

EN BANC

[G.R. No. 244336, October 06, 2020]

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

D E C I S I O N

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari* seeks to nullify the Decision No. 2018-305 dated March 15, 2018^[1] of the Commission on Audit (COA), affirming the disallowance of the 2005, 2006, 2007, and 2008 Collective Negotiation Agreement (CNA) Incentives paid to the rank and file employees of the Social Security System - Western Mindanao Division (SSS-WMD) in the total amount of P9,333,319.66.

Antecedents

During the calendar years 2005, 2006, 2007 and 2008,^[2] petitioner Social Security System (SSS) granted and released CNA incentives to its Western Mindanao Division rank and file employees^[3] in the amount of P20,000.00 each or a total of P9,333,319.66.^[4] The grant was purportedly based on a Supplemental CNA, specifically Social Security Commission (SSC) Resolution No. 183.^[5]

On March 26, 2012, State Auditor IV Annabelle Uy issued her Notice of Disallowance No. 2012-03 in the amount of P9,333,319.66. She noted that: a) for the fiscal years 2005, 2006, and 2007, the grant of CNA incentives amounting to P6,695,500.55 were not actually included in the duly executed CNA between management and the employees' association covering these years in violation of Section 5.1^[6] of the DBM Budget Circular (BC) No. 2006-01; b) for fiscal years 2005 and 2007, petitioner's actual operating income did not meet the targeted operating income in the Corporate Operating Budget (COB) approved by the DBM in violation of Section 3^[7] of the PLSMC Resolution No. 2, series of 2003;^[8] c) as for the remaining amount of P2,637,819.11, the same had been disallowed due to the excessive accruals of cash incentives for years 2006, 2007, and 2008 in violation of Sections 5.7^[9] and 7.1^[10] of the DBM BC No. 2006-01; and d) the SSS-WMD approving and certifying officers, *i.e.*, Assistant Vice President Rodrigo B. Filoteo (Approving Officer), Administrative Section Head Arlene Vargas (Certifying Officer), and Accounting Section Head Ma. Luz D. Abella (Certifying Officer),^[11] and all the payees who received the disallowed CNA incentives ought to be liable for the irregular disbursement of government funds.^[12]

The Ruling of COA- Regional Office

On petitioner's appeal, COA Regional Director Atty. Roy L. Ursal affirmed by Decision^[13] dated November 26, 2013. He found that the purported SSC Resolution No. 183 which authorized the grant never existed per verification with the COA-SSS Head Office.^[14] Since there was no authority to grant the CNA incentives, their payment was an irregular transaction per Sections 5.1^[15] and 5.3^[16] of DBM BC No. 2006-1.

Further, the grant of CNA incentives in the fixed amount of P20,000.00 is contrary to Section 5.6^[17] of DBM BC No. 2006-1. The same ordains that no amount shall be predetermined in the CNAs as it ought to be dependent on the cost-cutting measures specified under the CNA or its supplements.^[18]

Section 5.7^[19] of DBM BC No. 2006-1 was also violated when petitioner used up 80% of its savings in 2006, 2007, and 2008 as CNA incentives, albeit the grant was not covered by any validly existing CNA executed between the management and the employees' organization. This was also in breach of Section 6.1.3^[20] of DBM BC No. 2006-1. At any rate, the apportionment of 80% of the savings for CNA incentives constituted excessive expenditure considering that the employees were already given other benefits.^[21]

Meanwhile, in 2005, petitioner's target operating income fell short by 1.03 percent'.^[22] It meant that petitioner failed to fulfill the condition for the grant of CNA incentives laid down in Section 3 of PSLMC Resolution No. 2, Series of 2003 - that the actual operating income of the GOCC should meet the targeted income in the COB approved by the DBM.^[23]

In sum, the disallowance of the CNA incentives was justified because its grant lacked legal basis and contravened the auditing rules and regulations set forth under DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003.

Both the approving and certifying officers as well as the recipients of subject CNA incentives were found liable for the disallowed amount.^[24]

The Ruling of the COA-Commission Proper (COA-CP)

On January 17, 2014, petitioner further sought relief from the COA-CP which by Decision No. 2015-045 dated February 23, 2015 dismissed petitioner's petition for late filing.^[25] On motion for reconsideration, however, the COA-CP, per its assailed Decision No. 2018-305 dated March 15, 2018, resolved the petition on the merits,^[26] affirming, with modification the Decision of the COA Regional Office. Its dispositions may be summarized as follows:

- a) The purported SSC Resolution No. 183 which authorized the questioned CNA incentives was non-existent. In fact, petitioner did not even attach a copy of it to the petition filed before the COA- CP.^[27]
- b) The grant of P20,000.00 to each employee of the SSS Western Mindanao Division violated Sections 5.6.1 and 5.7^[28] of DBM BC No.

2006-1.

c) Petitioner failed to show that the conditions provided under Section 3 of PSLMC Resolution No. 2, Series of 2003^[29] had already been fulfilled before it granted the CNA incentives to the employees.^[30]

d) The disallowance of the 2005, 2006, 2007, and 2008 CNA incentives^[31] was proper as the grant of these benefits was devoid of legal basis, nay, in breach of auditing rules and regulations.

e) As for the issue of liability, the passive recipients need not return the disallowed CNA incentives since they had no knowledge of any irregularity surrounding the grant.^[32]

f) With respect to the approving and certifying officers, however, good faith cannot be appreciated in their favor because they were expected to know the laws, rules, and regulations in the performance of their duties. Thus, they are solidarity liable for the disallowed amounts.^[33]

The Present Petition

Petitioner now asks the Court to nullify the dispositions of the COA-CP insofar as it affirmed the disallowance of the CNA incentives, held the approving and certifying officers jointly and solidarity liable for the return of the disallowed amount, and absolved the employees from returning the respective amounts they received. Petitioner essentially argues:

- a) It made prior negotiations and consultations with the SSS Employees Union Panels, DBM, and PSLMC on the grant of the CNA incentives.
- b) The SSC issued several resolutions in the past providing for a similar grant of CNA incentives to SSS officials and employees.^[34]
- c) The approving and certifying officials merely performed their respective official functions when they affixed their signatures to the CNA incentives vouchers.^[35] Hence, they should be absolved from refunding the disallowed amount on ground of good faith.^[36]
- d) In accord with the principle against unjust enrichment, the passive recipients themselves ought to return the disallowed CNA incentives.^[37]

On the other hand, the COA-CP, through Solicitor General Jose Calida, and Senior State Solicitors B. Marc Canuto and Cheryl Angeline Roque-Javier ripostes, in the main:

- a) Petitioner's failure to comply with DBM BC No. 2006-1 and PSLMC Resolution No. 2, Series of 2003 warranted the disallowance of the 2005, 2006, 2007, and 2008 CNA incentives.
- b) The approving and certifying officials deliberately disregarded

the aforesaid circular and resolution, hence, they are deemed to have acted in bad faith.

- c) The payees are not obliged to refund the CNA incentives since they had no knowledge of the irregularity surrounding the grant.^[38]

Issues

1. Did the COA-CP gravely abuse its discretion when it affirmed the disallowance of the 2005, 2006, 2007, and 2008 CNA incentives paid to the employees?
2. Are the approving and certifying officers liable to return the disallowed amount? How about the employees who received the grant?

Ruling

The 2005, 2006, 2007, and 2008 CNA incentives patently lacked legal basis and violated auditing rules and regulations

PSLMC Resolution No. 2, Series of 2003^[39] authorizes the grant of CNA incentives for Government Owned and Controlled Corporations (GOCCs) and Government Financial Institutions (GFIs) in recognition of the joint efforts of labor and management to accomplish targets, programs, and services at costs less than the approved costs in their respective budgets. The clear objective of PSLMC Resolution No. 2, Series of 2003 is to encourage, promote, and reward productivity, efficiency, and use of austerity measures specified in the appropriate CNA.^[40]

Section 3 of PSLMC Resolution No. 2, Series of 2003 bears the conditions **for the grant of CNA incentives, viz.:**

- a) Actual operating income at least meets the targeted operating income in the Corporate Operating Budget (COB) approved by the Department of Budget and Management (DBM)/Office of the President for the year. For GOCCs/GFIs, which by the nature of their functions consistently incur operating losses, the correct year's operating loss should have been minimized or reduced compared to or at most equal that of prior year's levels;
- b) Actual operating expenses are less than the DBM-approved level of operating expenses in the COB as to generate sufficient source of funds for the payment of CNA Incentive; and
- c) For income generating GOCCs/GFIs, dividends amounting to at least 50% of their annual earnings have been remitted to the National Treasury in accordance with provisions of Republic Act No. 7656 dated November 9, 1993.

On December 27, 2005, former President Gloria Macapagal-Arroyo issued Administrative Order No. 135 (A.O. 135),^[41] confirming the grant of the CNA incentives to rank and file employees pursuant to PSLMC Resolution No. 2, Series of 2003^[42] subject to cost-cutting measures to be identified in the CNA and exclusive sourcing of these incentives from the savings that may be generated during the term of the CNA.^[43]

On February 1, 2006, the DBM issued its implementing DBM Budget Circular No. 2006-1, viz.:

- 5.1 The CNA Incentive in the form of cash may be granted to employees covered by this Circular, **if provided for in the CNAs or in the supplements thereto, executed between the representatives of the management and the employees' organization** accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.

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- 5.6 The amount/rate of the individual CNA Incentive:

- 5.6.1 **Shall not be pre-determined** in the CNAs or in the supplements thereto since it is dependent on savings generated from cost-cutting measures and systems improvement, and also from improvement of productivity and income in GOCCs and GFIs;

- 5.6.2 Shall not be given upon signing and ratification of the CNAs or supplements thereto, as this gives the CNA Incentive the character of the CNA Signing Bonus which the Supreme Court has ruled against for not being a truly reasonable compensation (Social Security System vs. Commission on Audit, 384 SCRA 548, July 11, 2002);

- 5.6.3 May vary every year during the term of the CNA, at rates depending on the savings generated after the signing and ratification of the CNA; and

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- 5.7 The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.