

## **MIGUEL RENE A. DOMINGUEZ, PETITIONER, VS. COMMISSION ON AUDIT, MICHAEL G. AGUINALDO IN HIS CAPACITY AS CHAIRPERSON, RESPONDENT.**

*G.R. No. 256285. August 03, 2021*

Ponente: CARANDANG, J.

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### **CARANDANG, J.:**

Assailed in this Petition for Certiorari[1] under Rule 64 are the Decision[2] dated May 10, 2017 and the Resolution[3] dated March 15, 2018 of the Commission on Audit (COA), which affirmed the two Notices of Disallowance issued by the COA-Intelligence and Confidential Fund Audit Unit (ICFAU) on 11 September 2013.[4] The two Notices of Disallowance found Miguel A. Dominguez (petitioner) and several others[5] liable to return P3,300,000.00 and P1,380,000.00, amounts pertaining to irregular disbursements allegedly used for intelligence and confidential activities and/or programs in the province of Sarangani for the years 2011 and 2012.[6]

#### **Facts of the Case**

Records show that in 2009, petitioner, then the Governor of the province of Sarangani,[7] approved[8] the Sarangani Province Local Government Security Plan (Security Plan).[9] The Security Plan was conceived due to a string of several incidents in prior years[10] that, according to the petitioner, highlighted the need for strengthened intelligence operations in the province.[11]

Pursuant to the Security Plan, the provincial government allotted funds for the following activities and/or programs, among others: the organization/federation training and benefits of deputized barangay tanods or civilian volunteer organizations, the inventory and registration of unlicensed firearms; and capability building on conflict transformation training for "ACT for Peace-assisted Peace and Development Communities." [12]

The Security Plan was thereafter submitted to the Department of the Interior and Local Government (DILG) for its favorable endorsement.[13] Financial plans and requests for allotment[14] for these activities were also submitted for the approval of the DILG.[15]

Petitioner claims that since the expenditures for the intelligence and confidential activities were beyond the budget based on DILG Memorandum Circular No. 99-65 (MC No. 99-65),[16] requests for exemption from the budget limitation were also submitted to the DILG.[17] The request for exemption was because of item II, number 2 (Item II.2) of MC No. 99-65, which provides that "[f]unds for Intelligence or Confidential purposes may be sourced from the: [a] appropriations for peace and order, or [b] total annual appropriations. Provided, that the total annual amount appropriated for Intelligence or Confidential undertakings shall not exceed thirty per cent (30%) of the total annual amount allocated for peace and order efforts or three per cent (3%) of the total annual appropriations, whichever is lower." [18]

The DILG granted the requests for exemption from the budget limitation for 2009 and 2010, through letters

signed by then Secretary Ronaldo V. Puno dated February 18, 2009 and March 9, 2010, respectively.[19] On various dates[20] in 2009, 2010, and 2011, credit advise were issued by the COA ICFAU, essentially confirming the use of the intelligence and confidential funds for 2009 and 2010 through cash advances.[21]

The aforementioned activities and/or programs were continued by the provincial government of Sarangani for calendar years 2011 and 2012, and the corresponding requests for exemption from the budget limitation were again allegedly submitted to the DILG for this purpose.[22]

However, on May 22, 2013,[23] the COA-ICFAU issued Audit Observation Memorandum (AOM) No. 2013-05-6337, finding among others that:

3. The Accomplishment Report for the period January to December 2011 contains items which are not related to Confidential and Intelligence Activities but attributable to Peace and Order Activities, x x x[24]

The same finding was stated in AOM No. 2013-05-6339 issued the next day, May 23, 2013:[25]

5. The Accomplishment Report for the period January to [October 2012] contains items which are not related to Confidential and Intelligence Activities but attributable to Peace and Order Activities, x x x[26]

In both AOMs, the COA-ICFAU, citing a clarification made by then DILG Assistant Secretary Rolando M. Acosta as to the provisions of MC No. 99-65,[27] requested the petitioner to submit a justification on the use of intelligence and confidential funds for the above-enumerated activities, instead of charging the expenses against the appropriations for peace and order projects. On June 25, 2013 and June 28, 2013, petitioner submitted his letter-replies to the two Audit Observation Memoranda.[28]

After evaluation, the COA-ICFAU still noted deficiencies on the use of intelligence and confidential funds, and accordingly issued two Notices of Disallowance.[29]

