

## EN BANC

[ G.R. No. 247228 (Formerly UDK 16410), March 02, 2021 ]

**HAGONOY WATER DISTRICT, CELESTINO S. VENGCO, AND REMEDIOS M. OSORIO, PETITIONERS, VS. COMMISSION ON AUDIT (COA), RESPONDENT.**

### DECISION

**LOPEZ, M., J.:**

This Petition for *Certiorari*<sup>[1]</sup> under Rule 64, in relation to Rule 65, of the Revised Rules of Court, questions Decision No. 2017-486<sup>[2]</sup> dated December 28, 2017 and Resolution<sup>[3]</sup> dated November 26, 2018 of respondent Commission on Audit (COA).

#### Facts

Petitioner Hagonoy Water District (HWD) is a government-owned and controlled corporation (GOCC) organized under Presidential Decree (PD) No. 198,<sup>[4]</sup> as amended, while petitioner Celestino S. Vengco, Jr. (Vengco) is its General Manager, and petitioner Remedios R. Osorio is its Division Manager - Finance.<sup>[5]</sup> In 2012, HWD released anniversary bonus and rice allowance to its officials and employees pursuant to Board Resolution No. 009<sup>[6]</sup> dated April 24, 1996 and Board Resolution No. 016<sup>[7]</sup> dated October 13, 1992, respectively. Various allowances were also given to its Board of Directors in the same year.<sup>[8]</sup>

On November 14, 2013, Notice of Disallowance (ND) No. 2013-001HWD(2012)<sup>[9]</sup> (*First ND*) was issued, disallowing HWD disbursements amounting to P582,000.00, consisting of the P174,000.00 excess in the payment of anniversary bonus; and P408,000.00 worth of rice allowance paid to employees hired after July 1, 1989. The ND stated that the payment of P5,000.00 to each HWD official and employee was in violation of the Office of the President's Administrative Order (AO) No. 263,<sup>[10]</sup> which limits the payment of such bonus to an amount not exceeding P3,000.00.<sup>[11]</sup> Thus, the excess of P2,000.00 given to each official and employee was disallowed. On the other hand, the disallowance of the rice subsidy paid to employees hired after July 1, 1989 was grounded upon Section 12<sup>[12]</sup> of RA No. 6758<sup>[13]</sup> and COA Resolution No. 2004-006<sup>[14]</sup> dated September 14, 2004, which allow the grant of additional allowances and benefits on top of the standardized salary rates only to incumbents as of July 1, 1989.<sup>[15]</sup>

On even date, ND No. 2013-002-HWD(2012)<sup>[16]</sup> (*Second ND*) was also issued, disallowing the payment of the additional allowances granted to the HWD Board of Directors for being given without the approval of the Local Water Utilities

Administration (LWUA) in violation of the explicit provisions in Section 13<sup>[17]</sup> of PD No. 198, as amended by RA No. 9286,<sup>[18]</sup> and LWUA Memorandum Circular (MC) No. 004-002<sup>[19]</sup> dated May 21, 2002.

Petitioners filed separate Appeal Memoranda<sup>[20]</sup> to the COA Regional Office No. III, San Fernando, Pampanga to question the *First* and *Second NDs*. Relevant to the present petition is petitioners' argument with regard to the disallowance of the rice subsidy. In the main, petitioners invoked good faith in granting and/or receiving rice allowance considering that its grant has been an established and existing practice in HWD since 1993 as authorized by a board resolution. They also cited as evidence of their good faith the immediate discontinuance of the grant of rice allowance upon receipt of the ND.<sup>[21]</sup>

### **COA Regional Office Ruling**

In its Decision No. 2014-84<sup>[22]</sup> dated October 9, 2014, the COA Regional Office denied petitioners' appeal and entirely affirmed both the NDs. It ruled that Section 12<sup>[23]</sup> of RA No. 6758 clearly requires that only incumbents as of July 1, 1989, who are actually receiving additional non-integrated benefits as of that date may continue to receive them. Hence, the COA Regional Office sustained the disallowance of the grant of rice subsidy to non-incumbents. On the other hand, the ND on the additional allowances given to the HWD Board of Directors was upheld for being granted without LWUA approval in violation of Section 13<sup>[24]</sup> of RA No. 9286. The COA Regional Office disposed:

**WHEREFORE**, premises considered, we concur and affirm the stand taken by the ATL of HWD and Supervising Auditor of the Water District Audit Group as stated under ND No. 2013-001-HWD(2012) in the amount of [P]582,000.00; and ND No. 2013-002-HWD(2012) in the amount of [P]150,000. Consequently, the herein appeal for the lifting of the subject disallowance, is hereby **DENIED**.<sup>[25]</sup> (Emphasis in the original.)

