

## EN BANC

[ G.R. No. 218383, January 05, 2021 ]

**THE OFFICERS AND EMPLOYEES OF ILOILO PROVINCIAL GOVERNMENT HEREIN REPRESENTED BY ATTY. EDGAR CLAUDIO O. SUMIDO, PETITIONERS, VS. THE COMMISSION ON AUDIT, CHAIRPERSON MA. GRACIA M. PULIDO-TAN, COMMISSIONER HEIDI L. MENDOZA AND COMMISSIONER JOSE A. FABIA, RESPONDENTS.**

### DECISION

**ZALAMEDA, J.:**

Officials and employees should endeavor to keep abreast of laws, rules and regulations, as well as all disallowed transactions received by their office, to avoid illegal, irregular, unnecessary, excessive, extravagant or unconscionable transactions. The grant and approval of a benefit more than five (5) times the amount given by other government offices without ensuring compliance with budgetary rules is a clear showing of gross negligence characterized by having a want of the slightest care and a conscious indifference to the consequences of his or her acts.

#### The Case

This is a petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court assailing Decision<sup>[1]</sup> No. 2014-188 dated 28 August 2014 and the Resolution<sup>[2]</sup> dated 09 March 2015 of the Commission on Audit (COA) Proper, which upheld the COA Regional Office decision affirming the payment of Productivity Enhancement Incentive (PEI) to the employees of the Province of Iloilo for calendar year (CY) 2009 in the total amount of Php102,700,000.00.

#### Antecedents

In December 2009, the *Sangguniang Panlalawigan* of Iloilo enacted Appropriation Ordinance No. 2009-06<sup>[3]</sup> allowing the request for additional funds<sup>[4]</sup> to cover the grant of PEI amounting to Php50,000.00 per employee, or a total disbursement of Php102.7 million.<sup>[5]</sup>

On post-audit, the Audit Team Leader and the Supervising Auditor of the Province of Iloilo disallowed the payment of the PEI through ND Nos. 2010-06-101(09) to 2010-85-101(09), for the total amount disbursed, on the ground that the payment is irregular and illegal for violating the following provisions: (1) Section 325(a) of Republic Act No. (RA) 7160 on the provision of Personal Services limitation; and (2) Department of Budget and Management (DBM) Local Budget Circular No. 2009-03

dated 17 December 2009.<sup>[6]</sup>

Based on post-audit computations, the Province of Iloilo had already exceeded its Personal Services limitation by Php38,701,198.90 even prior to the grant of the PEI benefit to its employees. Hence, the province should not have given this additional benefit to its employees for CY 2009. The following<sup>[7]</sup> were held liable under the NDs:

<b>Name and Position</b>	<b>Participation in the Transaction</b>
Niel D. Tupas, Sr. - Provincial Governor	For approving payment;
Rolex T. Suplico - Provincial Vice Governor / Sangguniang Panlalawigan (SP) - Presiding Officer	For passing the appropriation despite excess in Personal Services limitation;
Oscar S. Garin, Jr. - Floor Leader	For passing the appropriation despite excess in Personal Services limitation;
Macario N. Napulan - SP Member	For passing the appropriation despite excess in Personal Services limitation;
June S. Mondejar - SP Member	For passing the appropriation despite excess in Personal Services limitation;
Rodolfo V. Cabado - SP Member	For passing the appropriation despite excess in Personal Services limitation;
Arthur R. Defensor, Jr. - SP Member	For passing the appropriation despite excess in Personal Services limitation;
Mariano M. Malones, Sr. - SP Member	For passing the appropriation despite excess in Personal Services limitation;
George P. Demaisip - SP Member	For passing the appropriation despite excess in personal services limitation;
Cecilia A. Colada - SP Member (FSBM President)	For passing the appropriation despite excess in Personal Services limitation;
Guisseppe Karl D. Gumban - SP Member (PPSK President)	For passing the appropriation despite excess in Personal Services limitation;
Lyd P. Tupas - Provincial Accountant	For certifying as to completeness of documents;
Corazon Estelita S. Beloria - Asst. Prov. Treasurer	For certifying as to availability of funds;
Elena D. Lim - Budget Officer	For certifying as to availability of appropriation;
Salvador P. Cabaluna, III Provincial Legal Officer	For certifying that the officials and employees are entitled to Productivity Enhancement incentive (PEI);

All other payees as stated in ND Nos. 2010-06-101(09) to 2010-85-101(09), all dated 28 September 2010 <sup>[8]</sup>	For being recipients of the disallowed benefits.
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Petitioners appealed the disallowance before the COA Regional Office and argued that the Provincial Government of Iloilo acted in good faith in implementing Appropriation Ordinance No. 2009-06 passed by the *Sangguniang Panlalawigan* of Iloilo. The recipients, who received the benefit in good faith, should not be compelled to refund the same. Moreover, even if the province exceeded its Personal Services limitation, the disallowance should not cover the total amount since other waived items (leave credits, terminal leaves and subsistence allowance) must be considered in computing Personal Services limitation.<sup>[9]</sup>

The COA Regional Office, through Decision No. 2012-021 dated 28 August 2012, <sup>[10]</sup> denied petitioners' appeal and affirmed the subject NDs. It noted the Province of Iloilo had been made aware of the Personal Services limitation cap mandated by law through an earlier ND in 2004. Said ND was finally sustained by the Court and a Final Order of Adjudication issued by the COA on 18 March 2009. Even if the waived items are taken into account, the excess in Personal Services limitation would still be Php21,983,964.56.<sup>[11]</sup>

### **Ruling of the Commission Proper**

On 28 August 2014, COA Proper promulgated the assailed decision affirming the COA Regional Office's ruling, thus:

**WHEREFORE**, premises considered, the instant petition for review is hereby **DENIED** for lack of merit. Accordingly, COA Region VI Decision No. 2012-021 dated August 28, 2012 is **AFFIRMED**.<sup>[12]</sup>

COA Proper reiterated the need for the LGU to follow the Personal Services limitation in granting PEI to its employees. Further, COA Proper brushed aside petitioners' claim of good faith since they are presumed to know the relevant provisions of the law.<sup>[13]</sup>

Petitioners moved for the reconsideration of the decision but COA Proper denied the same on 09 March 2015.<sup>[14]</sup>

### **Issues**

Petitioners now come before the Court to assail COA Proper's decision, raising the following issues:

- a) The Commission on Audit gravely erred in disallowing payments made by the Iloilo Provincial Government to its officials and employees for their Productivity Enhancement Incentive for Calendar year 2009 and order the refund of the full amount without considering the amount in excess and the waived items.
- b) The COA gravely erred in its findings that the officials and employees

of Iloilo Provincial Government cannot be considered in goodfaith (sic) when the[y] received the subject incentive.

Petitioners assert the legality of the grant of PEI to the officials and employees of the Province of Iloilo by virtue of a validly passed appropriations ordinance. They also claim good faith in the receipt of the benefit to avoid liability for the refund of the disallowed amounts.<sup>[16]</sup>

Respondents, through the Office of the Solicitor General, argue that the present petition should be dismissed for being filed out of time. They maintain that payment of PEI to the employees of the Province of Iloilo violated the law and applicable rules and regulations. Lastly, petitioners cannot invoke good faith to avoid the refund of the disallowed amounts since an order of refund is supported by the principle of *solutio indebiti*,<sup>[17]</sup>

The focal issue in this case is whether the COA committed grave abuse of discretion in issuing the assailed decision and resolution.

### **Ruling of the Court**

The petition lacks merit.

*Petitioners failed to timely file the petition*

At the outset, the Court agrees with respondents that the present petition was filed out of time. Rule 64 specifically provides:

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

Clearly, the thirty-day reglementary period to assail the decision of COA Proper is merely interrupted by the filing of a motion for reconsideration. After receipt of the denial of the motion, petitioners are not given a fresh period of thirty (30) days but are allowed to file the petition within the remaining period, which shall not be less than five (5) days in any event.

Petitioners received the COA Proper Decision on 26 September 2014. It took them twelve (12) days to file a motion for reconsideration on 08 October 2014 and received its denial on 21 May 2015.<sup>[18]</sup> That gave them only eighteen (18) days, or until 08 June 2015, to file the proper petition before this Court.<sup>[19]</sup> However, they filed their petition only on 18 June 2015 on the mistaken belief they had thirty (30) days from 21 May 2015 before the lapse of the reglementary period.

Procedural rules should be treated with utmost regard and respect. They are

designed to facilitate the adjudication of cases and de-clog our already crowded dockets. For petitioners' disregard of the reglementary period, the petition should already be dismissed. At any rate, the Court sees no reason to overturn the assailed decision as there was no abuse of discretion on the part of the COA in affirming the assailed NDs and in holding petitioners liable, as can be seen in the subsequent discussion below.

*The assailed NDs were appropriately issued*

The Court generally sustains the decisions of administrative authorities, especially one which is constitutionally-created, not only on the basis of the, doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act in contemplation of law, as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.<sup>[20]</sup>

To overturn the assailed decision, petitioners must therefore show that the COA committed grave abuse of discretion when it affirmed the NDs for the payment of PEI to the employees of the Province of Iloilo. Petitioners, however, failed in this task.

Administrative Order No. 276 dated 15 December 2009 authorized the grant of PEI to government employees, including those in the LGUs, for CY 2009. To clarify the guidelines in granting PEI to local government personnel, DBM Local Budget Circular No. 2009-93<sup>[21]</sup> was issued, hence:

## 2.0 Grant of the PEI

2.1 The respective sanggunian may grant the PEI to local government personnel depending on the financial capability of the local government unit (LGU). The PEI shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years.

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## 3.0 Funding Source

The PEI for local government personnel shall be charged against LGU funds, subject to the budgetary conditions and Personal Services limitation in LGU budgets pursuant to Sections 325(a) and 331(b) of R.A. No. 7160.

Meanwhile, Sections 325(a) of RA 7160 provides:

**SECTION 325. *General Limitations.*** — The use of the provincial, city, and municipal funds shall be subject to the following limitations: