

# EN BANC

[ G.R. No. 218374, December 01, 2020 ]

**ZAMBOANGA CITY WATER DISTRICT AND ITS EMPLOYEES,  
REPRESENTED BY GENERAL MANAGER LEONARDO REY D.  
VASQUEZ, PETITIONER, VS. COMMISSION ON AUDIT,  
RESPONDENT.**

## DECISION

**INTING, J.:**

This resolves the Petition<sup>[1]</sup> for *Certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court filed by the Zamboanga City Water District (ZCWD), represented by its General Manager Leonardo Rey D. Vasquez, assailing the Decision No. 2014-182<sup>[2]</sup> dated August 28, 2014 and the Resolution<sup>[3]</sup> dated March 9, 2015 of the Commission on Audit (COA) Commission Proper (COA Proper). In the assailed issuances, the COA Proper upheld the Notice of Disallowance (ND) No. 10-127(09)<sup>[4]</sup> dated September 7, 2010 which disallowed the payment of P5,127,523.00 financial subsidy to ZCWD officials and employees.

### *The Antecedents*

ZCWD is a local water district created pursuant to the Provincial Water Utilities Act of 1973.<sup>[5]</sup> It is also a government-owned and -controlled corporation (GOCC).<sup>[6]</sup>

On May 13, 2009, former President Gloria Macapagal-Arroyo signed Memorandum Circular No. (MC) 174<sup>[7]</sup> calling all government agencies, including GOCCs, "to support the Philippine Government Employees Association's public sector agenda" and mandating as follows:

In view thereof, all government agencies, *including Government Owned and Controlled Corporations*, State Universities and Colleges are hereby enjoined to provide the following to their employees:

- shuttle service;
- *financial subsidy and other needed support to make the Botika ng Bayan more accessible to them;*
- scholarships programs for their children with siblings;
- PX mart that sell affordable commodities and the provision of its seed fund.

The DOLE is hereby directed to monitor and to ensure the implementation of this Circular. (Italics supplied.)

In a letter dated November 25, 2009,<sup>[8]</sup> ZCWD, through General Manager Leonardo Rey D. Vasquez, submitted the following queries to the Office of the Government Corporate Counsel (OGCC) relative to MC 174's provisions: "(1) does [ZCWD] have the power to prescribe the amount to be granted as financial subsidy?; (2) are the benefits enumerated in [MC 174] in the nature of "*de minimis*" benefits and/or can be treated as such by ZCWD?; and (3) how often can ZCWD allow the grant of such subsidy (monthly or annually)?"<sup>[9]</sup>

In the meantime, the ZCWD Board of Directors (Board) nonetheless granted a financial subsidy in favor of ZCWD officials and employees through Board Resolution No. 206<sup>[10]</sup> dated December 7, 2009, *viz.*:

RESOLVED, as it is hereby resolved, to approve the grant of Financial Subsidy authorized under [MC 174] dated May 13, 2009 to an amount equivalent to one (1) month salary of every ZCWD Officials and employees irrespective of the nature of their appointments, whether permanent, casual, temporary or contractual who have rendered at least a total or an aggregate of four (4) months service including leaves of absence with pay. Provided: That employees who have rendered services less than four (4) months shall be entitled to such benefit pro rata. Provided further: That the Guidelines, herewith annexed, be adopted for purposes of implementation of [MC 174].

x x x x

(signed)  
MS. NELIDA F.  
ATILANO  
Secretary

ATTESTED:

(signed)

EDWIN N. MAKASIAR  
Chairman

(signed)

GREGORIO I. MOLINA  
Vice Chairman

(signed)

MILAGROS L. FERNANDEZ  
Director

(signed)

EFREN ARAÑEZ  
Director

On even date, the Board also issued guidelines<sup>[11]</sup> on the financial subsidy grant reiterating that each covered official or employee shall receive a financial subsidy equal to one month's salary; and that an official or employee is covered by the grant irrespective of the nature of his appointment, provided he/she satisfies the service requirements under the guidelines.

Two days after, or on December 9, 2009, ZCWD paid an aggregate amount of P5,127,523.00 representing the financial subsidy granted through Board Resolution No. 206.

Subsequently, OGCC responded to ZCWD's previous query and issued Opinion No. 001,<sup>[12]</sup> Series of 2010 dated January 4, 2010 (OGCC Opinion) as follows:

Anent your first query [ZCWD's power to prescribe the amount to be granted as financial subsidy], we answer in the affirmative. The [MC 174] itself does not provide for the amount of financial subsidy x x x. The Department of Budget and Management (DBM) has not issued a set of guidelines on the implementation of the said [MC 174]. Hence, considering that water districts generate their own income, it is our view that the Board has sufficient discretion and authority to determine the amount of the financial subsidy that it will grant through a board resolution, subject to the availability of funds. It is noted though that the financial subsidy is intended to support the Botika ng Bayan, and thus, would presumably be for the purpose of purchasing medicines.

We likewise answer your second query [nature of benefits enumerated under MC 174] in the affirmative. Financial subsidies given pursuant to [MC 174] may be classified as "*de minimis*" benefits which are not subject to withholding tax on compensation pursuant to Section 2.78.1 (B) (11) (b) of Revenue Regulation No. 2-98. These are being given to address the needs of government employees in the midst of the present global economic crisis, thus:

x x x x

As to your third query [frequency of grant], [MC 174] is likewise silent as to how often a GOCC may grant the financial subsidy. Hence, unless the Office of the President or the DBM will issue guidelines in the implementation thereof, it is our considered view that there are no legal objections if ZCWD were to adopt its own guidelines on the frequency of the grants, which as mentioned earlier, would be subject to availability of funds.

