

PATRICK ALEX M. HAGEDORN, TRISHA MAE C. ASUNCION, MARIA REGINA S. CANTILLO, MARIA CORAZON A. ABAYARI, ROSALIA B. ORTIZ, AND AQUILINO B. CARIÑO, JR., PETITIONERS, VS. COMMISSION ...

G.R. No. 260458. June 04, 2024

Ponente: HERNANDO, J.

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HERNANDO, J.:

This Petition for Certiorari[1] with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 64, in relation to Rule 65 of the Rules of Court, seeks to set aside the Decision No. 2021-247[2] of the Commission on Audit (COA).

Factual Antecedents

On June 15, 2010, the Sangguniang Panlungsod of Puerto Princesa City, enacted Ordinance No. 438[3] which established the Early and Voluntary Separation Incentive Program (EVSIP) of the Puerto Princesa City Government (PPCG). The measure was approved by then City Mayor Edward S. Hagedorn (Mayor Hagedorn) on August 11, 2010.[4]

A week after, or on June 21, 2010, the Sangguniang Panlungsod of Puerto Princesa City also enacted Resolution No. 850-2010[5] which provided for the Implementing Rules and Resolutions (IRR) for Ordinance No. 438. This was also approved by Mayor Hagedorn on November 2, 2010.

The EVSIP was adopted with the following purposes in mind:

Section 3. PURPOSE, INTENT AND OBJECTIVE.

- a) To adopt an effective and efficient organizational structure of human resources in the City Government of Puerto Princesa thru [sic] re-alignment and streamlining of work process[es] thereby improving productivity and delivery of public service;
- b) To grant incentive for the loyalty and satisfactory public service of an employee who has rendered at least ten (10) years of city government service; [and]
- c) [To e]ncourage retireable [sic] employees to avail of the early separation program and possibly start anew in other private endeavors thus, [sic] helping in the local and national economic developments and empower them to become economically active citizens of the community.[6] (Emphasis supplied)

Section 6 of the said Ordinance provides the specifics of the proposed benefits and/or incentives to be given to qualified PPCG employees:

Section 6. BENEFITS AND/OR INCENTIVES. The applicant who will qualify under this program shall be entitled to receive incentives to be computed as follows:

- a) Ten (10) to Twenty (20) years of service: Basic monthly salary based on the last salary received multiplied by 1.5 and the product of which shall be multiplied by the number of years of service;
- b) Twenty-one (21) to Thirty (30) years of service: Basic monthly salary based on the last salary received multiplied by 1.8 and the product of which shall be multiplied by the number of years of service; [and]
- c) Thirty-one (31) and above years of service: Basic monthly salary based on the last salary received multiplied by 2.0 and the product of which shall be multiplied by the number of years of service.

In addition to the appropriate benefits and/or incentives provided above, the employee who availed of the Program shall also be entitled to receive additional benefits as follows:

- a) Commutation of unused vacation and sick leaves in accordance with existing rules and regulations on the matter[;] and
- b) The corresponding amount as provided for in the existing Salamat Paalam Program of the City Government.

Provided further, that the official/employee under this Program shall also be entitled to receive any benefits due to him/her under any local or national agencies such as but not limited to GSIS, [HDMF](PAG-IBIG) and Phil-Health.[7] (Emphasis supplied)

To be qualified under the EVSIP, Section 8 of the Ordinance provides the following:

Section 8. QUALIFICATIONS. The following officials and employees are qualified to avail of this benefit:

- a. The applicant must be a regular employee of the City Government at the time the application is tendered;
- b. [They] must have been regularly employed for at least ten (10) years in any City Government Office; [and]
- c. Those who, at the time of application is 64 years old but whose mandatory retirement under the civil service rule shall not fall from January 1, 2011 to June 30, 2011.[8] (Emphasis supplied)

The EVSIP was to be implemented for two and a half years from July 1, 2011 to June 30, 2013.[9] In line with the abovementioned objectives, the Ordinance appropriated an amount of at least PHP 50 million from the PPCG's budget starting 2011.[10]

Thereafter, or on October 3, 2011, the Sangguniang Panlungsod of Puerto Princesa City passed Ordinance No. 500[11] which amended Ordinance No. 438, specifically Sections 3(b),[12] 6,[13] 8(b),[14] and 9.[15] This version increased the required number of years from 10 years to at least 15 years of city government service.[16] This was approved by then City Vice Mayor and Acting City Mayor Lucilo R. Bayron on October 25, 2011.[17]

After a post audit in 2013, COA's Audit Team Leader (ATL) and Supervising Auditor (SA) (under its Regional Office No. IV-B), jointly issued Notices of Disallowance (ND) Nos. 13-057-100 (2011) to 13-130-100 (2011), all dated November 25, 2013, and ND Nos. 13-131-100 (2011) to 13-150-100 (2012), all dated December 2, 2013, disallowing the payments made under the EVSIP in the total amount of PHP 89,672,400.74.[18] No copies of these NDs are attached to the record.

