EN BANC

[G.R. No. 222838, September 04, 2018]

PHILIPPINE HEALTH INSURANCE CORPORATION, PETITIONER, VS. COMMISSION ON AUDIT, CHAIRPERSON MICHAEL G. AGUINALDO, DIRECTOR JOSEPH B. ANACAY, AND SUPERVISING AUDITOR ELENA L. AGUSTIN, RESPONDENTS.

D E C I S I O N

JARDELEZA, J.:

This petition for review on *certiorari*[1] under Rule 64,[2] with prayer for issuance of a temporary restraining order and/or writ of preliminary injunction, seeks to annul and set aside the Decision No. 2015-093[3] dated April 1, 2015 and Resolution[4] dated December 15, 2015, respectively, of the Commission on Audit (COA). The COA affirmed the disallowance of the Institutional Meeting Expenses (IME) for 2010 paid to members of the Board of Directors (BOD) of Philippine Health Insurance Corporation (PhilHealth) in the total amount of P2,965,428.59.

In October 2007, the PhilHealth BOD passed Board Resolution No. 1055 approving the entitlement of its members (or their authorized representatives) to the Board Extraordinary and Miscellaneous Expense (BEME) in the reimbursable amount of P30,000.00 each per month effective October 4, 2007. These allowances were intended to cover the expenses of said BOD members in the performance of their official functions, which they would otherwise personally shoulder.[5] Correspondingly, a supplemental budget in the amount of P1,560,000.00 was also appropriated for the purpose.[6]

In December 2007, the BOD amended Board Resolution No. 1055 through Board Resolution No. 1084. It allowed the unexpended balance of the monthly Extraordinary and Miscellaneous Expense (EME) to be carried over and expended in the succeeding months within the same calendar year, effective retroactively from October 5, 2007.[7]

In another Resolution[8] dated February 12, 2009, the BOD resolved to allocate the amount of P4,320,000.00 from the 2009 Corporate Operating Budget (COB) of the Office of the Corporate Secretary and every year thereafter for the reimbursement of expenses incurred by the members of the BOD (or their authorized representatives) in the discharge of their official functions and duties outside board meetings.

On May 24, 2011, the COA Supervising Auditor issued an Audit Observation Memorandum[9] (AOM) which showed that reimbursements of EME totaling P19.95 million in calendar year 2010 were charged to the Representation Expenses account under the sub-accounts "Institutional Meeting Expenses (865-10) and Committee

Meeting Expenses (865-20)." The AOM noted that PhilHealth had been using IME and Committee Meeting Expenses accounts to accommodate reimbursements of EME since charges to the EME account already far exceeded the General Appropriations Act (GAA) prescribed limitation for each official. The COA Supervising Auditor viewed the charging of EME against other accounts to be irregular because the nature and purpose of these expenses fall under the budgetary controls in the disbursement of EME as stated in the GAA and COA Circular No. 2006-01. The charging of EME against other accounts likewise increased the amount of the excess from the GAA-prescribed annual rate for EME.[10] The Supervising Auditor also observed that P5.63 million of the total amount was reimbursement of expenses made by members of the PhilHealth BOD and personnel whose positions were not entitled to EME.[11]

PhilHealth commented on the AOM, but its comment was found unsatisfactory. Consequently, Notice of Disallowance (ND) No. HO 12-004 (10) was issued on July 18, 2012 disallowing the payment for IME of the members of the PhilHealth BOD for the period January to December 2010 in the amount of P2,965,428.59 for lack of legal basis.[12]

PhilHealth filed an appeal before the COA-Corporate Government Sector (CGS), but the same was denied. The COA-CGS affirmed the ruling of the Supervising Auditor that Section 18(d) of Republic Act (RA) No. 7875[13] expressly provides that a *per diem* is precisely intended to be the compensation for members of the PhilHealth BOD. Nowhere in RA No. 7875 can it be found that PhilHealth is authorized to grant additional compensation, allowances or benefits to its BOD. Neither is the BOD authorized to grant compensation beyond what RA No. 7875 provides. Although the BOD is empowered to formulate the necessary rules and regulations pursuant to RA No. 7875, this power must be exercised within the scope of the authority given by the legislature. Thus, the COA-CGS found that the BOD exceeded its authority when it issued Board Resolution No. 1193 authorizing its members to receive EME contrary to Section 18(d) of RA No. 7875.[14]

The COA-CGS further ruled that PhilHealth cannot seek refuge on the previous rulings of the Court with regard to the non-refund of the disallowed benefits. Citing the AOM, the COA-CGS pointed out that the expenses in question were already disallowed in audit. As such, the BOD members already knew, at the time they received the IME, that said benefits had no legal basis.[15]

PhilHealth filed a petition for review before the COA Proper. In its assailed Decision, however, the COA Proper dismissed the petition for being filed out of time, noting that the ND and the COA-CGS Decision were appealed only after 181 and 42 days, respectively, had lapsed from the dates of their receipt by PhilHealth. The COA Proper also found no compelling reason to relax its procedural rules because PhilHealth did not offer any justification for the belated filing of its petition. PhilHealth moved for reconsideration, but the same was also denied.[16]

Hence, this petition which raises grave abuse of discretion on the part of COA for denying the appeal on mere procedural grounds instead of deciding on the merits of the case in the interest of substantial justice.

We deny the petition.

I

Firstly, PhilHealth maintains that the term "month" in the six-month reglementary period to file an appeal under the 2009 Revised Rules of Procedure of COA should be understood to mean the 30-day month and should, accordingly, not use the equivalent of 180 days. We are not persuaded.

Section 4, Rule V of the 2009 Revised Rules of Procedure of the COA provides that an appeal before the Director of a Central Office Audit Cluster in the National, Local or Corporate Sector, or of a Regional Office of the Commission, must be filed within six months after receipt of the decision appealed from. The receipt by the Director of the appeal memorandum shall stop the running of the period to appeal; the period shall resume to run upon receipt by the appellant of the Director's decision. Section 3, Rule VII further provides that the appeal before the COA Proper shall be taken within the time remaining of the six-month period, taking into account the suspension of the running thereof. There is no dispute that PhilHealth received the ND on July 27, 2012 and filed an appeal before the COA-CGS on January 24, 2013. In ruling that the reglementary period had already lapsed by then, the COA employed 180 days as the equivalent of the six-month period, thereby making January 23, 2013 as the last date for PhilHealth to file its appeal.

PhilHealth, on the other hand, takes its cue from our Decision in *Commissioner of Internal Revenue v. Primetown Property Group, Inc.*[17] *(Primetown),* positing that the six-month reglementary period should be determined as the entire period from July 28, 2012 to January 27, 2013. This conclusion stemmed from our explanation in *Primetown* which included a definition of a calendar month as one designated in the calendar without regard to the number of days it may contain.[18] Thus:

> It is the "period of time running from the beginning of a certain numbered day up to, but not including, the corresponding numbered day of the next month, and if there is not a sufficient number of days in the next month, then up to and including the last day of that month." To illustrate, one calendar month from December 31, 2007 will be from January 1, 2008 to January 31, 2008; one calendar month from January 31, 2008 will be from February 1, 2008 until February 29, 2008.[19] (Citations omitted.)

Glaringly, however, the issue in *Primetown* was with respect to the two-year prescriptive period within which to file for a tax refund or credit under the National Internal Revenue Code. In computing this legal period, the Court held that there was a manifest incompatibility with regard to the manner of computing legal periods, particularly as to what constitutes a year, under Article 13 of the Civil Code and Section 31, Chapter VIII, Book I of the Administrative Code of 1987. Under the Civil Code, a year is equivalent to 365 days, whether it be a regular year or a leap year. Under the Administrative Code of 1987, however, a year is composed of 12 calendar months, with the number of days being irrelevant. To address this incompatibility, the Court held that Section 31, Chapter VIII, Book I of the

Administrative Code of 1987, being the more recent law, governs the computation of legal periods.[20]

What is at issue here, conversely, is the computation of the legal period for a "month." Unlike in *Primetown,* there is no incompatibility with respect to the definition of a month under the Civil Code and the Administrative Code. A month is understood under both laws to be 30 days. In ascertaining the last day of the reglementary period to appeal, one month is to be treated as equivalent to 30 days, such that six months is equal to 180 days. Thus, the period began to run on July 27, 2012 upon receipt of the ND and ended on January 23, 2013.[21] The COA was correct, therefore, in denying the appeal on the ground that the six-month period within which to file an appeal from the ND had already lapsed when PhilHealth filed its appeal to the COA-CGS on January 24, 2013.

II

Even if we were to relax the rules and entertain the appeal, we find that PhilHealth's case would still fail on its merits. The COA correctly disallowed the IME on the ground that its grant was without legal basis.

A

To begin with, we shall distinguish between the appointive and *ex officio* members of the BOD. The composition of the BOD under RA No. 9241,[22] which amended RA No. 7875 in 2004, is as follows:

> Sec. 3. Section 18 of the Law shall be amended to read as follows:
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> "Sec. 18. *The Board of Directors.* –
>
> a) *Composition* – The Corporation shall be governed by a Board of Directors hereinafter referred to as the Board, composed of the following members:
> The Secretary of Health;
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> The Secretary of Labor and Employment or his representative;
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> The Secretary of the Interior and Local Government or his representative;
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> The Secretary of Social Welfare and Development or his representative;
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> The President of the Corporation;
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> A representative of the labor sector;
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> A representative of employers;
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> The SSS Administrator or his representative;

> The GSIS General Manager or his representative;
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> The Vice Chairperson for the basic sector of the National Anti-Poverty Commission or his representative;
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> A representative of Filipino overseas workers;
>
> A representative of the self-employed sector; and
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> A representative of health care providers to be endorsed by the national associations of health care institutions and medical health professionals.
>
> The Secretary of Health shall be the *ex officio* Chairperson while the President of the Corporation shall be the Vice Chairperson of the Board.

As can be gleaned from above, there are members of the BOD who are appointed to the position, and there are those who are designated to serve by virtue of their office (or in other words, in an *ex officio* capacity). Appointment is the selection by the proper authority of an individual who is to exercise the functions of an office. Designation, on the other hand, connotes merely the imposition of additional duties, upon a person already in the public service by virtue of an earlier appointment or election.[23]

Section 18(d) of RA No. 7875, which allows the members of the BOD to receive *per diems* for every meeting they actually attend, must be understood to refer only to the appointive members and not to those who are designated in an *ex officio* capacity or by virtue of their title to a certain office. The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive any other form of additional compensation for his services in the said position; otherwise, it would run counter with the constitutional prohibitions against holding multiple positions in the government and receiving additional or double compensation.[24] We explained:

> The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof, he is actually and in legal contemplation performing the primary function of his principal office in defining policy in monetary and banking matters, which come under the jurisdiction of his department. **For such attendance, therefore, he is not entitled to collect any extra compensation, whether it be in the form of a *per diem* or an honorarium or an allowance, or some other such euphemism.** By whatever name it is designated, such additional compensation is prohibited by the Constitution.[25] (Emphasis supplied.)

Prescinding from above, the disallowance of the IME granted to the members of the