

**NATIONAL POWER CORPORATION BOARD OF DIRECTORS
MARGARITO B. TEVES, ROLANDO G. ANDAYA, JR., PETER B. FAVILA,
ARTHUR C. YAP, ELEAZAR P. QUINTO, RONALDO V. PUNO, AUGUSTO
B. SANTOS, ...**

G.R. No. 242342. March 10, 2020

Ponente: REYES, J. JR., J.

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REYES, J. JR., J.:

Before the Court is a Petition for Certiorari under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the February 16, 2017 Decision[1] and the March 15, 2018 Resolution[2] of the Commission on Audit (COA) which affirmed the Notice of Disallowance (ND) No. NPC 11-004-10.

Factual Background

On September 10, 2009, the National Power Corporation (NPC) Board of Directors (petitioners), through Board Resolution No. 2009-52, authorized the payment of Employee Health and Wellness Program and Related Financial Assistance (EHWPRFA) to qualified officials and employees of the NPC. The EHWPRFA is a monthly benefit equivalent to P5,000.00 to be released on a quarterly basis.[3]

On September 26, 2011, petitioners received a copy of ND No. NPC-11-004-10,[4] which disallowed the payment of EHWPRFA for the first quarter of 2010 amounting to P29,715,000.00. The EHWPRFA was disallowed in audit because it was a new benefit and did not have prior approval from the Office of the President as required under Memorandum Order No. 20 dated June 25, 2001.[5]

Aggrieved, petitioners filed an appeal before the COA Corporate Government Sector–Cluster 3 (COA CGS-Cluster 3). In its December 27, 2013 Decision,[6] the COA CGS-Cluster 3 affirmed ND No. NPC-11-004-10.

Unsatisfied, petitioners filed a petition for review before the COA.

The Assailed COA Decision

In its February 16, 2017 Decision, the COA upheld ND No. NPC-11-004-10. It explained that the EHWPRFA was a new benefit granted to NPC personnel since it was a cash benefit. The COA noted that the benefits under the NPC Star Program, implemented under NPC Circular No. 2006-04 consisted of non-cash grants. It emphasized that the EHWPRFA was a mere allowance or financial assistance which was not categorically related to the activities or health program included in the NPC Star Program.

Further, the COA ruled that whether the EHWPRFA was a new benefit or an extension to an existing benefit, the grant and payment thereof still needed to comply with the requirements under Section 6 of Presidential Decree (P.D.) No. 1597, which requires the approval of the President through the Department of Budget and Management (DBM). In addition, it elucidated that the doctrine of qualified political agency was inapplicable in the present

case. The COA expounded that while some members of the board of NPC are department secretaries, they were not acting as such, but as mere members of the board when they approved the grant of EHWPRFA. The COA Decision reads:

WHEREFORE, premises considered, the Petition for Review of National Power Corporation, Quezon City is hereby DENIED for lack of merit. Accordingly, Commission on Audit Corporate Government Sector - Cluster 3 Decision No. 2013-18 dated December 27, 2013 and Notice of Disallowance No. NPC-11-004-10 dated September 22, 2011, on the payment of the Employee Health and Wellness Program and Related Financial Assistance to the agency's Board of Directors, officials, and employees for the first quarter of 2010 in the total amount of P29,715,000.00 are AFFIRMED.[7]

Unsatisfied, petitioners moved for reconsideration.

In its March 15, 2018 Resolution, the COA partially granted the petitioners' motion for reconsideration. It appreciated good faith in favor of the passive recipients who merely received the benefit, but had not participated in the approval and release thereof. As such, the COA absolved them from refunding the disallowed amount. Nevertheless, it ruled that the officials, who authorized, approved or certified the grant or payments cannot be deemed in good faith because the laws and rules requiring prior approval from the Office of the President and the DBM were already effective prior to the grant of the subject allowances and benefits. The COA Resolution reads:

WHEREFORE, premises considered, the Motion for Reconsideration is hereby PARTIALLY GRANTED. Accordingly, Commission on Audit (COA) Decision No. 2017-035 dated February 16, 2017, which affirmed COA Corporate Government Sector - Cluster 3 Decision No. 2013-18 dated December 27, 2013 and Notice of Disallowance (ND) No. NPC-11-004-10 dated September 22, 2011 on the payment of the Employee Health and Wellness Program and Related Financial Assistance to the agency's Board of Directors, officials, and employees for the first quarter of 2010 in the total amount of P29,715,000.00 is hereby AFFIRMED with MODIFICATION such that the passive recipients are no longer required to refund the disallowed benefits they have received in good faith.[8]

