

EN BANC

[G.R. No. 224182, March 02, 2021]

SOCIAL SECURITY SYSTEM, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

LEONEN, J.:

The grant of incentives to employees should be in accordance with law, not discretion. More so when the officers entrusted with its disbursement are mere trustees of the funds used. Failure to abide by the law, compels all the officers and employees to return the amount unlawfully released.

This Petition for Certiorari^[1] assails the Decision^[2] of the Commission on Audit, which dismissed Social Security System's appeal and declared as final and executory the disallowance on the payment of Collective Negotiation Agreement incentives to employees of the Social Security System – Central Visayas Division.

From January 2005 to December 2009, the Social Security System Central Visayas Division granted Collective Negotiation Agreement incentives to its employees in the total amount of P41,311,073.83.^[3] The incentives were granted pursuant to Social Security Commission Resolution No. 259 s. 2005,^[4] Resolution No. 400 s. 2007,^[5] Resolution 685 s. 2008,^[6] Resolution 703 s. 2009,^[7] Resolution 482 s. 2010,^[8] and Resolution 499 s. 2010.^[9]

On June 26, 2012, the Social Security System Central Visayas Division received Notice of Disallowance No. 12-002-CF (2005-2009) issued by the Commission on Audit Central Visayas Division.^[10]

In the Notice of Disallowance, the grant of Collective Negotiation Agreement incentives was disallowed, because: (1) the cash incentives for 2005, 2006 and 2007 were paid although the Collective Negotiation Agreement did not provide for it, contrary to Section 5.1 of the Department of Budget and Management Budget Circular No. 2006-01; (2) excessive accruals of cash incentives for 2006, 2007 and 2008 were made basis for paying additional cash incentives contrary to Sections 5.7 and 7.1 of Budget Circular No. 2006-01; and (3) no conclusive proof was shown that savings from Maintenance and Other Operating Expenses from 2005 to 2009 were generated out of cost-cutting measures.^[11] The Notice of Disallowance further stated that there was irregular or excessive disbursement, considering that one of the conditions under Section 3 of the Public Sector Labor Management Council Resolution (PSLMC) No. 2, s. 2003 was not met.^[12]

Aside from the recipients of the incentives listed in the Notice of Disallowance,^[13] the following officers were found liable for their individual participation in the transactions: (1) AVP-Central Visayas Cluster Helen C. Solito, who signed as

approving officer in the payrolls and debit advices with Land Bank; (2) Team Head-Administration Section Janet A. Acasio, who signed as certifying officer in the payrolls; (3) Head of Administration and General Accounting Section Joselita G. Crispo, who signed as certifying officer as to availability of funds in the payrolls and signed as approving officer in the debit advices with Land Bank for 2005 and 2007; (4) Senior Attorney Marie Ann B. Chavez, who signed as approving officer in the debt advices with Land Bank for 2008 and 2009; (5) Branch Head-Cebu Branch Mario V. Corro, who signed as approving officer in the debit advices with Land Bank for 2008; and (6) OIC RC/Senior Physician Salvador G. Demeterio, who signed as approving officer in the debit advices with Land Bank for 2007.^[14]

Social Security System, through its President and Chief Executive Officer Emilio S. de Quiros, Jr., filed its Appeal Memorandum on December 21, 2012.^[15]

The Appeal Memorandum states that: (1) the incentives for 2005 was lawfully granted, because it was clearly provided for in the Supplemental Collective Negotiation Agreement, in accordance with Section 5.1 of Budget Circular No. 2006-1;^[16] (2) the grant of additional incentives from 2006 to 2009 was not based on excessive accrual, but based on cost-cutting measures identified in the Collective Negotiation Agreements^[17] and on additional savings out of the unimplemented or partially completed projects, which is allowed under Section 7.3 of Budget Circular No. 2006-1;^[18] (3) the maximum allocation of eighty percent of the savings from the Maintenance and Other Operating Expenses as basis for computing cash incentives is in accordance with Section 6.1.3 of Budget Circular No. 2006-1;^[19] (4) the grant of incentives for 2005 and 2007 met the requirements of Section 3 of PSLMC Resolution No. 2, s. 2003;^[20] (5) staggered payments of incentives is not prohibited under Budget Circular No. 2006-1, Section 8 of PSLMC Resolution No. 2, s. 2003, and Section 5 of Administrative Order No. 135;^[21] and (6) granting the incentives to its rank-and-file employees was an exercise of its statutory prerogative under its charter.^[22]

In a Reply Memorandum, the Commission on Audit Central Visayas Division maintained their position and expounded on their basis for the disallowance.^[23]

In Decision No. 2015-003,^[24] the Commission on Audit's Corporate Government Sector Cluster 2 (CGS-Cluster 2) denied the appeal and affirmed the Notice of Disallowance. The dispositive portion of the Decision read:

WHEREFORE, foregoing premises considered, Notice of Disallowance No. 12-002-CF-(2005-2009) dated June 22, 2012, issued by the Office of the Supervising Auditor, Audit Group C - Corporate Government Sector, COA - Region VII, Cebu City is hereby **AFFIRMED**. Accordingly, the instant appeal is hereby **DENIED** for lack of merit.

So ordered.^[25] (Emphasis in the original)

The CGS-Cluster 2 ruled that the grant of incentives from 2005 to 2009 had no legal basis.^[26] It held that the conditions for the grant of the Collective Negotiation Agreement incentives under Budget Circular No. 2006-01 were not complied with, because the Supplemental Collective Negotiation Agreement was not produced.^[27] Assuming it exists, the Collective Negotiation Agreements did not also satisfy the

requirements of PSLMC Resolution No. 2, s. 2003, since cost-cutting measures were not identified and actual operating income was less than the targeted operating income for 2005.^[28] The CGS-Cluster 2 further found violations of Section 5.7 of Budget Circular No. 2006-01 on one-time benefit after end of the year, and of Section 7.1 of Budget Circular No. 2006-01 for not limiting the source from savings from released Maintenance and Other Operating Expenses allotments.^[29]

On March 5, 2015, the Social Security System, through its Chief Executive Officer and President, received a copy of the CGS-Cluster 2 Decision.^[30] The same was received by the Legal Services Division of the Social Security System on March 9, 2015.^[31]

On March 12, 2015, the Social Security System filed its Petition for Review with the Commission on Audit Proper.^[32]

On December 29, 2015, the Commission on Audit Proper rendered Decision No. 2015-450^[33] dismissing the petition for having been filed out of time, to wit:

WHEREFORE, premises considered, the petition for review is hereby **DISMISSED** for having been filed out of time. Accordingly, CGS Cluster 2 Decision No. 2015-003 dated [January 27, 2015], which affirmed Notice of Disallowance No. 12-002-CF-(2005-2009) dated June 22, 2012 on the payment of Collective Negotiation Agreement incentives to its employees at the Central Visayas Division from January 2005 to December 2009 in the total amount of P41,311,073.83, is **FINAL AND EXECUTORY**.^[34] (Emphasis supplied)

The Commission on Audit Proper held that Social Security System only had until March 8, 2015 to file its petition for review, in accordance with Section 3, Rule VII of the 2009 Revised Rules of Procedure of the Commission on Audit, but it filed its petition for review on March 12, 2015 or beyond the reglementary period to appeal, rendering CGS-Cluster 2 Decision final and executory.^[35]

On May 11, 2016, Social Security System filed this Petition for *Certiorari* under Rule 64 of the Rules of Court.^[36]

Petitioner claims that it timely filed its petition for review before the Commission on Audit Proper, because the reckoning date of its receipt of the CGS-Cluster 2 Decision should be March 9, 2015, or when its Chief Legal Counsel received it, and not on March 5, 2019.^[37] It maintains that its grant of incentives was an exercise of its judgment pursuant to its operational autonomy under its Charter.^[38] It also claims to have exercised reasonable discretion in accordance with the limitation of the law, specifically Section 25 of Social Security Act of 1997.^[39] Petitioner insists that Presidential Decree No. 1597 is not applicable and has been repealed by Social Security Act of 1997, and there is nothing in Social Security Act of 1997 which requires approval of the president before it can grant reasonable compensation, allowance and benefits to its employees.^[40]

In its Comment,^[41] respondent argues that the Petition for Review was filed beyond the period provided under Rule V, Sections 1, 4 and 5, and Rule VII, Section 3 of the Commission on Audit 2009 Revised Rules of Procedure.^[42] Respondent claims that

the reckoning period for the filing of the petition for review is on March 5, 2016, and not March 9, 2016.^[43] It avers that the service of the CGS-Cluster 2 Decision to the President and Chief Executive Officer on March 5, 2016 was proper, because petitioner filed its Appeal Memorandum through him.^[44]

Respondent further claims that the grant of Collective Negotiation Agreement incentives was properly disallowed as it was not provided for in the Collective Negotiation Agreements, in contravention of Section 5.1 of Budget Circular No. 2006-1.^[45] It further argues that the Supplemental Collective Negotiation Agreement was not proven to exist, since petitioner only presented Social Security Commission Resolution No. 259, s. 2005 to prove its existence.^[46] Thus, respondent argues the grant of incentives violated PSLMC Resolution No. 2, s. 2003 and Budget Circular No. 2006-01.^[47]

