

EN BANC

[G.R. No. 245274, October 13, 2020]

TERESITA P. DE GUZMAN, IN HER CAPACITY AS FORMER GENERAL MANAGER; GODIULA T. GUINTO, IN HER CAPACITY AS FORMER INTERNAL AUDITOR; VIVECA V. VILLAFUERTE, IN HER CAPACITY AS FORMER ADMINISTRATIVE MANAGER; WILHELMINA A. AQUINO, IN HER CAPACITY AS SENIOR ACCOUNTANT; RENATO S. RONDEZ, IN HIS CAPACITY AS A MEMBER OF THE BAGUIO WATER DISTRICT (BWD) BOARD OF DIRECTORS (BOD); MOISES P. CATING, RAMSAY M. COLORADO, GINA ROMILLO-CO, EMMANUEL M. MALICDEM AND MARIA ROSARIO R. LOPEZ, IN THEIR CAPACITIES AS FORMER MEMBERS OF THE BWD BOD; AND THE EMPLOYEES OF BWD, IN THEIR CAPACITIES AS PAYEES, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This Petition for Certiorari^[1] assails the following issuances of the Commission on Audit (COA) in *"Petition for Review of Ma. Teresita P. De Guzman, Ms. Viveca V. Villafuerte, Ms. Wilhelmina A. Aquino, and employees of Baguio Water District (BWD), Baguio City, of Commission on Audit -Cordillera Administrative Region Division No. 2015-26 dated May 21, 2015, affirming Notice of Disallowance No. 12-023-101-(09) dated May 15, 2012, on the payment of Centennial Bonus to the officers and employment of BWD for calendar year 2009, amounting to P1,233,860.00"*:

1) Decision^[2] No. 2017-475 dated December 28, 2017, disposing, thus:

WHEREFORE, premises considered, the Petition for Review of Ms. Teresita P. De Guzman, et al., all of Baguio Water District (BWD), Baguio City, of Commission on Audit-Cordillera Administrative Region Decision No. 2015-26 dated May 21, 2015, is **DENIED** for lack of merit. Accordingly, Notice of Disallowance No. 12-023-101-(09) dated May 15, 2012, on the payment of Centennial Bonus to the officers and employees of BWD for calendar year 2009, amounting to P1,233,860.50 is **AFFIRMED with MODIFICATION**. The passive recipients of the disallowed Centennial Bonus are not required to refund the amount received in good faith, but the approving/certifying/authorizing officers for the benefit remain liable for the total disallowance.^[3]

2) Resolution^[4] dated September 27, 2018, denying petitioner's Motion for Reconsideration.

Antecedents

Under Resolution (BR) No. 046-2009 dated November 20, 2009, the Baguio Water District (BWD) authorized the grant of Centennial Bonus to its officers and employees in the amount equivalent to fifty percent (50%) of the employee's salary. The bonus was distributed to the recipients on the occasion of the 100th anniversary of the City of Baguio.^[5]

The COA Audit Team, led by Antonieta La Madrid, issued Notice of Disallowance (ND) No. 12-023-101-(09)^[6] dated May 15, 2012 on the total amount of P1,233,860.50 granted as centennial bonus to the BWD officers and employees for being allegedly devoid of legal basis. The COA Audit Team cited Section 3(b) of Administrative Order (AO) No. 103 dated August 31, 2004 issued by President Gloria Macapagal-Arroyo, suspending the grant of new or additional benefits to full-time officials and employees, except: 1) Collective Negotiation Agreement Incentives (CNAI) granted under the Public Sector Labor Management Council Resolution No. 4, Series of 2002, and No. 2, Series of 2003; and 2) those expressly granted by applicable presidential issuances. As a consequence of the disallowance, the recipients were each directed to refund the centennial bonus they received.

Proceedings before the COA-CAR

Petitioners Teresita de Guzman (former General Manager); Godiula Guinto, (former Internal Auditor); Viveca Villafuerte (former Administrative Manager); Wilhelmina Aquino (Senior Accountant); Renato Rondez (member of the present BWD Board of Directors); and former members of the Board of Directors, namely Moises Cating, Ramsay Colorado, Gina Romillo- Co, Memmanuel Malicdem, and Maria Rosario Lopez appealed to the COA - Cordillera Administrative Region (COA-CAR). They were joined by the BWD employees.

Petitioners and the BWD employees essentially argued that the notice of disallowance was defective because the same did not bear the supervising auditor's signature but only that of the audit team leader; the agency was not covered by the austerity measures embodied in AO 103; and, the bonus was released to the officers and employees in good faith.^[7]

By Decision No. 2015-26^[8] dated May 21, 2015, the COA-CAR affirmed. It noted that there was no supervising auditor assigned to the BWD at the time the notice of disallowance was issued. By Memorandum dated May 9, 2012 though, the OIC Regional Director of COA-CAR authorized the audit team leaders concerned to issue notices of disallowance, sans the signature of a supervising auditor. Since BWD is a government- owned and controlled-corporation (GOCC) it is subject to the issuances emanating from the Office of the President. When the BWD Board granted the bonuses to its officers and employees, it disregarded AO 103, thus negating its claim of good faith.

Ruling of the COA En Banc

On petitioners' appeal, the COA En Bane rendered its assailed Decision No. 2017-475 dated December 28, 2017, affirming the COA- CAR's decision with modification that the passive recipients should not be required to refund the amounts they received in good faith. Only the approving/certifying/authorizing officers should refund the disallowed amount of P1,233,860.50.