The first Notice of Disallowance, ND-2013-09-006, dated September 11, 2013,[30] disallowed P3,300,000.00 in disbursements for calendar year 2011, for violation of item II, numbers 3 and 4 (Item II.3 and Item II.4, respectively) of MC No. 99-65. ND-2013-09-006 disallowed the disbursements for the following items:

### ACTIVITY

Amount (P)

1. Organization/ Federation Training and Benefits of Deputized Barangay Tanods or CVOs

1,500,000.00

2. Inventory of Unlicensed Firearms

300,000.00

3. Registration of Unlicensed Firearms

300,000.00

4. Other Measures

4.1 Capability Building on Conflict Transformation for ACT for Peace-Assisted PDCs

4.2 Peace Education & Advocacy to PDCs and Muslim Communities

1,200,000.00

**TOTAL**

3,300,000.00

The second Notice of Disallowance, ND-2013-09-007, also dated 11 September 2013,[31] disallowed P1,380,000.00 in disbursements for calendar year 2012, similarly for violation of items II.3 and II.4 of MC No. 99-65. ND-2013-09-007 disallowed the disbursements for the same items:

**ACTIVITY****AMOUNT (P)**

1. Organization/ Federation Training and Benefits of Deputized Barangay Tanods or CVOs

600,000.00

2. Inventory of Unlicensed Firearms

150,000.00

3. Registration of Unlicensed Firearms

150,000.00

4. Other Measures

4.1 Capability Building on Conflict Transformation for ACT for Peace-Assisted PDCs

4.2 Peace Education & Advocacy to PDCs and Muslim Communities

480,000.00

**TOTAL**

1,380,000.00

Both Notices of Disallowance stated that:

The above disallowance constituted the activities reported on the Accomplishment Reports submitted by then Provincial Governor. This Office, upon evaluation of the justifications, still found the above activities a component of Peace and Order Program. And the same should have been charged to Peace and Order Program Fund appropriated by the Provincial Government for CY [2011/2012].[32]

Pertinently, item II.3 of MC No. 99-65 provides:

3. The use of funds for Intelligence and Confidential activities shall be limited to the following: (a) purchase of information; (b) payment of rewards; (c) rental and other incidental expenses relative to the maintenance of safehouses; and (d) purchase of supplies and ammunitions, provision of medical and food aid, as well as payment of incentives or travelling expenses relative to the conduct of intelligence or confidential operations[.][33]

On the other hand, item II.4 of MC No. 99-65 states:

4. Disbursements from the allocation for peace and order concerns net of funds for Intelligence or Confidential undertakings shall include, but not limited to, the following: (a) purchase of lire arms and other relevant equipment; (b) payment of allowances, hospitalization benefits and training subsidies; and (c) other Maintenance and Other Operating Expenditures, in favor of the personnel of the Philippine National Police,

Bureau of Fire Protection and Bureau of Jail Management and Penology[.][34]

Petitioner filed an appeal questioning the two Notices of Disallowance,[35] reasoning, first, that the province of Sarangani has made peace and order as its priority, and the disbursement is supported by the appropriate Peace and Order Council Resolutions for calendar year 2011;[36] second, that the utilization of the fund for training and capability-building is in support of internal security operations under Executive Order (EO) No. 739[37] on counter-insurgency,[38] and since no funds were appropriated by EO No. 739 for this purpose, it was necessary to use intelligence funds;[39] third, that the limitations on the utilization of intelligence funds in MC No. 99-65 are subject to the rule on ejusdem generis, considering that the activities so funded are within its intent and spirit;[40] fourth, that the disbursement of the intelligence fund is necessary because the annual allocation for peace and order under the annual executive budget is limited to the programmed allocation and obligation by object expenditures;[41] and lastly, that all disbursements were done in good faith and cannot be solely attributed to the petitioner, and should be presumed in regular performance of official duties.[42]

In her Answer to the Appeal,[43] COA-ICFAU Director IV Florida A. Jimenez insisted that the justifications of the petitioner were not acceptable because the activities flagged by COA-ICFAU refer to activities under the Peace and Order Program and should have been charged to funds appropriated for that purpose, emphasizing the limitation stated in item II.3 of MC No. 99-65 on the use of funds for intelligence and confidential activities.[44]

Petitioner reiterated his arguments in his Reply to Answer.[45] He stressed that the COA-ICFAU failed to consider good faith in the disbursement of the funds,[46] and that similarly, it failed to consider the factual milieu of the supposed disbursement as it was legally supported and justified.[47]

As stated, the COA denied the petitioner's Appeal and affirmed the two Notices of Disallowance issued by the COA-ICFAU.[48]

The COA held, first, that the petitioner's reliance on the ejusdem generis rule is misplaced, for although there was an enumeration of particular and specific words in item II.3 of MC No. 99-65, these words were not followed by a general phrase, i.e., "such other similar expenditures," and thus, items of expenditure that are not included in the list cannot be considered part of, or similar to, expenditures properly chargeable against intelligence and confidential funds.[49]

Second, the COA pointed out that requests for authority to use intelligence and confidential funds for expenditures that fall outside the enumeration of item II.3 of MC No. 99-65 requires the approval of the DILG Secretary - but no such approval was given for the expenditures for calendar years 2011 and 2012.[50]

Petitioner filed a Motion for Reconsideration[51] on June 1, 2017, which the COA denied. The COA declared that the arguments raised by the petitioner had already been considered and judiciously passed upon in the Decision.[52] Further, the COA did not give credence to the petitioner's claim of good faith, noting that the petitioner was aware of the limitations on the use of intelligence and confidential funds.[53] The COA maintained that it is inconsistent with good faith when, notwithstanding this knowledge, and without the DILG Secretary granting the requests for exemption from the budget limitation, the petitioner still authorized the disbursement of cash advances from intelligence and confidential funds for the disallowed activities and/or programs.[54]

Undaunted, petitioner seeks recourse to this Court, arguing that, first, the activities and/or programs disallowed conforms with item II.3 of MC No. 99-65[55] because the wording used therein are mere descriptive words as to the proper use of the intelligence and confidential funds,[56] and what is essential is the purpose, nature, and result of the disbursement, not its nomenclature.[57] Second, petitioner contends that the DILG did not question, warn, or even called the attention of the provincial government of Sarangani with regard to the use of the funds

for calendar years 2011 and 2012, which meant that the use of the funds complied with the requirements of MC No. 99-65.[58] Third, since the DILG Secretary has approved the activities in 2009 and 2010, then the COA cannot interpret the scope of MC No. 99-65 differently for 2011 and 2012,[59] and it must respect the interpretation of the DILG as it is the latter which issued the regulation.[60] Fourth, petitioner asserts that he had the right to rely on the previous interpretations, even assuming that the previous interpretations of the activities disallowed in 2009 and 2010 were incorrect.[61] Fifth, petitioner alleges that the Decision and the Resolution violates the constitutional principle of local autonomy[62] because COA, in disallowing the expenses of the provincial government, substitutes its judgment over the judgment of the said local government unit in the utilization of public funds and prevents the local government unit from being more responsive to the needs of its constituents.[63] Lastly, petitioner insists that he relied in good faith on the approvals of DILG and COA in 2009 and 2010, which fall within the doctrine of operative fact,[64] and petitioner would not have repeated the disallowed activities and/or programs if these were previously disallowed.[65]

In its Comment[66] filed on November 21, 2019, the Office of the Solicitor General (OSG) counter-argued that grave abuse of discretion cannot be imputed to COA in rendering the assailed Decision and Resolution, as both are in consonance with prevailing laws, rules, and established jurisprudence.[67] Contrary to the petitioner's claim, there is no need to interpret item II.3 of MC No. 99-65 according to the OSG, as it categorically limits the activities for which intelligence and confidential funds may be used, and thus, items of expenditure that are not included in the list cannot be considered part of or similar to expenditures properly chargeable against intelligence and confidential funds.[68] For the OSG, the COA is correct in ruling that charging expenses for peace and order activities against intelligence and confidential funds was an irregular transaction, as the same did not comply with the requirements set forth in MC No. 99-65.[69] The OSG further claims that COA is not estopped from questioning the previous acts of its officials in the light of the well-established principle that estoppel does not lie against the government, and neither the erroneous application nor the erroneous enforcement of a statute by public officers can preclude the subsequent corrective application of a statute.[70] The OSG also posited that the doctrine of operative fact does not apply because there is no law or executive issuance or act in this case that has been judicially declared to be invalid[71] - the fact is that the petitioner acted without the requisite approval from the DILG to utilize intelligence and confidential funds for expenditures that fall outside of the enumeration in item II.3 of MC No. 99-65.[72] Finally, the OSG asserted that although local government units are afforded autonomy, they are still bound by the state policy of judicious utilization of public funds and properties, and that the Constitutional mandate of local autonomy did not deprive the COA of its audit authority over the government and any of its subdivisions.[73]

