

EN BANC

[G.R. No. 244193, November 10, 2020]

NATIONAL TRANSMISSION CORPORATION, PETITIONER, VS. COMMISSION ON AUDIT (COA) AND COA CHAIRPERSON MICHAEL G. AGUINALDO, RESPONDENTS.

D E C I S I O N

DELOS SANTOS, J.:

A certification which does not substantiate "the paying out of an account payable," or a disbursement is not a valid document to support the claim for reimbursement of extraordinary and miscellaneous expenses (EME) of the officials of government owned and controlled corporations (GOCCs), government financial institutions (GFIs), and their subsidiaries. The Commission on Audit (COA) can properly disallow in audit the EME disbursement for violation of COA Circular No. 2006-001.^[1] Consequently, the approving/certifying officers who acted in bad faith or with malice or gross negligence are solidarity liable to return the net disallowed amount. All passive recipients, including the approving/certifying officers who received the disallowed amounts that they have approved/certified, are liable to return the amounts they have respectively received on the basis of *solutio indebiti*.

This is a Petition for *Certiorari*^[2] under Rule 64 in relation to Rule 65 of the Rules of Court assailing COA Decision No. 2017-115^[3] dated April 26, 2017. The COA affirmed the disallowance of payments of EME of the officials of the National Transmission Corporation (TransCo) in the year 2010.

The Facts

TransCo is a GOCC created in June 2001 by virtue of Section 8 of Republic Act No. (RA) 9136,^[4] otherwise known as the Electric Power Industry Reform Act (EPIRA). It assumed the electrical transmission function of the National Power Corporation (NAPOCOR) and presently operates NAPOCOR's nationwide electrical transmission and subtransmission system.^[5]

On various dates in 2010, TransCo paid its officials EME pursuant to RA 9970^[6] or the General Appropriations Act of 2010 (GAA).^[7]

On June 1, 2011, Supervising Auditor Corazon V. España (Supervising Auditor España) and Audit Team Leader Minerva T. Cabigting issued Notice of Disallowance (ND) No. 11-58-(2010)^[8] which disapproved the payments of EME in the amount of P1,841,165.44. The ND provides that payments of EME were made on a commutable basis and were not supported by receipts, contrary to Item III of COA Circular No. 2006-001 dated January 3, 2006.

Aggrieved, TransCo appealed the ND to the COA Corporate Government Sector (COA-CGS).

Ruling of the COA-CGS

In Decision No. 2014-16^[9] dated September 17, 2014, the Cluster Director granted the appeal and lifted the ND. The Cluster Director opined that a certification may be accepted as supporting document for reimbursements of EME by GOCCs, since a certification is allowed in National Government Agencies (NGA) under COA Circular No. 89-300.^[10] The Cluster Director likewise stated that the uniformity of the amounts claimed does not support the allegation that the EME were paid on a commutable basis.^[11]

Ruling of COA Proper

On April 26, 2017, the COA, upon automatic review, rendered Decision No. 2017-115^[12] with the dispositive portion as follows:

WHEREFORE, premises considered Commission on Audit Corporate Government Sector Cluster 3 Decision No. 2014-16 dated September 17, 2014 is hereby **DISAPPROVED**. Accordingly, Notice of Disallowance No. 11-58-(2010) dated June 1, 2011, on the payment of Extraordinary and Miscellaneous Expenses to officials of National Transmission Corporation for the year 2010 in the total amount of [P]1,841,165.44 is **SUSTAINED**.^[13] (Emphasis in the original)

Citing *Espinosa v. Commission on Audit*,^[14] the COA held that a mere certification will not suffice to support a claim for reimbursement of EME as it is not a document evidencing disbursement under COA Circular No. 2006-001. It clarified that TransCo cannot invoke COA Circular No. 89-300, which allows the use of certifications in claiming for reimbursement, because said circular applies to NGAs. It further explained that "the substantial distinction between officials of the NGAs and GOCCs lies in the fund from which the EME is sourced. The EME of the GOCCs are allocated by their own internal governing boards while the EME paid by the NGAs are appropriated in the annual GAA duly enacted by Congress."^[15]

Contrary to the Cluster Director's Decision, the COA ruled that the absence of receipts or supporting documents evidencing disbursements of the EME and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis. It dismissed TransCo's claim of good faith because of its "disregard of the applicable law or rules." Ultimately, it found TransCo officials who had direct participation and/or authorized the payment of the EME solidarily liable with the payees for the disallowed amount.^[16]

TransCo moved for reconsideration but the same was denied in a Resolution dated January 23, 2018.^[17] On August 6, 2019, Commission Secretary Nilda B. Plaras (Commission Secretary Plaras) issued Notice of Finality of Decision (NFD) No. 2019-281,^[18] pertinent portions of which read:

Please be informed that the decision of the CP denying the motion for reconsideration of COA Decision No. 2017-115 dated April 26, 2017 has become final and executory pursuant to Section 9, Rule X of the 2009

Revised Rules of Procedure of the Commission on Audit, as modified under COA Resolution No. 2011-006 dated August 17, 2011.

Accordingly, the persons liable shall pay the above amount immediately to the agency cashier. Failure to pay the same shall authorize the agency cashier to withhold payment of salary and other money due to persons liable in accordance with COA Order of Execution to be issued to the agency cashier.^[19]

In a letter^[20] dated September 10, 2019, TransCo requested that the NFD be lifted and the effects thereof be suspended while awaiting the Court's decision in the instant petition. In response, Commission Secretary Plaras clarified that the COA's Revised Rules of Procedure provides that the filing of a petition for *certiorari* shall not sway the execution of the subject Decision and Resolution unless the Court directs otherwise.^[21]

TransCo filed a Motion for Issuance of a *Status Quo Ante* Order and/or Preliminary Injunction^[22] dated January 3, 2020 to enjoin the implementation of the subject COA Decision and Resolution.