Under the said Notices, the officials of the PPCG who approved and released the benefits under the EVSIP, as well as the employees who received the benefits thereunder, were identified as the persons liable.[19] Among them are petitioners Maria Corazon A. Abayari, City Treasurer; Trisha Mae C. Asuncion, Executive Assistant IV; Maria Regina S. Cantillo, City Budget Officer; Aquilino B. Cariño, Jr., Senior Bookkeeper; Patrick Alex M. Hagedorn, Sangguniang Panlungsod Member/City Councilor; and Rosalia B. Ortiz, Assistant City Accountant (Abayari, et al.).[20]

From the disallowance, Abayari, et al. on June 25, 2014, filed two separate appeals before the COA's Regional

Director of Regional Office No. IV-B. Asuncion and Hagedorn filed their appeal together with the other Sangguniang Panlungsod members. Meanwhile, Abayari, Cantillo, Cariño, and Ortiz filed their appeal together with former Mayor Hagedorn and other appointed officers and employees.[21] Their appeals were later consolidated.

In a Decision No. 2016-09[22] dated March 28, 2016, the Regional Director denied their appeal, with the following dispositive portion:

WHEREFORE, premises considered, the Consolidated Appeal of former City Mayor Edward S. Hagedorn, et al., all of Puerto Princesa City, Palawan, is hereby DENIED for lack of merit. Accordingly, Notice of Disallowance Nos. 13--057-100 (2011) to 13-130-100 (2011), all dated November 25, 2013, and 13-131--100 (2011) to 13-150-100 (2012), all dated December 2, 2013, on the payment of retirement benefits under the "Early and Voluntary Separation Incentive [P]rogram[" in the total amount of [PHP] 89,672,400.74, are AFFIRMED.[23] (Emphasis in the original)

The Regional Director held that the first batch of the consolidated appeals (i.e., ND Nos. Nos. 13-057-100 [2011] to 13-130-100 [2011], all dated November 25, 2013) was filed after 197 days from date of receipt of the subject NDs, or well beyond the six-month reglementary period provided in Rule V, Section 4[24] of then COA's 2009 Revised Rules of Procedure. Thus, the said NDs had already become final and executory.[25]

As to the second batch, the Regional Director affirmed the following findings of the ATL and SA:

- The PPCG's EVSIP was not enacted pursuant to any reorganization law for the PPCG.[26]
- Nowhere in Section 76[27] of Republic Act No. 7160,[28] otherwise known as the Local Government Code of 1991, does it explicitly state that the PPCG is empowered to create an early retirement program for its employees.[29]
- PPCG's EVSIP is basically a supplementary retirement plan designed to reward employees' loyalty and service, the grant of which is inextricably linked to, and inseparable from, the application and approval of their retirement benefits under the law. It is thus prohibited under Section 10(b)[30] of Republic Act No. 4968,[31] which amended Section 28 of Commonwealth Act No. 186,[32] otherwise known as the Government Service Insurance Act.[33]
- The operative fact doctrine is inapplicable since Ordinance No. 438 was not declared void or unconstitutional by any court.[34]
- Abayari, et al.'s acts in certifying the necessity and legality of the EVSIP as charges to PPCG's appropriations required their official discretion or judgment, and thus were not ministerial in nature. Thus, they cannot be relieved of liability concerning the same.[35]
- The PPCG employees who received any incentives under the EVSIP have the obligation to return the same under the principle of solutio indebiti under Article 2154[36] of Republic Act No. 386,[37] otherwise known as the Civil Code of the Philippines.[38]

Aggrieved, Abayari, et al. filed separate petitions for review before the COA Commission Proper. Abayari, Cantillo, Cariño and Ortiz filed a petition for review on May 12, 2016, together with other officials and personnel of the PPCG; while Hagedorn and Asuncion filed a petition for review on May 18, 2016, together with former Mayor Hagedorn and other certain officials and employees of the PPCG, and payee-beneficiaries of the disallowed benefits.[39] The two petitions were consolidated by the COA as they involve common NDs.[40]

In Decision No. 2021-247[41] dated October 7, 2021, the COA affirmed the Regional Director's disallowance,

viz.:

WHEREFORE, premises considered, the Petitions for Review are hereby DENIED. Accordingly, Commission on Audit Regional Office No. IV-B Decision No. 2016-09 dated March 28, 2016, which sustained Notice of Disallowance (ND) Nos. 13-057-100(2011) to 13-130-100(2011), all dated November 25, 2013; and ND Nos. 13-131-100(2011) to 13-150-100(2012), all dated December 2, 2013, on the payment of retirement benefits under the Early and Voluntary Separation Incentive Program of the City Government of Puerto Princesa, Palawan, in the total amount of [PHP] 89,672,400.74, is AFFIRMED.[42] (Emphasis in the original)

