

EN BANC

[G.R. No. 238882, January 05, 2021]

JUAN B. NGALOB, IN HIS CAPACITY AS VICE-CHAIRMAN OF THE REGIONAL DEVELOPMENT COUNCIL - CORDILLERA ADMINISTRATIVE REGION [RDC-CAR] AND FORMER REGIONAL DIRECTOR OF THE NATIONAL ECONOMIC AND DEVELOPMENT AUTHORITY-CORDILLERA ADMINISTRATIVE REGION (NEDA-CAR), HERMINIA B. SAMUEL, IN HER CAPACITY AS REGIONAL ACCOUNTANT, PATERNO C. LABOY, IN HIS CAPACITY AS FORMER CHIEF ADMINISTRATIVE OFFICER, AND ALL PAYEES IN THE PAYROLL (AS RECIPIENTS OF THE YEAR-END INCENTIVES), PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

LOPEZ, J.:

This Petition for *Certiorari*^[1] under Rule 64, in relation to Rule 65, of the Revised Rules of Court implores this Court to review respondent Commission on Audit's (COA) Decision No. 2016-335^[2] dated November 9, 2016 and Resolution No. 2017-491^[3] dated December 28, 2017.

Facts

On August 28, 2009, the Cordillera Administrative Region (CAR) - Regional Development Council (ROC) Executive Committee (ExCom), headed by its Chairman, petitioner Juan B. Ngalob (Ngalob), issued RDC ExCom Resolution No. 73,^[4] authorizing the grant of incentives covering January to June 2008, and quarterly releases for the third and fourth quarters of 2009 to compensate RDC-CAR officials and secretariat's "extra work" in implementing the RDC-CAR Work Program on Development and Autonomy. The CAR-RDC disbursed P1,095,000.00 for this purpose.

Similarly, on December 10, 2010, the RDC ExCom issued Resolution No. CAR-103,^[5] providing for a year-end incentive to its officers and secretariat, in lieu of honoraria from the ROC Regional Development and Autonomy Fund, to recognize the considerable responsibilities and tasks related to regional autonomy that they undertook over and above their regular functions. This time, P1,080,000.00 was disbursed.

Upon audit, the incentives amounting to P1,095,000.00 were disallowed in Notice of Disallowance (ND) No. 11-001-101(09)^[6] dated April 13, 2011, while the year-end incentives amounting to P1,080,000.00 were disallowed in NO No. 11-005-101(10)^[7] dated June 21, 2011, both for lack of legal basis. Petitioners were charged liable for the transactions in both NDs:^[8]

Name	Position/Designation	Nature of Participation in the Transaction
Juan B. Ngalob	Regional Director	Approved the payment of Staff Incentive
Herminia B. Samuel	Reg'l Accountant	Certified that supporting documents are complete and proper
Paterno C. Laboy	Chief Admin. Officer	Certified that charges are necessary and lawful and supporting documents are valid, proper and legal
All payees in the payroll		Benefited as payees

Ngalob appealed the NDs to the COA-CAR Director. In separate Letters^[9] dated August 15, 2011, Ngalob explained that under the General Appropriations Act (GAA) of 2007, P15,000,000.00 was allocated for the RDC-CAR to pursue social preparation of the CAR into an autonomous region. As this task was not among the regular functions of the RDC under Executive Order (EO) No. 325, the RDC-CAR considered it as a special project or an extra work, the undertaking of which entitles its officials and employees to honoraria under Department of Budget and Management (DBM) Circular No. 2007-2^[10] and Section 46(e)^[11] of RA No. 9524^[12] (2009 GAA) and Section 49(e)^[13] of RA No. 9970^[14] (2010 GAA). Ngalob also claimed that in the determination of the grant, the RDC-CAR was guided by factors laid down in DBM Circular No. 2007-2 such as the nature of work assignments, the level of difficulty of the duties assigned, the extent of productivity, and quality of performance in terms of completed and accepted deliverables in accordance with the timeframes set *per* project. Finally, Ngalob averred that the incentives were legally sourced from the budget allocated in the 2007 GAA in accordance with DBM Circular No. 2007-2.

In response, the Audit Team Leader maintained that the task of socially preparing the CAR towards autonomy was not a special project because the RDC-CAR was created under EO No. 30^[15] precisely to carry out the purposes of the CAR's creation under EO No. 220,^[16] *i.e.*, to "[p]repare for the establishment of the autonomous region in the Cordilleras,"^[17] among others. The Audit Team Leader also noted that the disallowed incentives were merely based on the RDC ExCom Resolution. This violates COA Decision No. 77-110, which states that the authority to grant additional, double, or indirect compensation to any elective or appointive public officer or employee under Article IX-B, Section 8^[18] of the 1987 Constitution pertains to statutes passed by the Legislature. Moreover, under the New Government Accounting System (NGAS), incentives, honoraria, and other allowances are proper charges to the appropriation for Personal Services (PS). Here, the disallowed incentives were improperly charged against the agency's Maintenance and Other Operating Expenses (MOOE) allotment since there was no appropriation for the payment of incentives under the agency's PS account. Lastly, the COA Audit Team Leader explained that the amount given to each payee had no basis as the RDC-CAR erroneously relied upon DBM Circular No. 2007-02, which applies to honoraria and not incentives.^[19]

COA-CAR Ruling

In its Decision No. 2012-35^[20] dated August 31, 2012, the COA-CAR ruled that the social preparation of the CAR for autonomy is not an additional task, but a regular function of the RDC-CAR because it is in line with one of the functions of the RDCs under Section 4 (j) of EO No. 325,^[21] i.e., to "[p]erform other related functions and activities as may be necessary to promote and sustain the socio-economic development of the regions." The COA-CAR also affirmed that there was no appropriation for incentives or honoraria in the RDC-CAR's PS account under the 2009 and 2010 GAAs; hence, the incentives were illegally charged against the agency's MOOE. Further, the COA-CAR observed that while the RDC-CAR asserted that the incentives were given in lieu of honoraria, the basic requirements set forth for the grant of honoraria under Section 46(e)^[22] of the 2009 GAA and Section 49(e)^[23] of the 2010 GAA were not complied with. Aside from its general allegation that the incentives were gauged against factors provided in DBM Circular No. 2007-2, the RDC-CAR did not present proof of the approved plan of activities for the alleged special project and proof of target accomplishment and deliverables to support the grant of incentives. Lastly, the COA-CAR ruled that the RDC-CAR has no authority to grant additional allowances, incentives, or compensation.

In all, the COA-CAR found no factual and legal basis for the grant of the incentives and disposed as follows:

WHEREFORE, the herein appeal is denied and the disallowances under ND No. 11-001-101(09) and ND No. 11-005-101(10) dated April 13, 2011 and June 21, 2011, respectively, are AFFIRMED.^[24]

Aggrieved, Ngalob filed a Petition for Review^[25] before the COA Proper, reiterating the same arguments. In addition, Ngalob invoked good faith and social justice in favor of labor to sustain the grant of the incentives.

COA Proper Ruling

In its Decision No. 2016-335^[26] dated November 9, 2016, the COA Proper affirmed the COA-CAR Decision. The COA Proper also found Ngalob's plea of social justice, good faith, and liberal interpretation of the law unavailing due to the patent disregard of the basic and essential requirements of law, thus:

WHEREFORE, premises considered, the petition is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit - Cordillera Administrative Region Decision No. 2012-35 dated August 31, 2012 and ND Nos. 11-001-101-(09) dated April 13, 2011 and 11-005-101-(10) dated June 21, 2011 on the payment of year-end incentives to Regional Development Council officials and National Economic and Development Authority - Cordillera Administrative Region employees for calendar years 2009 and 2010 in the amounts of [P]1,095,000.00 and [P]1,080,000.00, respectively, are **AFFIRMED**.^[27] (Emphasis in the original.)

Ngalob's motion for reconsideration was likewise denied in the COA Proper Decision No. 2017-491:^[28]

WHEREFORE, premises considered, the Motion for Reconsideration of Mr. Juan B. Ngalob, former Vice Chairman, Regional Development Council (RDC) - Cordillera Administrative Region (CAR), and Regional Director, National Economic and Development Authority (NEDA) - CAR, et al., is hereby **DENIED** for lack merit. Accordingly, Commission on Audit (COA) Decision No. 2016-335 dated November 9, 2016, which denied the Petition for Review of COA-CAR Decision No. 2012-35 dated August 31, 2012 and affirmed Notice of Disallowance Nos. 11-001-101(09) dated April 13, 2011 and 11-005-101(10) dated June 21, 2011, on the payment of year-end incentives to RDC officials and NEDA CAR employees for calendar years 2009 and 2010, in the amounts of [P]1,095,000.00 and [P]1,088,000.00, respectively, is **AFFIRMED**.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is directed to forward the records of the case to the Office of the Ombudsman for investigation and filing of appropriate charges considering the possible violation of the provisions of the Revised Penal Code against the approving officers.^[29]