Respondent further claims that upon investigation and assessment, petitioner's actual operating income in 2005 was only P59.80 billion, or below its targeted operating income of P60.42 billion, and its actual operating income in 2007 was only P72.564 billion, which falls short of its target of P78.300 billion, contrary to Section 3 of PSLMC Resolution No. 2, s. 2003.^[48] Finally, respondent claims that it did not commit grave abuse of discretion, considering that its decisions were issued after judicious exercise of its general audit power, in accordance with laws, and rules of procedure.^[49]

In its Reply,^[50] petitioner claims that its Appeal Memorandum clearly indicated that it is represented by its Corporate Legal Department. Thus, service should have been made to it.^[51] Petitioner insists that it filed the Petition within the reglementary period for filing appeal as the reckoning point should be March 9, 2015.^[52] It reiterates that the grant of incentives to its rank-and-file employees was clearly an exercise of its statutory prerogative.^[53]

In a November 21, 2017 Resolution,^[54] this Court required the parties to submit their respective memoranda.

In its Memorandum,^[55] petitioner reiterates the same arguments raised in the Petition. Respondent likewise, in its Memorandum,^[56] reiterates the same arguments in its Comment. Respondent insists that petitioner was not represented by counsel when it filed its Appeal Memorandum on December 21, 2012. Rather, it was petitioner's Chief Executive Officer and President who filed and signed its Appeal Memorandum.^[57]

The issues for this Court's resolution are:

First, whether or not respondent's CGS-Cluster 2 Decision became final and executory for failure of petitioner to file its Petition for Review on time;

Second, whether or not respondent correctly disallowed the grant of Collective Negotiation Agreement incentives to petitioner's Central Visayas Division employees; and

Finally, whether or not the approving and certifying officers, and the recipients of the Collective Negotiation Agreement incentives should return the amounts they

received.

We dismiss the Petition.

I

As a general policy, this Court sustains the decisions of administrative authorities, especially those by constitutionally created bodies like the Commission on Audit, "not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce."^[58]

A judgment or final order or resolution of the Commission on Audit may only be brought before this Court by a party through a petition for *certiorari* under Rule 65.^[59] Further, the Rule 65 petition will only be entertained when the Commission on Audit acted without jurisdiction or in excess of jurisdiction, or with grave abuse of discretion amounting to lack of jurisdiction.^[60] Grave abuse of discretion exists "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."^[61]

Presidential Decree No. 1445 provides that a person aggrieved by the decision of an auditor may, within six months from receipt of a copy of the decision, appeal in writing to the Commission.^[62] Under Rule V of the 2009 Revised Rules of Procedure of the Commission on Audit, as amended, an appeal from the decision of the auditor to the director should be made by filing an Appeal Memorandum within six months from the receipt of the decision appealed from.^[63] Thereafter, Rule VII, Section 3^[64] of the same Rules provides that a petition for review of the Director's decision to the Commission on Audit Proper shall be filed within the time remaining of the six months period under Rule V, Section 4,^[65] taking into account the suspension of the running thereof under Rule V, Section 5.^[66]

In *Abpi v. Commission on Audit*,^[67] this Court held that the Special Audit Office's Decision, upholding the validity of the Notices of Disallowances, became final and executory, because "petitioner filed the Petition for Review beyond the reglementary period which is six (6) months or 180 days after receipt of copies of the [Notices of Disallowances.]"^[68]

Here, the records show that petitioner received the Notice of Disallowance on June 26, 2012 and filed its Appeal Memorandum 178 days later on December 21, 2012. Thus, petitioner only had two days left to file its Petition for Review before the Commission on Audit Proper.

Meanwhile, the CGS-Cluster 2 issued its Decision on January 27, 2015 which petitioner appealed to the Commission on Audit Proper on March 12, 2015. Whether we reckon the two-day remaining period from March 5, 2015 when petitioner's President and Chief Executive Officer received the CGS-Cluster 2 Decision, or on March 9, 2015 when petitioner's Corporate Legal Counsel received the same Decision, its Petition for Review filed on March 12, 2015 was still beyond the two days remaining of the six-month period. A decision of the Commission or auditor upon any matter within its jurisdiction shall be final and executory, if not properly appealed.^[69] Thus, the CGS-Cluster 2 Decision became final and executory, for petitioner's failure to appeal within the reglementary period.