At issue is whether the COA gravely abused its discretion, amounting to a lack or excess of its jurisdiction, when it affirmed the disallowance on the use of intelligence and confidential funds for the following expenditures: (a) organization/federation training and benefits of deputized barangay tanods or civilian volunteer organizations; (b) inventory and registration of unlicensed firearms; and (c) capability building on conflict transformation training for ACT for Peace-assisted Peace and Development Communities.

#### Ruling of the Court

The petition lacks merit.

The COA did not gravely abuse its discretion, much less err, in affirming the disallowance on the use of intelligence and confidential funds for: (a) organization/federation training and benefits of deputized barangay tanods or civilian volunteer organizations; (b) inventory and registration of unlicensed firearms; and (c) capability building on conflict transformation training for ACT for Peace-assisted Peace and Development Communities.

There is no need to interpret the provisions of MC No. 99-65.

Petitioner posits that the Court should look into the administrative construction of the words used,[74] and hence determine the correctness of COA's interpretation of MC No. 99-65, because according to him the COA, in disallowing the use of intelligence and confidential funds for the abovementioned activities and/or programs made by the province of Sarangani, incorrectly restricted the applicability of item II.3 to the said activities and/or programs.

Petitioner explains that:

42. A careful perusal of the said Circular, however, would reveal that Item II.3 are merely descriptive words on where to use the funds if it will be culled from the Intelligence and Confidential Funds. Item II.3 (a), merely mentioned that the funds should be used if purchasing information, it does not prescribe any method on how to purchase the same. Item II.3 (b) does not mention what kind of rewards or as to what acts warrant the reward. Item II.3 (d) does not mention what specific type of Intelligence and Confidential Operations are included, be it surveillance or tactical. Only Item II.3 (c) is deliberate as to limit the expense only to those that are necessary and incidental in maintaining a safehouse.[75]

This explanation, however, presupposes that there is something in MC No. 99-65 that actually needs interpretation. There is none.

To reiterate, item II.3 provides:

3. The use of funds for Intelligence and Confidential activities shall be limited to the following: (a) purchase of information; (b) payment of rewards; (c) rental and other incidental expenses relative to the maintenance of safehouses; and (d) purchase of supplies and ammunitions, provision of medical and food aid, as well as payment of incentives or travelling expenses relative to the conduct of intelligence or confidential operations[.][76]

The rule is unequivocal that the use of funds for intelligence and confidential activities shall be limited to the enumerated items as provided, i.e., purchase of information; payment of rewards; rental and other incidental expenses relative to the maintenance of safehouses; and purchase of supplies and ammunitions, provision of medical and food aid, as well as payment of incentives or travelling expenses relative to the conduct of intelligence or confidential operations.

True, item II.3 did not prescribe the method on how to purchase information, the kind of rewards to be given, or the acts that warrant a reward. However, from which of those supposedly indeterminate subjects in item II.3 of MC No. 99-65 would the disallowed activities and/or programs fall under? Surely, the organization/federation training and provision of benefits for deputized barangay tanods or civilian volunteer organizations, the inventory and registration of unlicensed firearms, and the capability building on conflict transformation training for ACT for Peace-assisted Peace and Development Communities are not methods to purchase information. They are certainly not kinds of rewards, and neither are they acts that warrant rewards. They also likewise do not involve the maintenance of warehouses, and more so do not as well involve the purchase of supplies or ammunitions, the provision of medical and food aid, or the payment of incentives or travelling expenses.

The incongruity of the disallowed activities and/or programs with MC No. 99-65 is more evident if we consider the petitioner's justification for each of the items disallowed:

49. Petitioner has justified the need to train Barangay Officials/CVO as intelligence force multipliers. Barangay Officials are the striking force when events like these occur. There has been countless of times, wherein armed groups were detected by Barangay Officials because of their intelligence training, where the

Military or PNP has countered such moves. The first responders would always be the Barangay Officials, and without such training the propensity of being surprised by terrorist attacks or an attack of an armed group. Thus, it squarely falls under Item II.3.