Arguments of the Parties

TransCo argues that the COA erred in sustaining the disallowance due to the following reasons:

1. Supervising Auditor España failed to substantiate her claim that the payments of EME were made on a commutable basis;
2. Recipients of EME should not be held liable because they received the payments in good faith and without knowledge that they were made contrary to existing rules and regulations;
3. In the absence of malice and gross negligence, TransCo officials are not liable for the mistakes made in the performance of their official duties.

The COA, through the Office of the Solicitor General, for its part, maintains that:

1. The burden of proving that the expenses were incurred for official purposes and not on a commutable basis lies with TransCo;^[23]
2. The absence of receipts or supporting documents evidencing disbursements of EME and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis;^[24]
3. The payees of the EME did not receive the payments in good faith since as high ranking officials, they are expected to be knowledgeable of the laws, rules and regulations governing the grant of allowances and benefits such as EME.^[25]

Issues

I.

Whether or not the COA acted with grave abuse of discretion in ruling that TransCo has the burden of proof to show that payments were not made on a commutable basis, as it alleged.

II.

Whether or not the COA acted with grave abuse of discretion in holding that the doctrine of good faith is inapplicable in this case.

The Court's Ruling

The petition is partly meritorious.

TransCo has the burden of proof to show that it is entitled to reimbursement of EME incurred by its officials.

COA Circular No. 2006-001 dated January 3, 2006 prescribes the rules and regulations governing the disbursement of EME and other similar expenses to GOCCs/GFIs and their subsidiaries. It aims to regulate the incurrence of EME by the qualified officials of GOCCs/GFIs and their subsidiaries and ensure the prevention or disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds.^[26] This breathes life to COA's constitutional mandate, as guardian of public funds, to promulgate accounting and auditing rules and regulations in the exercise of its general audit power.^[27]

Item III of the circular reads:

III. AUDIT GUIDELINES

1. The amount of extraordinary and miscellaneous expenses, as authorized in the corporate charters of GOCCs/GFIs, shall be the ceiling in the disbursement of these funds. Where no such authority is granted in the corporate charter and the authority to grant extraordinary and miscellaneous expenses is derived from the General Appropriations Act (GAA), the amounts fixed thereunder shall be the ceiling in the disbursements;
2. **Payment of these expenditures shall be strictly on a non-commutable or reimbursable basis;**
3. **The claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements;** and
4. No portion of the amounts appropriated shall be used for salaries, wages, allowances, intelligence and confidential expenses which are covered by separate appropriations. (Emphasis supplied)

The above audit guidelines enumerate the conditions for a successful EME reimbursement which generally pertain to the authorized budget ceiling, method of payment, requisite proof of disbursement, and appropriation restriction. The COA rules require that the EME shall be paid strictly on a non-commutable or reimbursable basis and that the claim for reimbursement be supported by receipts and/or other documents evidencing disbursements.

In *Maritime Industry Authority v. Commission on Audit*,^[28] We have held that the burden of proving the validity or legality of the grant of allowance or benefits is with the government agency or entity granting the allowance or benefit, or the employee

claiming the same. Here, it is undisputed that the authority of TransCo to allow the payment of EME is derived from the GAA. But while TransCo is authorized to grant EME, it may do so only when the conditions set forth in COA Circular No. 2006-001 have been clearly established. In fact, the last paragraph of Section 28 of the GAA explicitly states that "these expenditures shall be subject to pertinent accounting and auditing rules and regulations."

The claims for reimbursement of EME of GOCCs, like TransCo, rest upon the existence of sufficient proof of the expenditures incurred by the qualified officials such as receipts and/or other documents evidencing disbursement. It is only when supporting documents are presented that the GOCC can properly claim reimbursement of EME. Hence, it is incumbent upon TransCo and its officials, as claimants, to prove that all these requirements have been met before they can properly claim reimbursement of their EME. It is an elementary rule that he who alleges a fact has the burden of proving it.

In this case, TransCo's claim for reimbursement was not supported by any receipt from its officials. The only document presented to substantiate the reimbursement claim was a "certification." Whether a certification is a sufficient document to support EME reimbursement has been squarely settled in *Espinás*^[29] in this wise:

[T]he Court concurs with the CoA's conclusion that the "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III (3) of CoA Circular No. 2006-01 which pertinently states that a "claim for reimbursement of [EME] expenses shall be supported by receipts and/or other documents evidencing disbursements." Similar to the word "receipts," the "other documents" pertained to under the above-stated provision is qualified by the phrase "evidencing disbursements." Citing its lexicographic definition, the CoA stated that the term "disbursement" means "to pay out commonly from a fund" or "to make payment in settlement of debt or account payable." That said, it then logically follows that petitioners' **"certification," so as to fall under the phrase "other documents" under Item III (3) of CoA Circular No. 2006-01, must substantiate the "paying out of an account payable," or, in simple term, a disbursement.** However, an examination of the sample "certification" attached to the petition does not, by any means, fit this description. The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners' reimbursement claims were solely supported by this "certification," the CoA properly disallowed said claims for failure to comply with CoA Circular No. 2006-01.^[30] (Emphasis and underscoring supplied)

Clearly, a certification may or may not constitute an adequate proof of disbursement. To be admitted as a sufficient evidence of payment, the certification presented by the GOCC must establish "the paying out of an account payable," or a disbursement. It must reflect the transaction details that are typically found in a receipt which is the best evidence of the fact of payment.^[31] It must specify the nature and description of the expenditures, amount of the expenses, and the date