

CONCERNED OFFICIALS AND EMPLOYEES OF THE NATIONAL FOOD AUTHORITY-REGIONAL OFFICE NO. II, SANTIAGO, ISABELA, REPRESENTED BY MARIO M. GONZALES, ITS FORMER OFFICER-IN-CHARGE, PETIT...

G.R. No. 252356. November 09, 2021

Ponente: CARANDANG, J.

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CARANDANG, J.:

Before the Court is a Petition for Certiorari[1] under Rule 64 dated June 23, 2020, seeking to annul and set aside Resolution No. 2020-024 dated November 25, 2019[2] of the Commission on Audit (COA) En Banc, which denied the reconsideration of COA Commission Proper Decision No. 2018-390 dated December 13, 2018[3] (Decision No. 2018-390) for failure of petitioners to raise new matters and to show sufficient ground to justify reconsideration of their arguments.

The case arose from Notice of Disallowance (ND) No. 2014-001-101-(12)[4] issued by COA's Cluster 5 Audit Group A-Audit Team I on April 10, 2014, which disallowed the Food and Grocery Incentive (FGI) received by the 33 officials and employees – herein petitioners – of the National Food Authority (NFA) Regional Office II in Santiago City, Isabela for calendar year 2012. The ND covered a total amount of P645,000.00.

As stated in the ND, the grant of FGI to petitioners was previously issued a Notice of Suspension[5] dated September 21, 2013 which required the submission of an approval or administrative order issued by the Office of the President authorizing the grant. The payment of the grant was eventually disallowed after COA received a letter[6] dated November 29, 2013 from the Governance Commission for Government Owned or Controlled Corporations (GCG), which stated that the latter cannot favorably recommend to the President the approval of NFA's request for the continuous grant of FGI to NFA officials and employees.[7]

Aggrieved that they were being made liable to return the FGI they received for 2012, petitioners filed an Appeal Memorandum dated July 9, 2014[8] with COA's Corporate Government Sector (CGS) Cluster 5, seeking to set aside the ND. They argued, firstly, that there is sufficient legal bases for the grant of the FGI[9] pursuant to NFA Council Resolution No. 226-2K5.[10] They insisted that the grant of the FGI has been given presidential imprimatur and specific authorization twice:[11] (1) through the approval by then President Joseph E. Estrada (President Estrada) of the letter-request of former NFA Administrator Eduardo Nonato N. Joson dated 08 December 1998[12] (Joson Letter-Request) to grant food assistance and emergency allowance to all NFA officials and employees; and (2) via implied acknowledgment in the Memorandum dated 04 November 2003[13] by the former Head of the Presidential Management Staff and Cabinet Secretary Ricardo L. Saludo (Saludo Memorandum) of the authority of government owned or controlled corporations – such as the NFA – to grant bonuses to their officials and employees, which acknowledgment was supposedly confirmed[14] by Opinion No. 219, series of 2003[15] (Opinion No. 219) of the Office of the Government Corporate Counsel (OGCC). Secondly, petitioners asserted that there is a customary or traditional basis for the FGI,[16] since the NFA has

been granting food gift packages as Christmas incentive on a yearly basis to its officials and employees since 1995.[17] Citing the ruling in *National Tobacco Administration v. Commission on Audit*[18] (National Tobacco) as discussed in OGCC Opinion No. 219,[19] they averred that disallowing a traditionally given benefit would violate the principle of equity.[20] Lastly, petitioners contend that they are not bound to return to amount granted as FGI, maintaining that the same was released and received in good faith.[21]

The COA CGS Cluster 5 denied the said appeal in its Decision No. 2014-021 dated November 24, 2014.[22] It found that the grant of the FGI to NFA officials and employees contravened[23] not only the General Provisions of the General Appropriations Act[24] and paragraph 4.5 of Department of Budget & Management (DBM) Budget Circular (BC) No. 16, series of 1998,[25] but more importantly Section 12 of Republic Act (R.A.) No. 6758,[26] because the enumeration therein does not include the FGI given to NFA personnel.[27] Since petitioners failed to cite a specific law, statute, or DBM BC authorizing the grant of the subject allowance, then payment of the same should not be allowed.[28] COA CGS Cluster 5 concurred with the finding of the GCG that the approval of the Joson Letter-Request by President Estrada did not authorize the continuous grant of FGI to NFA officials and employees[29] as the approval was for 1998 only.[30] The invocation of custom or tradition by petitioners was also rejected, with COA CGS Cluster 5 holding that the rules or principles of equity cannot override laws or statutes applicable to a certain state of facts.[31] Finally, the COA CGS Cluster 5 found no merit in the claim of good faith, since all those who received the FGI voluntarily signed a Deed of Undertaking that they will return the same if the grant is disallowed in audit.[32]

Undaunted by the foregoing, petitioners filed a Petition for Review[33] dated February 27, 2015 with the COA Commission Proper, reiterating their earlier argument that the approval of the Joson Letter-Request and the Saludo Memorandum provided sufficient legal basis for the continuous grant of the FGI under NFA Council Resolution No. 226-2K5.[34] They took exception to the holding that the principles of equity do not apply to their case[35] and that their reliance in *National Tobacco* was misplaced.[36] Petitioners dismissed the GCG letter as merely instructive, saying that it did not even categorically state that the presidential imprimatur given by President Estrada through the Joson Letter-Request and by President Gloria M. Macapagal-Arroyo (President Arroyo) through the Saludo Memorandum are per se illegal.[37] Lastly, petitioners disagreed with the finding that they are not in good faith, alleging that the fact they signed a Deed of Undertaking does not imply bad faith since it is never presumed, but must be proved by clear and convincing evidence.[38]

The COA Commission Proper denied the Petition for Review in its Decision No. 2018-390, consequently upholding the disallowance under ND No. 2014-001-101-(12). It held, first, that there is no valid authority specifically granting the FGI[39] since the supposed executive acts of Presidents Estrada and Arroyo cannot be considered as authorizing the FGI as an exception to the enumeration in Section 12 of R.A. No. 6758.[40] Reaffirming the findings of CGS Cluster 5 and the GCG, the COA pointed out that the approval of the Joson Letter-Request and the statements in the Saludo Memorandum are not the presidential approvals contemplated under Section 4.5 of DBM BC No. 16, which requires the issuance of an actual administrative order.[41] It stressed that the grant of fund assistance and emergency allowance as approved in the Joson Letter-Request is clearly for 1998 only, which is the year of the request.[42] The COA also emphasized that the Saludo Memorandum is not an approbation of any unauthorized benefits, allowances, or bonuses which government employees are already receiving, as the memorandum is but a mere reminder to GOCCs to moderate the granting of bonuses to their employees.[43]

Second, the COA ruled that when the NFA requested the GCG for its recommendation for presidential approval to continuously grant the FGI, it acknowledged that the GCG has the authority to regulate the compensation structure of, as well as the grant of allowances, honoraria, and other benefits by, GOCCs.[44] As such, petitioners

cannot now claim that the GCG letter was merely instructive and could not be made as the basis for the disallowance of their FGI.[45] Once again confirming the findings of the GCG, the COA maintained that in determining the compensation structure of the NFA, the business judgment of the NFA Council – even if mostly composed of Cabinet secretaries – is limited and must be within the parameters of the law, rules, and regulations,[46] and not merely based on equity.

Lastly, the COA disagreed with petitioners' persistent invocation of good faith, holding that the FGI granted to NFA officials and employees had already been disallowed in previous years.[47] Taken together with their execution of Deeds of Undertaking to return the amounts given as FGI through salary deduction, the COA concluded that petitioners had full knowledge of the FGI's infirmity, which negated their claim of good faith.[48] Petitioners should thus be held liable for the disallowance.[49] Further, the officers who approved and certified the disbursements for the FGI should be solidarily liable for the total disallowed amount, because without any action on their part, the FGI would not have been released to all the recipients.[50]

Petitioners filed a Motion for Reconsideration on March 5, 2019[51] but as aforementioned, this was denied by the COA in Resolution No. 2020-024.

Petitioners essentially restate their earlier arguments in assailing Resolution No. 2020-024, Decision No. 2018-390, and ND No. 2014-001-101-(12). They argue once more that the grant of the FGI has legal basis, stemming from the approval by President Estrada of the Joson Letter-Request[52] and the further affirmation of the authority of GOCCs to grant bonuses to their employees per the Saludo Memorandum in relation to OGCC Opinion No. 219.[53] These approvals, petitioners claim, should be considered as the required presidential acts or issuances and the specific authorization needed by the NFA to grant the FGI, notwithstanding the provisions of the General Appropriations Act and R.A. No. 6758.[54] Petitioners likewise invoke the operative fact doctrine,[55] arguing that the said rule applies to executive acts, as in the case at bar, that are subsequently declared invalid.[56] The grant of the FGI therefore, approved as it was by former Presidents Estrada and Arroyo, should not be taken against them as it has become an operative fact.[57]

Similarly as before, petitioners invoke tradition as basis to uphold the FGI and to set aside the ND.[58] They again call attention to the fact that the FGI has been given to NFA officials and employees annually since 1995, first in the form of food gift packages and later in cash or check.[59] They stress that since that time, the grant of the benefit has been passed upon by COA auditors during post-audit[60] without issue. Citing once more OGCC Opinion No. 219 and National Tobacco, they lament that the principle of equity as discussed in the former and as upheld in the latter would be violated if the disallowance will not be reversed by this Court.[61]

Petitioners likewise allege that the COA gravely abused its discretion when it failed to observe and follow the ruling in the 2016 case *Escarez v. Commission on Audit*[62] (*Escarez*), pursuant to the principle of *stare decisis*. [63] They claim that *Escarez* should be binding and applicable to their case[64] because the basic facts as presented in their petition parallels the facts in *Escarez*,[65] which involves the receipt of FGI from 2008 to 2012 by NFA personnel from other regions. Since the ruling in *Escarez* excused the said NFA personnel from returning or refunding the amounts they received as FGI, the same treatment should also be given to petitioners, for if a case has been decided one way, any other case involving exactly the same point at issue should be decided in the same manner.[66]

Finally, petitioners aver anew that they should not be made liable to return or refund the FGI.[67] They adamantly argue that the officers who approved and certified the release of the disbursement merely acted in the regular performance of their official functions,[68] noting that it was the NFA Council that actually approved the release of the FGI through NFA Council Resolution No. 226-2K5.[69] Since they relied in good faith on the approval and

authorization of the NFA Council, then they should not be made liable for the disallowance.[70] Relative thereto, and again, petitioners assert that all recipients are not bound to return the amount granted as FGI because it is a traditionally given benefit received in good faith.[71]

The Office of the Solicitor General counter-argued in its Comment[72] filed on February 2, 2021 that: (1) the COA correctly ruled that the grant of the FGI has no legal basis; (2) there is no diminution of benefits when COA disallowed the FGI; (3) that the defense of good faith cannot absolve petitioners from refunding the amounts disallowed in audit; and (4) the petition was filed out of time.[73]

The OSG explained, first, that petitioners' reliance on the approval in the Joson Letter-Request, the Saludo Memorandum, and OGCC Opinion No. 219 are all misplaced, since none of these documents authorized the continued grant of the FGI or approved a benefit that they should not have been receiving.[74] The OSG reiterated the COA finding that the approval required is an actual administrative order issued by the President.[75] In this regard, the OSG quoted verbatim the Court's ruling in Escarez that the disallowance by COA of the FGI given to NFA personnel was based on cogent legal grounds, there being no specific authority from the President or the Congress that justifies the release of FGI.[76] The OSG also submits that the operative fact doctrine is not applicable since no law, executive issuance or act has been declared invalid in this case.[77]

Second, the OSG opined that there was no diminution of benefits in disallowing the FGI because the allowance or benefit granted to NFA personnel is not in accordance with prevailing laws.[78] Considering that any benefit given to government employees must comply with R.A. No. 6758 and that the grant of FGI is not in accordance therewith, then no vested right was acquired by NFA personnel over the disallowed FGI.[79] Additionally, the OSG stressed that the payment of the FGI was only due to error in the construction or application of a statute,[80] which cannot estop the government if it makes a subsequent correction of such an error.[81]

Third, the OSG insisted that good faith cannot be appreciated in favor of petitioners because all NFA personnel – officers and employees alike – who received the FGI cannot be said to have been free of knowledge of facts, which would render the subject transaction questionable or unconscientious.[82] The OSG highlighted the fact that audit disallowances have already been issued against the payment of the FGI during previous years, but the NFA continued granting to its personnel the questioned benefit;[83] moreover, recipients of the benefit did not deny executing a Deed of Undertaking authorizing the deduction from their salary of the amount received as FGI in case of an audit disallowance.[84] Citing the ruling in *Madera v. Commission on Audit*[85] (*Madera*), the OSG noted that the Court returned to the basic premise that the responsibility to return is a civil obligation to which the principles of unjust enrichment and *solutio indebiti* applies, regardless of the good faith of passive recipients.[86]

Last, the OSG also drew attention to the fact that the petition should have been filed on March 11, 2020 as petitioners themselves admit, and yet the same was only mailed on June 23, 2020.[87] The OSG asserted that the excuse given by petitioners – in that the entire Luzon was placed under Enhanced Community Quarantine (ECQ) pursuant to Presidential Proclamation No. 929, series of 2020[88] – should not be countenanced, because the indicative last date for filing of the petition under Section 3, Rule 64 of the Rules of Court, or on March 11, 2020, was five days before ECQ was imposed throughout Luzon on March 16, 2020.[89] Thus, per the OSG, the assailed Resolution No. 2020-024 and Decision No. 2018-390 have both already become final.[90]

Issue

The main issue in this case is whether the COA gravely abused its discretion, amounting to a lack or excess of its jurisdiction, when it sustained the disallowance of petitioners' FGI, and in finding them liable to return or refund the same.

Ruling of the Court

At the outset, the Court agrees with the OSG that the issues raised in the petition are not novel.[91] Stripped of all the layers of interrelated arguments that petitioners have raised in each stage of adjudication against the disallowance of their FGI, the two essential questions animating the petition had in fact already been judiciously passed upon by this Court. On one hand, the question whether the COA has gravely abused its discretion in disallowing the FGI granted to NFA officials and employees has been settled in *Escarez*, which has been oft-cited in the case at bar. The ruling on this issue is confirmed in a more recent case, *Wycoco v. Aquino*[92] (*Wycoco*). On the other, the question whether the approving or certifying officers, as well as the passive recipients of FGI, are liable to return the same has been definitively resolved in *Wycoco*, applying the rules on return in *Madera* as clarified in *Abellanosa v. Commission on Audit*[93] (*Abellanosa*).

The Court will thus look to, and be guided by, the discussions made in these cases, but more so the ruling in *Wycoco*, in the proper disposition of this petition.

There is no legal basis for the grant of the FGI to NFA officials and employees.

As discussed in both *Escarez* and *Wycoco*, the COA did not gravely abuse its discretion in upholding the disallowance of petitioners' FGI for calendar 2012 because its findings are based on cogent legal grounds, negating any allegation that Resolution No. 2020-024 and Decision No. 2018-390 were rendered in a whimsical, arbitrary, despotic, or capricious manner.

It is well-settled that for there to be grave abuse of discretion, there must be a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law, or as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.[94] Even, the Court has oft-ruled that mere abuse of discretion is not enough – it must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[95]

Petitioners have utterly failed to substantiate their claim of grave abuse of discretion on the part of COA when it upheld the disallowance in the case at bar. The Court agrees with the COA, once again, that the disallowance of the amounts released as FGI should be upheld because there is no sufficient basis for the grant thereof to NFA officials and employees, wherever region they may be from. The Court finds no reason or sufficient justification as put forth by petitioners to depart from the ruling that the grant of the FGI did not enjoy any presidential or DBM approval that would place it among the enumerated exceptions to Section 12 of R.A. No. 6758 or that would make it comply with the relevant DBM issuances on the subject.[96]

Indeed, petitioners cite *Escarez* in their petition to buttress their argument that they should be excused from returning the amounts they received as FGI, but they remarkably and conveniently sidestepped the Court's findings therein that: (1) nothing in the approval of the Joson Letter-Request gave the impression that the grant of the benefit requested shall be an annual practice; and (2) both the Saludo Memorandum and OGCC Opinion No. 219 relate only to the grant of additional incentives to NFA officials and employees during the Christmas season, while the FGI in question is released in specific months of the year and not in one tranche that coincided with the yuletide season.

Even with the foregoing findings in *Escarez*, petitioners are consistently obstinate that the Joson Letter-Request, the Saludo Memorandum, and OGCC Opinion No. 219 justified the continued grant of the FGI, and are sufficient,

proper, and legal bases for the eventual issuance of NFA Council Resolution No. 226-2K5, which increased the FGI to P20,000.00 for each NFA Council official or NFA employee and directed its release not later than June 15 for the first half and not later than October 15 for the remaining half.[97] Similar then as now, the Court finds that these documents do not justify either the grant of the FGI, or the issuance of NFA Council Resolution No. 226-2K5. Once more reviewing these same documents in Wycoco, the Court observed that:

To begin with, Administrator Joson was seeking approval for the grant of the Food Assistance and Emergency Allowance (FAEA), which, in Our eyes, is an entirely different benefit with a significantly smaller amount. Even if the FAEA eventually evolved to FGI, still, the tenor of the letter suggests that the FAEA is to be granted only for the Christmas Season of 1998. There is nothing that would warrant an interpretation that President Estrada authorized the yearly grant of FGI. To ascribe such view to the mere presence of President Estrada's signature in the letter would be to stretch one's imagination and read something in the letter that was clearly not there.

On the same boat was President Arroyo's purported presidential approval allegedly contained in the Memorandum by Secretary Saludo addressed to the heads of GFIs and GOCCs x x x.

x x x x

We cannot see anything in the [Saludo] memorandum to convince Us that President Arroyo intended to give continuing authority to NFA to grant its employees FGI on a yearly basis. The purpose of the memorandum is clear and simple: to remind heads of GFIs and GOCCs not to give their employees exorbitant amounts by way of bonuses. The memorandum did not even authorize the release of a specific benefit, bonus or allowance. It spoke of a "proposal to grant" a benefit, which, again, was entirely different from FGI, and of an obvious smaller amount. Nevertheless, nothing categorical was given, much less authorized perpetually by virtue of the memorandum.

Still, petitioners argue that the memorandum recognized the authority of the heads of GOCCs to give benefits such as FGI. To bolster their claim, petitioners present the opinion of the OGCC expressing the same view. Even if We accept this as correct, the "recognition" in the memorandum does not carry unbridled authority in NFA's favor to violate the clear import of DBM BC No. 16, s. 1998 and AO 103, and ignore the need of an authorization from the President. The NFA, particularly the NFA Council, is not being deprived of its corporate power to determine the necessity of giving additional benefits. It is only being asked to follow said law and regulation to the letter, and seek first the required presidential authority before implementing the grant of the FGI.[98]

These same observations ring true for the case at bar, and petitioners have not shown to this Court any reason to find or rule to the contrary. Thus, and at the risk of repetition: there is no legal basis for the grant of the FGI to NFA officials and employees. It is therefore only right for the COA to disallow expenditures for the same.

The doctrine of operative fact
does not apply to this case.

Invocation by petitioners of the doctrine of operative fact will not lend merit to their claim that they are entitled to their FGI for 2012.

The doctrine of operative fact, as embodied in *De Agbayani v. Philippine National Bank*,[99] states that a legislative or executive act, prior to its being declared unconstitutional or invalid by the courts, is valid and must be complied with.[100] The rationale is that the courts, in keeping with the demands of equity, cannot be unmindful of the acts or consequences that resulted from the implementation of a law, executive act, or decisions or orders of the executive branch which were later nullified.[101]

The situation in the case at bar, however, does not call for the application of the doctrine of operative fact. The basis of the underlying disallowance that precipitated this case was not because of a statute, law, or executive issuance or act being judicially declared unconstitutional or invalid. The disallowance was for failure to follow the pertinent laws or rules for the grant of additional benefits to NFA personnel. As a rule, originating from considerations of equity, the doctrine does not and cannot bypass or erase laws, rules, or regulations that apply to a certain state of facts on the basis of an allegation that an executive act or issuance is valid because of its beneficial consequences – in this case the grant of FGI to NFA personnel – when these state of facts clearly demonstrate a failure to comply with the pertinent laws, rules, or regulations. This is not how the doctrine of operative fact should be applied. To subscribe to this line of thinking that petitioners would most certainly render the audit power of COA over the use of public funds nugatory.

NFA personnel did not acquire
a vested right to receive the
FGI.

Anent petitioners' claim that tradition justifies their right to receive the FGI, the Court has stated in *Wycoco* that customs, practice, and tradition regardless of the length of time, so long as it lacked legal anchor or is contrary to law, could not produce any vested right.[102] This ruling is reaffirmed in this case. The rejection of the claim that the ruling in *National Tobacco* is relevant to the case at bar is likewise reiterated, there being no similarities whatsoever between the facts in *National Tobacco* and the antecedents herein, not only as to the benefits received but also as to the situation obtaining that necessitated resolution by the Court. As aforementioned, the foolish and brazen recourse to principles of equity will not negate the requirement to comply with pertinent laws, rules, and regulations on the expenditure of public funds. The fact that the COA has passed upon the FGI in audit for previous years without raising an issue is also of no moment, because as the Court has said in *Wycoco* and as pointed out by the OSG, the erroneous application and enforcement of the law by public officers does not estop the government from making a subsequent correction of such errors.[103]

The rulings in *Escarez* and
Wycoco amount to res
judicata.

The Court will no longer dwell on the reasons why the rulings in *Escarez* and *Wycoco* are conclusive and binding precedents to the impropriety of the FGI, or alternatively, to the propriety of the disallowance of the FGI. This has been discussed thoroughly by Justice Rodil V. Zalameda in *Wycoco*, and further elucidated in the Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe. Suffice it to state that the substantial identities of the parties in the case at bar, and the community of their interest with those involved in both *Escarez* and *Wycoco*, categorically warrants the application herein of the ruling that there is no sufficient basis for the grant of the FGI to NFA employees, and hence, there is basis for the COA to uphold the disallowance of the same.

That matter settled, the Court likewise holds that the ruling in *Wycoco* can be appreciated as also binding and conclusive in ultimately determining the liability of petitioners – whether as officials who approved or certified the disbursement or as employees who passively received the benefit – to return the FGI as disallowed under ND No. 2014-001-101-(12). While of course the Court acknowledged in *Wycoco* that *Escarez* involved a different set of NDs, and therefore involved a different cause of action, the fact that an altogether different ND is involved here will not change the pertinence and applicability of the set of rules on the return of the FGI received by NFA personnel that the Court has discussed and adopted in *Wycoco*. The liability to return in this case should still be evaluated within the overarching framework of the applicable rules on that subject matter; and the rules on return as currently applied by the Court is that which has been settled in *Madera* as clarified in *Abellanosa* – which are

the same rules considered in Wycoco.

To spare themselves from their liability to return the FGI, petitioners raise the principle of stare decisis to support their claim that, alike the petitioners in Escarez, they should also be excused from returning the FGI on the basis of good faith.

The Court finds no merit in this argument.

As discussed in the seminal case of *Belgica v. Ochoa*[104] (*Belgica*), *res judicata* and *stare decisis* are both general procedural law principles which deal with the effects of previous but factually similar dispositions to subsequent cases. *Belgica* differentiated and characterized these two principles as follows:

The focal point of *res judicata* is the judgment. The principle states that a judgment on the merits in a previous case rendered by a court of competent jurisdiction would bind a subsequent case if, between the first and second actions, there exists an identity of parties, of subject matter, and of causes of action. x x x

On the other hand, the focal point of *stare decisis* is the doctrine created. The principle, entrenched under Article 8 of the Civil Code, evokes the general rule that, for the sake of certainty, a conclusion reached in one case should be doctrinally applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to re-litigate the same issue.[105] (Emphasis and underscoring supplied; citations omitted)

It is clear from *Belgica* that like cases ought to be decided alike absent any powerful countervailing considerations. This was in fact applied in *Belgica*, where the Court held that the complexity of the issues and the broader legal analyses warranted in that case should be considered as a powerful countervailing reason against a wholesale application of the *stare decisis* principle.