50. The gathering and registering unlicensed firearms were to provide information about who and which areas were concentrated with such because it will give the Province an idea on where to place law enforcement personnel or devise ways to improve security in the area. It will also show the potential areas where armed groups most likely settle. Thus, it squarely falls under Item II.3.

51. As to capacity building trainings in Islamic communities, also disallowed by COA, it connects, maintains, and ensures that the Provincial Government is able to gather information relative to the area. These areas are prone to be visited by terrorist groups or armed groups, because of the propaganda that the Government is apathetic towards their community. That is why it is vital to aid the aid area. Thus, it squarely falls under Item II.3.[77]

Again, there is nothing in the abovementioned justifications that indicate or imply that there was a purchase of information or a payment of a reward, a rental or an expense relative to the maintenance of a safehouse, or a purchase of supplies or ammunitions, the provision of medical and food aid, or the payment of incentives or travelling expenses. The fact that these activities resulted in some form of intelligence does not mean intelligence and confidential funds should or could have been used. This is not a standard considered or provided for in item II.3, or anywhere in MC No. 99-65 for that matter. Contrary to the allegations of the petitioner,[78] there is nothing in MC No. 99-65 that empowers local government units to use intelligence and confidential funds for activities and/or programs if the results thereof will fall under item II.3 - in fact, item II, number 5 (Item II.5) stresses that the authority to use intelligence and confidential funds are subject to the limitations provided under numbers 1, 2, and 3. It should even be noted that the justifications proffered by the petitioner do not even appear as a performance indicator, a target, or an actual accomplishment listed in the Matrix of Accomplishments that the provincial government submitted to DILG together with its budget requests to allow the use of intelligence and confidential funds.[79]

Considering that item II.3 is clear, plain, and free from any ambiguity, the words thereof must be given their literal meaning and applied without any attempt at interpretation. There is no "controlling administrative construction" at play in this case which the Court need look into, contrary to the assertion of the petitioner. The fact that the budget requests and requests for exemption for budget limitation were previously approved is not necessarily an "administrative construction" of MC No. 99-65. Such prior approvals should not bind the COA or the Court, for as the OSG correctly pointed out, the State is not estopped by the previous acts of its officials - and the erroneous application or the erroneous enforcement of a statute or rule by public officers cannot preclude the subsequent corrective application of that statute or rule.

In contrast, item II.4 of MC No. 99-65 is not restrictive, and even emphasizes the limitation in item II.3 by stating that disbursements falling under item II.4 is net of funds for intelligence and confidential undertakings:

4. Disbursements from the allocation for peace and order concerns net of funds for Intelligence or Confidential undertakings shall include, but not limited to, the following: (a) purchase of fire arms and other relevant equipment; (b) payment of allowances, hospitalization benefits and training subsidies; and (c) other Maintenance and Other Operating Expenditures, in favor of the personnel of the Philippine National Police, Bureau of Fire Protection and Bureau of Jail Management and Penology[.][80]

Based on the wording of this provision in relation to the wording in items II.3 and II.5, and considering the documentary evidence the petitioner himself provided, COA is within reason to place the disallowed activities and/or programs within the ambit of item II.4.

MC No. 99-65 purposely limits the activities or programs covered by, and the budget for, intelligence and confidential funds.

Even if the Court had to interpret MC No. 99-65, a reading of the clauses therein reveal an intent to limit the activities or programs covered by intelligence and confidential funds, since the budget therefor is similarly constrained. Thus, under MC No. 99-65, the general rule is that local government units are allowed a peace and order fund allocation from their respective budgets if peace and order is a priority investment area. This is clear in item II, number 1.[81] All expenses related to peace and order should be taken from that allocated fund, which is why item II.4 is not restrictive. Funds for intelligence or confidential activities or programs may be sourced from a maximum of 30% from the peace and order allocation or 3% of the local government unit's total annual appropriation, whichever is lower under item II.2, and which is why item II.3 has a limited scope. This limitation, as previously mentioned, is emphasized in item II.5. Item II, number 7 even reminds local government officials to observe fiscal prudence and applicable accounting and auditing rules in the use of intelligence and confidential funds.

