# EN BANC

# [ G.R. No. 237874, February 16, 2021 ]

## MIGUEL C. WYCOCO, FORMER REGIONAL MANAGER OF NATIONAL FOOD AUTHORITY - ZAMBOANGA REGIONAL OFFICE, ARACELY C. VALLEDOR, AND ALL CONCERNED NATIONAL FOOD AUTHORITY REGION IX EMPLOYEES, PETITIONERS, VS. MILAGROS L. AQUINO AND ESTRELLA B. AVILA, AUDIT TEAM LEADER AND SUPERVISING AUDITOR, RESPECTIVELY, NILDA B. PLARAS, DIRECTOR IV, COMMISSION SECRETARY, COA, - CORPORATE GOVERNMENT SECTOR, AUDIT GROUP C, ZAMBOANGA CITY, RESPONDENTS.

## [G.R. No. 239036]

## ERIC L. BONILLA AND ALL CONCERNED OFFICIALS AND EMPLOYEES OF THE NATIONAL FOOD AUTHORITY - AGUSAN DEL NORTE PROVINCIAL OFFICE, PETITIONERS, VS. THE COMMISSION ON AUDIT, RESPONDENT.

## D E C I S I O N

**ZALAMEDA, J.:**

The governing bodies of government entities and agencies are bound to be subservient to laws, rules and regulations in granting benefits to its employees. While the release of benefits may be motivated by benevolent intentions, the non-observance of relevant rules and laws could create more harm than good to their employees in the long run.

### The Case

Before this Court are the following consolidated petitions for *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court, which are all premised on identical set of facts and raised similar issues and defenses:

1. **G.R. No. 237874**, seeking to annul and set aside the Decision[1] No. 2017-036, dated 16 February 2017 and Resolution[2] dated 26 October 2017 of the Commission on Audit (COA) Proper, affirming the propriety of the Notice of Disallowance (ND) No. 11-003-GOF(10) dated 13 September 2011 issued against the officials and employees of National Food Authority (NFA) Region IX, which disallowed the grant of the Food and Grocery Incentive (FGI) for the calendar year (CY) 2010; and,

2. **G.R. No. 239036**, assailing the Decision[3] No. 2017-038 of the COA Proper dated 16 February 2017 and Resolution[4] dated 26 October 2017 which affirmed

the disallowance of the FGI given in CY 2012 to the officials and employees of the NFA-Agusan Del Norte Provincial Office (ADNPO) through the issuance of ND No. 2014-01(12).

**Antecedents**

In December 1998, then NFA Administrator Eduardo Nonato Joson (Administrator Joson) wrote a letter to former President Joseph Estrada (President Estrada), asking for the approval of the grant of food assistance and emergency allowance in the amount of Php7,000.00 to all NFA officials and employees.[5] President Estrada granted the said request.[6]

Five years thereafter, and during the term of former President Gloria Macapagal-Arroyo (President Arroyo), then Chief Presidential Management Staff Ricardo Saludo (Secretary Saludo) issued on 04 November 2003, a Memorandum addressed to the heads of government financial institutions (GFIs) and government-owned or controlled corporations (GOCCs) to exercise moderation when granting bonuses to their employees.[7] This prompted then NFA Administrator Arthur Y. Yap to request the Office of the Government Corporate Counsel (OGCC) to render an opinion on whether it was proper for the agency to grant its employees food/grocery incentives every Christmas season.[8] On 24 November 2003, the OGCC issued Opinion No. 21910 answering in the affirmative NFA's query. It opined that Secretary Saludo's Memorandum effectively recognized the authority of heads of GFIs and GOCCs to grant Christmas or year-end bonuses.[9]

Allegedly pursuant to these "presidential issuances" and OGCC opinion, the NFA Council approved Resolution No. 226-2K5 on 18 May 2005[10] authorizing the annual grant of FGI in the amount of Php20,000.00 to every NFA official and employee, payable in two (2) tranches.[11] In 2007, then NFA Administrator Jessup P. Navarro issued Memorandum AO-2K&-02-024[12] encapsulating the Revised Guidelines, continuing the grant of the benefit in four (4) tranches.

Consequently, the annual release of FGI triggered COA's issuance of several NDs prohibiting the same, including those that are being challenged here in these consolidated petitions.

In **G.R. No. 237874**, the COA Audit Team Leader (ATL) and Supervising Auditor (SA) issued ND No. 11-003-GOF(10) disallowing the amount of Php660,000.00 representing the FGI granted to the officials and employees of NFA-Zamboanga Regional Office in CY 2020.[13] Meanwhile, ND No. 2014-01(12), the subject of **G.R. No. 239036**, was issued to disallow the grant of FGI to the officials and employees of NFA-ADNPO for CY 2012.[14] Petitioners were ordered to refund the amount of Php480,000.00.[15]

In **G.R. No. 237874**, the FGI was disallowed because its grant was found to have violated Republic Act No. (RA) 6758,[16] the 2010 General Appropriations Act (GAA),

and DBM Budget Circular No. 16, series of 1998 (DBM BC No. 16, s. 1998). Meanwhile, in **G.R. No. 239036**, the ND was issued on the ground that the Governance Commission for GovernmentOwned and Controlled Corporation (GCG) had denied presidential imprimatur to the grant.[17] Among those found liable in G.R. No. 239036 were the Provincial Manager and Senior Accounting Specialist of NFAADNPO as approving/certifying officers, and all officers and employees of NFA-ADNPO who received the benefit.[18]

Petitioners' respective appeals all suffered the same denial, prompting them to elevate the matter before the COA Proper.[19]

**Rulings of the COA Proper**

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The COA Proper affirmed the disallowance of the FGI and ruled that nothing in the Memorandum of Secretary Saludo or the letter of Administrator Joson supports the conclusion that Presidents Estrada and Arroyo authorized the annual grant of FGI. While President Estrada did authorize the grant of a benefit, it was only for the Christmas Season of CY 1998. Further, petitioners failed to prove the existence of the requisites under Section 12 of RA 6758 allowing the continuous grant of additional benefits under specified conditions.

Dispelling petitioners' claim of good faith, the COA Proper held that contrary to the approving/certifying officers' assertion, their participation was not ministerial as it paved the way for the payment of FGI. On the other hand, the Deed of Undertaking executed by the payees was found antithetical to their claim of good faith.[20] Petitioners' motion for reconsideration was also denied.[21]

*G.R. No. 239036*

The COA Proper denied the petition for review filed by the affected employees of NFA-ADNPO for lack of merit. It held that contrary to petitioners' assertion, and notwithstanding the fact that the NFA Council is composed of members of the cabinet, NFA Council Resolution No. 226-2K5 could not be considered an act of the President. According to the COA Proper, the doctrine of political agency does not apply to instances where cabinet secretaries are acting on an *ex-officio* capacity such as those occupying seats in the NFA Council.

Also, the COA Proper observed that the alleged "presidential approvals" to the grant of FGI in 1998 and 2003 do not meet the requirements under DBM BC No. 16, s. 1998, which requires the issuance of an Administrative Order to signify the approval of the President. Ultimately, the COA Proper found the grant of FGI violative of Section 12 of RA 6758, as it was not among those deemed excluded in the standardized salary rates.

The COA proper also ruled the disallowance did not violate the principle of non-diminution of benefits more so as the recipients were never entitled to the same. Further, it agreed with the COA Corporate Government Sector 5 (COA CGS-5) that the good faith defense is unavailing:

1) previous NDs were already issued against the grant of FGI; and 2) the employees signed an undertaking consenting to salary deduction should the FGI be disallowed.

Finally, the COA Proper sustained the approving and certifying officers' solidary liability considering the grant of FGI would not have been possible without their approval and certification.[22]

On 26 October 2017, the COA Proper denied petitioners' motion for reconsideration for failure to raise sufficient grounds to justify its grant.[23]

**Issue**

Petitioners in these consolidated petitions raise identical issues. They argue the annual grant of the FGI is sanctioned by the "presidential imprimaturs" of President Estrada in 1998 and President Arroyo, through Secretary Saludo, in 2003. They insist that these prior presidential authorizations were the legal basis for the issuance of NFA Council Resolution No. 226-2K5. Also, to disallow FGI, which had been traditionally given, would violate equity principles and considerations, as well as the principle of non-diminution of benefits. Finally, petitioners assert that neither the NFA officials who authorized the grant of FGI, nor the employees who merely received the same, should be required to return the disallowed amount on the ground of good faith.[24]

Thus, this Court is primarily tasked to determine whether or not: 1) the COA Proper committed grave abuse of discretion in sustaining the disallowance of petitioners' FGI; and 2) petitioners should be held liable in returning the disallowed amounts if the NDs are found to be proper.

**Ruling of the Court**

The petitions are partially granted.

he Court affirms the COA Proper's assailed Decisions in **G.R. No. 237874** and **G.R. No. 239036** by reason of the present petitions' failure to show grave abuse of discretion on the part of the COA Proper.

Grave abuse of discretion requires proof from the party alleging it that the exercise of judgment of the tribunal being challenged was done capriciously and whimsically:

> By *grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction*. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility; it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. The burden lies on the petitioner to prove not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent issuing the impugned order.

> In this case, the Court finds no grave abuse of discretion on the part of the COA in issuing the questioned NDs. The oft-repeated rule is that findings of administrative agencies are accorded not only respect but also finality when the decision or order is not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.[25]

The COA Proper did not gravely abuse its discretion when, in both cases, it upheld the disallowance of the FGI. The COA Proper's decisions were supported by sufficient legal bases, negating any allegation that these were rendered in a whimsical, arbitrary, despotic, or capricious manner. Indeed, the impropriety of NFA's practice of granting FGI to its employees is not new to this Court. Petitioners even recognized that in *Escarez v. Commission on Audit*,[26] this Court ruled the grant of FGI improper for lack of presidential authorization, among others. We have no reason to depart from *Escarez* as the same amounts to *res judicata* and a conclusive and binding precedent to the impropriety of FGI. Thus:

> The philosophy behind [*res judicata*] prohibits the parties from litigating the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction or an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Verily, there should be an end to litigation by the same parties and their privies over a subject, once it is fully and fairly adjudicated.[27]

In our jurisdiction, *res judicata* is understood in two concepts: (1) bar by prior judgment, and (2) conclusiveness of judgment. The difference between them is straightforward: as compared to "bar by prior judgment," "conclusiveness of judgment" does not require identity of causes of action but only identity of parties. [28]

Thus, notwithstanding that the present petitions involve different NDs, and therefore, premised on a different cause of action, We find that the conclusiveness of *Escarez*'s judgment applies here. Further, the fact that *Escarez* was enunciated in an unsigned resolution would not prevent *res judicata* from setting in. In *Philippine Health Care Providers, Inc., v. Commissioner of Internal Revenue*,[29] We held that:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
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> **With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.** Thus, in CIR v. Baier-Nickel, the Court noted that a