

EN BANC

[G.R. No. 223244, June 20, 2017]

**RHODELIA L. SAMBO AND LORYL J. AVILA, PETITIONERS, V.
COMMISSION ON AUDIT, REPRESENTED BY MA. GRACIA M.
PULIDO TAN, CHAIRPERSON, RESPONDENT.**

DECISION

PERALTA, J.:

Before the Court is a petition for *certiorari*^[1] under Rule 65 in relation to Rule 64 of the Rules of Court seeking to nullify Commission on Audit (COA) Decision No. 2015-024^[2] dated January 29, 2015 of the COA partly affirming Decision No. 2010-C-005 dated May 13, 2010 of the COA Regional Office (RO) No. V, which partly lifted the Notice of Disallowance (ND) No. REG. 08-01-101^[3] dated September 12, 2008 as regards the payment of benefits to several employees of Quedan and Rural Credit Guarantee Corporation (QUEDANCOR), Region V for the Calendar Years (CYs) 2006 and 2007 in the total amount of P94,913.15.

The factual antecedents are as follows:

QUEDANCOR is a government-owned and controlled corporation (GOCC) created under Republic Act No. 7393.^[4] Petitioners Rhodelia L. Sambo (*Sambo*) and Loryl J. Avila (*Avila*) are the Acting Regional Assistant Vice President and Regional Accountant, respectively, of QUEDANCOR, Regional Office V.^[5]

In September 12, 2008, the Audit Team Leader (ATL)/Resident Auditor in QUEDANCOR of COA Naga City issued ND No. REG. 08-01- 101 dated September 12, 2008 disallowing disbursement and payments in the total amount of P94,913.15. The disallowed expenditures consist of benefits to several employees of QUEDANCOR for the CYs 2006 and 2007, as follows:

1. Year End Benefits (YEB) for CY 2007 in the amount of P6,815.50;
2. Medicine Reimbursements for CY 2007 in the amount of P53,097.65;
3. Performance Bonus (*PerB*) for CY 2007 in the amount of P25,000.00;
4. Productivity Incentive Benefit (*PIB*) for CY 2006 in the amount of P10,000.00

The reason for the disallowance by the ATL was that the payees for the YEB, *PerB* and *PIB* are casual employees and, therefore, not entitled to receive the benefits and allowances. The appointments were merely covered by Special Orders issued by the QUEDANCOR President and Chief Executive Officer (*COE*) and were without approval of the Civil Service Commission (CSC). Hence, the employees' contracts of services are not governed by the CSC laws, rules and regulations. The ATL stated that the nature of the employment of the payees is in the nature of contracts of service or job orders. Being such, their employment cannot be classified as government service because there is no employer and employee relationship

between them and QUEDANCOR. Hence, they are not entitled to receive the benefits enjoyed by government employees like the YEB, PerB and PIB.^[6]

The following rules and regulations were cited as bases for the disallowance:

1. Item 3.2 of Budget Circular (BC) No. 2005-6 dated October 28, 2005 on the *"Updated Rules and Regulations on the Grant of the Year-End Bonus and Cash Gift to Government Personnel for FY 2005 and Years Thereafter"*;
2. Item 2.2 of BC No. 2005-07 dated December 15, 2005 on the *"Grant of Performance Bonus for FY 2005"*;
3. Item 2.1.1 of National Compensation Circular (NCC) No. 73 dated December 27, 1994 entitled the *"Grant of Productivity Incentive Benefit for CY 1994 and Years Thereafter."* ^[7]

The Medicine Reimbursements were disallowed in audit in the absence of statutory authority for its grant, citing Section 84(1) of Presidential Decree (P.D.) 1445, otherwise known as the *Government Auditing Code of the Philippines*, which provides that revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.^[8] According to the ATL, a mere Memorandum issued by the President and COE of QUEDANCOR authorizing the grant of medicine reimbursement is not the "statutory authority" contemplated by P.D. 1445.