As this was an exception to the general rule, the petitioner should have been more circumspect and awaited the approval by the DILG, more so when he knew fully well that he was in excess of the maximum allowed for intelligence and confidential activities by MC No. 99-65. Item III of MC No. 99-65 specifically provides that allocations for intelligence and confidential funds beyond the limitations prescribed under item II.2 shall be subject to the prior approval of the DILG Secretary. The fact that the DILG did not notify him, or questioned the disallowed expenses when he submitted his request for exemption from the budget limitation in 2011 and 2012 is not an excuse, as the petitioner clearly knows approval is necessary from previous years. The Court also notes that COA Circular No. 2003-003,[82] applicable at the time of the disallowances in this case, explicitly requires the submission of a document showing that the DILG Secretary approved the allocations for intelligence and confidential funds.

Petitioner cannot rely on previous approvals or claim good faith.

In allowing the cash advances even without the requisite approval from the DILG, the petitioner undertook the responsibility for the same, and he cannot now claim good faith or that he has a right to rely on previous approvals. If he has the right to rely on the previous approvals, why did he even have to submit a budget request and a request for exemption from the budget limitation with the DILG for 2011 and 2012? Petitioner, as then Governor, cannot just assume that an approval was given, when item III clearly requires prior approval, and that this has even been flagged as a documentary requirement for audit and liquidation under COA Circular No. 2003-003. Further, if he is in good faith, why did he allow the release of cash advances for the disallowed activities and/or programs knowing that no prior approval by the DILG has been obtained for the same? That the petitioner says this is very telling:

77. Petitioner relied on the credit advises of the Commission on Audit in 2009 and 2010. The activities disallowed at present were included in the credit advises. DILG likewise acted on the request to increase the financial limitations set in MC No. 99-65 so that the Province can apply the allocation to the disallowed activities. Without such action and grant by the DILG and COA, Petitioner would not have repeated the said programs. Requiring the petitioner to be liable for the said disbursements will cause damage to him as those [sic] funds were used for Intelligence and Confidential Purpose. The parties therein involved would no longer believe that government support for intelligence operations will be given if the benefits they received therein will be declared as illegal.[83] (Emphasis and underscoring supplied)

The question remains: why did he allow the cash advances for the disallowed activities and/or programs without the approval of the DILG? Petitioner has not submitted anything, and there is nothing on record, to disprove the finding of COA that he did not obtain the requisite DILG approval for the use of intelligence and confidential funds for 2011 and 2012. The COA is hence correct in concluding that the cash advances disallowed in 2011 and 2012 for intelligence and confidential funds by the petitioner were irregular.

We, likewise, note here that the petitioner similarly mentions reliance on the credit advise issued by the COA for 2009 and 2010. This reliance, however, is misplaced. A credit advice or credit notice is issued only to confirm the full liquidation of a transaction - in this case, a cash advance - and does not bestow authority or allow cash advances for a succeeding year. The issuance of a credit advice thus comes in only once the cash advances made in a previous year are liquidated or settled by the submission of liquidation reports and other supporting documents. The petitioner, therefore, cannot rely on the credit advice issued by the COA-ICFAU for 2009 and 2010 to justify the cash advances he authorized for 2011 and 2012, because the succeeding cash advances made in 2011 and 2012 for intelligence and confidential funds still needed the prior approval of the DILG under MC No. 99-65.

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

There is, likewise, no merit to the petitioner's claim that the operative fact doctrine applies in this case. The doctrine of operative fact, as embodied in *De Agbayani v. Philippine National Bank*,<sup>[84]</sup> 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. 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.<sup>[85]</sup>

The situation in the case at bar, while permissively within what can be accepted as an "executive, act," is not an occasion where the doctrine of operative fact should apply. The point of the operative fact doctrine is to recognize what transpired prior to adjudication so as not to deprive the law of its quality of fairness and justice.<sup>[86]</sup> Thus, the doctrine acknowledges why the act was done, as well as sustains the effects of the act - but it does not, in any way, excuse an act that is patently irregular for failure to comply with a rule or policy regulation. As a rule, originating from considerations of equity, this is not how the doctrine of operative fact should be applied. Since the underlying issue in this case is whether the petitioner respected the pertinent provisions in MC No. 99-65 - and the COA found that he did not - he therefore cannot erase the irregularity of his actions by simply claiming that it should be deemed valid because of its consequences, i.e., that it has resulted into a disbursement of funds that may have redounded to the benefit of the province of Sarangani. The liability being imposed on the petitioner is for his failure to abide by the regulatory policy in MC No. 99-65. To subscribe to this line of thinking that the petitioner espouses would not only render the audit power of COA nugatory, it would also make the Court a sanitizing medium for patently irregular acts.