Aggrieved, petitioners reiterated their arguments in a Petition for Review<sup>[26]</sup> filed before the COA Proper.

### **COA Proper Ruling**

In its Decision No. 2017-486,<sup>[27]</sup> the COA Proper sustained the validity of the two NDs, but ruled that the passive recipients should not be required to refund the amount of the disallowed benefits that they received in good faith. The members of the HWD Board of Directors were also held solidarily liable to refund the disallowed amounts, thus:

**WHEREFORE**, premises considered, the Petitions for Review of the Commission on Audit Regional Office No. III Decision No. 2014-84 dated October 9, 2014 are hereby **DENIED** for lack of merit. Accordingly, Notice of Disallowance (ND) Nos. 2013-001-HWD(2012) and 2013-002-HWD(2012), both dated November 14, 2013, on the payment of anniversary allowance and rice allowance to the officials and employees of Hagonoy Water District (HWD) for calendar year 2012 amounting to

[P]582,000.00, and additional allowances to the members of the Board of Directors (BOD) of HWD, amounting to [P]150,000.00, respectively, are **AFFIRMED**. However, the passive recipients of the disallowed benefits are not required to refund the amount received in good faith.

The Supervising Auditor and the Audit Team Leader are directed to issue a Supplemental ND against the members of the BOD of HWD who issued resolutions relative to the grant of the disallowed transactions.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transactions.<sup>[28]</sup> (Emphasis in the original.)

For failure to raise new matters and show sufficient ground to justify a reconsideration of the COA Decision No. 2017-486, petitioners' motion for reconsideration was denied in the COA Proper Resolution<sup>[29]</sup> dated November 26, 2018. Thus, the HWD Board of Directors issued Board Resolution No. 005<sup>[30]</sup> dated February 27, 2019, authorizing Vengco to file this Petition, challenging the COA Proper Decision No. 2017-486.

Petitioners impute grave abuse of discretion on the COA in denying the HWD employees' entitlement to the rice allowance, which had been an established practice since 1993 pursuant to a board resolution. The denial violates the principle of non-diminution of pay. Further, petitioners argue that good faith should be appreciated in favor of the HWD Board of Directors in issuing the board resolution approving the grant of rice allowance in 1992, alleging that the HWD Board believed in good faith that the grant was valid at that time. In the same vein, petitioners posit that inasmuch as the passive recipients were exonerated from liability because of their good faith, the officers should likewise be excused from refunding the disallowed amounts because they merely approved and certified the release of rice allowances in 2012 as a matter of duty in accordance with existing policies and practices of the HWD since 1993.<sup>[31]</sup>

### **Issues**

- I. Whether the COA gravely abused its discretion in sustaining the disallowance of the rice subsidy; and
- II. Whether the COA gravely abused its discretion on its disposition with regard to the liability to refund the disallowed rice subsidy.

### **Ruling**

#### *Propriety of the Disallowance*

At the outset, we note that the Petition merely questions the COA's ruling with regard to the rice allowance. The disallowance of the excess in the anniversary bonus was never appealed before the COA Regional Office, the COA Proper, and this Court. Consequently, the *First ND* and the COA's ruling insofar as the anniversary bonus is concerned, are now deemed final and immutable, and our discussion shall

focus only on the disallowance of the rice subsidy.

The rice allowance given to HWD officials and employees hired after July 1, 1989 was disallowed in accordance with Section 12 of RA No. 6758, which provides:

SEC. 12. *Consolidation of Allowances and Compensation.* - **All allowances**, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, **shall be deemed included in the standardized salary rates herein prescribed.** Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized. (Emphasis supplied.)