The ND No. REG. 08-01-1 01 enumerates the following persons as liable for the disallowed amounts:

1. the payees;
2. petitioner Avila for certifying on the completeness and propriety of the supporting documents and the cash availability;
3. petitioner Sambo for approving the payments;
4. Federico A. Espiritu, Executive Vice-President of QUEDANCOR for issuing the following:
 - (a) QUEDANCOR No. 061 dated February 8, 2008 authorizing the payees to claim 10% compensation adjustment effective July 2007 as regards the payment of YEBs;
 - (b) QUEDANCOR No. 08 dated January 29, 2008 authorizing the payees to claim PerB for Fiscal Year 2007; and
 - (c) QUEDANCOR No. 181 dated March 15, 2007 authorizing the payees to claim PIB for CY 2006;
5. Nelson C. Buenaflor, President and COE of QUEDANCOR for issuing QUEDANCOR Circular No. 294 dated June 3, 2004 authorizing the claim for medical reimbursement in the absence of statutory authority for the grant of the benefit.

The officers, together with the payees named in ND No. REG. 08-01- 1 01, filed a motion for reconsideration with the ATL, but the same was denied.^[9]

On February 18, 2010, petitioners and the concerned employees-payees elevated the matter to the COA Regional Director in Region V by filing a Memorandum for the

appellants.^[10] They argued that: (a) they are only following the policies, guidelines, letters of authority and special orders issued by their head office in the grant of the questioned benefits; (b) they are in good faith as their functions are only ministerial; (c) they have proof that they have, in fact, submitted CSC authenticated Plantilla of Casual Appointments and Contractual Appointments in the Quedancor Regional Office with attestation from the CSC.^[11]

In her answer to the appeal, the ATL maintained that the disallowance was proper in its entirety and reiterated that appellants were not entitled to the subject benefits.^[12]

In view of the submission of the CSC approved Plantilla of Casual Appointments by Quedancor effective September 7, 2007, the Regional Director of COA Regional Office (RO) V lifted the disallowance on the PerB equivalent to the pro-rated amount of P2,000.00 from each of the five payees, or a total of P10,000.00. Thus, the total disallowed amount of P41,815.50 as stated in the ND was reduced to P31,815.50 broken down as follows: P6,815.50 for YEB, P15,000.00 for PerB and P10,000.00 for PIB. The dispositive portion of Decision No. 2010-C0-005 dated May 13, 2010 states:

WHEREFORE, premises considered, the disallowance appealed from is LIFTED as to the amount of of P10,000.00 while the remaining amount of P84,913.15 is AFFIRMED WITH MODIFICATION in that the appellants are no longer required to refund the amount disallowed on the basis of good faith, consistent with the rulings of the Supreme Court in the cases of Ronnie H. Lumayna, et al., vs. Commission on Audit, Remedios T. Blanquera, et al. v. Hon. Angel C. Alcala, et al. and Home Development Mutual Fund v. COA.^[13]

Upon automatic review,^[14] the COA Commission Proper rendered a Decision dated January 29, 2015 partly approving the said Decision No. 2010-C-005 of COA RO No. V:

Thus, this Commission agrees with the decision of the RD of COA RO No. V dated May 13, 2010, lifting the disallowance on the PerB equivalent to the pro-rated amount to which employees were entitled to receive upon submission of a copy of their appointment approved by the CSC, to wit:

x x x x

However, the RD might have overlooked the name of Mr. Reinhard Arceo and included instead Ms. Meriam A. Borromeo in lifting the above disallowance. Hence, the above RD's Decision dated May 13, 2010 partially lifting the PerB is corrected as to Ms. Borromeo who shall be replaced by Mr. Arceo.

On the other hand, the employees who were considered "probationary" but without the original appointment issued by the CSC were not entitled to the said benefits. Thus, the remaining disallowance in the total amount of P31,815.50 representing YEB (P6,815.50), PerB (P15,000.00) and PIB (P10,000.00) is proper.

As to the propriety of the grant of medicine reimbursements, the ATL is correct in disallowing the same for lack of legal basis.

The decretal portion of the Decision reads:

WHEREFORE, premises considered, Commission on Audit Regional Office No. V Decision No. 2010-C-005 dated May 13, 2010 is hereby **PARTLY APPROVED**. Accordingly, the disallowance on the Performance Bonus granted to the employees who were able to submit their appointments duly approved/attested to by the Civil Service Commission, in the amount of **P10,000.00** is hereby **LIFTED**, with the name of Ms. Meriam A. Borromeo to be replaced by Mr. Reinhard Arceo. However, the disallowance of the Year-end bonus, remaining Performance Bonus and Productivity Incentive Bonus in the total amount of **P31,815.50** and the Medicine Reimbursements in the amount of **P53,097.65** is **AFFIRMED**. The officers who authorized/certified/approved the payment of the disallowed benefits shall be solidarily liable for the total disallowance, but the rank-and file employees who received the benefits in good faith need not refund the amount they each received.^[16]

A Motion for Reconsideration^[17] dated May 11, 2015 was filed by petitioners and Atty. Renato Z. Enciso (one of the payees for the grant for medical reimbursement) but the same was denied in the Resolution dated October 15, 2015.^[18]

Hence, this petition, raising the following issues:

THE RESPONDENT COMMISSION ON AUDIT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RENDERED THE DECISION DATED JANUARY 29, 2015, HOLDING THE PETITIONERS IN THEIR CAPACITIES AS THE AUTHORIZING/CERTIFYING AND APPROVING OFFICERS SOLIDARILY LIABLE FOR THE TOTAL DISALLOWANCE.

THE RESPONDENT COMMISSION ON AUDIT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT RULED THAT ONLY THE OFFICERS WHO AUTHORIZED/CERTIFIED/APPROVED THE PAYMENT OF THE DISALLOWED BENEFITS ARE SOLIDARILY LIABLE BUT EXEMPTING FROM ANY SPECIFIC LIABILITY THE BOARD OF DIRECTORS, PRESIDENT AND CEO OF QUEDANCOR, WHO MADE THE POLICY GUIDELINES AND ISSUED THE LETTERS OF AUTHORITY AUTHORIZING THE PAYMENT OF THE DISALLOWED BENEFITS.^[19]

Petitioners argue in their petition that (a) they could not be held liable for the disallowance as they are mere subordinate officers performing ministerial functions in good faith when they certified and approved the disbursements of employee benefits disallowed by the COA; and (b) it is the Policy-Makers, Board of Directors, President and CEO of QUEDANCOR, who made the circulars and guidelines for the payments of disallowed benefits, that should be held directly and primarily liable for the disallowance not the subordinate officers who merely followed it to the letter.

In the Comment^[20] of respondent, it argued that petitioners failed to prove that they acted in good faith in disregarding the provisions of RA 6758^[21] and Administrative Order (AO) 103 dated January 14, 1994 pertaining to payment of

allowances. RA 6758 standardizes the salary rates of government officials and employees,^[22] while AO 103 enjoins head of government agencies from granting incentive benefits without prior approval of the President. Respondent averred that the blatant disregard of the petitioners (approving officers) to abide with the provisions of AO 103 overcame the presumption of good faith invoking the rulings in *Executive Director Casal v. COA*,^[23] *Dr. Velasco, et al. v. COA*,^[24] and *Tesda v. COA*.^[25]

We dismiss the petition.

Presidential Decree No. 1445 spells out the rule on general liability for unlawful expenditures:

Section 103. *General liability for unlawful expenditures.* Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.^[26]

Under this provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present, to wit: (a) there must be an expenditure of government funds or use of government property; (b) the expenditure is in violation of law or regulation; and (c) the official is found directly responsible therefor.^[27]

Related to the foregoing is Section 19 of COA Circular No. 94-001, the Manual of Certificate of Settlement and Balances, which provides for the bases for determining the extent of personal liability:

19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of (a) the nature of the allowance; (b) the duties and responsibilities of the officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. The following are illustrative examples:

x x x x

19.1.3. Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

Clearly, therefore, public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement.^[28]

However, in cases involving the disallowance of salaries, emoluments, benefits, and allowances due to government employees, jurisprudence has settled that recipients or payees in good faith need not refund these disallowed amounts. For as long as there is no showing of ill intent and the disbursement was made in good faith, public officers and employees who receive subsequently disallowed benefits or allowances may keep the amounts disbursed to them.^[29]