

EN BANC

[G.R. No. 217285, November 10, 2020]

**THE DEPARTMENT OF AGRARIAN REFORM EMPLOYEES
ASSOCIATION, REPRESENTED BY ITS PRESIDENT, LUTHGARDA
S. SIBBALUCA, PETITIONER, VS. COMMISSION ON AUDIT,
RESPONDENT.**

DECISION

LOPEZ, J.:

This Petition for *Certiorari*^[1] under Rule 64 of the Revised Rules of Court seeks to reverse respondent Commission on Audit's (COA) Decision No. 2014-388^[2] dated December 17, 2014 that upheld Notices of Disallowance (ND) Nos. 08-001-158-(08),^[3] 09-003-158-(09),^[4] and 10-001-158-(09).^[5]

Initially, the Court dismissed the Petition in a Resolution^[6] dated April 21, 2015 for failure to indicate the latest Mandatory Continuing Legal Education Certificate of Compliance of petitioner Department of Agrarian Reform Employees Association's (DAREA) counsel, and for failure to submit proof of authority to file the petition. The Court further resolved that the dismissal was proper because the Petition failed to sufficiently show grave abuse of discretion on the part of the COA. The DAREA moved for reconsideration, which was granted in the Court's Resolution^[7] dated January 12, 2016. Hence, the Petition was reinstated.

Facts

On October 29, 2004, then Department of Agrarian Reform (DAR) Secretary Rene Villa (Secretary Villa) and the DAREA executed a Collective Negotiation Agreement (CNA). Pursuant to this CNA, the DAR Regional Office No. 02 (DAR-RO2) released a total of P6,598,000.00 to its officials and employees as incentives for accomplishing their targets from 2008 to 2009: P1,894,000.00 for January to June 2008;^[8] P1,584,000.00 for January to June 2009;^[9] and P3,120,000.00 for October to December 2009.^[10]

These disbursements were, however, disallowed in ND No. 08-001-158-(08)^[11] dated September 9, 2008; ND No. 09-003-158-(09)^[12] dated July 17, 2009; and ND No. 10-001-158 (09)^[13] dated February 18, 2010. The COA Audit Team found that the CNA Incentives were illegally charged against the Comprehensive Agrarian Reform Program (CARP) Fund or Fund 158 in violation of Section 4(3) of Presidential Decree (PD) No. 1445^[14] or the "Government Auditing Code of the Philippines," stating that "[t]rust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received."^[15] The Audit Team explained that as the CARP Fund was created under Republic Act (RA) No. 6657^[16]

or the "CARP Law of 1988," as amended, for a specific purpose, its use should be strictly scrutinized.

The DAR-RO2, through its Executive Committee, filed appeals to the COA Regional Office No. 2 (COA-RO2), for and on behalf of all its officers and rank-and-file employees. They argued that Section 4(3)^[17] of PD No. 1445 is not applicable because the CARP Fund is a special fund, not a trust fund. Also, the Department of Budget and Management (DBM) Budget Circular 2006-1,^[18] which laid down the guidelines in the grant of CNA Incentives, does not specify what savings may be used for the incentives granted. Hence, for the DAR-RO2, the CNA Incentives may be taken from the CARP Fund savings.

COA-RO2 Ruling

In three separate Decisions,^[19] the COA-RO2 affirmed the NDs and ruled that the CARP Fund is a special fund pursuant to the categorical statement in Section 20^[20] of Executive Order (EO) No. 229.^[21] Being a fund for a special purpose, the limitation to its use continues to apply despite satisfaction or abandonment of the original purpose for which it was created. Further, DBM Budget Circular No. 2006-1 requires that CNA Incentives be sourced solely from Maintenance and Other Operating Expenses (MOOE) allotment savings,^[22] released under the General Appropriations Act (GAA).^[23] Thus, the CARP Fund was illegally disbursed as it was directly charged for the payment of the CNA Incentives.^[24]

Dissatisfied with the COA-RO2's disposition, the DAR-RO2 filed with the COA Proper three separate Petitions for Review.^[25]

COA Ruling

In a consolidated Decision^[26] dated December 17, 2014, the COA denied the petitions for review and upheld the validity of the NDs. The COA affirmed that the CARP Fund is a special fund, similar to a trust fund, which is segregated for a specific purpose. As such, it should be used solely for the purpose for which it was created. Any unused balance from the fund cannot be used for another purpose by the agency because it is required to be transmitted to the general funds of the government.^[27] The COA concluded that the CNA Incentives cannot be directly sourced from the CARP Fund.

