

# EN BANC

[ G.R. No. 243278, November 03, 2020 ]

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

### DECISION

#### CAGUIOA, J:

This is a Petition for Review on *Certiorari*<sup>[1]</sup> filed under Rule 64 in relation to Rule 65 of the Rules of Court (Rules), assailing Decision No. 2018-379<sup>[2]</sup> of the Commission on Audit (COA) Commission Proper (COACP) dated November 21, 2018, which affirmed the Notice of Disallowance (ND) No. 2012-07 dated June 13, 2012<sup>[3]</sup> issued by the COA supervising auditor for petitioner Social Security System (SSS), disallowing the payment of allowances and benefits to the officers and employees of the SSS National Capital Region (NCR) Branches in the amount of P71,612,873.00 for being in excess of the approved SSS Corporate Operating Budget (COB) for Calendar Year (C.Y.) 2010.

### FACTS

Pursuant to SSS Board Resolution No. 185<sup>[4]</sup> dated March 9, 2010, the SSS proposed the amount of P5,384,737,000.00 for Personal Services (PS) in its 2010 COB for approval of the Department of Budget and Management (DBM).<sup>[5]</sup> On April 12, 2011, the DBM approved the COB with modifications, reducing the amount of PS to P4,934,200,000.00.<sup>[6]</sup> The DBM also stressed that its approval of the COB should not be construed as authorization for the specific items of expenditure for PS, and that all allowances not in accordance with the Salary Standardization Law (SSL) are subject to the approval of the President of the Philippines upon recommendation of the DBM,<sup>[7]</sup> pursuant to Sections 5 and 6 of Presidential Decree No. (P.D.) 1597,<sup>[8]</sup> Sections 1 to 3 of Memorandum Order No. 20, s. 2001,<sup>[9]</sup> Section 9 of Joint Resolution No. 4, s. 2009,<sup>[10]</sup> and Sections 8 to 10 of Executive Order No. 7, s. 2010.<sup>[11]</sup>

In the meantime, however, the SSS had already paid its employees benefits and allowances amounting to P554,109,362.03 for C.Y. 2010.<sup>[12]</sup> Upon audit, the amount of P335,594,362.03 out of these payments, were found to be in excess of the DBM-approved 2010 COB.<sup>[13]</sup> The amount found to be in excess represented expenditures in the following items:<sup>[14]</sup>

Benefit/Allowance	Approved Budget	Disbursement	Excess/Disallowed Amount
Special Counsel Allowance	0	P6,784,050.00	P6,784,050.00

Overtime pay	0	P20,244,099.73	P20,244,099.73
Incentive Awards			
- Short-term variable pay	P163,495,999.00	P322,721,212.30	P159,226,212.30
- Christmas bank/gift certificate	P54,020,000.00	P203,360,000.00	P149,340,000.00
<b>TOTAL</b>	<b>P217,515,000.00</b>	<b>P553,109,362.03</b>	<b>P335,594,362.03<sup>[15]</sup></b>

Pursuant to the audit finding, several NDs were issued to different branches of the SSS, one of which was ND No. 2012-07 pertaining only to SSS NCR branches in the total amount of P71,612,873.00.<sup>[16]</sup> ND No. 2012-07 found that the Social Security Commissioners who approved the grant and payment of the allowances, the approving and certifying officers in the payrolls, and the payees themselves for the SSS NCR Branches were all liable to return the subject amount.<sup>[17]</sup>

Aggrieved, the SSS filed an appeal with the COA Corporate Government Sector Cluster 2 (COA CGS-2) which denied the petition in its Decision No. 2013-007.<sup>[18]</sup> The COA CGS-2 decision declared that despite the exemption of SSS from the SSL, it is still subject to the supervision of the President through the DBM, particularly as regards the grant of additional benefits to its officers and employees.

The SSS filed a Petition for Review before the COA-CP, which initially dismissed the petition for being filed out of time.<sup>[19]</sup> Upon Motion for Reconsideration, the COA-CP gave due course to the petition to "serve the broader interests of justice and substantial rights."<sup>[20]</sup> However, the COA-CP ultimately issued Decision No. 2018-379 affirming the decision of the COA CGS-2 with modification, excusing only the passive recipients of the subject benefits from return thereof on the ground of good faith.<sup>[21]</sup>

Hence, this Petition for Review, which essentially raises the issue of whether the COA-CP acted with grave abuse of discretion in affirming the COA CGS-2 Decision and holding the approving and certifying officers of the SSS liable for return of the disallowed amounts. Petitioner pray that a decision be rendered (a) reversing and setting aside COA-CP Decision No. 2018-379, (b) annulling ND No. 2012-07, and (c) declaring the Special Counsel Allowance, Overtime Pay, and Incentive Awards paid in favor of SSS' officials and employees as passed in audit.