Hence, this present petition raising the following issues:

The Issues

I

[WHETHER THE] COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO A LACK OR EXCESS OF JURISDICTION IN RULING THAT EHWPRFA WAS A NEW BENEFIT[; and]

II

[WHETHER THE] COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RULING THAT THE GRANT OF EHWPRFA NEEDED PRESIDENTIAL APPROVAL.[9]

Petitioners argue that the EHWPRFA is not a new benefit as similar benefits had been granted in the past such as the Enhanced Comprehensive Health Benefit Program (CHBP). It explains that EHWPRFA was issued because the amount granted under the CHBP is no longer feasible owing to the exorbitant increase in the prices of medicine. Petitioners assail that EHWPRFA cannot be considered a new benefit as it merely expanded the wellness benefits already enjoyed by the NPC personnel. It laments that the EHWPRFA is an enforcement of the right of the NPC personnel to protect and promote their welfare or well-being.

In addition, petitioners contend that the President's approval was secured as a consequence of the approval of the

EHWPRFA by the National Power Board. It highlights that the DBM Secretary is one of the members of the National Power Board. Petitioners aver that having a member of the board review an act already validly enacted by the board itself is a useless proposition as this would result in an absurd scenario that one member of the board can overrule an action taken and approved by the whole board.

In its Comment[10] dated January 28, 2019, the COA reiterated that the EHWPRFA was a new benefit and one that can only be justified on the basis of its exemption from the Salary Standardization Law. It countered that under existing laws, agencies and government-owned or -controlled corporations (GOCCs) that are exempted from the standardized compensation are to observe guidelines and policies the President may issue governing position classification, salary rates, levels of allowances and other forms of compensation and fringe benefits. The COA highlighted that Memorandum Order (M.O.) No. 20 dated June 25, 2001 stated that any increase in the salary or compensation of the GOCCs is subject to the approval of the President. It pointed out that the EHWPRFA was granted without the required approval of the President. Further, the COA disagreed that there was no need for the EHWPRFA to be submitted for the approval of the President on the ground that the National Power Board was composed of cabinet secretaries. It explained that the alter ego doctrine cannot extend to acts done by the cabinet members in an ex officio capacity.

The Court's Ruling

The petition is without merit.

As the constitutionally mandated guardian of public funds, the COA is vested with latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds.[11] Its findings are generally accorded not only respect, but at times finality if such findings are supported by substantial evidence.[12] The findings of the COA can only be set aside when there is a showing that it has acted without, or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[13]

A finding of grave abuse of discretion against the COA means that the audit commission is guilty of evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, such as when the assailed decision or resolution rendered is not based on law and the evidence, but on caprice, whim and despotism.[14] As the party alleging grave abuse of discretion, petitioners had the burden to prove that the COA had acted in a capricious, whimsical, arbitrary or despotic manner.[15]

The Court finds that the petitioners failed to prove that the COA acted with grave abuse of discretion in upholding ND No. NPC 11-004-10 disallowing the payment of EHWPRFA for the first quarter of 2010 amounting to P29,715,000.00.

Section 1 of M.O. No. 20 provided for the immediate suspension on the grant of any salary increase and new or increased benefit. On the other hand, Section 3 thereof requires that any increase in salary or compensation shall be subject to the approval of the President. In fact, at the time EHWPRFA was granted, Administrative Order (A.O.) No. 103 dated August 31 2004 was still in effect. Section 3(b) of the said A.O. directed the GOCCs to suspend the grant of new or additional benefits to officials and employees.

Petitioners argue that the EHWPRFA is not a new benefit as it is a similar benefit with the previous CHBP under Circular No. 2000-55 dated September 11, 2000. It explains that the EHWPRFA was granted because the amount granted under the CHBP was no longer reasonable owing to the exorbitant increase in the prices of medicines and considering that the preventive approach to wellness would benefit the work force more.

Petitioners' argument fails to persuade.