Plainly, upon the effectivity of RA No. 6758 on July 1, 1989, all allowances of government officials and employees, including those in the GOCCs, are deemed included in the standardized salary rates.<sup>[32]</sup> This rule is grounded upon the distinct policy of eliminating multiple allowances and other incentive packages, which resulted in inequitable differences of compensation among government personnel.<sup>[33]</sup>

Exceptions to the rule on consolidation of allowances and compensation were, however, put in place, *i.e.*, those which are expressly excluded by law or by a DBM issuance.<sup>[34]</sup> Under Section 12, the following allowances are not integrated in the standardized salary rates, and allowed to be continuously granted, to wit: (1) representation and transportation allowances; (2) clothing and laundry allowances; (3) subsistence allowances of marine officers and crew on board government vessels; (4) subsistence allowances of hospital personnel; (5) hazard pay; (6) allowances of foreign service personnel stationed abroad; and (7) such other additional compensation not otherwise specified as determined by the Department of Budget and Management (DBM). In addition, to temper the comprehensive effect of the general rule of integration, the policy of non-diminution of pay was embodied in Sections 12 and 17 of RA No. 6758. Thus, the second sentence of Section 12 allows government workers to continue receiving additional remunerations and benefits provided that: (1) they were incumbents when RA No. 6758 took effect on July 1, 1989; (2) they were actually receiving such benefits as of that date; and (3) such additional compensation is distinct and separate from the specific allowances enumerated in the first sentence of Section 12.<sup>[35]</sup> As well, Section 17 states:

Section 17. *Salaries of Incumbents.* - Incumbents of positions presently receiving salaries and additional compensation/fringe benefits including those absorbed from local government units and other emoluments, the aggregate of which exceeds the standardized salary rate as herein prescribed, shall continue to receive such excess compensation, which shall be referred as transition allowance. The transition allowance shall be reduced by the amount of salary adjustment that the incumbent shall receive in the future.

Verily, other than those specifically enumerated in the first sentence of Section 12 of RA No. 6758, sub-paragraphs 5.4<sup>[36]</sup> and 5.5<sup>[37]</sup> of DBM Corporate Compensation Circular (CCC) No. 10<sup>[38]</sup> dated February 15, 1999 allowed the continuous grant of additional benefits "[**after June 30, 1989**] only [to] incumbents of positions x x x, who are authorized and actually receiving such allowances [or] benefits as of [that] date."<sup>[39]</sup> This is consistent with the policy of non-diminution of pay adopted by the legislature in crafting the standardization law to protect the interest of employees who are already receiving certain allowances when the law was enacted. We stress that the Court has invariably construed the qualifying date to be July 1, 1989 or the effectivity date of RA No. 6758, in determining whether an employee was an incumbent and actually receiving additional non-integrated remunerations to be continuously entitled to them.<sup>[40]</sup> In *Agra v. Commission on Audit*,<sup>[41]</sup> which was notably cited by petitioners in their Appeal Memorandum,<sup>[42]</sup> the Court rationalized the incumbency requirement in this wise: "if a benefit was not yet existing when the law took effect on July 1, 1989, there [is] nothing to continue and no basis for applying the policy [of non-diminution of pay]."<sup>[43]</sup>

Rice subsidy is among those listed, allowed to be continuously granted to incumbents under sub-paragraph 5.5 of DBM CCC No. 10. However, the 2012 rice subsidy was given to all HWD officials and employees, regardless of their incumbency before July 1, 1989. This is a patent violation of Section 12 of RA No. 6758 and DBM CCC No. 10. Hence, the COA did not commit grave abuse of discretion in issuing the *First ND*, disallowing the rice subsidy for the non-incumbent petitioners.

Petitioners' claim that the grant of rice allowance had long been an established practice in HWD cannot legitimize the unauthorized disbursement of public fund. First, there was nothing on record that will prove such allegation. What is clear in the records is that rice allowance was granted specifically for HWD employees in 1993. Second, even if it was proven that such grant had been an established practice since 1993, we held in the case of *Kapisanan ng mga Manggagawa sa Government Service Insurance System (KMG) v. Commission on Audit*<sup>[44]</sup> that:

The Court has previously held that **practice, no matter how long continued, cannot give rise to any vested right if it is contrary to law**. The erroneous application and enforcement of the law by public officers does not estop the Government from making a subsequent correction of such errors. Where the law expressly limits the grant of certain benefits to a specified class of persons, such limitation must be enforced even if it prejudices certain parties due to a previous mistake committed by public officials in granting such benefit.<sup>[45]</sup> (Emphasis supplied; citations omitted.)

*Liability to  
Refund the  
Disallowed  
Amounts*

Petitioners ascribe grave abuse of discretion against the COA in failing to appreciate good faith in favor of the HWD Board of Directors in issuing Board Resolution No. 016, which approved the grant of rice allowance in 1993. Further, petitioners argue