

**EN BANC**

**[ G.R. No. 213189, September 08, 2015 ]**

**FAUSTINO A. SILANG, VENERANDO R. REA, LUZVIMINDA B. CUADRA, MARIA CIELITO V. ZETA, ESTELITO M. QUERUBIN, LYKA MONIKA J. OABEL, GINALYN CELESTINO, GENER B. ABORDO, JOY O. TAGUILASO, GERMAN L. JAMILANO, ROLANDO P. BORROMEO, RENATO TABERNILLA, ROMEO G. CARIAGA, ROMEO O. GAMBOA, ADELMO M. ABESAMIS, ROEL O. TADIOSA, RUPERTO R. ZARSAGA, JOSELITO C. TALABONG, EMMANUEL L. AVERILLA, MARIO G. QUESEA, FELIX T. MARQUEZ, ROLANDO Z. OLIVAR, MARCELITO R. AYALA, DIONISIO N. SOMBRERO, REYNALDO J. MADERAL, CARLOS G. ABANTO, ESMERALDO Z. RIVERE, REGALADO O. ROMERO, ROMEO S. BOMBANI, MARCELINO U. CONTRERAS, EDMERLITO P. YBARDOLAZA, SR., MANUEL S. ABRAGON, GERARDO S. EDRESA, ESMERALDO V. MADRONIO, TEODORO V. RIVADENERA, RODRIGO A. MAGTIBAY, MARVIN JACELA, MICHAEL CASTILLO, ROBERTO S. VILLA, ALEXANDER A. OLIVAR, ODILON O. PINEDA, RUFINO N. CABULA, RIZALYN Z. ESPEDIDO, ARLENE O. AYALA, ROSELLE Y. VILLAVERDE, LORNA S. BOMBANI, JOSEFINA O. PEREZ, MARY JANE Z. CALUPIG, NECIAS C. PATAUNIA, AILEEN R. RANERA, MARIO C. REYES, JR., ERMELO A. ESCOBINAS, ENRICO T. NAÑEZ, RIZALINO O. AGUAS, ANTONIO Z. SALVAN, MAIDE D. JADER, ISADORA G. REYES, DALMACIA AIZELE P. RAFA, RONALDO Q. CARILLO, NANCY N. BABLES, ESPERANZA E. CABRIGA, LUISA ROSAN B. ABULENCIA, AMELIA F. BABIERRA, MARILOU D. VILLANUEVA, SONIA C. TABI, MELANIE C. TALABONG, MA. CECILIA R. POTESTADES, REMEDIOS A. VILLORIA, ARMANDO TABERNILLA, CELINA B. OABEL, BENILDA O. DE GUZMAN, NARCISO P. RAMALLOSA, CRISTINO V. ZAGALA, AUREA S. RESARE, ROY Z. SUMINISTRADO, PAZ V. JAVAL, GALLARDO N. EBINA, BRENDA B. SUMALABE, ERLITO A. OBDIANELA, HECTOR D. OABEL, NELSON V. COLADILLA, FABIAN JABALLA, EVANGELINA L. LAVADIA, MANOLO G. ROMERO, SUSANA V. AÑONUEVO, DR. CESAR ANTHONY ORIAS, CRISTETA O. BAJAR, ERLINDA C. TAGULINAO, ROSITA M. AMOYO, MERCEDITA C. REYES, LETECIA B. SANDOVAL, ISABEL S. CARANDANG, MARIAN JOY INES N. ABADILLA, LAARNI Q. LUNA, LORENA D. PADUA, MAROCHELLE S. ABAS, MA. VERONICA C. NACA, LORENZO GUAÑO, AVELINA S. MARINAY, IRMA C. ILOCARIO, VENERACION R. SAN JUAN, MARIDEL C. BALLARD, LILIA D. LACORTE, REMEDIOS Z. JUACALLA, JOSEFINA N. MANTES, DELIA S. TABERNILLA, JOCELYN S. CADAVIDO, FLORENCE O. CAGAUAN, CONCEPCION C. CABRIGA, LEOVINA C. FLORES, HERMINIA V. LADINES, ROMMEL N. ABUYAN, ABNER A. ZUBIETA, DANIEL A. LAVADO, MIGUEL O. QUINSANOS, RUELITO O. AÑOSO RADITO C.**

**LABITA, RODEL M. CADEMIA, ELADIO V. MANZANO, JR., GILBERT T. OABEL, EFREN A. ZARSUELO, RUBEN S. ABLAÑA, ILUMINADA R. CUEVAS, VIRGILIO A. CABAÑAS, RENATO M. MANLULU, RAMON M. VALDEAVILLA, FLORENCIA E. REMOLONA, VERONICA N. GARCIA, ALLAN C. ZAGALA, RAYMUNDO L. CONSTANTINO, ISAGANI C. REQUISIO, ARNEL V. RATUISTE, FREDIE R. FLORES, LORD R. QUINTO, WARREN A. OBEÑA, AND BELEN D. PANDEZ, PETITIONERS, \*\* VS. COMMISSION ON AUDIT, RESPONDENT.**

## **D E C I S I O N**

**PERLAS-BERNABE, J.:**

Assailed in this petition for *certiorari*<sup>[1]</sup> under Rule 64 in relation to Rule 65 of the Rules of Court are the Decision<sup>[2]</sup> dated December 21, 2012 and the Resolution<sup>[3]</sup> dated March 13, 2014 rendered by the Commission on Audit (COA) *En Banc*, which upheld Notices of Disallowance (ND) Nos. 2009-001-101-(08) and 2009-002-101-(09) both dated March 6, 2009 in the amounts of P9,230,434.20 and P19,933,510.00 as 2008 and 2009 Collective Negotiation Agreement (CNA) Incentives, respectively, paid to the rank-and-file employees of the local government unit (LGU) of Tayabas, Quezon.

