

EN BANC

[G.R. No. 199752, February 17, 2015]

**LUCENA D. DEMAALA, PETITIONER, VS. COMMISSION ON AUDIT,
REPRESENTED BY ITS CHAIRPERSON COMMISSIONER MA.
GRACIA M. PULIDO TAN, RESPONDENT.**

D E C I S I O N

LEONEN, J.:

Through this Petition for Certiorari, Lucena D. Demaala (Demaala) prays that the September 22, 2008 Decision (Decision No. 2008-087)^[1] and the November 16, 2011 Resolution (Decision No. 2011-083)^[2] of the Commission on Audit be reversed and set aside.

The Commission on Audit's Decision No. 2008-087^[3] denied Demaala's appeal and affirmed with modification Local Decision No. 2006-056^[4] dated April 19, 2006 of the Commission on Audit's Legal and Adjudication Office (LAO). LAO Local Decision No. 2006-056, in turn, affirmed Notice of Charge (NC) No. 2004-04-101.^[5] NC No. 2004-04-101 was dated August 30, 2004 and issued by Rodolfo C. Sy (Regional Cluster Director Sy), Regional Cluster Director of the Legal Adjudication Sector, Commission on Audit Regional Office No. IV, Quezon City.

The Commission on Audit's Decision No. 2011-083 denied the Motion for Reconsideration filed by Demaala.^[6]

I

The Sangguniang Panlalawigan of Palawan enacted Provincial Ordinance No. 332-A, Series of 1995, entitled "An Ordinance Approving and Adopting the Code Governing the Revision of Assessments, Classification and Valuation of Real Properties in the Province of Palawan" (Ordinance).^[7] Chapter 5, Section 48 of the Ordinance provides for an additional levy on real property tax for the special education fund at the rate of one-half percent or 0.5% as follows:

Section 48- Additional Levy on Real Property Tax for Special Education Fund. There is hereby levied an annual tax at the rate of one-half percent (1/2%) of the assessed value property tax. The proceeds thereof shall exclusively accrue to the Special Education Fund (SEF).^[8]

In conformity with Section 48 of the Ordinance, the Municipality of Narra, Palawan, with Demaala as mayor, collected from owners of real properties located within its

territory an annual tax as special education fund at the rate of 0.5% of the assessed value of the property subject to tax. This collection was effected through the municipal treasurer.^[9]

On post-audit, Audit Team Leader Juanito A. Nostratis issued Audit Observation Memorandum (AOM) No. 03-005 dated August 7, 2003 in which he noted supposed deficiencies in the special education fund collected by the Municipality of Narra.^[10] He questioned the levy of the special education fund at the rate of only 0.5% rather than at 1%, the rate stated in Section 235^[11] of Republic Act No. 7160, otherwise known as the Local Government Code of 1991 (Local Government Code).^[12]

After evaluating AOM No. 03-005, Regional Cluster Director Sy issued NC No. 2004-04-101 dated August 30, 2004^[13] in the amount of P1,125,416.56. He held Demaala, the municipal treasurer of Narra, and all special education fund payors liable for the deficiency in special education fund collections.

This Notice of Charge reads:

NC No. 2004-04-101
Date: August 30, 2004

NOTICE OF CHARGE

The Municipal Mayor
Narra, Palawan

Attention: Municipal Accountant

We have reviewed and evaluated Audit Observation Memorandum (AOM) No. 03-005 dated August 7, 2003 and noted the following deficiencies:

Reference		PAYOR	AMOUNT CHARGED	Persons LIABLE	FACTS AND/OR REASONS FOR CHARGE
No.	Date				
Please attached schedule		see	1,125,416.56	Lucena D. Demaala - Municipal Mayor - for allowing the reduced rate of additional real property taxes	The additional levy for SEF should be one per cent (1%) instead of 0.5% as provided in RA 5447 dated September 25, 1968

	1,125,416.56	Municipal Treasurer	
		- for collecting understated taxes	
		All payors	

Charge not appealed within six (6) months as prescribed under Sections 49, 50 and 51 of PD No. 1445 shall become final and executory.

RODOLFY C. SY (sgd.)
Regional Cluster Director^[14]

The Municipality of Narra, through Demaala, filed the Motion for Reconsideration^[15] dated December 2, 2004. It stressed that the collection of the special education fund at the rate of 0.5% was merely in accordance with the Ordinance. On March 9, 2005, Regional Cluster Director Sy issued an Indorsement denying this Motion for Reconsideration.^[16]

Following this, the Municipality of Narra, through Demaala, filed an appeal^[17] with the Commission on Audit's Legal and Adjudication Office. In Local Decision No. 2006-056^[18] dated April 19, 2006, this appeal was denied.

The Municipality of Narra, through Demaala, then filed a Petition for Review^[19] with the Commission on Audit.

