

EN BANC

[G.R. No. 244128, September 08, 2020]

**MARIO M. MADERA, BEVERLY C. MANANGUITE, CARISSA D. GALING,
AND JOSEFINA O. PELO, PETITIONERS, VS. COMMISSION ON AUDIT
(COA) AND COA REGIONAL OFFICE NO. VIII, RESPONDENTS.**

DECISION

CAGUIOA, J:

In this case, the Court is presented the optimum opportunity to provide for a clear set of rules regarding the refund of amounts disallowed by the Commission on Audit (COA) in order to reach a just and equitable outcome among persons liable for disallowances.

The Facts

Before the Court is a petition for *certiorari*^[1] under Rule 64 in relation to Rule 65 of the Rules of Court, assailing the COA Decision^[2] dated December 27, 2017 and Resolutions^[3] dated August 16, 2018 which affirmed the disallowance of various allowances given in 2013 to the officials and employees of the Municipality of Mondragon, Northern Samar (the Municipality).

In December 2013, the Municipality passed and approved *Sangguniang Bayan* (SB) Ordinance No. 08^[4] and SB Resolutions Nos. 41,^[5] 42,^[6] 43,^[7] and 48,^[8] all series of 2013, granting various allowances to its officials and employees. These allowances are: 1) Economic Crisis Assistance (ECA), 2) Monetary Augmentation of Municipal Agency (MAMA), 3) Agricultural Crisis Assistance (ACA), and 4) Mitigation Allowance to Municipal Employees (MAME).

For the **ECA**, the Whereas Clauses of SB Resolution No. 41, series of 2013, state:

WHEREAS, the effect of continuing increase of cost on prime commodities brought about by the worldwide inflation and its adverse effect in the locality xxx is felt most by our low-income salaried employees;

WHEREAS, it is the policy the local government unit to alleviate the plight of our lowly paid officials and employees; and

WHEREAS, the local government unit of Mondragon has shown the willingness to provide its officials, employees and workers whether local or national, serving in the LGU, an assistance to cushion the impact of increasing prices.^[9]

As regards the **MAMA**, the grant of the same is authorized by SB Resolution No. 42, series of 2013, which provides:

WHEREAS, the effect of inflation has weakened the purchasing power of the local employees of Mondragon and has become a major burden in their daily subsistence;

WHEREAS, it has been observed that the local officials and employees alike succumbed [to] high-interest rates loans in order to augment their low income and minimal xxx take-home pay; and

WHEREAS, it is the policy of the local government unit of Mondragon to help lighten the financial burden of its local official[s] and employees from the sustaining high interest loans[.]^[10]

With respect, to the **ACA**, the Whereas Clauses of Resolution No. 43, series of 2013, state:

WHEREAS, the people of Mondragon are basically dependent on Agriculture;

WHEREAS, it is deemed proper that the local government unit of Mondragon provides agricultural assistance to its officials and employees to lighten their burden in terms of agricultural shortage of products caused by typhoon "Yolanda" and help them buy agricultural seeds and other farm facilities from other provinces; and

WHEREAS, premises above cited[,], this council hereby approves the grant of Agricultural Crisis Assistance (ACA) in order to help its officials and employees for their agricultural production.^[11]

Lastly, SB Resolution No. 44, series of 2013, authorizes the grant of the **MAME** and its Whereas Clauses states:

WHEREAS, there is the global effort against climate change that continuously provides principles and assistance to reduce the human suffering during disaster and calamity;

WHEREAS, the Municipality of Mondragon is vulnerable to damaging effects of a possible calamity and disaster because of its location, hence, making its people also susceptible to risk;

WHEREAS, the LGU of Mondragon deemed it right to provide mitigation capability by providing financial assistance to its employees that would [equip] them to lessen the adverse impact of hazards and disaster; and

WHEREAS, the mitigation assistance will provide them means to pre-empt risks and hazards such as providing their families a risk-free place to dwell.^[12]

In total, these allowances in question amounted to P7,706,253.10^[13] as specified below:

