

EN BANC

[G.R. No. 243503, September 15, 2020]

**ESTER B. VELASQUEZ, JUAN V. BOLO, ELADIO C. DIOKO, AND
GLEN M. PESOLE, AS FORMER MEMBERS OF THE BOARD OF
REGENTS OF THE CEBU NORMAL UNIVERSITY, PETITIONERS, VS.
COMMISSION ON AUDIT, RESPONDENT,**

DECISION

REYES, J. JR., J.:

Assailed in this Petition for *Certiorari*^[1] are the Decision^[2] dated January 28, 2015 and the Resolution^[3] dated January 30, 2018 of the Commission on Audit (COA; Commission Proper), upholding Notice of Disallowance (ND) No. 2004-12-101-(2003) and ND Nos. 2004-04-101-(2003) to 2004-10-101-(2003), all of which are dated September 2, 2005, which involve the grant of the quarterly rice subsidy and the Kalampusan Award, respectively, in favor of Cebu Normal University (CNU) employees.

The Factual Antecedents

In Board Resolution No. 18, Series of 2003,^[4] the members of the Board of Regents (BOR) of the CNU, consisting some of herein petitioners, approved the proposed Special Trust Fund Budget in the amount of P9,304,981.53. Among those listed in the proposed expenditures include the quarterly rice allowance for CNU employees, COA resident auditors, and members of the BOR.^[5]

Subsequently, Board Resolution No. 28, Series of 2004,^[6] approving the proposed budget for the use of university income, was issued by the BOR of CNU. The quarterly rice subsidy was likewise included among its proposed expenditures.^[7]

The members of the BOR of CNU likewise granted the Kalampusan Award of P20,000.00 for each employee in recognition of his/her accomplishments manifested through the exemplary performance of CNU's graduates in various licensure examinations through Board Resolution No. 91, Series of 2003.^[8]

On September 2, 2005, the COA issued ND No. 2004-12-101-(2003),^[9] stating that, among others, the disbursements in the amount of P1,277,240.00 pertaining to the grant of rice subsidy, were without legal basis and in violation of Section 5 of Presidential Decree (P.D.) No. 1597:

SEC. 5. *Allowances, Honoraria, and Other Fringe Benefits.* Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President

upon recommendation of the Commissioner of the Budget. For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

On even date, ND No. 2004-04-101-(2003)^[10] was issued. Similarly, the grant of the quarterly rice subsidy was viewed by the COA as made without legal basis and in violation of Section 4(1), P.D. No. 1445:

SEC. 4. *Fundamental principles.* Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

1. No money shall be paid out of any public treasury of depository except in pursuance of an appropriation law or other specific statutory authority.

In addition, ND No. 2004-10-101-(2003),^[11] disapproving the disbursement of funds pertaining to the *Kalampusan* Award for having no legal bases, was issued by the COA.

Petitioners appealed the NDs, but such appeal was denied in Legal Services Sector (LSS) Decision No. 2010-011^[12] dated February 3, 2010. Ruling against the petitioners, the COA LSS of the COA Central Office, through Director Amante A. Liberato, affirmed the NDs and held the petitioners solely liable for the refund of the disallowed benefits.

Aggrieved, petitioners filed a petition for review before the Commission Proper. In the assailed Decision^[13] dated January 28, 2015, the petition was dismissed for belated filing.

Under the 2009 Revised Rules of Procedure of the COA, an appeal to the Director must be filed within six months or 180 days after the receipt of the ND, and the period of appeal before the Commission Proper shall be taken within the time remaining of the six months under the proceedings before the Director. The Commission Proper observed that the receipt of LSS Decision No. 2010-011 dated February 3, 2010 was on September 1, 2010, yet the petition for review was filed only on March 1, 2011, resulting in a lapse of 181 days. As such, the decision of the COA LSS has become final and executory:

WHEREFORE, the instant Petition for Review of the Board of Regents of the Cebu Normal University is hereby DISMISSED for being filed out of time. Accordingly, COA Legal Services Sector Decision No. 2010-011 dated February 3, 2010 is final and executory.^[14]

Petitioners filed a Motion for Reconsideration, arguing that they filed the petition within 174 days or on February 22, 2011; and that they should not be held liable for the refund following the case of *Benguet State University v. Commission on Audit*,^[15] wherein the members of the BOR, who granted rice subsidy and health

allowances to school employees by virtue of a Board Resolution, were not required to refund the disallowed amounts on account of good faith.^[16]

In the assailed Resolution^[17] dated January 30, 2018, the Commission Proper clarified that the petition was filed within the reglementary period and confirmed that the filing was done on February 22, 2011. However, it ruled for the denial of the Motion as the members of the BOR acted beyond their powers in granting the quarterly rice subsidy and the Kalampusan Award. Likewise reliant on the case of *Benguet State University*, the COA maintained that the BOR is authorized to disburse the income generated by the CNU only for instruction, research, extension, or other programs/projects of similar nature under Section 4(d) of R.A. No. 8292. Thus, the act of granting the quarterly rice subsidy and the *Kalampusan* Award, which were not intended for academic programs, was outside the power of the BOR of CNU.