The same holds true in this case. Petitioners' resort to *stare decisis* to excuse their liability to return is misplaced because there are powerful countervailing considerations that militate against the application of the principle in their favor. First, and as earlier stated, the issue of liability to return is not the only matter adjudged in *Escarez*. It would be imprudent for this Court to apply the finding of good faith to excuse the return of the FGI in *Escarez* when this finding is and cannot be effectively and wholly dissociated from the finding that the disallowance of the FGI is proper, which was also settled in *Escarez*. Second, and relative to the first consideration, the manifest differences in the NDs involved in these three cases do not change the fact that all fundamentally involve the same disallowed subject matter. Third, it is noteworthy that petitioners do not deny executing a Deed of Undertaking – a factual peculiarity in this case that was not considered in *Escarez*. Last, there is no reason or justification whatsoever for this Court to depart from or to not apply in this case the rules on return. For even without *Wycoco*, the current rules on return in *Madera* as clarified in *Abellanosa* still applies to this case.

As will be discussed further below, the Court has determined, in applying the rules on return in *Madera* as clarified in *Abellanosa*, that: (1) all passive recipients of the FGI are liable to return the amounts received by them, pursuant to the general rule, there being no discernible reason to excuse or exempt the return; and (2) the officials who approved and certified the release of the FGI are not liable to return for lack of evidence showing bad faith or gross negligence.

The applicable rules
on return in *Madera*

The guidelines in determining liability to return of government officials and employees affected by disallowances of benefits and compensation are set out in the landmark case of Madera as follows:

- 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:
 - 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 with 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.[106]

When a disallowance is upheld, as in this case, Rules 2a and 2b apply with respect to approving and certifying officers, while Rules 2c and 2d apply with respect to passive recipients.

All passive recipients of the FGI are liable to return the amounts they wrongfully received.

Even without the clarification in Abellanosa, the Court in Madera already established that the general rule is for recipients to return the disallowed amounts received by them – whether they be approving or certifying officers who also received the disallowed amounts or are mere passive recipients. As discussed in Wycoco and as correctly mentioned by the OSG,[107] Madera explained that the liability of payees or recipients of disallowed benefits is based on the Civil Code provisions on solutio indebiti and unjust enrichment. Under both these principles, the receipt by the payees of disallowed benefits is one by mistake, which therefore creates a corresponding obligation on their part to return the same. It therefore does not matter whether the recipient was in good faith – since the receipt of the benefits was made in error, then the intent, the state of mind, or even the motive of the receiver in receiving the disallowed FGI is irrelevant and immaterial. Wycoco, quoting the Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in Madera, underscored that good faith cannot be appreciated as a defense against an obligation under solutio indebiti since it is forced by operation of law upon the parties, and not because of any intention on their part, but in order to prevent unjust enrichment.

The Court was explicit in Wycoco that post-Madera, it has strictly applied the general rule that passive recipients or payees should return what they received by mistake, save for those very rare instances when it can be shown that there is a compelling reason to apply the exceptions in the Madera guidelines. Wycoco underscored this ruling by citing Abellanosa, where the Court declared that the rules in Madera should be applied only to truly exceptional cases and should not be haphazardly applied, or else they would effectively nullify the general rule, which is to return disallowed public funds.

The importance in strictly applying the general rule rather than the exceptions is also mentioned in *Wycoco* through, once more, the Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Madera*. As quoted in *Wycoco*, the complete absolution of passive recipients from liability may significantly reduce the funds that should be recovered by the COA and as a result, cause great financial loss or "fiscal leakage" to the detriment of the government. Thus, if the Court were to continue to recognize the non-return of passive recipients as the norm, Senior Associate Justice Perlas-Bernabe noted that the COA's ability to recover government funds that are clearly paid in error may be greatly hampered. This Court once more adopts this view herein and affirms that this skewed paradigm recognized in earlier jurisprudence should no longer be propagated.

There is hence no plausible reason for the Court not to apply the general rule in the case at bar, and the Court finds nothing in the allegations and arguments raised by petitioners that they come within the exceptions under Rules 2c or 2d. As similarly observed in *Wycoco*, petitioners have not shown that the FGI they received was in consideration of actual services rendered; and the circumstances surrounding the case are bereft of any indication that NFA personnel will be prejudiced or will suffer injustice apart from the fact that they are being made to pay and part with money that they should not have received in the first place. The Court also finds no relevant social justice considerations and no other bona fide exceptions to justify the non-return. Additionally, petitioners in this case had in fact agreed to return the FGI through salary deduction in the event it is disallowed in audit by executing a Deed of Undertaking. The execution of this Deed of Undertaking has not been denied, and operates to divest petitioners of any reason not to return the FGI.

All passive recipients of the FGI – meaning, all petitioners – should therefore return what they received by mistake, notwithstanding their claim of receipt of the FGI in good faith.

Officials who approved the release of the FGI are not solidarity liable to return the total disallowed amount.