The DAR-RO2 officers and employees, who approved and released the CNA Incentives were then held solidarily liable to return the disallowed amounts. The other recipients, on the other hand, were held liable only up to the amounts that they received pursuant to the principle of *solutio indebiti*.^[28]

The COA disposed the petitions in this wise:

WHEREFORE, premises considered, the instant petitions for review are hereby **DENIED** for lack of merit. Accordingly, [COA-RO2] Decision Nos. 2010-025, 2010-010, and 2010-05[,] sustaining [ND] Nos. 08-001-158(08), 09-003-158(09)[,] and 10-001-158(09) in the aggregate amount of [P]6,598,000.00 are hereby **AFFIRMED**. Moreover, the

officers and employees who approved and released the payment of Collective Negotiation Agreement Incentives are solidarily liable for the said disallowances, while each of the payees shall be liable for the amount he received.^[29] (Emphasis in the original.)

The DAR-RO2 did not question the COA Decision. This prompted the DAREA, representing its members who are rank-and-file employees, to seek relief from this Court, imputing grave abuse of discretion on the part of the COA. The DAREA insists that the CNA Incentives can be derived from the CARP Fund savings following DBM Undersecretary for Operations, Mario L. Relampagos' (Undersecretary Relampagos) Letter^[30] dated October 10, 2007, and DBM Secretary Rolando G. Andaya, Jr.'s (Secretary Andaya) undated Letter,^[31] stating that the CARP Fund is considered "consolidated and operationally one" with Fund 101 or the DAR's general fund for use in pursuit of CARP outputs and objectives that includes payment of salaries, wages, and MOOE.^[32] The DAREA also argues that it will be "grossly unfair, unjust, and inequitable" to require its members to refund the benefits that they received in good faith.^[33]

For its part, the COA maintains the validity of the NDs,^[34] and contends that the principle of *solutio indebiti* applies despite DAREA's claim of good faith. The COA cites that Section 43, Chapter 5, Book VI of the Administrative Code categorically calls for "every person receiving such [disallowed] payment [to] be jointly and severally liable to the Government for the full amount so paid or received [x x x]." ^[35]

Ruling

The petition lacks merit.

The disbursements were properly disallowed for being illegally sourced from the CARP Fund.

This issue is not novel. The cases of *Dubongco v. Commission on Audit*^[36] and *Department of Public Works and Highways, Region IV-A v. Commission on Audit*^[37] (DPWH) have settled with finality the illegality of using agency funds to finance the grant of CNA Incentives. In *Dubongco*, the Court ruled:

[T]he CARP Fund could not be legally used to finance the grant of the CNA Incentive. x x x.

[T]he CNA Incentive may be awarded to rank-and-file employees only if there are savings in the agency's operating expenses. **The grant of CNA Incentives financed by the CARP Fund is not only illegal but also inconsiderate of the plight of Filipino farmers for whose benefit the CARP Fund is allocated. Moreover, it is disconcerting how**

petitioner could muster the courage to say that there were savings from the CARP Fund when in reality, agrarian reform funds are more often than not, insufficient to meet the needs of its beneficiaries. x x x

Another point that militates against petitioner's position is the character of the CARP Fund as a special fund, as stated in Sections 20 and 21 of Executive Order (E.O.) No. 229, Series of 1987 and Section 63 of R.A. No. 6657, x x x.