A perusal of Circular No. 2000-55,[16] which implemented the CHBP, would negate the petitioners' claim that the EHWPRFA is not a new benefit, but merely increased the amounts provided under the CHBP. Under the above-mentioned circular, NPC employees were entitled to the following benefits: (a) reimbursement of medical, dental and optical expenses; (b) medical assistance; (c) Annual Physical Examination; and (d) Annual Executive Check-Up.

On the other hand, the EHWPRFA is a straight-up cash benefit equivalent to P5,000.00 monthly to be released quarterly. It is readily apparent that the EHWPRFA cannot be considered as merely increasing the amounts prescribed under the CHBP since none of the benefits therein consisted of giving cash to the employees. While the CHBP provided Medical Assistance as one of the benefits, it was limited to employees suffering from dreaded diseases. In contrast, the EHWPRFA was given to employees regardless of their health condition as it was not even required that they suffered any medical condition.

Even assuming that the petitioners are correct in arguing that the EHWPRFA merely increased existing benefits of NPC employees, it still erred in concluding that the same did not require the imprimatur of the President. Both M.O. No. 20 and A.O. No. 103 did not limit their application to new benefits, but likewise included the increase of existing benefits. Section 3 of M.O. No. 20 required that any increase in salary or compensation shall be subject to the approval of the President. On the other hand, Section 3(b) of A.O. No. 103 directed the GOCCs to suspend the grant of new or additional benefits to officials and employees. Clearly, the augmenting of the benefits the NPC employees already enjoyed still required the approval from the President.

On the other hand, the petitioners forward that even if it were to concede that the EHWPRFA required presidential approval, the said requirement was complied with. It notes that the DBM Secretary was one of the members of the National Power Board. Thus, petitioners conclude that since the DBM Secretary was one of the board members who approved the grant of EHWPRFA, presidential approval was already secured by virtue of the doctrine of qualified political agency.

Again, the petitioners' position fail to convince.

The doctrine of political agency provides that department secretaries are alter egos of the President and that their acts are presumed to be those of the latter unless disapproved or reprobated by him.[17] In short, acts of department secretaries are deemed acts of the President. Acting on this premise, the petitioners posit that the acquiescence of the DBM Secretary as member of the National Power Board to the grant of EHWPRFA has the effect of obtaining the President's approval thereto.

In *Atty. Manalang-Demigillo v. Trade and Investment Development of the Philippines Corporation*,[18] the Court had differentiated the effects of the secretaries' actions as members of the cabinet and actions performed in an ex officio capacity, to wit:

The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of

TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. x x x Such Cabinet members sat on the Board of Directors of TIDCORP ex officio, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.

Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the alter egos of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred. (Emphases and underscoring supplied)

Petitioners concede that the DBM Secretary sits as member of the National Power Board in an ex officio capacity pursuant to R.A. No. 9136 or the Electric Power Industry Reforms Act of 2001. As such, the Budget Secretary's authority to sit in the National Power Board emanated from the law, and not from the appointment of the President. Thus, the doctrine of qualified political agency does not attach to the acts performed by cabinet secretaries in connection with their position as ex officio members of the National Power Board.

Contrary to petitioners' assumption, no absurd situation arises in still requiring presidential approval in the grant of the EHWPRFA. In assenting to the grant of EHWPRFA as part of the National Power Board, the Budget Secretary was not acting as the alter ego of the President as it was in connection with his ex officio position as member of the board. Thus, the approval or disapproval of the DBM Secretary as required under the law would not have the effect of one member of the board overturning the votes of the majority of the board since it is, by legal fiat, actually the act of the President exercised through his alter ego.

In sum, the COA did not act with grave abuse of discretion in upholding ND No. NPC-11-004-10 and in finding that the NPC officers who had approved or authorized the disbursement in question are liable to refund the same. To reiterate, the grant of EHWPRFA for the first quarter of 2010 was contrary to existing laws, rules and regulations as it was made sans presidential approval.

Unjust enrichment vis-à-vis obligation to refund the disallowed amount

Nevertheless, the Court finds that the COA committed grave abuse of discretion in exempting the passive recipients of the disallowed benefit from refunding on account of good faith. In *Dubongco v. Commission on Audit*,^[19] the Court ruled that passive recipients must refund the disallowed benefits considering that they were never entitled to them in the first place, to wit:

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. Unjust enrichment refers to the result or effect of failure to make remuneration of, or for property or benefits received under circumstances that give rise to legal or equitable obligation to account for them. To be entitled to remuneration, one must confer benefit by mistake, fraud, coercion, or request. Unjust enrichment is not itself a theory of reconveyance. Rather, it is a prerequisite for the enforcement of the doctrine of restitution. Thus, there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires two conditions: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. Conversely, there is no unjust enrichment when the person who will benefit has a valid claim to such benefit.

x x x x

Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the

same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where, although acquired originally without fraud, it is against equity that it should be retained by the person holding it. In fine, the payees are considered as trustees of the disallowed amounts, as although they committed no fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

In *Department of Public Works and Highways v. Commission on Audit*,^[20] the Court also ruled that employees who have received the disallowed benefit are obliged to return the amounts they received under the principle of unjust enrichment. Meanwhile, in *Rotoras v. Commission on Audit*,^[21] the Court was even more unequivocal in ruling that regardless of their lack of malice or bad faith, passive recipients are required to return the benefits they were not entitled to, viz.:

The defense of good faith, which precludes the requirement to return disallowed benefits or allowances, is based on the principle that public officials are entitled to the presumption of good faith when discharging their official duties. Both the public officers who disbursed the benefits or allowances and those who received them will not be required to return the benefits or disallowances when it is shown that they acted in good faith in doing so.

x x x x

Nonetheless, there have been instances when, regardless of the alleged good or bad faith of the responsible officers and recipients, this Court ordered the refund of the amounts received. Applying the rule against unjust enrichment, it required public officers to return the disallowed benefits, considering them as trustees of funds which they should return to the government.

x x x x

The rule against unjust enrichment, along with the treatment of recipients of disallowed benefits as trustees in favor of government, was applied in the recent case of *Dubongco v. Commission on Audit*. There, this Court declined to ascribe good or bad faith to the recipients of the disallowed collective negotiation agreement incentives. It found that since they had no valid claim to the benefits, they cannot be allowed to retain them, notwithstanding the absence of fraud in their receipt:

x x x x

The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank[-]and[-]file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank[-]and[-]file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not — depends on the circumstances. (Emphases supplied)

In other words, good faith is not a valid defense for passive recipients because they are deemed trustees of a constructive trust for having received benefits they were never entitled to in the first place. In addition, the doctrine of unjust enrichment only concerns the question of whether an individual was benefited without legal basis at the expense of another — the belief or intent of the party placed at an advantage is immaterial. Such scenario exists in the disallowance of benefits as the concerned employees receive benefits or emoluments sans legal basis to the prejudice of the government.

Both *Dubongco* and *DPWH* involved the disallowance of Collective Negotiation Agreement (CNA) incentives on

account of it funded from improper or illegal sources. In the latter case, the Court even expounded that the obligation to reimburse the amounts received becomes more obvious when the nature of CNA incentive as a negotiated benefit is considered. In *Rotoras*, the Court explicitly ruled that the defense of good faith is unavailable to the rank-and-file employees should the allowance or benefit be the subject of collective negotiation agreement negotiations.

Nevertheless, the application of the doctrine of unjust enrichment is not limited to cases which involved the disallowance of CNA or negotiation benefits. It must be remembered that in the above-mentioned cases, there was no express pronouncement that passive recipients are obliged to return what they received only when the benefit in question is CNA incentive.

In *Government Service Insurance System v. Commission on Audit*,^[22] the Court ordered the employees who received benefits under the disallowed GSIS Retirement/Financial Plan (RFP) to return the subject benefit. It was ruled that while the employees committed no fraud in obtaining the benefits under the RFP, it was against equity and good conscience for them to continue holding onto them. As such, it is readily apparent that the application of the doctrine of unjust enrichment is not limited to cases involving the disallowance of CNA incentives because the crux of unjust enrichment is the receipt of a benefit by someone who was not entitled thereto.

Consequently, the NPC employees who received the EHWPRFA must still be held liable to refund the disallowed amount because they were not entitled thereto as its grant was without legal basis.