The COA held that the EVSIP does not change the nature of the incentives granted to the city personnel as supplemental retirement benefits proscribed by Republic Act No. 4968. The provisions of Ordinance No. 438 clearly and unmistakably indicate that EVSIP is nothing more than a supplemental retirement plan; EVSIP entitles the city personnel to additional or supplemental retirement benefits beyond what is allowed under existing retirement laws.[43] Ordinance No. 438 and the Sangguniang Panlungsod resolution which established the EVSIP were passed in violation of laws and jurisprudence; hence, the passage or approval thereof proceeded from the ultra vires acts of the legislative and executive officials of the city. Thus, the said Ordinance and Sangguniang Panlungsod Resolution produced no legal effect and conferred no rights from its inception.[44]

The COA further declared that the issuance of the NDs is an exercise of its authority to implement the law and jurisprudence on the prevention of illegal and irregular expenditures or uses of government funds; and that local autonomy should not be used as a cloak to legitimize a prohibition in the guise of the passage of an ordinance or resolution.[45] It also reiterated that public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom, shall be jointly and severally liable for the full amount so paid or received, consistent with the concepts of solutio indebiti and the principles of unjust enrichment.[46]

Abayari, et al. now come to this Court via the instant Petition. In support of their causes of action, they assert that the COA committed grave abuse of discretion a) in declaring Ordinance No. 438 "null and void" or in disallowing the payments made thereunder as "bereft of legal basis" since only the courts of law can strike down an ordinance as invalid;[47] b) in striking down Ordinance No. 438 as invalid since it complies with the conditions for a valid early separation incentive program;[48] and c) in finding them liable considering that they acted in good faith as they merely implemented an ordinance that is presumed valid.[49]

In support of their application for a Temporary Restraining Order (TRO) and/or Writ of Preliminary Injunction, Abayari, et al. aver that they have a clear legal right to an injunction, and that the order of the COA for them to refund the amount will leave them with no income or means of support, hence, will deprive them of life, liberty, or property without due process of law.[50]

On September 14, 2022, the COA, through the Office of the Solicitor General (OSG), filed a Comment[51] praying for the dismissal of the Petition based on the following grounds: 1) Abayari, et al. failed to file a motion for reconsideration of the COA's assailed Decision which is an indispensable requirement;[52] 2) the COA correctly ruled that the EVSIP has no legal basis since it constitutes a supplemental retirement plan and is not for the implementation of any valid reorganization program of the local government; in fact, the Department of Budget and Management (DBM) also shares the same views;[53] 3) the approving/certifying officers who participated in the illegal expenditure are liable to return the disallowed amounts for their lack of good faith, as well as the payees who received the benefits pursuant to the principle of solutio indebiti;[54] and 4) Abayari, et al. are not entitled to the relief for TRO/injunction since they failed to offer evidence to prove the injury they will sustain as a result of the non-issuance of the relief.[55]

In their Reply,[56] which was filed on March 21, 2023, Abayari, et al. assert that a) the filing of a motion for reconsideration may be dispensed with when, as in this case, the issues presented are pure questions of law and the same have been squarely and exhaustively passed upon by the COA; b) no court has ever declared Ordinance No. 438 as null and void; c) the EVSIP does not contravene Section 28(b) of Commonwealth Act No. 186, as amended, because it is not a supplementary retirement or pension plan; d) the DBM has no authority to review Ordinance No. 438 as it is not an appropriation ordinance; e) Abayari, et al. had a reasonable textual interpretation on the legality of Ordinance No. 438; and f) the OSG had previously taken the position that similarly situated them in G.R. No. 253127[57] that they cannot be held liable because they acted in good faith; thus, the OSG's unexplained change in its position in the present case is arbitrary.[58]

Issues

The following are the issues for Our resolution: 1) whether the non-filing of a motion for reconsideration from the COA's assailed Decision renders the instant Petition dismissible; 2) whether Ordinance No. 438, Resolution No. 850--2010, and Ordinance No. 500, as well as the payments made under the EVSIP are valid; 3) if in the negative, whether Abayari, et al. are liable for the amounts paid to the payee-beneficiaries of the EVSIP; and 4) whether they are entitled to a TRO or an injunction.

Our Ruling

We dismiss the Petition and deny the application for TRO/injunction.

The Court En Banc, in G.R. No. 253127 entitled, "Bayron v. Commission on Audit"[59] which was promulgated on November 29, 2022, has already categorically nullified Ordinance No. 438 and Resolution No. 850-2010 for being ultra vires, and unequivocally declared that the EVSIP is a supplementary retirement package that is proscribed under relevant laws and rules, viz.:

WHEREFORE, the present Petition for Certiorari is hereby DENIED for lack of merit, and respondent Commission on Audit's Decision No. 2020-100 dated January 16, 2020 is hereby AFFIRMED. Ordinance No. 438 dated June 15, 2010 and Resolution No. 850-2010 dated June 21, 2010 of the Sangguniang Panlungsod of Puerto Princesa City are both hereby DECLARED NULL AND VOID for being ultra vires and contrary to Section 28(b) of Commonwealth Act No. 186, as amended by Republic Act No. 4968.