### **The Facts**

On November 13, 2007<sup>[4]</sup> and February 4, 2008,<sup>[5]</sup> the LGU of Tayabas, Quezon entered into CNAs with the *Unyon ng mga Kawani ng Pamahalaang Lokal ng Tayabas* (UNGKAT),<sup>[6]</sup> an employees' organization of the LGU of Tayabas, Quezon duly registered with the Department of Labor and Employment (DOLE) and the Civil Service Commission (CSC), per Certificate of Registration No. 827<sup>[7]</sup> dated June 14, 2001, which conferred upon it "the right to be certified" as the sole representative of the LGU of Tayabas, Quezon's rank-and-file employees.<sup>[8]</sup>

Thereafter, or on February 11, 2008, the local *Sanggunian*, whose members include herein petitioners Venerando R. Rea, Luzviminda B. Cuadra, Maria Cielito V. Zeta, Estelito M. Querubin, and Lyka Monika J. Oabel,<sup>[9]</sup> (local *Sanggunian* members) passed **City Ordinance No. 08-03**<sup>[10]</sup> appropriating the amount of **P9,230,434.49** for the payment of the **2008 CNA Incentive** to the rank-and-file employees of Tayabas, Quezon to be sourced from the LGU's Maintenance and Other Operating Expenses (MOOE) savings for 2007.<sup>[11]</sup> However, for failure to submit the required documents, the Office of the Auditor of COA, Province of Quezon (Office of the Auditor) issued **Notice of Suspension (NS) No. 2008-001-101(08)**<sup>[12]</sup> dated December 17, 2008, anchored on the non-registration of the CNA with the CSC and the absence of cost-cutting measures therein.<sup>[13]</sup>

Disputing the suspension, petitioner Faustino A. Silang (Silang), City Mayor of Tayabas, Quezon, through a letter<sup>[14]</sup> dated February 9, 2009, submitted the letter<sup>[15]</sup> dated January 28, 2009 of then UNGKAT President petitioner Enrico T. Nanez (Nanez).<sup>[16]</sup> In the letter, Nanez argued that the non-registration of the CNA with the CSC was not a bar to the payment of the 2008 CNA Incentive and that the

cost-cutting measures were provided in the Minutes of the Meeting dated September 26, 2007, prior to the CNA-signing on November 13, 2007.<sup>[17]</sup> However, the Office of the Auditor maintained that: (a) prior registration of the CNA with the CSC; (b) accreditation by CSC of UNGKAT as the sole and exclusive negotiating agent of the LGU concerned, and (c) the identification of cost-cutting measures in the CNA itself are indispensable requisites for the validity of payment of the 2008 CNA Incentive.<sup>[18]</sup> Consequently, the Office of the Auditor issued **Notice of Disallowance (ND) No. 2009-001-101-(08)**<sup>[19]</sup> dated March 6, 2009 disallowing the amount of **P9,230,434.20** representing the 2008 CNA Incentive paid to 156 rank-and-file employees of the LGU of Tayabas, Quezon.<sup>[20]</sup>

Meanwhile, on February 11, 2009, the local *Sanggunian* passed **Ordinance No. 09-01**<sup>[21]</sup> appropriating the amount of **P39,867,161.00** for the payment of the **2009 CNA Incentive** to be sourced from the LGU's MOOE savings for 2008.<sup>[22]</sup> As the 2009 CNA Incentive was suffering from the same infirmities as the 2008 CNA Incentive, among them, the fact that UNGKAT was not accredited by CSC at the time of the execution of the CNA, the Office of the Auditor issued **ND No. 2009-002-101-(09)**<sup>[23]</sup> dated March 6, 2009 disallowing the amount of **P19,933,510.00** representing the 2009 CNA Incentive.<sup>[24]</sup>

Aggrieved, the LGU of Tayabas, Quezon, as represented by Silang, appealed<sup>[25]</sup> the NDs to the Regional Director, COA Regional Office No. IV.<sup>[26]</sup>

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

In a Decision<sup>[27]</sup> dated November 9, 2010, the COA Regional Director (RD) denied the appeal and sustained the assailed NDs on the grounds, among others, that UNGKAT was not accredited with the CSC at the time of the signing of the CNAs,<sup>[28]</sup> and non-compliance with the requirement that the savings from which the payment of the 2008 and 2009 CNA Incentives are to be sourced must be reckoned from the date of the signing of the CNAs.<sup>[29]</sup> The COA RD found that while UNGKAT was registered with DOLE and CSC as of June 14, 2001, such registration did not confer upon it the right to negotiate with management on behalf of its members.<sup>[30]</sup> Certificate of Registration No. 827 merely conferred upon it the "right to be certified, subject to the conditions prescribed in [Executive Order No. 180] and Implementing Rules, as the sole representative of the rank-and-file employees to negotiate for them."<sup>[31]</sup> This simply means that after registration, UNGKAT *may seek accreditation* as the sole negotiating representative of the LGU personnel. As UNGKAT was not accredited with the CSC *at the time of the signing of the CNA*, as in fact it was only accredited with the CSC on January 14, 2009 under CSC Resolution No. 090087,<sup>[32]</sup> the COA RD concluded that the 2008 and 2009 CNA Incentives were properly disallowed in view of the requirement under Item No. 5.1 of the Department of Budget and Management (DBM) Budget Circular No. 2006-01,<sup>[33]</sup> which provides:

## **5.0 Policy Guidelines**

5.1 The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, executed between the representatives of management and the employees' organization **accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations** with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.

Moreover, Item 7.0 of the same DBM Circular states:

### **7.0 Funding Source**

7.1 The CNA Incentive shall be sourced solely from savings from released [MOOE] allotments for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1 Such sa'vings were generated out of the cost-cutting measures identified in the CNAs and supplements thereto;

7.1.2 Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

x x x x

Further, as the first CNA in this case was signed only on November 13, 2007, the computation of the amount of the actual MOOE savings should commence only from that date. Since the MOOE savings to be used for the 2008 CNA Incentive amounting to P11,538,043.12<sup>[34]</sup> was saved from September 2007 to December 2007, the said CNA Incentive cannot therefore be allowed, in violation of Item No. 7.1.2 as above-quoted.

Dissatisfied, the LGU of Tayabas, Quezon, as represented by Silang, elevated<sup>[35]</sup> the case to the COA *En Banc*, which resolved the issue of the legality of the CNA Incentives.

### **The Ruling of the COA *En Banc***

In a Decision<sup>[36]</sup> dated December 21, 2012, the COA *En Banc* affirmed the RD November 9, 2010 Decision disallowing the payments for the 2008 and 2009 CNA Incentives. It echoed the RD's finding that at the time of the execution of the CNA, UNGKAT had no CSC accreditation as required in DBM Budget Circular No. 2006-01, as in fact, it was accredited with the CSC only on January 14, 2009.<sup>[37]</sup> With regard to the reckoning date and computation of savings from which the 2008 CNA Incentive may be sourced, since the same was computed from September 2007, or two (2) months before the first CNA was signed on November 13, 2007, the same cannot be allowed, as the said DBM Circular requires that the savings be reckoned

from the date of the signing of the CNA.<sup>[38]</sup>

The LGU of Tayabas, Quezon's motion for reconsideration was denied by the COA *En Banc* in the Resolution<sup>[39]</sup> dated March 13, 2014; hence, this petition.

### **The Issues Before the Court**

The issues advanced for the Court's resolution are whether or not the COA *En Banc* committed grave abuse of discretion when it: (a) affirmed the disallowance of the 2008 and 2009 CNA Incentives on the ground that UNGKAT was not accredited with the CSC; (b) ruled that the LGU of Tayabas, Quezon's savings, to be considered as CNA Incentives, shall be reckoned from the date of signing of the CNAs; and (c) failed to consider good faith on the part of the management and the union in the granting of the 2008 and 2009 CNA Incentives.

### **The Court's Ruling**

The petition is partly meritorious.

Item No. 5.1 of DBM Budget Circular No. 2006-01 clearly requires accreditation with the CSC for the purpose of collective negotiations prior to the grant of CNA Incentives, to wit:

#### **5.0 Policy Guidelines**

5.1 The CNA Incentive in the form of cash may be granted to employees covered by this Circular, if provided for in the CNAs or in the supplements thereto, executed between the representatives of management and the employees' organization **accredited by the CSC as the sole and exclusive negotiating agent for the purpose of collective negotiations** with the management of an organizational unit listed in Annex "A" of PSLMC Resolution No. 01, s. 2002 and as updated.

In this case, records show that UNGKAT, the rank-and-file employees' organization of the LGU of Tayabas, Quezon, had no CSC accreditation when the CNAs were executed on November 13, 2007 and February 4, 2008. In fact, it was accredited with the CSC only on January 14, 2009, as evidenced by CSC Resolution No. 090087<sup>[40]</sup> of even date, which states, *inter alia*:

**NOW, THEREFORE**, the Commission hereby resolves to accredit the **Unyon ng mga Kawani ng Pamahalaang Lokal ng Tayabas (UNGKAT)**. Accordingly, it is declared as the sole and exclusive representative of the rank-and-file employees of the *City Government of Tayabas*, City Hall, Tayabas City, Quezon for purposes of collective negotiations with management on terms and conditions of employment not fixed by law.<sup>[41]</sup>