In *Department of Public Works and Highways v. Commission on Audit*,^[23] the Court had modified the COA Decision when it absolved passive recipients from refunding the disallowed benefit. In the said case, only one of the responsible officers had assailed the COA Decision which held only the responsible officers from refunding the disallowed amount. Similar to DPWH, only responsible officers challenged the assailed COA Decision as NPC employees who received the EHWPRFA were exempted from refunding on account of good faith. As such, the subject COA Decision must likewise be modified to include the passive recipients in refunding the disallowed amount in order to conform to recent jurisprudence.

WHEREFORE, the February 16, 2017 Decision and the March 15, 2018 Resolution of the Commission on Audit in Decision No. 2017-035 and Decision No. 2018-257, respectively, are AFFIRMED with MODIFICATION. The certifying and approving officers, as well as all the employees of the National Power Corporation who received the disallowed benefit, are liable for the amount of disallowance. They must reimburse the amount they received through salary deduction, or through whatever mode of payment the Commission on Audit may deem just and proper under the circumstances.

SO ORDERED.

Peralta (C.J.), Perlas-Bernabe, Caguioa, A. Reyes, Jr., Gesmundo, Hernando, Carandang, Lazaro-Javier, Inting, Zalameda, Lopez, Delos Santos, and Gaerlan, JJ., concur.

Leonen, J., see separate concurring and dissenting opinion.

[1] Concurred in by Chairperson Michael G. Aguinaldo, Commissioners Jose A. Fabia and Isabel D. Agito; rollo, pp. 18-25.

[2] *Id.* at 26-30.

[3] *Id.* 43-44.

[4] Not attached in the rollo.

- [5] Rollo, p. 5.
- [6] Not attached in the rollo.
- [7] Id. at 24.
- [8] Id. at 28-29.
- [9] Id. at 7.
- [10] Id. at 66-83.
- [11] Technical Education and Skills Development Authority v. Commission on Audit, 753 Phil. 434, 441 (2015).
- [12] Felix Gochan & Sons Realty Corporation v. Commission on Audit, G.R. No. 223228, April 10, 2019.
- [13] Tetangco v. Commission on Audit, 810 Phil. 459, 466 (2017).
- [14] Miralles v. Commission on Audit, 818 Phil. 380, 389-390 (2017).
- [15] Chua v. People, G.R. No. 195248, November 22, 2017, 846 SCRA 74, 81.
- [16] Rollo, pp. 31-32.
- [17] Manubay v. Garilao, 603 Phil 135, 139 (2009).
- [18] 705 Phil. 331, 347-349 (2013).
- [19] G.R. No. 237813, March 5, 2019.
- [20] G.R. No. 237987, March 19, 2019.
- [21] G.R. No. 211999, August 20, 2019.
- [22] 694 Phil. 518 (2012)
- [23] Supra note 20.

CONCURRING AND DISSENTING OPINION

LEONEN, J.:

I concur with the majority that the doctrine of qualified political agency does not apply to a cabinet secretary's act performed in connection with his or her position as an ex officio member of a board. However, I disagree with the ruling directing the employees of the National Power Corporation to return the disallowed benefit.

On September 10, 2009, the Board of Directors of the National Power Corporation, consisting of among others the Secretaries of: (1) Finance; (2) Energy; (3) Budget and Management; (4) Agriculture; (5) Environment and Natural Resources; (6) Interior and Local Government; and (7) Trade and Industry,[1] approved Board Resolution No. 2009-52, authorizing the payment of Employee Health and Wellness Program and Related Financial Assistance (EHWPRFA) to qualified officials and employees of the National Power Corporation (NPC). Pursuant to Board Resolution No. 2009-52, all eligible employees shall be given a monthly EHWPRFA in the amount of P5,000.00.[2]

On post-audit, Notice of Disallowance No. NPC-11-004-10 was issued, disallowing the amount of P27,715,000.00, representing the payment of EHWPRFA for the first quarter of 2010.[3] Thereafter, the Audit

Team Leader and Supervising Auditor of the Commission on Audit disallowed the amount for lack of legal basis after it was found that the grant of EHWPRFA was a new benefit requiring the President's prior approval.[4]

On appeal, the Commission on Audit Corporate Government Cluster (COA-CGS) affirmed the Notice of Disallowance.[5]

Upon a Petition for Review, the Commission on Audit proper upheld the Notice of Disallowance. The Board of Directors of the National Power Corporation moved for reconsideration, which was partially granted in the Commission on Audit's March 15, 2018 Resolution.[6]

Dissatisfied with the decision, the Board of Directors of the National Power Corporation then filed a Petition for Certiorari before this Court.

