

## EN BANC

[ G.R. No. 221706, March 13, 2018 ]

### DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

#### DECISION

##### **GESMUNDO, J.:**

This is a petition for *certiorari* seeking to annul and set aside the December 17, 2014 Decision<sup>[1]</sup> and the August 18, 2015 Resolution<sup>[2]</sup> of the Commission on Audit (COA) in Decision No. 2014-396. The COA affirmed the March 18, 2011 Decision<sup>[3]</sup> of the COA-Corporate Government Sector (CGS) in CGS-A Decision No. 2011-002. The COA-CGS affirmed the May 18, 2007 Notice of Disallowance (ND) No. BOD-2006-007(06)<sup>[4]</sup> relative to the compensation and other benefits received by the Board of Directors (*Board*) of petitioner Development Bank of the Philippines (*DBP*).

##### *The Antecedents*

On March 29, 2006, the DBP Board passed Resolution No. 0121<sup>[5]</sup> approving, among others, the entitlement of the DBP Chairman and Board, except for the DBP President and Chief Executive Officer, the following:

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2. P1,000.00 per diem for every Board/ExCom meeting attended provided the total amount of per diems for every single month shall not exceed P7,500.00 (per Executive Order [EO] No. 81, DBP Charter). No per diem is given for attendance in Committee Meetings;

#### **3. Reimbursement of reasonable actual transportation and representation expenses such as the following:**

- a. Expenses for entertainment, promotions, gifts to corporate clients and donations and contributions to hospitals, foundations, hospices, civil and charitable organizations.
- b. Expenses of the member for travel and other expenses related thereto including travel insurance.
- c. Convention, workshop, seminar and conference fees and similar expenses relevant to the office and/or profession of the

member.

- d. Membership fee/s of the member concerned in not more than two (2) civic, professional organizations; monthly dues in not more than three (3) cultural, sports and recreation clubs.
- e. Subscription/s of members to periodicals/publications on finance, banking, law, economics or other relevant subjects, x x x.
- f. Member's personal medical, dental and optical expenses (including medicines, vitamins, physical therapy, not covered or beyond the limitations of the Health Care Plan) x x x.

4. Benefits under the Motor Vehicle Lease Purchase Plan (MVLPP).

5. Benefits under the DBP Health Care Plan.

xxxx

7. Other benefits that may be allowed to be given pursuant to the Bank's Charter. (emphasis supplied)

On August 23, 2006, the DBP Board passed Resolution No. 0037<sup>[6]</sup> approving the following guidelines in determining the entitlement to per diems and other benefits of the Board:

- 1. [That] members of the Board shall continue to be entitled to P1,000.00 for each meeting of the Board actually attended:
- 2. **That members of the Board shall be compensated at rates comparable to DBP consultants for work undertaken for the Bank including but not limited to Committee assignments, representation in DBP Branch and central office/international activities; client calls and consultations and provision of technical resource for DBP officers and staff;**
- 3. That a record of such compensable hours shall be kept by the relevant bank officers which shall be the basis of any payments by the bank; [and]
- 4. **That costs to represent the Bank shall be reimbursed to members of the DBP Board.** (emphases supplied)

On September 20, 2006, the DBP Board sent a Memorandum<sup>[7]</sup> (*DBP Memorandum*) to the President of the Philippines requesting the approval of Resolution No. 0037.

The DBP alleged that then President Gloria Macapagal Arroyo (*President Arroyo*) attached a Note<sup>[8]</sup> stating "No objection" on the said memorandum.

**DBP paid its Board members benefits which were accounted as Representation and Entertainment – Others. It likewise paid the Board members rice subsidy and anniversary bonuses.** Based on the DBP Schedule of Allowance granted to Chairman and Members of the Board,<sup>[9]</sup> as of December 31, 2006, DBP has paid the members of the Board rice subsidy, anniversary bonuses and representation and entertainment expenses in the total amount of P16,656,200.09.

Upon post-audit of the DBP accounts, the Supervising Auditor from the COA issued Audit Observation Memorandum<sup>[10]</sup> (AOM) No. HO-BODC AOM-2006-001 dated March 20, 2007. It stated therein that the Board's compensations, which were charged under Representation and Entertainment – Others expense, were contrary to Section 8 of Executive Order (*E.O.*) No. 81,<sup>[11]</sup> as amended by Republic Act (*R.A.*) No. 8523 (*DBP Charter*).<sup>[12]</sup> The AOM stated that pursuant to the law, the Board members are only entitled to per diem.

On April 23, 2007, DBP submitted its Comment<sup>[13]</sup> to the AOM arguing that there is no prohibition under the law in granting additional benefits to its Board members; and that it secured the approval of President Arroyo before granting the assailed benefits.

#### *Notice of Disallowance*

Not satisfied with its explanation, the Supervising Auditor issued a ND against the DBP, which stated: that pursuant to the DBP Charter, the Board members are only entitled to per diems; that the approval of the President under Section 8 of DBP Charter only refers to the increase of the per diem for each meeting attended; and that COA Decision No. 2001-026 dated January 25, 2001, provided that granting additional compensation to the Board members other than those prescribed requires legislative action and that it cannot be substituted by administrative authorization. It declared that the total amount disallowed of P16,565,200.09 must be returned by the Board members, Certify Payroll/HRM, Accountant, Cashier, and all payees per attached payrolls and schedules.

Aggrieved, the DBP appealed to the Director of COA-CGS.

#### *The COA-CGS Ruling*

In its decision, dated March 18, 2011, the COA-CGS affirmed the ND. It held that Section 8 of the DBP Charter mentions only of per diems and no other compensation. The COA-CGS observed the authority of the DBP Board with the approval of the President to "set" compensation is limited to the amount of per diem that may be granted to the Board. It also questioned the authenticity of the alleged approval of President Arroyo because her signature appeared in a separate note, and not in the DBP's memorandum.

Undaunted, DBP filed a petition for review before the COA.

## *The COA Ruling*

In its decision dated December 17, 2014, the COA denied the petition and affirmed the COA-CGS ruling. It underscored that Section 8 of the DBP Charter only stated per diem and that the authority of the Board, with the approval of the President, is limited in setting the amount of the per diem. The COA reasoned that had Congress intended to allow the Board to receive other benefits, then it would have expressly stated so. It also cited Department and Budget and Management (DBM) Circular Letter No. 2002-02, which provides that Board members of agencies are non-salaried officials, thus, they are not entitled to benefits unless expressly provided by law. The COA further questioned the approval of the DBP Memorandum because the signature of the President was contained in a separate note and the said memorandum was not in the file of the Malacañang Records Office.

The DBP filed a motion for reconsideration but it was denied by the COA in its resolution dated August 18, 2015.

Hence, this petition.

### **ISSUES**

#### **I**

**THE AUTHORITY OF THE BOARD UNDER SECTION 8 OF THE DBP CHARTER, WITH THE APPROVAL OF THE PHILIPPINE PRESIDENT, IS NOT LIMITED TO THE AMOUNT OF THE PER DIEM THAT MAY BE GRANTED TO THE BOARD OF DIRECTORS (BOD).**

#### **II**

**THE NOTATION "NO OBJECTION" OF THEN PRESIDENT GLORIA MACAPAGAL ARROYO IN THE MEMORANDUM DATED SEPTEMBER 20, 2006 OF THE DBP BOD REQUESTING APPROVAL OF BOARD RESOLUTION NO. 0037 IS TANTAMOUNT TO A STAMP OF APPROVAL AND SHOULD BE ACCORDED DUE RESPECT AND CREDENCE. IN FACT, THE SUPERVISING AUDITOR OF DBP DID NOT EVEN DISPUTE SAID APPROVAL.**

#### **III.**

**THE NOTICE OF DISALLOWANCE VIOLATED THE RIGHT OF DBP TO DUE PROCESS SINCE THE SUPERVISING AUDITOR ADDED AS A GROUND FOR DISALLOWANCE THE COA DECISION NO. 2001-026 DATED 25 JANUARY 2001 WHICH WAS NEVER MENTIONED IN AOM NO. HO-BODC-AOM-2006-001 DATED 20 MARCH 2007.**

#### **IV.**

**THE SUBJECT TRANSACTIONS WERE SUPPORTED BY THE FAVORABLE OPINION OF THE THEN COA GENERAL COUNSEL ON**

## ISSUES SIMILAR TO THE INSTANT CASE.

### V.

**ASSUMING THAT THERE WAS A LEGAL BASIS IN DISALLOWING THE SUBJECT COMPENSATION AND OTHER BENEFITS, THE BOD AND ALL THE ACCOUNTABLE OFFICERS SHOULD NOT BE HELD LIABLE TO REFUND THE SAME SINCE THEY RELIED IN GOOD FAITH ON THE PERTINENT PROVISIONS OF THE DBP CHARTER AND THE PRESIDENTIAL APPROVAL.**<sup>[14]</sup>

DBP argues that the authority of the Board under Section 8 of the DBP Charter is not limited to the amount of per diem that may be granted to the Board; that the President's note containing the words "No objection" is tantamount to her approval; that the President's approval of the DBP Memorandum, granting the Board members benefits other than per diems, should be accorded due respect, which was even recognized by the Supervising Auditor; and that the ND violated DBP's right to due process because it cited COA Decision No. 2001-026 even though it was not included in the AOM.

DBP avers that the COA General Counsel's opinion - that the affairs and properties of the DBP should be managed by the Board - renders COA estopped from assailing the Board's benefits; and that assuming there was legal basis in disallowing the entitlements, the Board and its accountable officers should not be held liable for refund by reason of good faith. It prays for the issuance of a Temporary Restraining Order (*TRO*) against COA.

In its Comment,<sup>[15]</sup> the OSG counter that DBP failed to prove that there was grave abuse of discretion on the part of the COA. It contended that Section 8 of the DBP Charter indicates only per diem as compensation of the Board. The OSG emphasized that when a statute mentions one person, thing or consequence, it implies the exclusion of all others; and that the DBP Charter is similar to the Bases Conversion and Development Authority (*BCDA*) Charter, which limited the Board's benefits to per diem.

The OSG highlighted that the alleged approval of President Arroyo deserves scant consideration because it was written on a separate sheet of paper and its authenticity was unverified; that DBP's right to due process was not violated because it could still appeal the assailed ND; that the COA General Counsel's opinion is not applicable because it pertained to staff assistance and incidental expense of the Board; and that the Board and its officers cannot claim good faith because the DBP Charter states that the Board is only entitled to per diem.

In its Reply,<sup>[16]</sup> the DBP reiterated that there is no prohibition in granting additional benefits to the Board members and that President Arroyo approved the said benefits. It underscored that, even assuming that there is basis to disallow the said entitlements, the Board and the accountable officers should not be held liable to refund the same since they relied in good faith on the pertinent provisions of the