

## EN BANC

**[ G.R. No. 202733, September 30, 2014 ]**

**DEVELOPMENT BANK OF THE PHILIPPINES, PETITIONER, VS.  
COMMISSION ON AUDIT, JANEL D. NACION, DIRECTOR IV,  
LEGAL SERVICES SECTOR OF COA, AND THE SUPERVISING  
AUDITOR OF THE DEVELOPMENT BANK OF THE PHILIPPINES,  
RESPONDENTS.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a petition for *certiorari* under Rule 65 in relation to Rule 64 of the Rules of Court, seeking to reverse and set aside Decision No. 2011-055<sup>[1]</sup> and Resolution No. 2012-099,<sup>[2]</sup> dated August 17, 2011 and July 12, 2012, respectively, of the Commission on Audit (COA).

The antecedent facts are as follows:

On April 5, 2005, the Corporate Auditor of the Development Bank of the Philippines (DBP), Adela L. Dondonilla, issued Audit Observation Memorandum No. HO-BOD-AO-2004-002,<sup>[3]</sup> noting that the following foreign travels of former DBP Chairman Vitaliano N. Nañagas II and former Director Eligio V. Jimenez were not cleared by the Office of the President as required by Section 1 of Administrative Order (AO) No. 103 (Directing the Continued Adoption of Austerity Measures in the Government) dated August 31, 2004:

Name	Country	Period
Chairman Vitaliano N. Nañagas II	Vietnam	October 5-9, 2004
	Japan	October 18-23, 2004
	Japan and Hongkong	November 1-7, 2004
Director Eligio V. Jimenez	USA	October 1-29, 2004

On March 28, 2006, the DBP Assistant Corporate Secretary, Maria L. Ramos, submitted its comments and actions taken on said foreign travels and stated that while the same did not have prior clearance from the Office of the President, they were made in good faith and in the discharge of the duties, functions, and responsibilities as directors of the Bank.<sup>[4]</sup>

On April 4, 2007, the DBP Supervising Auditor, Hilconeda P. Abril, issued Notice of Disallowance No. BOD-2006-003 (2005) disallowing the amount of P1,574,121.62 consisting of P678,992.76 and P895,128.86 for the reimbursement of travel expenses of Chairman Nañagas and Director Jimenez, respectively, on the basis of the absence of clearance thereon from the Office of the President.<sup>[5]</sup>

On October 10, 2007, Director Jimenez requested for a reconsideration of the disallowance arguing that the questioned travel took place before the effectivity of AO No. 103, at a time when presidential approval was not required. In support thereof, he submitted a copy of an Opinion dated September 23, 2007, issued by then Chief Presidential Legal Counsel, Sergio A. F. Apostol, the pertinent portions of which reads:

**The law in force at the time of the said travel was Executive Order No. 298** dated March 23, 2004 which PRESCRIBES RULES AND REGULATIONS AND NEW RATES OF ALLOWANCES FOR OFFICIAL LOCAL AND FOREIGN TRAVELS OF GOVERNMENT PERSONNEL. This E.O. amended the first paragraph of Section 5 of Executive Order 248. Therefore, the second paragraph of Section 5 of E.O. 248 remains the same and reads:

For purposes of this Order, **approval of travels** of officials and employees of government-owned and/or controlled corporations and financial institutions that will last for not more than one (1) calendar month **shall be subject to the policies, rules and regulations that will be adopted by their respective governing Boards**, and by the Secretary of the Interior and Local Government in the case of officials and employees of local government units.

x x x

Therefore, **if at the time of the official travel of Mr. Vitaliano N. Nañagas II and Mr. Egilio V. Jimenez, the rules, policies and regulations of the governing board of the Development Bank of the Philippines allowed them to charge their travel expenses in their respective travel allowance as well as travel without the consent of the President of the Philippines, then such claims for reimbursements must be honored.**<sup>[6]</sup>

In addition to the Opinion cited above, Chairman Nañagas also asserted in his Appeal Brief/Memorandum dated October 3, 2007 that the disallowed disbursement is not a liquidation of a prior travel cash advance but, rather, a reimbursement of expenses chargeable against an expense allowance to which all members of the DBP Board are entitled. Moreover, he invoked the denial of due process since the disallowance was arrived at without giving him opportunity to address any negative audit observation before the same ripened into a disallowance.<sup>[7]</sup>

In a letter dated October 30, 2007, Supervising Auditor Abril denied the Motion for Reconsideration filed by Jimenez on the ground that Section 5 of E.O. No. 248 is under Title I: Official Local Travel of Government Personnel, which is inapplicable to the case at bar. Thereafter, on January 31, 2008, she submitted her Answer to the appeal of Chairman Nañagas arguing that his appeal did not address the substance of the disallowance, to which he replied reiterating his arguments in his appeal.<sup>[8]</sup>

On October 13, 2009, the Legal Services Sector of the COA rendered LSS Decision No. 2009-334<sup>[9]</sup> denying the appeal of Chairman Nañagas. It held that notwithstanding the DBP's exemption from the Salary Standardization Law, it is still required to comply with administrative directives, such as the AO No. 103, which was clearly violated when the DBP directors travelled abroad without prior approval of the Office of the President. Moreover, contrary to Chairman Nañagas' contention, the LSS found that there was no denial of due process since before the Notice of Disallowance was issued, the DBP Supervising Auditor, through the Audit Observation Memorandum, informed the DBP Directors of their foreign travels without the required clearance and gave the parties concerned a chance to explain, as reflected in the comments of DBP's Assistant Corporate Secretary.

Consequently, Chairman Nañagas filed a Motion for Reconsideration on November 23, 2009, which was consolidated and resolved by the COA together with the Petition for Review<sup>[10]</sup> filed by the DBP on February 23, 2010. In its Decision<sup>[11]</sup> dated August 17, 2011, the COA denied petitioner's appeals and ruled that while EO No. 248,<sup>[12]</sup> as amended by EO No. 298,<sup>[13]</sup> likewise applies to the foreign travels in question, prior approval of the President is nonetheless required since the applicable provision in the case at hand is Section 8 of the said orders, not Section 5, as opined by the Chief Presidential Legal Counsel. Hence, in consonance with said Section 8 of EO No. 248, as amended by EO No. 298, the COA ruled in the following wise:

In his September 23, 2007 opinion, Chief Presidential Legal Counsel Apostol said that Section 5 of EO No. 248, as amended by EO No. 298, provides that approval of travels of officials and employees of GOCCs lasting not more than one calendar month shall be subject to policies, rules and regulations adopted by their respective governing boards.

**However, the said Section 5 of EO No. 248 covers official domestic travels only. Official foreign travels are governed by Title II of EO No. 248, Section 8 of which expressly requires prior approval by the President of all official travels abroad of Department Secretaries, Undersecretaries, Assistant Secretaries, heads, senior assistant heads and assistant heads of GOCCS.**

x x x x

**Actually, the reimbursement referred to by Secretary Apostol was made dependent on his view that the foreign travels did not require prior presidential approval supposedly pursuant to the second paragraph of Section 5, EO No. 248. But as earlier discussed, such view is erroneous as it cited the wrong provision of EO No. 248, which governed domestic travels. Since the foreign travels of Chairman Nañagas II and Director Jimenez required presidential approval, necessarily all expenses incurred in connection therewith which were reimbursed to them during said travels should also be considered as unauthorized by the President, although these expenses may have the approval by the DBP Board of Directors.<sup>[14]</sup>**

Moreover, the COA refused to consider petitioner's invocation of good faith given the sheer clarity of the applicable law, which clearly differentiated local travels in Title I thereof from foreign travels in Title II. According to the COA, petitioner's senior officials could not have mistaken one for the other as they are expected to update their knowledge on whatever laws that may affect the performance of their functions.

In a Resolution<sup>[15]</sup> dated July 12, 2012, the COA further denied petitioner's Motion for Reconsideration and added that the Opinion of the Chief Presidential Legal Counsel cannot be equated to the required presidential approval, since the same is not a definitive decision which sufficiently excluded DBP officials from the required clearance.

Unfazed, petitioner filed the instant petition before this Court raising the following grounds:

I.

PUBLIC RESPONDENT COMMISSION ON AUDIT GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DENYING DBP'S PETITION FOR REVIEW FOR NO LESS THAN THE CHIEF PRESIDENTIAL LEGAL COUNSEL HAD ISSUED AN OPINION THAT THE CLEARANCE OF THE PRESIDENT IS NOT REQUIRED IN THE FOREIGN TRAVELS OF MESSRS. NAÑAGAS AND JIMENEZ. THE OPINION OF THE CHIEF PRESIDENTIAL LEGAL COUNSEL, A CABINET SECRETARY AND AN ALTER-EGO OF THE PRESIDENT, SHOULD BE ACCORDED CONSIDERABLE WEIGHT AND RESPECT.

II.

ASSUMING THE NECESSITY OF PRESIDENTIAL APPROVAL ON FOREIGN TRAVELS OF GFI OFFICIALS, THE OPINION OF THE CHIEF PRESIDENTIAL LEGAL COUNSEL MAY BE DEEMED TO BE THE ACT OF THE PRESIDENT IN EXCUSING THE OFFICIALS CONCERNED FROM THE REQUIREMENTS OF THE SUBJECT ADMINISTRATIVE ISSUANCES.

III.

THE PURPORTED MISTAKEN INTERPRETATION ON THE NECESSITY OF A PRESIDENTIAL CLEARANCE COMMITTED BY THE CHIEF PRESIDENTIAL LEGAL COUNSEL, WHO IS KNOWLEDGEABLE OF VARIOUS PRESIDENTIAL ISSUANCES, ONLY SHOWS THAT DBP OFFICIALS, WHO ARE EXPECTED TO KNOW THE ADMINISTRATIVE ISSUANCES AFFECTING THEIR FUNCTIONS ARE VULNERABLE TO COMMITTING THE SAME MISTAKE IN GOOD FAITH.

IV.

THE FOREIGN TRAVELS OF MESSRS. NAÑAGAS AND JIMENEZ REDOUNDED TO THE BENEFIT OF THE BANK AND THE COUNTRY AS

WELL. COMPELLING THE REFUND OF THE AMOUNT SUBJECT OF THE DISALLOWANCE WOULD BE UNFAIR, UNJUST AND ABSURD.

Petitioner contends that since the law in force at the time of travel was EO No. 248, as amended by EO No. 298, as opined by the Chief Presidential Legal Counsel, there was no need to secure prior clearance from the President on the respective travels as provided by Section 5 thereof.

Petitioner's argument is misplaced.

Section 5 under Title I of EO No. 248, as amended by EO No. 298, provides:

TITLE I: OFFICIAL **LOCAL** TRAVEL OF GOVERNMENT PERSONNEL

x x x x

Section 5. Approval of Travel and Payment of Travel Expenses. Travels of officials and employees of National Government Agencies for less than thirty (30) days and payment of travel expenses therefore shall be approved by the head of office/bureau or equivalent. Travels that will last thirty (30) days or more and payment of travel expenses therefore shall be approved by the Department Secretary or his equivalent. The approval of the Department Secretary concerned shall be construed as equivalent to the approval of the Secretary of Budget and Management.

For purposes of this Order, approval of travel of officials and employees of government-owned and/or controlled corporations and financial institutions that will last for not more than one (1) calendar month shall be subject to the policies, rules and regulations that will be adopted by their respective governing Boards, and by the Secretary of the Interior and Local Government in the case of officials and employees of local government units.<sup>[16]</sup>

It is clear from the above that Section 5 of the subject Executive Order pertains to local travels of government employees and not to the foreign travels of the DBP officials herein. Accordingly, as correctly observed by respondent COA, the provision applicable to the case at hand is not Section 5, as asserted by petitioner, but Section 8 under Title II, EO No. 248, as amended by EO No. 298, which provides:

TITLE II: OFFICIAL TRAVEL **ABROAD** OF GOVERNMENT PERSONNEL

SECTION 8. APPROVAL OF THE PRESIDENT. All official travels **abroad** of Department Secretaries, Undersecretaries, Assistant Secretaries, heads, senior assistant heads and assistant heads of government-owned and/or controlled corporations and **financial institutions**, and heads of local government units like Provincial Governors and Mayors of highly urbanized cities or independent component cities, and other officials of equivalent rank whose nature of travel falls under the categories prescribed in this Order **shall be subject to the prior approval of the**