Petitioner argues that the Commission on Audit committed grave abuse of discretion in ruling that the grant of EHWPRFA requires the President's prior approval, considering that the Board consists of cabinet secretaries who act as the President's alter ego. It further insists that it is an absurd situation to require the Department of Budget and Management's approval, as it would mean that the board's action can be overridden by one of its members.[7]

The majority dismissed petitioner's invocation of the alter ego doctrine ruling that the cabinet secretaries' acts performed in connection with their position as ex officio members of the National Power Corporation's Board are not covered by the doctrine of qualified agency.[8]

I agree.

I

As held in *Manalang-Demigillo v. Trade and Investment Development Corp. of the Phils.*, "[t]he doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President[.]"[9] Acts done by the executive department heads in relation to their duties and functions as such, are presumptively deemed the President's own act, which are valid and binding unless disapproved or reprobated by the Chief Executive,[10] thus:

Under this doctrine, which recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person on the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the Chief Executive." [11] (Emphasis in the original, citations omitted)

The doctrine of qualified political agency was introduced in the Philippines as a recognition that by reason of the multifarious responsibilities demanding a president's attention, it becomes a necessity for his or her control power to be delegated to the members of his or her cabinet.[12] This necessity springs forth from the fact that "the President of the Philippines is the Executive of the Government of the Philippines, and no other." [13]

In *Philippine Institute for Development Studies v. Commission on Audit*, [14] this Court clarified that the doctrine applies only to the President's executive secretary and other cabinet secretaries.

Nonetheless, the doctrine does not extend to acts of a cabinet secretary performed while sitting as an ex-officio member of a board,[15] thus:

The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts. This doctrine is in recognition of the fact that in our presidential form of government, all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments. The doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.

But the doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. Under Section 10 of Presidential Decree No. 1080, as further amended by Section 6 of Republic Act No. 8494, the five ex officio members were the Secretary of Finance, the Secretary of Trade and Industry, the Governor of the Bangko Sentral ng Pilipinas, the Director-General of the National Economic and Development Authority, and the Chairman of the Philippine Overseas Construction Board, while the four other members of the Board were the three from the private sector (at least one of whom should come from the export community), who were elected by the ex officio members of the Board for a term of not more than two consecutive years, and the President of TIDCORP who was concurrently the Vice-Chairman of the Board. Such Cabinet members sat on the Board of Directors of TIDCORP ex officio, or by reason of their office or function, not because of their direct appointment to the Board by the President. Evidently, it was the law, not the President, that sat them in the Board.

Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the alter egos of the President. We cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.[16] (Emphasis supplied, citations omitted)

The heads of the various executive departments are appointed by the President to act on his or her behalf on matters relating to his or her executive and administrative functions as Chief Executive of the government. By this reason, the President's alter egos occupy a position that is political by nature and "should be of the President's bosom confidence[.]"[17] Necessarily, "their personality is in reality but the projection of that of the President." [18]

Section 48 of Republic Act No. 9136 otherwise known as the "Electric Power Industry Reform Act of 2001" explicitly provides for the composition and organization of the National Power Board of the National Power Corporation. It states:

SECTION 48. National Power Board of Directors. — Upon the passage of this Act, Section 6 of RA 6395, as amended, and Section 13 of RA 7638, as amended, referring to the composition of the National Power Board of Directors, are hereby repealed and a new Board shall be immediately organized. The new Board shall be composed of the Secretary of Finance as Chairman, with the following as members: the Secretary of Energy, the Secretary of Budget and Management, the Secretary of Agriculture, the Director-General of the National Economic and Development Authority, the Secretary of Environment and Natural Resources, the Secretary of Interior and Local Government, the Secretary of the Department of Trade and Industry, and the President of the National Power Corporation.

A perusal of Section 48 would disclose that the assumption of the heads of the various executive departments of a position in the National Power Board was not made through any express act, nor acquiescence, of the President.

