

EN BANC

[G.R. No. 188635, January 29, 2013]

BRENDA L. NAZARETH, REGIONAL DIRECTOR, DEPARTMENT OF SCIENCE AND TECHNOLOGY, REGIONAL OFFICE NO. IX, ZAMBOANGA CITY, PETITIONER, VS. THE HON. REYNALDO A. VILLAR, HON. JUANITO G. ESPINO, JR., (COMMISSIONERS OF THE COMMISSION ON AUDIT), AND DIR. KHEM M. INOK, RESPONDENTS.

DECISION

BERSAMIN, J.:

No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.^[1] A violation of this constitutional edict warrants the disallowance of the payment. However, the refund of the disallowed payment of a benefit granted by law to a covered person, agency or office of the Government may be barred by the good faith of the approving official and of the recipient.

Being assailed by petition for *certiorari* on the ground of its being issued with grave abuse of discretion amounting to lack or excess of jurisdiction is the decision rendered on June 4, 2009 by the Commission on Audit (COA) in COA Case No. 2009-045 entitled *Petition of Ms. Brenda L. Nazareth, Regional Director, Department of Science and Technology, Regional Office No. IX, Zamboanga City, for review of Legal and Adjudication Office (LAO)-National Decision No. 2005-308 dated September 15, 2005 and LAO-National Resolution No. 2006-308A dated May 12, 2006 on disallowances of subsistence, laundry, hazard and other benefits in the total amount of P3,591,130.36*,^[2] affirming the issuance of notices of disallowance (NDs) by the Audit Team Leader of COA Regional Office No. IX in Zamboanga City against the payment of benefits to covered officials and employees of the Department of Science and Technology (DOST) for calendar year (CY) 2001 out of the savings of the DOST.

The petitioner DOST Regional Director hereby seeks to declare the decision dated June 4, 2009 “null and void,” and prays for the lifting of the disallowance of the payment of the benefits for CY 2001 for being within the ambit of Republic Act No. 8439 (R.A. No. 8439), otherwise known as the *Magna Carta for Scientists, Engineers, Researchers, and other Science and Technology Personnel in the Government* (*Magna Carta*, for short), and on the strength of the Memorandum of Executive Secretary Ronaldo B. Zamora dated April 12, 2000 authorizing the use of the savings for the purpose.

Antecedents

On December 22, 1997, Congress enacted R.A. No. 8439 to address the policy of the State to provide a program for human resources development in science and

technology in order to achieve and maintain the necessary reservoir of talent and manpower that would sustain the drive for total science and technology mastery.^[3] Section 7 of R.A. No. 8439 grants the following additional allowances and benefits (*Magna Carta* benefits) to the covered officials and employees of the DOST, to wit:

- (a) *Honorarium*. - S & T personnel who rendered services beyond the established irregular workload of scientists, technologists, researchers and technicians whose broad and superior knowledge, expertise or professional standing in a specific field contributes to productivity and innovativeness shall be entitled to receive honorarium subject to rules to be set by the Department;
- (b) *Share in royalties*. - S & T scientists, engineers, researchers and other S & T personnel shall be entitled to receive share in royalties subject to guidelines of the Department. The share in royalties shall be on a sixty percent-forty percent (60%-40%) basis in favor of the Government and the personnel involved in the technology/ activity which has been produced or undertaken during the regular performance of their functions. For the purpose of this Act, share in royalties shall be defined as a share in the proceeds of royalty payments arising from patents, copyrights and other intellectual property rights;

If the researcher works with a private company and the program of activities to be undertaken has been mutually agreed upon by the parties concerned, any royalty arising therefrom shall be divided according to the equity share in the research project;

- (c) *Hazard allowance*. - S & T personnel involved in hazardous undertakings or assigned in hazardous workplaces, shall be paid hazard allowances ranging from ten (10%) to thirty (30%) percent of their monthly basic salary depending on the nature and extent of the hazard involved. The following shall be considered hazardous workplaces:
 - (1) Radiation-exposed laboratories and service workshops;
 - (2) Remote/depressed areas;
 - (3) Areas declared under a state of calamity or emergency;
 - (4) Strife-torn or embattled areas;
 - (5) Laboratories and other disease-infested areas.
- (d) *Subsistence allowance*. - S & T personnel shall be entitled to full subsistence allowance equivalent to three (3) meals a day, which may be computed and implemented in accordance with the criteria to be provided in the implementing rules and regulations. Those assigned out of their regular work stations shall be entitled to per diem in place of the allowance;
- (e) *Laundry allowance*. - S & T personnel who are required to wear a prescribed uniform during office hours shall be entitled to a laundry allowance of not less than One hundred fifty pesos (P150.00) a month;
- (f) *Housing and quarter allowance*. - S & T personnel who are on duty in laboratories, research and development centers and other government facilities shall be entitled to free living

quarters within the government facility where they are stationed: Provided, That the personnel have their residence outside of the fifty (50)-kilometer radius from such government facility;

- (g) Longevity pay. - A monthly longevity pay equivalent to five percent (5%) of the monthly basic salary shall be paid to S & T personnel for every five (5) years of continuous and meritorious service as determined by the Secretary of the Department; and
- (h) Medical examination. - During the tenure of their employment, S & T personnel shall be given a compulsory free medical examination once a year and immunization as the case may warrant. The medical examination shall include:
 - (1) Complete physical examination;
 - (2) Routine laboratory, Chest X-ray and ECG;
 - (3) Psychometric examination;
 - (4) Dental examination;
 - (5) Other indicated examination.

Under R.A. No. 8439, the funds for the payment of the *Magna Carta* benefits are to be appropriated by the General Appropriations Act (GAA) of the year following the enactment of R.A. No. 8439.^[4]

The DOST Regional Office No. IX in Zamboanga City released the *Magna Carta* benefits to the covered officials and employees commencing in CY 1998 despite the absence of specific appropriation for the purpose in the GAA. Subsequently, following the post-audit conducted by COA State Auditor Ramon E. Vargas on April 23, 1999, October 28, 1999, June 20, 2000, February 27, 2001, June 27, 2001, October 10, 2001 and October 17, 2001, several NDs were issued disapproving the payment of the *Magna Carta* benefits. The justifications for the disallowance were stated in the post-audit report, as follows:

- a) ND Nos. 99-001-101 (98) to 99-105-101 (98) [Payment of Subsistence and Laundry Allowances and Hazard Pay for the months of February-November 1998] – The State Auditor claims that no funds were appropriated in the 1998 General Appropriations Act for the said purpose notwithstanding the effectivity of the Magna Carta, providing for payment of allowances and benefits, among others, to Science and Technology Personnel in the Government;
- b) ND Nos. 2000-101-101 (99) to 2000-010-101 (99) [Payment of Subsistence and Laundry Allowances and Hazard Pay for the months of January-June 1999] – The State Auditor claims that no Department of Budget and Management (DBM) and Civil Service Commission (CSC) guidelines were issued by the said Departments on the payment thereof;
- c) ND Nos. 2001-001-101 (00) to 2001-013-101 (00) [Payment of Subsistence and Laundry Allowances, Hazard Pay and Health Care Program for the month of October 1999 and January-September 2000] – The State Auditor claims that there was no basis for the payment of the said allowances because the President vetoed provisions of the General

Appropriations Act (GAA) regarding the use of savings for the payment of benefits;

d) ND Nos. 2001-014-101(00) to 2001-025-101 (00) [Payment of Subsistence and Laundry Allowances, Hazard Pay and Medical Benefits for the months of January-October 2001] – The provision for the use of savings in the General Appropriations Act (GAA) was vetoed by the President; hence, there was no basis for the payment of the aforesaid allowances or benefits according to the State Auditor.^[5]

The disallowance by the COA prompted then DOST Secretary Dr. Filemon Uriarte, Jr. to request the Office of the President (OP) through his Memorandum dated April 3, 2000 (*Request for Authority to Use Savings for the Payment of Magna Carta Benefits as provided for in R.A. 8439*) for the authority to utilize the DOST's savings to pay the Magna Carta benefits.^[6] The salient portions of the Memorandum of Secretary Uriarte, Jr. explained the request in the following manner:

x x x. However, the amount necessary for its full implementation had not been provided in the General Appropriations Act (GAA). Since the Act's effectivity, the Department had paid the 1998 MC benefits out of its current year's savings as provided for in the Budget Issuances of the Department of Budget and Management while the 1999 MC benefits were likewise sourced from the year's savings as authorized in the 1999 GAA.

The 2000 GAA has no provision for the use of savings. The Department, therefore, cannot continue the payment of the Magna Carta benefits from its 2000 savings. x x x. The DOST personnel are looking forward to His Excellency's favorable consideration for the payment of said MC benefits, being part of the administration's 10-point action program to quote "I will order immediate implementation of RA 8439 (the Magna Carta for Science and Technology Personnel in Government)" as published in the Manila Bulletin dated May 20, 1998.

Through the Memorandum dated April 12, 2000, then Executive Secretary Ronaldo Zamora, acting by authority of the President, approved the request of Secretary Uriarte, Jr.,^[7] viz:

With reference to your Memorandum dated April 03, 2000 requesting authority to use savings from the appropriations of that Department and its agencies for the payment of Magna Carta Benefits as provided for in R.A. 8439, please be informed that the said request is hereby approved.

On July 28, 2003, the petitioner, in her capacity as the DOST Regional Director in Region IX, lodged an appeal with COA Regional Cluster Director Ellen Sescon, urging the lifting of the disallowance of the *Magna Carta* benefits for the period covering CY 1998 to CY 2001 amounting to P4,363,997.47. She anchored her appeal on the April 12, 2000 Memorandum of Executive Secretary Zamora, and cited the provision in

the GAA of 1998,^[8] to wit:

Section 56. *Priority in the Use of Savings.*– In the use of savings, priority shall be given to the augmentation of the amounts set aside for compensation, bonus, retirement gratuity, terminal leave, old age pension of veterans and other personnel benefits authorized by law and those expenditure items authorized in agency Special Provisions and in Sec. 16 and in other sections of the General Provisions of this Act.^[9]

In support of her appeal, the petitioner contended that the DOST Regional Office had “considered the subsistence and laundry allowance as falling into the category ‘other personnel benefits authorized by law,’ hence the payment of such allowances were charged to account 100-900 for Other Benefits (Honoraria), which was declared to be the savings of our Office.”^[10] She argued that the April 12, 2000 Memorandum of Executive Secretary Zamora not only ratified the payment of the *Magna Carta* benefits out of the savings for CY 1998 and CY 1999 and allowed the use of the savings for CY 2000, but also operated as a continuing endorsement of the use of savings to cover the *Magna Carta* benefits in succeeding calendar years.

The appeal was referred to the Regional Legal and Adjudication Director (RLAD), COA Regional Office IX in Zamboanga City, which denied the appeal and affirmed the grounds stated in the NDs.

Not satisfied with the result, the petitioner elevated the matter to the COA Legal and Adjudication Office in Quezon City

On September 15, 2005, respondent Director Khem N. Inok of the COA Legal and Adjudication Office rendered a decision in LAO-N-2005-308,^[11] denying the petitioner’s appeal with the modification that only the NDs covering the *Magna Carta* benefits for CY 2000 were to be set aside in view of the authorization under the Memorandum of April 12, 2000 issued by Executive Secretary Zamora as the *alter ego* of the President. The decision explained itself as follows:

In resolving the case, the following issues should first be resolved:

1. Whether or not the “approval” made by the Executive Secretary on April 12, 2000 on the request for authority to use savings of the agency to pay the benefits, was valid; and
2. Whether or not the payments of the benefits made by the agency using its savings for the years 1998 and 1999 based on Section 56 of RA 8522 (General Appropriations Act of 1998 [GAA]) were legal and valid.

Anent the first issue, the law in point is Article VI, Section 25(5) of the 1987 Constitution, which aptly provides that: