

EN BANC

[G.R. No. 204869, March 11, 2014]

TECHNICAL EDUCATION AND SKILLS DEVELOPMENT AUTHORITY (TESDA), PETITIONER, VS. THE COMMISSION ON AUDIT, CHAIRPERSON MA. GRACIA M. PULIDO TAN, COMMISSIONER JUANITO G. ESPINO, JR., AND COMMISSIONER HEIDI L. MENDOZA, RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for certiorari^[1] with prayer for issuance of temporary restraining order or writ of preliminary injunction to annul Decision No. 2012-210^[2] of the Commission on Audit (COA). The COA disallowed payments of Extraordinary and Miscellaneous Expenses (EME) by the Technical Education and Skills Development Authority (TESDA) to its officials.

The Facts

Upon post audit, the TESDA audit team leader discovered that for the calendar years 2004-2007, TESDA paid EME twice each year to its officials from two sources: (1) the General Fund for locally-funded projects, and (2) the Technical Education and Skills Development Project (TESDP) Fund for the foreign-assisted projects. The payment of EME was authorized under the General Provisions of the General Appropriations Acts of 2004, 2005,^[3] 2006 and 2007 (2004-2007 GAAs), subject to certain conditions:

x x x *Extraordinary and Miscellaneous Expenses.*— Appropriations authorized herein may be used for extraordinary expenses of **the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:**

- (a) P180,000 for each Department Secretary;
- (b) P65,000 for each Department Undersecretary;
- (c) P35,000 for each Department Assistant Secretary;
- (d) P30,000 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director;
- (e) P18,000 for each Bureau Regional Director; and
- (f) P13,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses **not exceeding Fifty Thousand Pesos (P50,000) for each of the offices under the above named officials** are authorized.^[4] (Emphasis supplied)

On 15 May 2008, the audit team issued Notice of Disallowance No. 08-002-101 (04-06)^[5] disallowing the payment of EME amounting to P5,498,706.60 for being in excess of the amount allowed in the 2004-2007 GAAs. In addition, the EME were disbursed to TESDA officials whose positions were not of equivalent ranks as authorized by the Department of

Budget and Management (DBM), contrary to the provisions of the 2004-2007 GAAs. Notice of Disallowance No. 08-002-101 (04-06) indicated the persons liable for the excessive payment of EME: the approving officers, payees and the accountants.^[6]

On 4 July 2008, TESDA, through its then Director-General Augusto Boboy Syjuco, Jr., filed an Appeal Memorandum^[7] arguing that the 2004-2007 GAAs and the Government Accounting and Auditing Manual allowed the grant of EME from both the General Fund and the TESDP Fund provided the legal ceiling was not exceeded for each fund. According to TESDA, the General Fund and the TESDP Fund are distinct from each other, and TESDA officials who were designated as project officers concurrently with their regular functions were entitled to separate EME from both funds.

The Ruling of the Commission on Audit

In a Decision dated 5 September 2008,^[8] the COA Cluster Director, Cluster VII, National Government Sector, denied the appeal for lack of merit. The COA Cluster Director ruled that:

On the first issue, the GAA provision on EME is very clear to the effect that payment of EME may be taken from any authorized appropriation but shall not exceed the ceiling stated therein. It had been consistently held that when the language of the law is clear and unequivocal it should be given its common and ordinary meaning. If the legislative intent is to grant officials EME of unlimited amount, no limit or ceiling should have been included in the GAA. On the other hand, the Audit Team Leader stated that the inclusion in TESDA budget for EME in TESDP Fund, which was actually found only in the GAA for FY 2005 could not serve as basis for the grant of EME, should not be treated distinctly and separately from EME provision under the General Provisions of the GAA as the officials who were paid the EME from [TESDP Fund] are the same TESDA officials who were already paid EME out [of the General Fund]. It should be emphasized that the designation of TESDA officials as Project Managers in concurrent capacities to offices under TESDP, forms part only of their additional functions without another appointment. The EME is covered by the compensation attached to his principal office and not for every project handled. x x x.

On the second issue whether officials who are not of equivalent rank as

authorized by the DBM, the Audit Team Leader informed that the officials were designated for [positions] which are not included in the Personnel Service Itemization (PSI) and the creation of said positions [was] not supported with authority or approval from the DBM. Neither was there a DBM document identifying the equivalent ranks of these positions as basis for ascertaining the amount of EME to be paid.

On the third issue whether the Regional Directors who were not performing as head of the Bureau or a regional office or organization unit of equal rank, because of their reassignment to the Office of the Director[-]General, the same were not entitled to receive EME since the Director[-]General and its office are already claiming the said amount. There could be no two officials entitled to receive EME although they are listed in the GAA as entitled to receive the same.^[9]

On 4 December 2008, TESDA, through its Director-General, filed a petition for review with COA.

In a Decision dated 15 November 2012,^[10] COA denied TESDA's petition for lack of merit. The COA adopted the findings of both the TESDA audit team and the COA Cluster Director that the grant of EME exceeded the allowable limit in the 2004-2007 GAAs. The COA emphasized that the provision in the 2004-2007 GAAs that granted EME clearly provided a ceiling for its grant. Accordingly, the COA ruled that the failure of the TESDA officials to adhere to the 2004-2007 GAAs negated their claim of good faith. Thus, the COA ordered them to refund the excess EME they received.

In a Resolution dated 12 March 2013,^[11] the Court En Banc resolved to excuse the Office of the Solicitor General from representing the COA due to conflict of interest considering that both COA and TESDA are government agencies being represented by it.