Hence, this Petition, raising the following issues:

- (1) Whether the COA acted with grave abuse of discretion upholding the disallowance; and
- (2) Whether the COA acted with grave abuse of discretion affirming petitioners' liability.

Ruling

The Petition lacks merit.

Propriety of the Disallowance

At the outset, we emphasize the basic rule that the burden of proving the validity or legality of the grant of allowance, benefits, or compensation is with the government agency or entity granting, or the employee claiming them.^[30] Here, petitioners cite DBM Circular No. 2007-2 and DBM Circular No. 2007-510^[31] as authorization to grant incentives to their employees and officials for a special project that was allegedly undertaken. They argue that the mandate to pursue social preparation in the CAR for regional autonomy is a special project because it is not a part of the RDC-CAR's regular and permanent functions, entitling its officials and employees to additional incentives. They also claim that the grant was in accordance with the guidelines set forth in these circulars.

Petitioners are mistaken. The general averment of "pursuing social preparation of the CAR into an autonomous region" does not suffice to prove that a "project" was undertaken to warrant disbursements for the payment of honoraria. Paragraph 2.2 of DBM Circular No. 2007-2 defines a "special project" as "**a duly authorized** inter-office or intra-office **undertaking** of a composite group of government officials and employees which is not among the regular and permanent functions of their respective agencies. Such undertaking x x x is reform-oriented or developmental in nature, and is contributory to the improvement of service delivery and enhancement

of the performance of the core functions of an agency or member agencies." Conformably, under the Administrative Code of 1987,^[32] a "project" is defined as "a component of **a program covering a homogenous group of activities** that results in the accomplishment of an identifiable output,"^[33] while a "program" refers to the **functions and activities** necessary for the performance of a major purpose for which a government agency is established."^[34] Paragraph 4.3 of DBM Circular No. 2007-2 is explicit in requiring that a special project plan should be "prepared in consultation with all personnel assigned to a project and approved by the department/agency/lead agency head," containing the following:

- title of the project;
- objectives of the project, including the benefits to be derived therefrom;
- outputs or deliverables per project component;
- project timetable;
- skills and expertise required;
- personnel assigned to the project and the duties and responsibilities of each;
- expected deliverables per personnel assigned to the project per project component at specified timeframes; and
- cost by project component, including the estimated cost for honoraria for each personnel based on man-hours to be spent in the project beyond the regular work hours; personnel efficiency should be a prime consideration in determining the man-hours required.

Moreover, paragraph 4.5 of DBM Circular No. 2007-2 was emphatic in requiring that:

4.5 Payment of honorarium shall be made **only upon completion and acceptance by the agency head of the deliverable per project component.** (Emphasis supplied.)

Similar conditions for the grant of honoraria to officials and employees assigned to special projects are imposed in the 2009 and 2010 GAAs, *i.e.*, aside from the special project entailing rendition of additional work over and above their regular workload, the special project should be "reform-oriented or developmental, contribute[s] to the improvement of service delivery and enhancement of the performance of the core functions of the agency, **and ha[s] specific timeframes and deliveries for accomplishing objectives and milestones set by the agency for the year;** x x x."^[35]

In this case, while petitioners put forward an identifiable output, *i.e.*, to socially prepare the CAR for regional autonomy, only general principles on the concept of special project and honorarium were presented. Petitioners did not show any approved plan of activities or undertakings for the accomplishment of such goal. Despite several opportunities before the Audit Team, the COA-CAR, the COA Proper, and even before this Court, the RDC-CAR consistently disregarded its burden to prove the validity or legality of the disallowed incentives by failing to present an **approved special project plan** in accordance with paragraph 4.3 of DBM Circular 2007-2. Thus, absent a specific project and its supporting documents contemplated under the rules, we find no reason and basis to rule on whether such project can be considered as a regular function of the RDC-CAR.