Allowance	Total Amount	Recipients
ECA	P3,865,203.10	Regular officials and employees, casual and job order/contractual employees, <i>Barangay Tanods</i> , <i>Barangay Nutrition Scholars</i> (BNS), Day Care Workers (DCW), <i>Barangay Health Workers</i> (BHW), public elementary and high school teachers and national employees stationed in the municipality
MAMA	P1,245,000.00	Regular officials and

		employees and casual employees
ACA	P1,771,550.00	Regular officials and employees, casual employees and job order/contractual employees
MAME	P824,500.00	Regular official and employees, casual employees, job order/contractual employees, BNSs, DCWs, and BHWs. ^[14]

Notices of Disallowance

On post audit, the Audit Team Leader (ATL) and the Supervising Auditor (SA) of the Municipality issued a total of 11 Notices of Disallowance (NDs) dated February 20, 2014 for the grant of the ECA, MAMA, ACA and MAME (subject allowances) as specified below:

ND No.	Date	Nature	Amount	Paid under Check No.
14-004-101 (2013)	02/20/2014	ECA	P406,000.00	1164301
14-005-101 (2013)	02/20/2014	ECA	358,000.00	1164302
14-006-101 (2013)	02/20/2014	ECA	830,000.00	1164303
14-007-101 (2013)	02/20/2014	MAME	409,500.00	1164304
14-008-101 (2013)	02/20/2014	ACA	246,300.00	1164305
14-010-101 (2013)	02/20/2014	MAMA	1,245,000.00	1164296
14-011-101 (2013)	02/20/2014	ACA	1,525,250.00	1164297
14-012-101 (2013)	02/20/2014	MAME	415,000.00	1164298
14-013-101 (2013)	02/20/2014	ECA	219,000.00	1164300
14-014-101 (2013)	02/20/2014	ECA	44,500.00	1164306
14-015-101 (2013)	02/20/2014	ECA	2,007,703.10	1164307
TOTAL			P7,706,253.10 ^[15]	

The ATL and SA disallowed the subject allowances on the ground that the grants were in violation of the following:

- a) Section 12 of Republic Act No. (R.A.) 6758 or the Salary Standardization Law (SSL) as regards the consolidation of allowances and compensation;
- b) Item II of COA Circular No. 2013-003 dated January 30, 2013 which excluded the subject allowances among the list of authorized allowances, incentives, and benefits;
- c) Items 4 and 5 of Section 1.a of Civil Service Commission (CSC) Resolution No. 02-0790 dated June 5, 2002, which provides that employees under contract or

job order do not enjoy the benefits enjoyed by the government employees (such as the Personnel Economic Relief Allowance or PERA, Additional Compensation Allowance or ACA, and Representation Allowance and Transportation Allowance or RATA), and that the services rendered thereunder are not considered as government service.^[16]

The persons held liable under the NDs were as follows:

Name and Position	Participation in the Transaction
Mario M. Madera (Madera) - Municipal Mayor	For certifying in the Obligation Request that the appropriations/allotments are necessary, lawful and under his direct supervision, and for approving the payment;
Beverly C. Mananguite (Mananguite) - Municipal Accountant	For certifying in the voucher as to the completeness of the supporting documents;
Carissa D. Galing (Galing) - Municipal Treasurer	For certifying the availability of funds;
Josefina O. Pelo (Pelo) - Municipal Budget Officer	For certifying the existence of available appropriation;
All other payees as stated in the ND Nos. 14-004-101 (2013) to 14-008-101 (2013); and 14-010-101 (2013) to 14-015-101 (2013), all dated February 20, 2014	For being claimants/recipients of the allowances. ^[17]

Notably, the records show that Madera, Mananguite, Galing and Pelo (petitioners) also received the benefits covered by ND Nos. 14-010-101(2013), 14-011-101(2013), 14-012-101(2013), and 14-015-101(2013).^[18]

COA Regional Office

On January 8, 2015, petitioners filed their appeal with the COA Regional Director (RD). They argued that the grant of additional allowances to the employees is allowed by R.A. 7160 or the Local Government Code (LGC); hence, the LGC actually repealed Section 12 of R.A. 6758^[19] because the former law allows the municipality to grant additional allowances/financial assistance should its finances allow. Petitioners also claimed that the pronouncement of the Audit Team that the disallowed allowances were not among those listed under COA Circular No. 2013-003 is not correct considering that said Circular also stated that "other allowances not listed above, whether granted government-wide or specific to certain government agencies are likewise recognized provided there is sufficient legal basis thereof."^[20]