Under Rules 2a and 2b in *Madera*, the statutory basis for holding approving or certifying officers solidarily liable to return or not is found in Section 38, Chapter 9, Book I[108] and Section 43, Chapter 5, Book VI,[109] both of the 1987 Administrative Code.[110] For these group of persons to be made liable to return under Rule 2b, it must be clearly shown that they acted in bad faith, malice, or gross negligence. Conversely, if they acted in good faith, in the regular performance of their functions, and with the diligence of a good father of the family, they are not civilly liable to return under Rule 2a.

Again as in *Wycoco*, there are in this case badges of good faith on the part of the approving and certifying officers identified in ND No. 2014-001-101-(12) and hence, they should be exonerated from their civil liability to return the total disallowed amount. Similar to *Wycoco*, the fact that the FGI has been traditionally given, albeit without basis, is a badge of good faith that should be appreciated in favor of the approving and certifying officers, since they were expected to continuously perform their duty to approve and certify the release of the same. More so, it can hardly be said that their act of approval or certification was without de facto basis, as it was done because of the mistaken belief by the NFA Council that they had the authority to grant the same, leading to the issuance of NFA Council Resolution No. 226-2K5. Finally, again echoing *Wycoco*, the disallowance upheld in *Escarez* was made only in 2016 and thus, there was still no significant precedent disallowing the FGI when the subject FGI in this case was released in 2012.

For these reasons, the Court holds that the approving and certifying officers named in ND No. 2014-001-101-(12) – Danilo I. Pastrana, Phoebe A. Co, and Marilou C. Arellano – should be excused from their solidary liability to

return the total amount disallowed.

Before ending, the Court must note that indeed, petitioners admit^[111] to filing the petition beyond the period allowed under Section 3, Rule 64 of the Rules of Court.^[112] Instead of filing the same on March 11, 2020, petitioners mailed the petition only on 23 June 2020.^[113] The OSG is therefore correct that the petition was filed out of time. Nevertheless, the Court will overlook this procedural lapse, noting the confluence of the following factors: first, the duly authorized representative^[114] of petitioners who actually signed the petition is not a member of the Bar; second, that under the computation of the period under Section 3, Rule 64, petitioners only had five days from receipt of Resolution No. 2020-024 on 06 March 2020 to prepare and file the petition, having filed their motion for reconsideration on the 28th day of their original 30-day period after receipt of Decision No. 2018-390; and third, three days prior to the indicative filing date of 11 March 2020, the President has already declared a state of public health emergency throughout the Philippines due to COVID-19 under Presidential Proclamation No. 922, series of 2020,^[115] and the prevailing atmosphere at the time has made everyone, not least this Court, concerned and wary of the situation. The Court finds these factors sufficient to excuse the filing of the petition beyond the reglementary period.

WHEREFORE, the Petition for Certiorari filed by the concerned officials and employees of the National Food Authority – Regional Office No. II is **PARTIALLY GRANTED**. Commission on Audit En Banc Resolution No. 2020-024 dated November 25, 2019 and COA Commission Proper Decision No. 2018-390 dated December 13, 2018 affirming Notice of Disallowance No. 2014-001-101-(12) in the amount of P645,000.00 are both **AFFIRMED** with **MODIFICATION**. The approving/certifying officers are **EXONERATED** from their solidary liability to return the disallowed amount. However, all passive recipients of the Food and Grocery Incentive disallowed under Notice of Disallowance No. 2014-001-101-(12), including the approving/certifying officials who had received the disallowed amount in their capacity as payees, are hereby **ORDERED** to refund the amounts they received.

SO ORDERED.

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

[1] Rollo, pp. 3-35.

[2] Id. at 41.

[3] Id. at 116-124.

[4] Id. at 42-43, 58-59, 95-96.

[5] Id. at 42, 95. The Notice of Suspension is numbered 13-04-501 (2012).

[6] Id. at 68-70, 113-115.

[7] Id. at 42, 70, 115.

[8] Id. at 46-56

[9] Id. at 50.

[10] Id. at 67, 112. Approved by the NFA Council on May 18, 2005. See also the NFA Board Secretary's Certificate dated May 25, 2005 (id. at 66, 111).

[11] Id. at 51.

[12] Id. at 61, 106.

[13] Id. at 62, 107.

[14] Id. at 51-52.

[15] Id. at 63-65, 108-110.

[16] Id. at 52.

[17] Id.

[18] 370 Phil. 793 (1999).

[19] Rollo, p. 53.

[20] Id.

[21] Id. at 54.

[22] Id. at 72-78, 100-105.

[23] Id. at 74.

[24] The specific provision was not mentioned in the Decision, but may refer to Section 16(e) of R.A. No. 10155 or the General Appropriations Act for Fiscal Year 2012 (January 1, 2012), as follows:

Section 16. Use of Government Funds. – Government funds shall be utilized in accordance with the appropriations authorized for the purpose. Moreover, departments, bureaus, offices or agencies, including GOCCs and LGUs shall ensure that utilization of government funds comply with applicable laws, rules and regulations, such as, but not limited to the following: ... (e) Grant honoraria and other allowances authorized by law.