SO ORDERED.[60] (Emphasis in the original)

To recall, the petitioners in Bayron were also PPCG officials or employees, namely: former City Mayor Lucilo R. Bayron, Jimmy L. Carbonell, Henry A. Gadiano, Feliberto S. Oliveros III, Roberto D. Herrera, and Mylene J. Atienza. In their certiorari petition before the Court, petitioners were assailing the COA's Decision No. 2020-100 dated January 16, 2020, which also affirmed the March 28, 2016 Decision of the Regional Director of Regional Office No. IV-B's; disallowing the disbursement of the amount of PHP 89,672,400.74 under the EVSIP.

While the petitioners involved and the COA's Decision that is being assailed are different in Bayron, the questioned Regional Office No. IV-B's Decision are the same. The issues, i.e., whether Ordinance No. 438 and the appropriations made thereunder are valid and whether petitioners acted in good faith, are likewise the same. In Bayron, petitioners therein also failed to file a motion for reconsideration from the COA's assailed Decision, which the OSG also aptly pointed out.

We now discuss the first issue. We reiterate the Court's observation in Bayron that while the validity of Ordinance No. 438 and the appropriations thereunder are questions of law, the Petition also raises a question of fact, which is Abayari, et al.'s plea of good faith vis-à-vis the enactment and implementation of the appropriations in Ordinance No. 438. As We have pronounced in Bayron, said question of fact can only be resolved by evaluating petitioners' actions and state of mind, as well as the extent of their individual or concerted participation.

In Bayron, the questioned COA's Decision No. 2020-100 dated January 16, 2020, issued a categorical directive to forward the records of the case to the Office of the Ombudsman for investigation, and thus the Court deferred the determination of good faith to the said office.[61]

Here, the assailed COA's Decision No. 2021-047 dated October 7, 2021 did not issue a particular directive.[62] Nevertheless, We deem it prudent to also defer ruling on Abayari, et al.'s alleged good faith in their participation in the approval and implementation of the EVSIP, which is also determinative of the COA's right to pursue them and others for collection of the disallowed amount of PHP 89,672,400.74.

The Court, in Bayron, already nullified Ordinance No. 438 and Resolution No. 850-2010, and declared the payments made under the EVSIP illegal; nonetheless, the operative fact doctrine is applicable subject to a finding of petitioners' good faith in a separate proceeding by the appropriate tribunal

The Court's pronouncement in Bayron nullifying Ordinance No. 438 and Resolution No. 850-2010 has erased any doubt as to the validity of the EVSIP implemented under it. The Court declared that the disbursements made under EVSIP pursuant to Ordinance No. 438 are illegal as they constitute supplementary retirement package that is proscribed by relevant laws.

At the forefront, the Court explained in Bayron that an ordinance cannot prevail over national laws, viz.:

Section 458(a)(2)(i) of the Local Government Code of 1991 empowers a Sangguniang Panlungsod to "[a]pprove the annual and supplemental budgets of the city government and appropriate funds for specific programs, projects, services and activities of the city, or for other purposes not contrary to law, in order to promote the general welfare of the city and its inhabitants. While LGUs in general are apt in their regular invocation of the general welfare clause under Section 16 of the Local Government Code of 1991, they must always remember that their powers and exercise thereof are circumscribed by national legislation and policy.

The Court declared as early as *United States v. Abendan* that an ordinance enacted by the legislative body of an LGU is valid "unless it contravenes the fundamental law of the Philippine Islands, or an Act of the Philippine Legislature, or unless it is against public policy, or is unreasonable, oppressive, partial, discriminating, or in derogation of common right." In *Magtajas v. Pryce Properties Corp., Inc.*, the Court explained the rational[e] for the supremacy of national laws over local laws, viz.:

The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

In *Batangas CATV, Inc. v. Court of Appeals*, the Court stressed that "where the state legislature has made provision for the regulation of conduct, it has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct." The Court further stated the following:

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or [are] repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. (Citations omitted)

Thus, [Commonwealth Act] No. 186, as amended by [Republic Act] No. 4968, cannot be circumvented by a mere

ordinance creating a separate, parallel, and supplementary early retirement plan for an LGU's officials and employees. Section 28(b) of [Commonwealth Act] No. 186 is loud and clear: no supplementary retirement or pension plans other than the GSIS shall exist in any government office or instrumentality.[63] (Emphasis supplied, citation omitted)

In rejecting petitioners' argument that the EVSIP is an early retirement plan/separation pay, and not a supplementary retirement plan, the Court further held in this wise:

To recall, the objectives of PPCG's EVSIP are threefold: 1) to adopt a streamlined organizational structure of the PPCG (though without any law as basis for said streamlining/reorganization); 2) to grant incentives for loyalty and satisfactory service in the PPCG; and 3) to encourage retireable [sic] employees to avail of the EVSIP's benefits and pursue other endeavors in the private sector.

Because of its second objective that is co-equal in importance to the others, PPCG's EVSIP already goes contrary to Section 28(b) of [Commonwealth Act] No. 186, as amended by [Republic Act] No. 4968. And even if it has the first and third objectives, the presence of the second taints the entire Ordinance No. 438 with invalidity [—]again because it goes contrary to the said statutory provision. Indeed, combining the effects of the second and third objectives would create a separate early retirement benefits plan to reward loyal and faithful service of retiring PPCG personnel who avail of the EVSIP [—]which is definitely not in the spirit of a separation pay given pursuant to any reorganization or streamlining of the PPCG.

Even the language of the actual benefits to be received by PPCG employees partakes of the supplementary/augmenting nature of the EVSIP, since it is to be paid on top of other benefits under any local or national program, including but not limited to GSIS benefits. Crucially, the integers assigned to be multiplied to a PPCG employee's basic monthly salary and multiplied again with the number of years of service ([i.e.], 1.5 for PPCG employees with 10-20 years of service, 1.8 for those with 21-30 years, and 2.0 for those with 31 years of service or more) are what characterize the EVSIP as a form of reward for a PPCG employee's loyalty and years of service. Had these integers been absent from the computation of a PPCG employee's benefits under the EVSIP, it would indeed simply be a form of separation pay comparable to the computations under renumbered Articles 298 and 299 of Presidential Decree (P.D.) No. 442, otherwise known as the Labor Code of the Philippines as amended. However, that is not the case.[64] (Emphasis supplied, citation omitted)

Notably, Bayron only discussed the integers in Ordinance No. 438, but failed to discuss the amended provisions in Ordinance No. 500.[65] Nevertheless, these integers are still present in the amended version, to wit:

Section 6. BENEFITS AND/OR INCENTIVES. The applicant who will qualify under this program shall be entitled to receive incentives to be computed as follows:

- a) Fifteen (15) to Twenty (20) years of service: Basic monthly salary based on the last salary received multiplied by 1.5 and the product of which shall be multiplied by the number of years of service;
- b) Twenty One (21) years of service and above: Basic monthly salary based on the last salary received multiplied by 1.8 and the product of which shall be multiplied by the number of years of service. This specific incentive shall be retroactive to 2011.[66] (Emphasis supplied)

The Court also observed that Ordinance No. 438 imposed a minimum number of years, which negates the nature of the incentive as a separation pay, viz.:

The Court must also note that even Section 9 of [Republic Act] No. 6656 mandates that the separation pay of a government employee on account of reorganization shall only be "one (1) month salary for every year of service." It is important to note that this provision has no minimum years of service required. Had the Sangguniang Panlungsod really intended for the EVSIP to be a form of separation pay for PPCG employees, there would not have been a minimum of 10 years of service for a PPCG employee to qualify for the same.

Thus, the EVSIP is clearly intended to reward long years of service in the PPCG.[67] (Emphasis supplied, citation omitted)

Neither Abayari, et al.'s contention that the EVSIP was implemented pursuant to a valid reorganization was appreciated by the Court since Ordinance No. 438 contains only a general averment, i.e., the general interest of adopting a more effective and efficient organizational structure for the local government unit.[68]

Thus, the Court pronounced that all in all, Ordinance No. 438 and Resolution No. 850-2010 are ultra vires; hence, the COA is correct in disallowing the payments under the EVSIP since said payments are: 1) pegged on a beneficiary's years of service as a PPCG employee; 2) are a form of reward for their loyalty and service; and 3) are meant to augment or supplement a PPCG employee's benefits upon retirement.[69]

Consequently, the Court proceeded to nullify the said issuances and declared that the operative fact doctrine applies.

In *Municipality of Tupi v. Faustino*,[70] citing *Commissioner of Internal Revenue v. San Roque Power Corporation*,[71] the Court discussed the metes and bounds of the operative fact doctrine, thus:

The general rule is that a void law or administrative act cannot be the source of legal rights or duties. Article 7 of the Civil Code enunciates this general rule, as well as its exception: "Laws are repealed only by subsequent ones, and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary. When the courts declared a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution."

The doctrine of operative fact is an exception to the general rule, such that a judicial declaration of invalidity may not necessarily obliterate all the effects and consequences of a void act prior to such declaration. In *Serrano de Agbayani v. Philippine National Bank*, the application of the doctrine of operative fact was discussed as follows:

The decision now on appeal reflects the orthodox view that an unconstitutional act, for that matter an executive order or a municipal ordinance likewise suffering from that infirmity, cannot be the source of any legal rights or duties. Nor can it justify any official act taken under it. Its repugnancy to the fundamental law once judicially declared results in its being to all intents and purposes a mere scrap of paper. As the new Civil Code puts it: "When the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern. Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution." It is understandable why it should be so, the Constitution being supreme and paramount. Any legislative or executive act contrary to its terms cannot survive.

Such a view has support in logic and possesses the merit of simplicity. It may not however be sufficiently realistic. It does not admit of doubt that prior to the declaration of nullity such challenged legislative or executive act must have been in force and had to be complied with. This is so ... until after the judiciary, in an appropriate case, declares its invalidity, it is entitled to obedience and respect. Parties may have acted under it and may have changed their positions. What could be more fitting than that in a subsequent litigation regard be had to what has been done while such legislative or executive act was in operation and presumed to be valid in all respects. It is now accepted as a doctrine that prior to its being nullified, its existence as a fact must be reckoned with. This is merely to reflect awareness that precisely because the judiciary is the governmental organ which has the final say on whether or not a legislative or executive measure is valid, a period of time may have elapsed before it can exercise the power of judicial review that may lead to a declaration of nullity. It would be to deprive the law of its quality of fairness and justice then, if there be no recognition of what had transpired prior to such adjudication.

In the language of an American Supreme Court decision: "The actual existence of a statute, prior to such a

determination of unconstitutionality, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects, with respect to particular relations, individual and corporate, and particular conduct, private and official." This language has been quoted with approval in a resolution in *Araneta v. Hill* and the decision in *Manila Motor Co., Inc. v. Flores*. An even more recent instance is the opinion of Justice Zaldivar speaking for the Court in *Fernandez v. Cuerva and Co.*

Clearly, for the operative fact doctrine to apply, there must be a "legislative or executive measure," meaning a law or executive issuance, that is invalidated by the court. From the passage of such law or promulgation of such executive issuance until its invalidation by the court, the effects of the law or executive issuance, when relied upon by the public in good faith, may have to be recognized as valid. [. . .]"[72] (Emphasis supplied, citations omitted)

The Court emphasized in *Bayron* that the operative fact doctrine only applies to PPCG employees who received EVSIP benefits in good faith, as well as PPCG officials and employees who enacted or implemented the same also in good faith, citing *Araullo v. Aquino*:^[73]

In *Araullo v. Aquino*, whilst discussing the consequences and after effects of declaring the Executive Department's Disbursement Acceleration Program (DAP) null and void, the Court declared in no uncertain terms that the operative fact doctrine "cannot apply to the authors, proponents and implementors of the DAP, unless there are concrete findings of good faith in their favor by the proper tribunals determining their criminal, civil, administrative and other liabilities." The doctrine finds similar application in the present case where no finding of unconstitutionality has been rendered but where there is a finding of an ordinance's nullity due to: (1) its obvious ultra vires character and unsuitability as legal basis for the PPCG's EVSIP; and (2) its being contrary to a valid and subsisting statute enacted by the national legislature i.e. [Commonwealth Act] No. 186 (as amended by [Republic Act] No. 4968).^[74] (Emphasis supplied)

Thus, while the operative fact doctrine applies since the questioned Ordinance has been nullified, this does not relieve Abayari, et al. from liability unless there are concrete findings of their good faith in approving and in implementing Ordinance No. 438, as well as in disbursing the benefits under the EVSIP.

As earlier mentioned, We defer to the Office of the Ombudsman in conducting their own fact-finding investigation for the purpose of determining Abayari, et al.'s good faith, or how the illegal disbursements may be returned, and specifically against whom should the government enforce it.

It is thus proper to forward the entire records of the case to the Office of the Ombudsman to determine Abayari, et al.'s good faith, as well as their participation in the implementation and enforcement of the EVSIP; in turn, the Office of the Ombudsman is directed to forward to the COA the results of its investigation so that the latter can determine whether Abayari, et al. should be held solidarily liable for the amounts disbursed under the EVSIP.

All told, Ordinance No. 438 and Resolution No. 850-2010, and the payments made under the EVSIP, have already been nullified in *Bayron*. Significantly, Abayari, et al. in the instant case are aware of the *Bayron* judgment when they filed their Reply on March 21, 2023, but they did not proffer any argument, supervening event, or other circumstances that could possibly vacate the said judgment or convince Us to revisit the same.

A final note. *Bayron* nullified Ordinance No. 438 and Resolution No. 850--2010. However, as earlier mentioned, Ordinance No. 438 was amended by Ordinance No. 500 which increased the required number of years for the availment of benefits under the EVSIP from 10 years to 15 years, among other amendments. Thus, to prevent any misconstruction, doubt, or confusion, for the same reasons as in *Bayron*, We also nullify Ordinance No. 500 which amended Ordinance No. 438; all appropriations made thereunder are likewise declared illegal.

Petitioners are not entitled to a TRO/injunction

In light of the nullification of Ordinance Nos. 438 and 500, and Resolution No. 850-2010, as well as of the ruling that the disbursements were illegal and needed to be returned, it is clear that Abayari, et al. do not have a clear and unmistakable right to enjoin the enforcement of the COA's assailed Decision.

Time and again, the Court has held that to be entitled to the injunctive writ, the petitioner must show that:

(1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[75]

[E]ssential for the grant of the injunctive relief is the existence of an urgent necessity to prevent serious damage. A TRO is issued only if the matter is of such extreme urgency that grave injustice and irreparable injury will arise unless it is issued immediately. Parenthetically, the burden is on the petitioner to show in the application that there is a meritorious ground for the issuance of the TRO in its favor.[76]

In this case, We agree with the OSG's observation that Abayari, et al. failed to produce any evidence to show that they have a clear and unmistakable right to the relief prayed for. The alleged damage to them which may be brought about by the implementation of the COA's assailed Decision is not yet material since the determination of their good faith, or the lack thereof, and of their individual or concerted participation, is still subject of the investigation of the Office of the Ombudsman.

Moreover, while the amount involved is indeed substantial, their allegation that they will suffer financially cannot be considered so grave and serious so as to warrant the issuance of such extraordinary remedy; such damage, if any, is quantifiable and, as such, cannot be considered as "grave and irreparable injury" as contemplated under the law. The Court explained the concept of irreparable damage or injury as follows:

Damages are irreparable within the meaning of the rule relative to the issuance of injunction where there is no standard by which their amount can be measured with reasonable accuracy. An irreparable injury which a court of equity will enjoin includes that degree of wrong of a repeated and continuing kind which produce hurt, inconvenience, or damage that can be estimated only by conjecture, and not by any accurate standard of measurement.[77] (Emphasis supplied, citations omitted)

ACCORDINGLY, the Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction is DISMISSED for lack of merit. The Commission on Audit's Decision No. 2021-247 dated October 7, 2021 is AFFIRMED.

Moreover, in conjunction with the Court's pronouncements in G.R. No. 253127 entitled, "Bayron v. Commission on Audit", Ordinance No. 500 of the Sangguniang Panlungsod of Puerto Princesa City is DECLARED NULL AND VOID for being ultra vires and contrary to Section 28(b) of Commonwealth Act No. 186, as amended by Republic Act No. 4968.

Let the entire records of this case be forwarded to the Office of the Ombudsman for appropriate action. The Office of the Ombudsman is DIRECTED to forward the results of its investigation to the Commission on Audit for the latter's proper action. Both offices are ENJOINED to inform the Court of the status of their respective investigation.

Gesmundo, C.J., Leonen, S.J., Caguioa, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, J. Lopez, Dimaampao, Marquez, Kho, Jr., and Singh, JJ., concur.

M. Lopez,[*] J., on official leave.

[*] On official leave.

[1] Rollo, pp. 3-44.

[2] Id. at 45-62. The October 7, 2021 Decision in Decision No. 2021-247 was penned by Chairperson Michael G. Aguinaldo and Commissioner Roland C. Pondoc of the Commission on Audit, Quezon City.

[3] Puerto Princesa City Ordinance No. 438 (August 11, 2010), Puerto Princesa City Government's Early and Voluntary Separation Incentive Program; id. at 63-67.

[4] Id. at 67.

[5] No copy was attached to the petition.

[6] Rollo, p. 64.

[7] Id. at 65.

[8] Id.

[9] Section 9. PERIOD OF THE INCENTIVE PROGRAM. This Program shall be implemented for two and a half years, subject to availability of funds from July 1, 2011 to June 30, 2013 unless a longer period of time is recommended by the Committee. The Screening and Evaluation Committee shall issue the necessary guidelines for said purpose to carry out the intents and purposes of this Ordinance. Provided, however, that an applicant availing of the herein benefits shall be considered separated/retired only upon payment of [their] full benefits, id.

[10] Section 10. APPROPRIATION. For the purpose of this Ordinance, an amount of not less than [PHP] 50 Million is hereby appropriated in the CY 2011 Annual Budget of the City Government of Puerto Princesa and the appropriate amount every year thereafter for the effective implementation of the same. id.

[11] Rollo, pp. 68-70.

[12] Section 3. PURPOSE, INTENT AND OBJECTIVE.

....

b.) To grant incentive for the loyalty and satisfactory public service of an employee who has rendered at least Fifteen (15) years of city government service. This specific incentive shall take effect January of 2012. (Emphasis supplied)

[13] Section 6. BENEFITS AND/OR INCENTIVES. The applicant who will qualify under this program shall be entitled to receive incentives to be computed as follows:

a) Fifteen (15) to Twenty (20) years of service: Basic monthly salary based on the last salary received multiplied by 1.5 and the product of which shall be multiplied by the number of years of service;

b) Twenty One (21) years of service and above: Basic monthly salary based on the last salary received multiplied by 1.8 and the product of which shall be multiplied by the number of years of service. This specific incentive shall be retroactive to 2011. In addition to the appropriate benefits and/or incentives provided above, the employee who availed of the Program shall also be entitled to receive additional benefits as follows: 1) Commutation of unused vacation and sick leaves in accordance with existing rules and regulations on the matter, and