The heads of the various executive departments sat as directors in the National Power Board, not by virtue of the President's power of appointment, but by reason of their position and function. In this light, when the members of the National Power Board issued its resolution authorizing the payment of EHWPRFA, they were acting as directors of the National Power Corporation by reason of their position and function, as provided under R.A. No. 9136.[19]

II

In modifying the Commission on Audit's decision and requiring the passive recipients to return the disallowed amount, the majority decreed that the passive recipients cannot invoke good faith on the ground that "they are deemed trustees of a constructive trust for having received benefits they were never entitled to in the first place." [20] The majority cited *Dubongco v. Commission on Audit*, [21] *Rotoras v. Commission on Audit* [22] and *Department of Public Works and Highways v. Commission on Audit* [23] where this Court applied the principle of unjust enrichment and directed the recipients to return the disallowed amount.

With all due respect, I am of the opinion that the doctrine in *Dubongco*, *Department of Public Works and Highways* and *Rotoras* were incorrectly applied.

The principle of unjust enrichment provided under Article 22 of the Civil Code states that "[e]very 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." It exists "when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience." [24]

In *Dubongco*, the benefit involved a Collective Negotiation Agreement (CNA) incentive sourced from the Comprehensive Agrarian Reform Program (CARP) fund. The employee-beneficiaries were required to return the disallowed benefit on the ground that they participated in the grant and approval of the benefit. By participating in the CNA incentive's negotiation and approval, the employees could not have feigned ignorance on the necessity of it being sourced from the Maintenance and Other Operating Expenses (MOOE) allotment savings:

Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, CNA Incentives require the participation of the employees who are the intended beneficiaries. The employees indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive. They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE. [25]

Similarly, in *Department of Public Works and Highways, Region IV-A v. Commission on Audit*, the amount disallowed represented the collective negotiation agreement incentive granted as a result of the collective negotiation between *Department of Public Works and Highways* and the employees' collective negotiation representative, thus:

The obligation of the DPWH IV-A employees to reimburse the amounts they received becomes more obvious when the nature of CNA Incentive as negotiated benefit is considered.

It must be recalled that CNA Incentive is granted as a form of reward to motivate employees to exert more effort toward higher productivity and better performance. However, before any CNA Incentive may be granted, the CNA on which it is based must first be negotiated, approved, and implemented. . . .

....

From the provisions of the aforecited rule, there are two necessary steps which must be undertaken before the CNA Incentive could be released to the government employees: first, the negotiation between the government agency and the employees' collective negotiation representative; and second, the approval by the majority of the rank-and-file employees in the negotiating unit. In the first step, the government employees concerned participates through their duly-elected representative; in the second, the rank-and-file employees participate directly. Thus, unlike ordinary monetary benefits granted by the government, the CNA Incentive involve the participation of the employees who are intended to be the beneficiaries thereof.

In this case, the DPWH IV-A employees' participation in the negotiation and approval of the CNA, whether direct or indirect, certainly gives them the necessary information to know the requirements for the valid release of the CNA incentive. Verily, when they received the subject benefit, they must have known that they were undeserving of it.[26] (Emphasis supplied)

The pronouncement in *Dubongco* was reiterated and further clarified in *Rotoras* wherein this Court made a categorical statement that rank-and-file employees can no longer invoke the defense of good faith when the disallowed benefit was the result of a collective negotiation agreement:

The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return — whether it be solidary or not — depends on the circumstances.[27] (Emphasis supplied.)

Unlike in the abovementioned cases, the issuance of Board Resolution No. 2009-52—granting the EHWPRFA—was not the result of collective negotiation between NPC and the employees' association. The NPC employees had neither direct nor indirect participation in the benefit's approval, which would have alerted them of the grant's lack of legal basis. The NPC employees were passive recipients who received the benefit in an honest belief that they are validly entitled to it. For this reason, the NPC employees should not be required to return the amount they received in good faith.

Finally, neither is the case of *Government Service Insurance System v. Commission on Audit*[28] applicable. In that case, this Court applied the principle of unjust enrichment and required the payees to return the retirement benefits they received under the GSIS RFP. This Court rejected the payees' plea of good faith due to the nature of the benefit involved. It decreed that unlike cash gifts or other fringe benefits which are given as a form of additional compensation, retirement benefits are given as a reward for the services rendered by the separated employee. Its purpose is to aid the employees during their twilight years, thus:

While it is true, as claimed by the Movants Federico Pascual, et al., that based on prevailing jurisprudence, disallowed benefits received in good faith need not be refunded, the case before us may be distinguished from all the cases cited by Movants Federico Pascual, et al. because the monies involved here are retirement benefits.

Retirement benefits belong to a different class of benefits. All the cases cited by the Movants Federico Pascual, et al. involved benefits such as cash gifts, representation allowances, rice subsidies, uniform allowances, per diems, transportation allowances, and the like. The foregoing allowances or fringe benefits are given in addition to one's salary, either to reimburse him for expenses he might have incurred in relation to his work, or as a form of supplementary compensation. On the other hand, retirement benefits are given to one who is separated from employment either voluntarily or compulsorily. Such benefits, subject to certain requisites

imposed by law and/or contract, are given to the employee on the assumption that he can no longer work. They are also given as a form of reward for the services he had rendered. The purpose is not to enrich him but to help him during his non-productive years.

Our Decision dated October 11, 2011 does not preclude Movants Federico Pascual, et al. from receiving retirement benefits provided by existing retirement laws. What they are prohibited from getting are the additional benefits under the GSIS RFP, which we found to have emanated from a void and illegal board resolution. To allow the payees to retain the disallowed benefits would amount to their unjust enrichment to the prejudice of the GSIS, whose avowed purpose is to maintain its actuarial solvency to finance the retirement, disability, and life insurance benefits of its members.[29] (Emphasis in the original, citations omitted)

ACCORDINGLY, I submit that the Petition for Certiorari be DISMISSED.

[1] Rollo, p. 11.

[2] Ponencia, p. 2.

[3] Id.

[4] Rollo, pp. 18-19.

[5] Ponencia, p. 2.

[6] Id. at 2-3.

[7] Id. at 4.

[8] Id. at 7-8.

[9] 705 Phil. 331, 347 (2013) [Per J. Bersamin, En Banc].

[10] Id.

[11] *Carpio v. Executive Secretary*, 283 Phil. 196, 204-205 (1992) [Per J. Paras, En Banc].

[12] *Philippine Institute for Development Studies v. Commission on Audit*, G.R. No. 212022, August 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65612>> [Per J. Leonen, En Banc].

[13] *Villena v. Secretary of the Interior*, 67 Phil. 451, 464 (1939) [Per J. Laurel, En Banc].

[14] G.R. No. 212022, August 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65612>> [Per J. Leonen, En Banc].

[15] *Manalang-Demigillo v. Trade Investment Corporation*, 705 Phil. 331, 348-349 (2013) [Per J. Bersamin, En Banc].

[16] Id. at 347-349.

[17] *Villena v. Secretary of the Interior*, 67 Phil. 451, 464 (1939) [Per J. Laurel, En Banc.]

[18] Id.

[19] Republic Act No. 9136 (2001), sec. 48.

[20] Ponencia, p. 10.

[21] *Dubongco v. Commission on Audit*, G.R. No. 237813, March 5, 2019,

<<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051>> [Per J. Reyes, Jr., En Banc].

[22] Rotoras v. Commission on Audit, G.R. No. 211999, August 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65585>> [Per J. Leonen, En Banc].

[23] Department of Public Works and Highways, Region IV-A v. Commission on Audit, G.R. No. 237987, March 19, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047>> [Per J. Reyes, Jr., En Banc].

[24] Reyes v. Lim, 456 Phil. 1, 14 (2003) [Per J. Carpio, First Division] citing 66 Am. Jur. 20 Restitution and Implied Contracts § 2 (1973).

[25] Dubongco v. Commission on Audit, G.R. No. 237813, March 5, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051>> [Per J. Reyes, Jr., En Banc].

[26] G.R. No. 237987, March 19, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047>> [Per J. Reyes, Jr., En Banc].

[27] Rotoras v. Commission on Audit, G.R. No. 211999, August 20, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65585>> [Per J. Leonen, En Banc].

[28] Government System Insurance System v. Commission on Audit, 694 Phil. 518 (2012) [Per J. Leonardo--De Castro, En Banc].

[29] Id. at 524-525.

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