x x x x

Even petitioner admits that the CARP Fund is a special trust fund, but he insists that the purpose of the CARP Fund may be broadened to include the grant of incentives to employees who play an integral role in the achievement of the CARP's objectives. While the Court recognizes the employees' indispensable part in the implementation of agrarian reforms, it cannot legally uphold the grant of incentives financed by the wrong source for to do so would lead to an abhorrent situation wherein the sources of funds for bonuses or incentives depend upon the whims and caprice of superior officials in blatant disregard of the laws which they are supposed to implement. In addition, it must be emphasized that the primary purpose of the CNA Incentive is to recognize the joint efforts of labor and management in the achievement of planned targets, programs and services at lesser cost. On the other hand, the CARP Fund is intended to support the State's policy of social justice which includes the adoption of an "agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farm workers, to receive a just share of the fruits thereof" The two serve very different purposes. The CNA Incentive is conditional as it is made to depend upon the availability of savings from operating expenses; whereas, the CARP Fund is derived from multiple sources of funding to ensure continued implementation of the agrarian reform program. x x x.^[38] (Emphasis supplied; citations omitted.)

Similarly, in *DPWH*, the Court held:

Clear from the foregoing is that CNA Incentive may not be allocated out of the savings of any fund. To be valid, the CNA Incentive must be released from the savings of the MOOE. In this case, there is no dispute that the subject CNA Incentive was paid out of the savings from the EAO. The violation of the provisions of DBM Budget Circular No. 2006-1 is glaring. Thus, the COA correctly affirmed ND No. 09-01-101-(09) as there are factual and legal justifications therefor.^[39]

Indeed, the CARP Fund is a special fund created under EO No. 229,^[40] particularly to cover the cost of the CARP. As such, it should be used exclusively for its avowed purpose. In the case of *Confederation of Coconut Farmers Organizations of the Philippines, Inc. v. President Benigno Simeon C. Aquino III*,^[41] the Court elucidated that the rationale behind the restriction on the use of special funds is to deter abuse in their disposition. The Court categorically ruled then that "any attempt to

appropriate [such] funds for another reason, no matter how noble or beneficial, would be struck down as unconstitutional."^[42]

We are mindful that the grant of CNA Incentives is authorized under Public Sector Labor-Management Council (PSLMC) Resolution No. 4, Series of 2002,^[43] Administrative Order (AO) No. 103, Series of 2004,^[44] as well as AO No. 135, Series of 2005,^[45] to recognize the joint efforts of labor and management in the achievement of planned targets, programs, and services approved in the budget of the agency at a lesser cost.^[46] This was confirmed by the invoked opinions of Undersecretary Relampagos and Secretary Andaya. However, restrictive guidelines and policies were laid down for the implementation of this purpose consonant with the limitation on the use of special funds.

For one, PSLMC Resolution No. 4, Series of 2002,^[47] mandates that "the CNA Incentive is intended to be charged against [the] free unencumbered savings of the agency, which are no longer intended for any specific purpose[,]"^[48] to ensure that funds are available and all planned targets, programs and services approved in the budget of the agency are still achieved. "[O]nly savings generated after the signing of the CNA may be used for the CNA Incentive."^[49] Section 3 of PSLMC Resolution No. 4 defines the specific "savings" that may be used, thus:

Sec. 3. Savings refer to such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s:

- (a) After completion of the work/activity for which the appropriation is authorized;
- (b) Arising from unpaid compensation and related costs pertaining to vacant positions; or
- (c) Realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies thus enabled the agency to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost.

Also, AO No. 135, Series of 2005,^[50] requires that "[t]he CNA Incentive[s] shall be sourced only from the savings generated during the life of the CNA."^[51] Further, "[t]he management and the accredited employees' organization [are obliged] to identify in the CNA the cost-cutting measures and systems improvement to be jointly undertaken by them to achieve effective service delivery and agency targets at lesser cost."^[52] Strict compliance with the DBM policy and guidelines was also provided for its implementation.

Relevantly, DBM Circular No. 2006-1 provides that "[t]he CNA Incentive[s] shall be sourced solely from savings from released x x x (MOOE) allotments for the year under review x x x,"^[53] subject to several conditions such as requiring the savings to be generated out of the cost cutting measures identified in the CNAs and its supplements.^[54] Moreover, the amount of the individual CNA Incentive cannot be