[25] Grant of Amelioration to All Government Personnel (November 26, 1998). Paragraph 4.5 provides:

4. Rules and Regulations

x x x x

4.5 All agencies are hereby prohibited from granting any food, rice, gift checks or any other form of incentives/allowances except those authorized via Administrative Order by the Office of the President. Agencies which have granted such incentives/allowances before the issuance of AO No. 37 shall be deemed to have complied with Administrative Order No. 37. Administrative authorizations granting any and all forms of additional compensation that are inconsistent with the provisions of AO No. 37 are considered revoked pursuant to Section 2 thereof."

[26] Republic Act No. 6758 or "An Act Prescribing a Revised Compensation and Position Classification System in the Government and for Other Purposes" (August 21, 1989). Section 12 states:

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

Existing additional compensation of any national government official or employee paid from local funds of a local

government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

[27] Rollo, p. 75.

[28] Id.

[29] Id. at 69, 76.

[30] Id. at 69.

[31] Id. at 75-76.

[32] Id. at 78.

[33] Id. at 81-94.

[34] Id. at 86-87.

[35] Id. at 87-88.

[36] Id.

[37] Id. at 89.

[38] Id. at 91.

[39] Id. at 120.

[40] Id. at 119.

[41] Id.

[42] Id.

[43] Id.

[44] Id. at 121.

[45] Id.

[46] Id., citing Joint Resolution No. 04, s. 2009 (Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes, June 17, 2009), R.A. No. 6758, and Presidential Decree No. 1597 (Further Rationalizing the System of Compensation and Position Classification in the Government, June 11, 1978).

[47] Id.

[48] Id.

[49] Id.

[50] Id. at 122.

[51] Id. at 6-7, 126-139.

[52] Id. at 14.

[53] Id. at 14-15.

[54] Id. at 16.

[55] Id. at 17.

[56] Id. at 17-18.

[57] Id. at 22.

[58] Id. at 22-24.

[59] Id. at 24.

[60] Id. at 22, 48.

[61] Id. at 24.

[62] G.R. Nos. 217818, 218334, 219979, 220201, & 222118 (Resolution), May 31, 2016.

[63] Rollo, pp. 24-25, 32.

[64] Id. at 26.

[65] Id. at 27.

[66] Id.

[67] Id.

[68] Id.

[69] Id. at 28.

[70] Id. at 28-29.

[71] Id. at 27, 28, 32.

[72] Id. at 178-201.

[73] Id. at 182-183.

[74] Id. at 186.

[75] Id. at 186-187.

[76] Id. at 187.

[77] Id. at 189-190.

[78] Id. at 191.

[79] Id. at 192.

[80] Id. at 191.

[81] Id. at 192.

[82] Id. at 195.

[83] Id.

[84] Id. at 196.

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

[86] Rollo, p. 197.

[87] Id. at 183.

[88] Declaring a State of Calamity Throughout the Philippines Due to the Corona Virus Disease 2019 March 16, 2020.

[89] Rollo, p. 184.

[90] Id.

[91] Id. at 187.

[92] G.R. Nos. 237874 & 239036, February 16, 2021.

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

[94] Wycoco v. Aquino, supra note 92; Escarez v. Commission on Audit, supra note 62; see also Maritime Industry Authority v. Commission on Audit, 750 Phil. 288, 308 (2015).

[95] City of General Santos v. Commission on Audit, 733 Phil. 687, 697 (2014), citing Dimapilis-Baldoz v. Commission on Audit, 714 Phil. 171, 187 (2013).

[96] Wycoco v. Aquino cites DBM Corporate Compensation Circular No. 10 (Rules and Regulations for the implementation of the Revised Compensation and Position Classification System Prescribed Under R.A. No. 6758 for Government-Owned and/or Controlled Corporations [GOCCs] and Financial Institutions [GFIs], February 15, 1999).

[97] Rollo, pp. 66-67, 111, 112.

[98] Wycoco v. Aquino, supra note 92.

[99] 148 Phil. 443 (1971).

[100] Id. at 448.

[101] Hacienda Luisita, Incorporated v. Presidential Agrarian Reform Council, 668 Phil. 365, 499 (2011).

[102] Metropolitan Waterworks and Sewerage System v. Commission on Audit, 821 Phil. 117, 137 (2017).

[103] Wycoco v. Aquino, supra note 92, citing Metropolitan Waterworks and Sewerage System v. Commission on Audit, supra note 101.

[104] 721 Phil. 416 (2013).

[105] Id. at 529-530.

[106] Madera v. Commission on Audit, supra note 85.

[107] Rollo, p. 197.

[108] 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.

[109] 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.

[110] Executive Order No. 292, s. 1987 (Instituting the "Administrative Code of 1987," July 25, 1987).

[111] Rollo, pp. 7-8.

[112] Section 3. Time to file petition. – The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The filing of a motion for new trial or reconsideration of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial.

[113] Rollo, p. 165.

[114] Id. at 160-161.

[115] Declaring a State of Public Health Emergency Throughout the Philippines, March 8, 2020.

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