On this note, the COA sustained the solidary liability of petitioners to refund the disallowed amount on ground of bad faith.

Thus:

WHEREFORE, premises considered, the Motion for Reconsideration of the Board of Regents (BOR), Cebu Normal University, of Commission on Audit Decision No. 2015-10 dated January 28, 2015, is hereby DENIED. Accordingly, Notice of Disallowance (ND) No. 2004- 12-101 [-](2003) dated September 2, 2005, on the grant of quarterly rice subsidy, in the amount of P1,277,240.00, and ND Nos. 2004-04-101 [-](2003) to 2004-10-101 [-](2003) of even date on the Kalampusan [A]ward given to the employees of CNU, amounting to P3,708,000.00, or in the total amount of P4,985,240.00, are AFFIRMED. However, the passive recipients need not refund the amounts they received on account of good faith.

The CNU BOR and the approving/certifying officials shall be jointly and severally liable for the disallowances.^[18]

Seeking relief from the ruling of the COA, petitioners filed this instant petition.

Essentially, petitioners argue that the COA acted with grave abuse of discretion in affirming the NDs on the grant of the quarterly rice subsidy and the *Kalampusan* Award. Petitioners maintain that at the time of the issuance of the Board Resolutions in 2003 and 2004, there was no definitive ruling yet on the incentives and benefits that the governing board of government educational institutions may legally provide their employees. It was only when the *Benguet State University* case was promulgated in 2007 when an interpretation on the power of the BOR was clarified; thus, the application of such case must be prospective. Corollary, petitioners insist that they should not be held solidarily liable for the refund of the disallowed amounts on the basis of good faith,^[19]

In their Comment,^[20] the COA avers that the *Benguet State University* case should be retroactively; applied as judicial interpretation of statutes constitutes a part of the law of the land as of the date they were passed; and that petitioners cannot be deemed to have acted in good faith as they are senior officials of the CNU who were

expected to have knowledge of laws, rules or regulations.

The Issues

For consideration of the Court are the following issues: (1) did the COA correctly disallow the quarterly rice subsidy and the *Kalampusan* Award; and (2) are petitioners solidarily liable to refund the disallowed amounts?

The Court's Ruling

Jurisprudentially established is the doctrine that "a judicial interpretation of a statute constitutes part of that law as of the date of its original passage." This is so because such interpretation merely clarifies and defines a law in line with the intent of the legislature.^[21] In construing a law, the Court essentially delves into its spirit when it was passed.

The effectivity of judicial interpretation, however, varies. As explained in the case of *Castro v. Deloria*:^[22]

Where a judicial interpretation declares a law unconstitutional or abandons a doctrinal interpretation of such law, the Court, recognizing that acts may have been performed under the impression of the constitutionality of the law or the validity of its interpretation, has consistently held that such operative fact cannot be undone by the mere subsequent declaration of the nullity of the law or its interpretation; thus, the declaration can only have a prospective application. But where no law is invalidated nor doctrine abandoned, a judicial interpretation of the law should be deemed incorporated at the moment of its legislation.

Alternatively put, the application of a judicial interpretation is retroactive, except when an old doctrine was overruled by a new one.

In this regard, petitioners' insistence on the prospective application of the Court's declaration in the *Benguet State University* case is hinged on the fact that such case was promulgated only in 2007, after the approval of the Board Resolutions granting the quarterly rice subsidy and the *Kalampusan* Award in 2003 and 2004.

The authority of the BOR of CNU to disburse funds is found in Section 4(d) of Republic Act (R.A.) No. 8292:

SEC. 4. *Powers and Duties of Governing Boards.* — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines[:]

x x x x

d) to fix the tuition fees and other necessary school charges, such as but not limited [to] matriculation fees, graduation fees and laboratory fees, as their respective boards may deem

proper to impose after due consultations with the involved sectors.

Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: *Provided*, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

Any provision of existing laws, rules and regulations to the contrary notwithstanding, **any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college:** *Provided*, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.

If, for reason of control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.]
(Emphasis supplied)

In the case of *Benguet State University*, the Court applied the statutory construction doctrine of *ejusdem generis* in construing that the power of the governing boards of government educational institutions are not plenary and absolute. Consequently, their power to defray their income is limited to disbursements for programs and projects intended for instruction, research, and extension. The Court interpreted "other programs or projects" as those programs/projects which are of similar nature to academic programs/projects for instruction, research, and extension.

Guided by the pronouncement of the Court in the case of *Castro*, it is clear that the judicial interpretation of Section 4(d) of R.A. No. 8292 in the case of *Benguet State University* must be applied retroactively. Such interpretation did not revisit nor overturn an existing doctrine. Contrary to petitioners' assertion, the ruling of the Court in the *Benguet State University* case retroacts as of the date that R.A. No. 8292 was enacted in 1997.

In fact, such construction was upheld in the 2019 case of *Rotoras v. Commission on Audit*^[23] Therein, the Court identified that the tuition fees and other necessary school charges collected by the government educational institution constitute as special trust fund, which shall be used solely for instruction, research, extension, or other programs or projects of similar nature.