There is no violation of the  
principle of local autonomy.

Lastly, there is also no merit that COA's ruling violates the principle of local autonomy. For one thing, the proper party to assail whether COA's ruling infringes on local and fiscal autonomy are the local government units themselves, not the petitioner.<sup>[87]</sup> He has not shown that he was duly authorized by some or all local government units to represent them in assailing a violation of local autonomy. For another, the OSG is correct that the guarantee of autonomy under Section 2, Article X of the Constitution does not deprive the COA of its authority to

audit the government and all of its subdivisions under Section 2(1), Article IX-D of the Constitution. Local government units, through granted autonomy, remain within the audit jurisdiction of COA.

There is no grave abuse of discretion.

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.[88] 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.[89] Based on the disquisition above, petitioner has failed to show that COA's actions were tainted with grave abuse of discretion.

Petitioner is solidarily liable to return the disallowed amounts.

There being no grave abuse of discretion on the part of COA, and there being gross negligence on the part of the petitioner in authorizing the release of intelligence and confidential funds without the necessary approval required by the applicable rules, the Court therefore finds in order the directive for the petitioner and the other persons identified in the two Notices of Disallowance to return the amounts representing the cash advances released for the disallowed items in 2011 and 2012. The petitioner shall be solidarily liable to return the total amount of P4,680,000.00, consistent with Section 38, Chapter 9, Book I[90] and Section 43, Chapter 5, Book VI,[91] both of the 1987 Administrative Code,[92] as well as the prevailing jurisprudential rules on return as provided in *Madera v. Commission on Audit*: [93]

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

(a) Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.

(b) Approving and certifying officers who are clearly shown to have acted 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.

(c) Recipients - whether approving or certifying officers or mere passive recipients - are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.

(d) The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.

WHEREFORE, the Petition for Certiorari filed by petitioner Miguel Rene A. Dominguez is hereby DENIED. Accordingly, the assailed Decision dated May 10, 2017 and the Resolution dated March 15, 2018 of the Commission on Audit are AFFIRMED.

Petitioner Miguel Rene A. Dominguez shall be solidarily liable to RETURN, with the other approving and certifying officers who are similarly found to have acted with gross negligence, the total disallowed amount of P4,680,000.00.

**SO ORDERED.**

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

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[1] Rollo, pp. 6-40.

[2] Id. at 138-142.

[3] Id. at 160-162.

[4] Id. at 97-101.

[5] As named in the Notices of Disallowance, Leah P. Duhaylungsod (Provincial Budget Officer), Leovigildo A. Librando (Provincial Accountant), and Noriel D. Beton (Provincial Treasurer). See rollo, pp. 98, 101; the Petition does not identify or mention any of these persons.)

[6] Rollo, pp. 98, 101.

[7] Id. at 9.

[8] Id. at 61.

[9] Id. at 59-61.

[10] Id. at 9-10.

[11] Id. at 10.

[12] Id. at 62-63.

[13] Id. at 61.

[14] Id. at 62-66.

[15] Id. at 11.

[16] Amending Memorandum Circular No. 98-136 dated July 24, 1998 entitled, Revised Guidelines Relative to the Utilization of Funds for Intelligence and Confidential Purposes (23 April 1999), as supplemented by DILG Memorandum Circular No. 99-100.

[17] Rollo, p. 11.

[18] Id. at 91. Emphasis supplied.

[19] Id. at. 11, 67, 68. Note that the petitioner likewise stated that the provincial government of Sarangani submitted a request for exemption from the budget limitation in 2008, prior to the submission of the Security Plan.

[20] Id. at 70-78; These were issued on August 25, 2009 (covering expenses from January to June 2009), January 29, 2010 (covering expenses for calendar year 2009), June 11, 2010 (covering expenses for November 2009), August 31, 2010 (one covering expenses from January to February 2010, and a second covering expenses from June to July 2010), December 8, 2010 (covering expenses from March to May 2010 and August to September 2010), December 29, 2010 (covering expenses from April and October 2010), March 15, 2011 (covering expenses for November 2010), and March 16, 2011 (covering expenses for October and December 2010).

[21] Id.

[22] Id. at 11.

[23] Id. at 89-92.

[24] Id. at 90.