In Decision No. 2008-087^[20] dated September 22, 2008, the Commission on Audit ruled against Demaala and affirmed LAO Local Decision No. 2006-056 with the modification that former Palawan Vice Governor Joel T. Reyes and the other members of the Sangguniang Panlalawigan of Palawan who enacted the Ordinance^[21] were held jointly and severally liable with Demaala, the municipal treasurer of Narra, and the special education fund payors.^[22]

The dispositive portion of this Decision reads:

WHEREFORE, premises considered, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, LAO Local Decision No. 2006-056 is **AFFIRMED** with modification, to include Former Vice-Governor and Presiding Officer Joel T. Reyes, Chairman Pro-Tempore Rosalino R. Acosta, Majority Floor Leader Ernesto A. Llacuna, Asst. Majority Floor Leader Antonio C. Alvarez, Asst. Minority Floor Leader Haide B. Barroma, Hon. Leoncio N. Ola, Hon. Ramon A. Zabala, Hon. Belen B. Abordo, Hon. Valentin A. Baaco, Hon. Claro Ordinario, Hon. Derrick R. Pablico, Hon. Laine C. Abogado and Hon. Joel B. Bitongon among the persons liable in

the Notice of Charge. They shall be jointly and severally liable with Mayor Lucena D. Demaala, together with the Municipal Treasurer and all the payors of the under-collected real property tax in the total amount of P1,125,416.56.

The Audit Team Leader is directed to issue a Supplemental Notice of Charge to include the members of the Sangguniang Panlalawigan as among the persons liable.^[23]

Thereafter, Demaala, who was no longer the mayor of the Municipality of Narra, filed a Motion for Reconsideration.^[24] Former Vice Governor Joel T. Reyes and the other members of the Sangguniang Panlalawigan of Palawan who were held liable under Decision No. 2008-087 filed a separate Motion for Reconsideration.^[25] The Commission on Audit's Decision No. 2011-083^[26] dated November 16, 2011 affirmed its September 22, 2008 Decision.

Demaala then filed with this court the present Petition for Certiorari.^[27]

Respondent Commission on Audit, through the Office of the Solicitor General, filed its Comment^[28] on April 20, 2012. Petitioner Demaala filed her Reply^[29] on September 6, 2012. Thereafter, the parties filed their respective Memoranda.^[30]

II

For resolution in this case are the following issues:

First, whether respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that there was a deficiency in the Municipality of Narra's collection of the additional levy for the special education fund. Subsumed in this issue is the matter of whether a municipality within the Metropolitan Manila Area, a city, or a province may have an additional levy on real property for the special education fund at the rate of less than 1%.

Second, assuming that respondent correctly held that there was a deficiency, whether respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding petitioner personally liable for the deficiency.

We find for petitioner.

Setting the rate of the additional levy for the special education fund at less than 1% is within the taxing power of local government units. It is consistent with the guiding constitutional principle of local autonomy.

III

The power to tax is an attribute of sovereignty. It is inherent in the state. Provinces, cities, municipalities, and barangays are mere territorial and political subdivisions of the state. They act only as part of the sovereign. Thus, they do not have the inherent power to tax.^[31] Their power to tax must be prescribed by law.

Consistent with the view that the power to tax does not inhere in local government units, this court has held that a reserved temperament must be adhered to in construing the extent of a local government unit's power to tax. As explained in *Icard v. City Council of Baguio*:^[32]

It is settled that a municipal corporation unlike a sovereign state is clothed with no inherent power of taxation. The charter or statute must plainly show an intent to confer that power or the municipality, cannot assume it. And *the power when granted is to be construed in strictissimi juris*. Any doubt or ambiguity arising out of the term used in granting that power must be resolved against the municipality. Inferences, implications, deductions – all these – have no place in the interpretation of the taxing power of a municipal corporation.^[33] (Emphasis supplied)

Article X, Section 5 of the 1987 Constitution is the basis of the taxing power of local government units:

Section 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges *subject to such guidelines and limitations as the Congress may provide*, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments. (Emphasis supplied)

The taxing power granted by constitutional fiat to local government units exists in the wider context to “ensure the autonomy of local governments.”^[34] As Article II, Section 25 of the 1987 Constitution unequivocally provides:

Section 25. The State shall ensure the autonomy of local governments.

Article II, Section 25 is complemented by Article X, Section 2:

Section 2. The territorial and political subdivisions shall enjoy local autonomy.

The 1935 Constitution was entirely silent on local autonomy, albeit making a distinction between executive departments, bureaus, and offices on the one hand, and local governments on the other. It provided that the President had control over the former but merely “exercise[d] general supervision”^[35] over the latter. Article VII, Section 10(1) of the 1935 Constitution provided:

SEC. 10. (1) The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.