Petitioners' Motion for Reconsideration^[9] was denied per assailed Resolution^[10] dated September 27, 2018.

The Present Petition

Petitioners now seek affirmative relief from the Court via Rule 64 of the Rules of Court. They essentially argue that the absence of the supervising auditor's signature on the notice of disallowance violated Section 10.2, Chapter III of the COA Rules and Regulations on Settlement of Accounts (COA-RRSA) which provides that a notice of disallowance "*shall be signed by both the Audit Team Leader and the Supervising Auditor*". Presidential Decree No. 198^[11] (PD 198) granted water districts the power to conduct their business and affairs through their respective board of directors. The BWD Board validly exercised its power under the law when it granted the centennial bonus to its officers and employees. Lastly, the centennial bonus was granted in good faith, hence, the officers who authorized their release should not be required to refund the same.^[12]

The Office of the Solicitor General (OSG), through Assistant Solicitor General Gilbert Medrano and State Solicitor I Philander Turqueza, submits that ND No. 12-023-101-(09) is valid despite the fact that it bears the lone signature of the audit team leader. For at the time of its issuance, there was no supervising auditor assigned to the BWD audit team. Since water districts are GOCCs, they are under the control of the Office of the President, thus, AO 103 is binding on the BWD. Petitioners cannot invoke good faith because they were grossly negligent in granting the centennial bonus despite the clear provisions of AO 103.^[13]

Issues

- 1) Is ND No. 12-023-101-(09) defective for not bearing the signature of a supervising auditor?
- 2) Is the BWD subject to the power of control of the Office of the President?
- 3) Are petitioners liable to refund the full disallowed amount?

Ruling

ND No. 12-023-101-(09) is not defective

On the first issue, we hold that ND No. 12-023-101-(09) is not deemed defective, let alone, without force and effect simply because it did not bear the signature of a supervising auditor. We quote with concurrence the disquisition of the COA En Banc on this score, viz.:

Although the requirement that an ND should be signed by both the ATL and the SA as provided under Section 10.2, Chapter III of the RRSA, its non-compliance is not a fatal defect that could render the ND invalid and without effect. As found by the RD, the reason for the absence of the signature of an SA was due to the non- assignment of an SA by the COA Central Office for Audit Group C. Hence, issuances such as NDs by the Audit Team for 2009 transactions and onwards were signed only by the ATL. Clearly, the ATL cannot be faulted for issuing the ND without a signature of the SA under the circumstances.^[14]

By Memorandum dated May 9, 2012, the OIC Regional Director of COA-CAR expressly authorized Audit Team Leader Antonieta La Madrid to issue notices of disallowances, albeit without the signature of a supervising auditor as none was assigned to BWD at that time. Surely, the post audit functions of the COA do not depend on the availability of a supervising auditor. In other words, these audit functions are not halted or suspended simply because an officer or a member of the COA's audit team has resigned or has not been appointed in the meantime.

BWD is subject to the President's power of control

On the second issue, we rule that the disallowance of the centennial bonus under ND No. 12-023-101 -(09) is in accord with law and jurisprudence. Local water districts are not private corporations but GOCCs.^[15] Specifically, a water district is a GOCC with a special charter since it was created pursuant to a special law, PD 198.^[16] Under the Revised Administrative Code, GOCCs are part of the Executive Department for they are attached to the appropriate department with which they have allied functions.^[17]

Being a water district, the BWD itself is a GOCC, thus, subject to the power of control of the President. In *ZCWD v. COA*,^[18] it was held that the amount of per diems granted to the board of directors of local water districts is subject to the presidential power of control since local water districts are GOCCs, viz.:

Although ZCWD is correct in arguing that A.O. No. 103 did not repeal R.A. No. 9286, it is, however, mistaken, that the LWUA resolution is a sufficient basis to justify the grant of per diem in the amount beyond what is allowed under A.O. No. 103. Section 3 of A.O. No. 103 instructs all GOCCs to reduce the combined total of per diems, honoraria and benefits to a maximum of P20,000.00.

The said provision did not divest LWUA of its authority to fix the per diem of BODs of LWDs. It, nonetheless, limits the same in order to implement austerity measures, as directed by A.O. No. 103, to meet the country's fiscal targets. Under R.A. No. 9275, the LWUA is an attached agency of the Department of Public Works and Highway (DPWH). The President, exercising his power of control over the executive department, including attached agencies, may limit the authority of the LWUA over the amounts of per diem it may allow.

Undeniably, AO 103 governs the manner by which local water districts like the BWD manage and handle their finances, thus:

SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

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(b) Suspend the grant of new or additional benefits to full-time officials and employees and officials, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor- Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance;

X X X

Here, the commemorative or centennial bonus granted to the BWD officers and employees on the occasion of the agency's 100th anniversary of Baguio City is neither a CNA incentive nor authorized by a presidential issuance. Its grant, therefore, was devoid of any legal basis.

BWD's certifying and approving officers and recipient employees are liable to refund the disapproved amount

The following statutory provisions identify the persons liable to return the disallowed amounts, viz.:

1. Section 43, Chapter V, Book VI of the 1987 Administrative Code:

Section 43. Liability for Illegal Expenditures. - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

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2. Sections 38 and 39, Chapter 9, Book I, of the 1987 Administrative Code:

Section 38. *Liability of Superior Officers.* -

(1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.

(2) Any public officer who, without just cause, neglects to perform a duty within a period fixed by law or regulation, or within a reasonable period if none is fixed, shall be liable for damages to the private party concerned without prejudice to such other liability as may be prescribed by law.