[25] Id. at 93-96.

[26] Id. at 94; Note that Audit Observation Memorandum No. 2013-05-6339 covers the period January to October 2012 (id. at 93). The quoted portion of the text mistakenly referred to the period "January to December 2011," similar to that as stated in the first Audit Observation Memorandum 2013-05-6337 (id. at 90).

[27] Id. at 91, 95.

[28] Id. at 118.

[29] Id.; as stated in paragraph 7 of the Answer to the Appeal (Rollo, pp. 115-122) filed by COA-ICFAU Director IV Florida A. Jimenez: "7. On June 25 and 28, 2013, the [petitioner] submitted his letter-reply to the said AOMs (photocopies attached as Annexes 'E' and 'F'). After conducting an evaluation of the documents attached to the [petitioner's] letter-reply, ICFAU considered the additional submission and justifications acceptable except for some deficiencies noted on the use of the Confidential and Intelligence Fund. Accordingly, Notice of Disallowance (ND) No. 2013-09-006 and ND No. 2013-09-007 both dated September 11, 2013 (photocopies attached as Annexes 'G' and 'H') were issued in the amount of Php3,300,000.00 for CY 2011 and Php 1,380,000.00 for CY 2012, stated hereunder, as follows: x x x."

[30] Id. at 97-98.

[31] Id. at 100-101.

[32] Id. at 97, 100.

[33] Id. at 90

[34] Id. at 90-91.

[35] Id. at 103-112.

[36] Id. at 107-109.

[37] OFFICE OF THE PRESIDENT, Reorganizing the Peace and Order Council (19 August 2008).

[38] Rollo, pp. 109-111.

[39] Id. at 110.

[40] Id. at 110.

[41] Id. at 111.

[42] Id. at 111-112.

[43] Id. at 115-122.

[44] Id. at 120-121.

[45] Id. at 124-135.

- [46] Id at 126.
- [47] Id.
- [48] Id. at 141
- [49] Id. at 140-141.
- [50] Id. at 141.
- [51] Id. at 14-158.
- [52] Id. at 160.
- [53] Id. at 161.
- [54] Id.
- [55] Id. at 18.
- [56] Id. at 20.
- [57] Id. at 24.
- [58] Id. at 25-26.
- [59] Id. at 26-27.
- [60] Id. at 26.
- [61] Id. at 27.
- [62] Id. at 28.
- [63] Id. at 29.
- [64] Id. at 34.
- [65] Id. at 37.
- [66] Id. at 182-198.
- [67] Id. at 187.
- [68] Id. at 188.
- [69] Id. at 189.
- [70] Id.
- [71] Id. at 190.
- [72] Id. at 191.
- [73] Id.
- [74] Id. at 19.
- [75] Id. at 20-21.
- [76] Id. at 90.

[77] Id. at 24.

[78] Id. at 21.

[79] Id. at 79-88.

[80] Id. at 90-91.

[81] II. Policies and Guidelines. x x x 1. An allocation for peace and order concerns may be provided in the annual budget of a local government unit. Provided, that peace and order is a priority investment area[.]

[82] Audit and Liquidation of Intelligence and Confidential Funds of Local Government Units.

[83] Rollo, p. 37.

[84] 148 Phil. 443 (1971).

[85] Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, 676 Phil. 518, 571 (2011).

[86] De Agbayani v. Philippine National Bank, supra note 84 at 447-448, as cited in Hacienda Luisita, Inc. v. Presidential Agrarian Reform Council, 668 Phil. 365, 497 (2011).

[87] See Pagdanganan v. Puno, 367 Phil. 584 (1999). The petitioner in that case assailed the constitutionality of DILG MC Nos. 99-65 and 99-66, contending that both issuances violate the constitutional guarantee of local and fiscal autonomy by imposing limits on the use of development and intelligence funds and thereby depriving them of the discretion and judgment in deciding how these funds should be appropriated or used. The Court dismissed the petitions because the petitioners have no standing and that there is no actual case or controversy that calls into operation the exercise of judicial power.

[88] Maritime Industry Authority v. Commission on Audit, 750 Phil. 288, 308 (2015).

[89] 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).

[90] 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.

[91] 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.

[92] Executive Order No. 292, s. 1987.

[93] G.R. No. 244128, September 8, 2020. See also *Torreta v. Commission on Audit*, G.R. No. 242925, November 10, 2020.

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