The Issues

In this petition, TESDA seeks a reversal and raises the following issues for resolution:

A. THE [COA] GRAVELY ERRED IN DISALLOWING THE PAYMENTS MADE BY TESDA TO ITS OFFICIALS OF THEIR [EME] FROM BOTH [GENERAL FUND] AND [TESDP FUND];

B. THE [COA] LIKewise GRAVELY ERRED IN HOLDING THE OFFICERS OF TESDA INDIVIDUALLY LIABLE FOR THE TOTAL DISALLOWANCE IN THE AMOUNT OF P5,498,706.60 EVEN IF THEY MAY BE RIGHTFULLY CONSIDERED AS DE FACTO OFFICERS IN GOOD FAITH WHO ARE ENTITLED TO EME FOR ACTUAL SERVICES RENDERED;

C. THE [COA] LIKewise GRAVELY ERRED IN HOLDING THAT CONSIDERING THE CEILING SET FORTH BY SECTIONS 23[, 25] AND 26 OF THE GENERAL PROVISIONS OF THE [2004-2007 GAAS], THE CONCERNED TESDA OFFICIALS' CLAIMS FOR EME ARE UNAUTHORIZED

AND EXCESSIVE;

D. FINALLY, THE [COA] GRAVELY ERRED IN HOLDING THAT THE CONCERNED TESDA OFFICIALS CANNOT BE CONSIDERED AS *DE FACTO* OFFICERS IN GOOD FAITH AND IN DISREGARDING THE RELEVANT RULING OF THE SUPREME COURT IN THE CASE OF CA[N]TILLO VS. ARRIETA.^[12]

The Ruling of the Court

The petition is partly meritorious.

The Constitution vests COA, as guardian of public funds, with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.^[13] The COA is generally accorded complete discretion in the exercise of its constitutional duty and the Court generally sustains its decisions in recognition of its expertise in the laws it is entrusted to enforce.^[14]

Only when COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court grant a petition assailing COA's actions. There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.^[15]

We do not find any grave abuse of discretion when COA disallowed the disbursement of EME to TESDA officials for being excessive and unauthorized by law, specifically the 2004-2007 GAAs, to wit:

x x x *Extraordinary and Miscellaneous Expenses.*– Appropriations authorized herein may be used for extraordinary expenses of **the following officials and those of equivalent rank as may be authorized by the DBM, not exceeding:**

- (a) P180,000 for each Department Secretary;
- (b) P65,000 for each Department Undersecretary;
- (c) P35,000 for each Department Assistant Secretary;
- (d) P30,000 for each head of bureau or organization of equal rank to a bureau and for each Department Regional Director;
- (e) P18,000 for each Bureau Regional Director; and
- (f) P13,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses ***not exceeding Fifty Thousand Pesos (P50,000) for each of the offices under the above named officials*** are authorized.^[16] (Boldfacing and italicization supplied)

The GAA provisions are clear that the EME shall *not exceed* the amounts

fixed in the GAA. The GAA provisions are also clear that only the officials named in the GAA, the officers of equivalent rank as may be authorized by the DBM, and the offices under them are entitled to claim EME not exceeding the amount provided in the GAA.

The COA faithfully implemented the GAA provisions. COA Circular No. 2012-001^[17] states that the amount fixed under the GAA for the National Government offices and officials shall be the ceiling in the disbursement of EME. COA Circular No. 89-300, ^[18] prescribing the guidelines in the disbursement of EME, likewise states that the amount fixed by the GAA shall be the basis for the control in the disbursement of these funds.

The COA merely complied with its mandate when it disallowed the EME that were reimbursed to officers who were not entitled to the EME, or who received EME in excess of the allowable amount. When the law is clear, plain and free from ambiguity, there should be no room for interpretation but only its application.

However, TESDA insists on its interpretation justifying its payment of EME out of the TESDP Fund. It argues that the 2004-2007 GAAs did not prohibit its officials from receiving additional EME chargeable against an authorized funding, the TESDP Fund in this case, for another office to which they have been designated.

We do not find merit in TESDA's argument.

The TESDA is an instrumentality of the government established under Republic Act No. 7796 or the TESDA Act of 1994. Under Section 33 of the TESDA Act, the TESDA budget for the implementation of the Act is included in the annual GAA; hence, the TESDP Fund, being sourced from the Treasury, are funds belonging to the government, or any of its departments, in the hands of public officials.^[19] The Constitution provides, "No money shall be paid out of the Treasury except in pursuance of an appropriation made by law."^[20] The State Audit Code, which prescribes the guidelines in disbursing public funds, reiterates this important Constitutional provision that there should be an appropriation law or other statutes specifically authorizing payment out of any public funds.^[21]

In this case, TESDA failed to point out the law specifically authorizing it to grant additional reimbursement for EME from the TESDP Fund, contrary to the explicit requirement in the Constitution and the law. In *Yap v. Commission on Audit*,^[22] we upheld COA's disallowance of medical expenses and other benefits such as car maintenance, gasoline allowance and driver's subsidy due to petitioner's failure to point out the law specifically authorizing the same. There is nothing in the 2004-2007 GAAs which allows TESDA to grant its officials **another set of EME from another source of fund like the TESDP Fund**. COA aptly pointed out that not even TESDA's inclusion of EME from both the General Fund and the TESDP Fund in the 2005 GAA justified its payment of excessive EME from 2004 up to 2007.^[23] The 2005 GAA provided for a ceiling on EME that TESDA still had to comply despite the grant of EME in the 2005 GAA for foreign-assisted projects.

The position of project officer is not among those listed or authorized to be entitled to EME, namely, the officials named in the GAA, the officers of equivalent rank as