2) The corresponding amount as provided for in the existing Salamat Paalam Program of the City Government. Provided further, that the official/employee under this Program shall also be entitled to receive any benefits due to [them] under any local or national agencies such as but not limited to GSIS,

[HDMF](PAG-IBIG)[,] and Phil-Health. (Emphasis supplied)

[14] Section 8. QUALIFICATIONS. The following officials and employees are qualified to avail of this benefit: [....]

b. [They] must have been regularly employed for at least Fifteen (15) years in any City Government Office; (Emphasis supplied)

[15] Section 9. PERIOD OF THE INCENTIVE PROGRAM. This Program shall be implemented for two and a half years subject to the availability of funds starting July 1, 2011 to June 30, 2013 unless a longer period of time is recommended by the Committee. The Screening and Evaluation Committee shall issue the necessary guidelines for said purpose to carry out the intents and purposes of this Ordinance.

[16] Rollo, p. 68.

[17] Id. at 70.

[18] Id. at 167.

[19] Id. at 168.

[20] Id. at 6-7.

[21] Id. at 11.

[22] Id. at 97-113. Penned by Regional Director Atty. Sheila U. Villa of the Regional Office No. IV-B of the Commission on Audit, Quezon City.

[23] Id. at 113.

[24] Section 4. When Appeal Taken. – An Appeal must be filed within six (6) months after receipt of the decision appealed from.

[25] Rollo, p. 105.

[26] Id. at 106-108.

[27] Section 76. Organizational Structure and Staffing Pattern. – Every local government unit shall design and implement its own organizational structure and staffing pattern, taking into consideration its service requirements and financial capability, subject to the minimum standards and guidelines prescribed by the Civil Service Commission.

[28] Local Government Code of 1991 (1991).

[29] Rollo, pp. 106-109.

[30] Section 10. Subsection (b) of Section twenty-eight of the same Act, as amended, is hereby further amended to read as follows: "(b) Hereafter no insurance or retirement plan for officers or employees shall be created by any employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished: Provided, That the rights of those who are already eligible to retire thereunder shall not be affected."

[31] An Act Amending Further Commonwealth Act Numbered One Hundred And Eighty-Six, As amended, (1967).

[32] Government Service Insurance Act (1936).

[33] Rollo, p. 109.

[34] Id. at 108-109.

[35] Id. at 109-111.

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

[37] CIVIL CODE (1949).

[38] Rollo, pp. 111-112.

[39] Id. at 12, 45-46.

[40] Id. at 46.

[41] Id. at 45-62. The October 7, 2021 Decision in Decision No. 2021-247 was penned by Chairperson Michael G. Aguinaldo and Commissioner Roland C. Pondoc of the Commission on Audit, Quezon City.

[42] Id. at 59-60.

[43] Id. at 55.

[44] Id. at 56.

[45] Id. at 57.

[46] Id. at 57-58.

[47] Id. at 14-20.

[48] Id. at 20-28.

[49] Id. at 28-33.

[50] Id. at 33-34.

[51] Id. at 165-193.

[52] Id. at 172-174.

[53] Id. at 174-182.

[54] Id. at 182-186.

[55] Id. at 187-188.

[56] Id. at 253-268.

[57] Bayron v. Commission on Audit, G.R. No. 253127, November 29, 2022. [Per J. Gaerlan, En Banc].

[58] Id.

[59] G.R. No. 253127, November 29, 2022 [Per J. Gaerlan, En Banc].

[60] Bayron v. Commission on Audit, G.R. No. 253127, November 29, 2022, [Per J. Gaerlan, En Banc] at 16. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[61] Id.

[62] Rollo, pp. 45-62.

[63] Bayron v. Commission on Audit, G.R. No. 253127, November 29, 2022, [Per J. Gaerlan, En Banc] at 9-10. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[64] Id. at 12-14. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[65] Rollo, pp. 68-70.

[66] Id. at 69.

[67] Bayron v. Commission on Audit, G.R. No. 253127, November 29, 2022, [Per J. Gaerlan, En Banc] at 14. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[68] Id.

[69] Id.

[70] 860 Phil. 363 (2019). [Per J. Lazaro-Javier, En Banc].

[71] 719 Phil. 137, 157-158 (2013). [Per J. Carpio, En Banc].

[72] Municipality of Tupi v. Faustino, 860 Phil. 363, 385-387 (2019) [Per J. Lazaro-Javier, En Banc].

[73] 752 Phil. 716 (2015) [Per J. Bersamin, En Banc].

[74] Bayron v. Commission on Audit, G.R. No. 253127, November 29, 2022, [Per J. Gaerlan, En Banc] at 15. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

[75] Tiong Bi, Inc. v. Philippines Health Insurance Corporation, 847 Phil. 906, 913 (2019). [Per J. Reyes, J., Jr., Second Division].

[76] Id.

[77] Id. at 914.

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