Please be guided accordingly.

Very truly yours,

(signed)  
ALBERTO C. AGRA  
Government  
Corporate  
Counsel<sup>[13]</sup>

Later in 2010, as a result of their investigation, the COA audit team issued Audit Observation Memorandum No. (AOM) ZCWD-2010-05(09)<sup>[14]</sup> dated July 21, 2010 finding the subject disbursement violative of Section 57 of Republic Act No. (RA) 9524, otherwise known as the General Appropriations Act of 2009 (2009 GAA), which provides:

*SECTION 57. Personal Liability of Officials or Employees for Payment of Unauthorized Personal Services Cost.* — No official or employee of the national government, LGUs, and GOCCs shall be paid any personnel

benefits charged against the appropriations in this Act, other appropriations laws or income of the government, unless specifically authorized by law. Grant of personnel benefits authorized by law but not supported by specific appropriations shall also be deemed unauthorized.

The payment of any unauthorized personnel benefit in violation of this section shall be null and void. The erring officials and employees shall be subject to disciplinary action under the provisions of Section 43, Chapter 5 and Section 80, Chapter 7, Book VI of E.O. No. 292, and to appropriate criminal action under existing penal laws.

Further, the audit team recommended the refund by ZCWD officials and employees of the financial subsidies so received.<sup>[15]</sup>

Based on the above-mentioned findings, the COA issued ND No. 10-127(09)<sup>[16]</sup> dated September 7, 2010. In disallowing the payment of financial subsidy amounting to P5,127,523.00, COA further explained:

[MC 174] particularly item no. 2 of the above paragraph cannot be used as the legal basis for the payment of such benefit since the "financial subsidy" meant monetary assistance to the Botica ng Bayan and not to the employees of the agency. The MC did not specifically mention that financial assistance shall be given to the employees, The phrase "financial subsidy" should not be taken out of context.<sup>[17]</sup>

It found all ZCWD officers and employees who received the financial subsidy liable for the disallowance and ordered them to refund the amounts so received.<sup>[18]</sup>

Consequently, ZCWD appealed<sup>[19]</sup> the disallowance to the COA Regional Director.

#### *Ruling of the COA Regional Director*

In Decision No. 2012-12<sup>[20]</sup> dated February 6, 2012, COA Regional Director Roberto T. Marquez denied ZCWD's appeal and upheld the disallowance. He opined as follows:

In the case of Yap vs. COA x x x the Supreme Court held:

x x x x

x x x Such board action should in itself be authorized by law or regulation or have valid legal basis. Otherwise, it becomes an illegal corporate act that is void and cannot be validated. x x x<sup>[21]</sup>

x x x Section 2 of MC 174 relied upon by the appellant does not stand on its own but has to be harmonized with Section 8, Article IX-B of the 1987 Constitution, Section 4 of PD 1445 and [the] ruling laid down by the [Court] in the case of Yap vs. COA x x x. It is basic that a law should be construed in harmony with and not in violation of the Constitution x x x.<sup>[22]</sup>

Aggrieved, ZCWD elevated the case to the COA Proper.

### *Ruling of the COA Proper*

In the assailed Decision, the COA Proper affirmed the COA Regional Director's ruling. It held that, contrary to the mandate of ZCWD Board Resolution No. 206, MC 174 did not authorize any direct payment to the employees. The COA Proper discussed as follows:

This Commission concurs with the interpretation of the [Audit Team Leader]. Contrary to the assertion of the Petitioners, [MC 174] does not suggest that the financial subsidy should be paid directly to the employees. The more plausible conclusion is to direct the payment of financial subsidy to the Botika ng Bayan; otherwise, the phrase "to make Botika ng Bayan more accessible" should not have been added in the first place. Moreover, the financial subsidy is intended to make the Botika ng Bayan more accessible to the government employees. If payment of financial subsidy should be made directly to the employees, as suggested by the Petitioners, the money received may not necessarily be used to purchase medicines or to purchase them from the Botika ng Bayan. This is beyond what is contemplated under [MC 174].<sup>[23]</sup>

Hence, ZCWD filed the present petition.

### *Issues*

In the present case, the Court shall resolve whether the COA Proper gravely abused its discretion when it upheld the disallowance of the financial subsidy amounts paid to ZCWD employees. Petitioner claims that the COA Proper committed grave abuse: (a) in ruling that MC 174 does not authorize direct payment to government employees as it contemplates a financial subsidy directly in favor of the *Botika ng Bayan*; and (b) in denying their motion for reconsideration by way of a one-page notice without exhaustively resolving the merits thereof, and thus, failing to distinctly state the facts and the law on which it is based.<sup>[24]</sup>

### *The Court's Ruling*

The petition lacks merit.

At the onset, the Court emphasizes that Our power to review COA decisions *via* Rule 54 petitions is limited to *jurisdictional errors* or *grave abuse of discretion*.<sup>[25]</sup> The Court generally upholds the COA's ruling, especially in the clear absence of grave abuse on its part.<sup>[26]</sup>

A perusal of the petition reveals that only one issue is a *bona fide* imputation of grave abuse: that the COA Proper violated the constitutional mandate that all decisions must clearly and distinctly contain its factual and legal bases. Petitioners point out that the COA Proper resolved ZCWD's motion for reconsideration of its Decision dated August 28, 2014 only "by way of a one-page notice, which does not exhaustively resolve the merits presented."<sup>[27]</sup>