The Court grants the Petition in part.

## **DISCUSSION**

After a careful review of the records and the pleadings filed by the parties, the Court finds that the COA-CP did not act with grave abuse of discretion in its Decision No. 2018-379.

SSS claims that the COA-CP erred in concluding that the SSS officials who authorized the grant and payment of the subject benefits acted in bad faith, given that they did so in contravention of the laws and rules requiring prior approval from

the President. SSS further claims that the Social Security Commission (SSC) is authorized by Republic Act No. (R.A.) 8282 or the Social Security Law to fix the reasonable compensation, allowances or other benefits of its officials and employees,<sup>[22]</sup> and that the only qualification to the exercise of this power is that provided in Section 25 of the same law:

**SEC. 25. Deposit and Disbursements.** - All money paid to or collected by the SSS every year under this Act, and all accruals thereto, shall be deposited, administered and disbursed in the same manner and under the same conditions and requirements as provided by law for other public special funds: **Provided, That not more than twelve (12%) percent of the total yearly contributions plus three (3%) percent of other revenues** shall be disbursed for administrative and operational expenses such as salaries and wages, supplies and materials, depreciation, and the maintenance of offices of the SSS. x x x (Emphasis supplied)

SSS likewise argues that there is nothing on the face of the Social Security Law which imposes the requirement of Presidential approval upon the exercise of its right to fix reasonable compensation of its personnel; hence, it must be concluded that neither Congress nor the President—who did not veto the law while it was still a bill pending his concurrence intended that such approval should be sought.

The SSS' contentions lack merit. GOCCs like the SSS are always subject to the supervision and control of the President. That it is granted authority to fix reasonable compensation for its personnel, as well as an exemption from the SSL, does not excuse the SSS from complying with the requirement to obtain Presidential approval before granting benefits and allowances to its personnel. This is a doctrine which has been affirmed time and again in jurisprudence. For instance, in *Philippine Economic Zone Authority (PEZA) v. Commission on Audit (COA)*,<sup>[23]</sup> the Court said:

Thus, the charters of those government entities exempt from the Salary Standardization Law is not without any form of restriction. They are still required to report to the Office of the President, through the DBM the details of their salary and compensation system and to endeavor to make the system to conform as closely as possible to the principles and modes provided in Republic Act No. 6758. Such restriction is the most apparent indication that the legislature did not divest the President, as Chief Executive of his power of control over the said government entities. In *National Electrification Administration v. COA*, this Court explained the nature of presidential power of control, and held that the constitutional vesture of this power in the President is self-executing and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature.

**It must always be remembered that under our system of government all executive departments, bureaus and offices are under the control of the President of the Philippines. This precept is embodied in Section 17, Article VII of the Constitution which provides as follows:**

Sec. 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

Thus, respondent COA was correct in claiming that petitioner has to comply with Section 3 of M.O. No. 20 dated June 25, 2001 which provides that any increase in salary or compensation of GOCCs/GFIs that is not in accordance with the Salary Standardization Law shall be subject to the approval of the President. The said M.O. No. 20 is merely a reiteration of the President's power of control over the GOCCs/CFIs notwithstanding the power granted to the Board of Directors of the latter to establish and fix a compensation and benefits scheme for its employees.<sup>[24]</sup>

Similarly, in *Philippine Health Insurance Corporation v. Commission on Audit*,<sup>[25]</sup> this Court rightly said:

**Accordingly, that Section 16(n) of R.A. 7875 granting PHIC's power to fix the compensation of its personnel does not explicitly provide that the same shall be subject to the approval of the DBM or the OP as in Section 19(d) thereof does not necessarily mean that the PHIC has unbridled discretion to issue any and all kinds of allowances, limited only by the provisions of its charter.** As clearly expressed in *PCSO v. COA*, even if it is assumed that there is an explicit provision exempting a GOCC from the rules of the then Office of Compensation and Position Classification (OCPC) under the DBM, the power of its Board to fix the salaries and determine the reasonable allowances, bonuses and other incentives was still subject to the standards laid down by applicable laws: P.D. No. 985, its 1978 amendment. P.D. No. 1597, the SSL, and at present, R.A. 10149. To sustain petitioners' claim that it is the PHIC, and PHIC alone, that will ensure that its compensation system conforms with applicable law will result in an invalid delegation of legislative power, granting the PHIC unlimited authority to unilaterally fix its compensation structure. Certainly, such effect could not have been the intent of the legislature.<sup>[26]</sup>

Verily, and contrary to the SSS' contentions, the grant of authority to fix reasonable compensation, allowances, and other benefits in the SSS' charter does not conflict with the exercise by the President, through the DBM, of its power to review precisely how reasonable such compensation is, and whether or not it complies with the relevant laws and rules. Neither is there any merit in the claim that the SSS' charter supersedes the provisions of P.D. 1597, Memorandum Order No. 20, s. 2001, Joint Resolution No. 4, s. 2009, and Executive Order No. 7, s. 2010 as far as their applicability to the SSS is concerned. Nothing in its charter explicitly repeals these laws and regulations, and there is no irreconcilable conflict between the provisions of these laws on the one hand, and the SSS' charter on the other. Hence, no implied repeal can be gleaned therefrom.

In a final effort to avoid the disallowance issued against it, the SSS further argues that P.D. 1597, Memorandum Order No. 20, s. 2001, Joint Resolution No. 4, s. 2009, and Executive Order No. 7, s. 2010 cannot apply to it because (a) these rules cover only the grant of new benefits, while the SSS employees and officers had been receiving the subject benefits and allowances even prior to C.Y. 2010; (b) as regards Memorandum Order No. 20, s. 2001, it is only applicable to senior officials; and (c) as regards P.D. 1597 and Memorandum Order No. 20, s. 2001, the provisions of

these two issuances mention only "salary compensation", without mention of benefits and allowances. These arguments merit scant consideration.

Notably, neither the Petition nor the Reply filed by the SSS offer any proof to establish the first claim. While the Reply mentions SSC Resolution No. 523 dated July 17, 1997 as basis for the Short-term Variable Pay, no copy of the same Resolution had been attached to the Petition nor to the Reply. Basic is the rule that one who alleges a fact has the burden of proving it by means other than mere allegations.<sup>[27]</sup> As to the second and third claims, even if these were to be given credence, the SSS still cannot evade compliance with Section 5 of P.D. 1597 which categorically states:

**Section 5. Allowances, honoraria and other fringe benefits. Allowances, honoraria, and other fringe benefits which may be granted to government employees, whether payable by their 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 continuously review and shall prepare 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. (Emphasis supplied)

All told, the COA did not err in finding that the SSS is subject to the requirement of Presidential approval through the DBM, and that as regards the Special Counsel Allowance, Overtime Pay, and Incentive Awards it paid out to its personnel in C.Y. 2010, this requirement was not complied with. Hence, the disallowance of these amounts was proper.

However, there are attendant circumstances which may exempt the SSS' officers and employees from returning the subject amounts.

First, at the time that the subject benefits and allowances were disbursed by the SSS, there was no prevailing ruling by this Court specifically on the exemption of the SSS from the SSL as well as its authority to determine the reasonable compensation for its personnel, *vis-a-vis* the requirement of approval by the President or the DBM prior to the grant of additional or increased benefits. In several cases, the Court has considered the lack of knowledge of a similar ruling prohibiting a particular disbursement as a badge of good faith.<sup>[28]</sup> In the same vein, in the relatively recent case of *Philippine Economic Zone Authority (PEZA) v. Commission on Audit (COA)*,<sup>[29]</sup> the Court found that the PEZA had acted in good faith in granting additional Christmas Bonus to its employees even without Presidential approval, as it relied on its exemption from the SSL provided in its charter. Said the Court:

The affirmation of the disallowance of the payment of additional Christmas bonus/cash gifts to PEZA officers and employees for CY 2005 to 2008, however, does not automatically cast liability on the responsible officers.

The question to be resolved is: To what extent may accountability and responsibility be ascribed to public officials who may have acted in good faith, and in accordance with their understanding of their authority which