthorized.

The payment of any unauthorized personnel benefit in violation of this section shall be null and void. The erring officials and employees shall be subject to disciplinary action in accordance with Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of EO No. 292, and to appropriate criminal action under existing penal laws. (Emphasis supplied.)

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

[47] SEC. 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.

x x x x

(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.

[48] SEC. 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.

[49] SEC. 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.

[50] *Blaquera v. Alcala*, 356 Phil. 678, 765 (1998).

[51] CIVIL CODE, Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

[52] CIVIL CODE, Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

[53] *Madera v. Commission on Audit*, supra note 46.

[54] (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. *Id.*

[55] *Tetangco, et al. v. Commission on Audit*, 810 Phil. 459, 467 (2017); *Metropolitan Works and Sewerage System v. Commission on Audit*, 821 Phil. 117, 140 (2017).

[56] 769 Phil. 327, 346 (2015).

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