Additionally, petitioners contended that the grant of additional allowances/financial assistance in the Municipality was a customary scheme over the years. They also claimed that the allowances were considered as financial assistance to the employees who suffered the effects of Typhoon Yolanda. Lastly, petitioners averred that the *Sangguniang Panlalawigan* (SP), the Department of Budget and Management (DBM) and the COA did not declare the appropriation ordinance as invalid; hence, they remain legal and valid.^[21]

In a Decision^[22] dated July 14, 2015, the RD affirmed the NDs and ruled that government units are not exempt from the SSL and the grant and payment of the subject allowances were subject to Section 12 of R.A. 6758 which provides that all allowances such as the ECA, MAMA, ACA and MAME are deemed integrated in the standardized salary rates and only six enumerated allowances are considered excluded from the integration. According to the RD, while it may be true that the subject allowances were not among those included in the list of

authorized allowances and they may be granted if there is sufficient legal basis, the appropriation ordinance is not sufficient to become the legal basis. Moreover, petitioners' assertion that R.A. 7160 repealed the provision of Section 12 of R.A. 6758 is not convincing since Section 534 of R.A. 7160 mentions the specific laws or parts thereof which are repealed, and R.A. 6758 is not one of them.^[23]

Moreover, the RD ruled that petitioners cannot hide behind the claim that the grant of such benefits was a customary scheme of the Municipality because practice, no matter how long continued, cannot give rise to any vested right if it is contrary to law.^[24]

As for petitioners' contention that no appropriation ordinance of the Municipality had been declared invalid, the RD gave scant consideration to the same on the position that the subject ordinance and resolutions showed no indication of their having been transmitted to the SP for review in accordance with Section 327^[25] of R.A. 7160. Moreover, the subject ordinance and resolutions appropriated amounts for the disallowed benefits from the savings, unexpended allotment, and unappropriated balances for 2013 of the Municipality, in violation of Section 322^[26] of R.A. 7160.^[27]

Lastly, petitioners cannot claim that the subject allowances were given as financial assistance to the employees because good intention, no matter how noble, cannot be made an excuse for not adhering to the rules.^[28]

Consequently, petitioners appealed to the COA.

COA Proper

In a Decision dated December 27, 2017, the COA affirmed the ruling of the COA Regional Office, with modification in that the officials and employees who unwittingly received the disallowed benefits or allowances are not held liable for their reimbursement since they are recipient-payees in good faith.

The COA opined that, following applicable rules, the approving officer and each employee who received the disallowed benefit or allowance are obligated, jointly and severally, to refund the amount received. However, it also recognized that the Court has ruled, by way of exception, that passive recipients of disallowed amounts need not refund if they received the same in good faith. Thus, while the COA itself observed that this results in an inequitable burden on the approving officers and that the same is inconsistent with the concept of *solutio indebiti*, it nevertheless applied the exception as to passive recipients in deference to the Court.^[29] Thus, the COA ruled as follows:

WHEREFORE, premises considered, the Petition for Review of Mayor Mario M. Madera, et al., Municipality of Mondragon, Northern Samar, of Commission on Audit - Regional Office No. VIII Decision No. 2015-020 dated July 14, 2015 is DENIED. Accordingly, Notice of Disallowance Nos. 14-004-101(2013) to 14-008-101 (2013) and 14-010-101 (2013) to 14-015-101(2013), all dated February 20, 2014, on the grant of Economic Crisis Assistance, Agricultural Crisis Allowance, Monetary Augmentation of Municipal Agency, and Mitigation Allowance to the officials and employees of the municipality, including national government employees assigned thereat, in the total amount of P7,706,253.10, are AFFIRMED with MODIFICATION.

The municipal officials who passed and approved the *Sangguniang Bayan* Ordinance and Resolutions authorizing the grant of subject allowances, including those who approved/certified the payment thereof, are made to refund the entire disallowed benefits or allowances. However, the officials and employees who unwittingly received the disallowed benefits or allowances are not liable for their reimbursement, they, being recipient-