

EN BANC

[G.R. No. 193677, September 06, 2011]

LUCIANO VELOSO, ABRAHAM CABOCHAN, JOCELYN DAWIS-ASUNCION AND MARLON M. LACSON, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a Petition for Review on *Certiorari* under Rule 65 of the Rules of Court assailing Decision No. 2008-088^[1] dated September 26, 2008 and Decision No. 2010-077^[2] dated August 23, 2010 of the Commission on Audit (COA) sustaining Notice of Disallowance (ND) No. 06-010-100-05^[3] dated May 24, 2006 disallowing the payment of monetary reward as part of the Exemplary Public Service Award (EPSA) to former three-term councilors of the City of Manila authorized by City Ordinance No. 8040.

The facts of the case are as follows:

On December 7, 2000, the City Council of Manila enacted Ordinance No. 8040 entitled *An Ordinance Authorizing the Conferment of Exemplary Public Service Award to Elective Local Officials of Manila Who Have Been Elected for Three (3) Consecutive Terms in the Same Position*. Section 2 thereof provides:

SEC. 2. The EPSA shall consist of a Plaque of Appreciation, ***retirement and gratuity pay remuneration equivalent to the actual time served in the position for three (3) consecutive terms***, subject to the availability of funds as certified by the City Treasurer. PROVIDED, That [it] shall be accorded to qualified elected City Officials on or before the first day of service in an appropriated public ceremony to be conducted for the purpose. PROVIDED FURTHER, That this Ordinance shall only cover the Position of Mayor, Vice-Mayor and Councilor: PROVIDED FURTHERMORE, That those who were elected for this term and run for higher elective position thereafter, after being elected shall still be eligible for this award for the actual time served: PROVIDED FINALLY That the necessary and incidental expenses needed to implement the provisions of this Ordinance shall be appropriated and be included in the executive budget for the year when any city official will qualify for the Award.^[4]

The ordinance was deemed approved on August 23, 2002.

Pursuant to the ordinance, the City made partial payments in favor of the following former councilors:

Councilor/Recipients	Check	Date	Amount
Abraham C. Cabochan	353010	06/07/05	P1,658,989.09
Julio E. Logarta, Jr.	353156	06/14/05	P1,658,989.08
Luciano M. Veloso	353778	06/30/05	P1,658,989.08
Jocelyn Dawis-Asuncion	353155	06/14/05	P1,658,989.08
Marlon M. Lacson	353157	06/14/05	P1,658,989.08
Heirs of Hilarion C. Silva	353093	06/09/05	P1,628,311.59
TOTAL			P9,923,257.00^[5]

On August 8, 2005, Atty. Gabriel J. Espina (Atty. Espina), Supervising Auditor of the City of Manila, issued Audit Observation Memorandum (AOM) No. 2005-100(05)07(05)^[6] with the following observations:

1. The initial payment of monetary reward as part of Exemplary Public Service Award (EPSA) amounting to P9,923,257.00 to former councilors of the City Government of Manila who have been elected for three (3) consecutive terms to the same position as authorized by City Ordinance No. 8040 is without legal basis.

2. The amount granted as monetary reward is excessive and tantamount to double compensation in contravention to Article 170 (c) of the IRR of RA 7160 which provides that no elective or appointive local official shall receive additional, double or indirect compensation unless specifically authorized by law.

3. The appropriations for retirement gratuity to implement EPSA ordinance was classified as Maintenance and Other Operating Expenses instead of Personal Services contrary to Section 7, Volume III of the Manual on the New Government Accounting System (NGAS) for local government units and COA Circular No. 2004-008 dated September 20, 2004 which provide the updated description of accounts under the NGAS.

^[7]

After evaluation of the AOM, the Director, Legal and Adjudication Office (LAO)-Local of the COA issued ND No. 06-010-100-05^[8] dated May 24, 2006.

On November 9, 2006, former councilors Jocelyn Dawis-Asuncion (Dawis-Asuncion), Luciano M. Veloso (Veloso), Abraham C. Cabochan (Cabochan), Marlon M. Lacson (Lacson), Julio E. Logarta, Jr., and Monina U. Silva, City Accountant Gloria C. Quilantang, City Budget Officer Alicia Moscaya and then Vice Mayor and Presiding Officer Danilo B. Lacuna filed a Motion to Lift the Notice of Disallowance.^[9] In its Decision No. 2007-171^[10] dated November 29, 2007, the LAO-Local decided in favor of the movants, the pertinent portion of which reads:

WHEREFORE, premises considered, the motion of former Vice- Mayor Danilo B. Lacuna, et al., is GRANTED and ND No. 06-010-100-05 dated

May 24, 2006 is hereby ordered lifted as the reasons for the disallowance have been sufficiently explained. This decision, however, should not be taken as precedence (sic) to other or similar personal benefits that a local government unit may extend which should be appreciated based on their separate and peculiar circumstances.^[11]

Citing Article 170 of the Implementing Rules and Regulations (IRR) of Republic Act (RA) No. 7160, the LAO-Local held that the monetary reward given to the former councilors can be one of gratuity and, therefore, cannot be considered as additional, double or indirect compensation. Giving importance to the principle of local autonomy, the LAO-local upheld the power of local government units (LGUs) to grant allowances. More importantly, it emphasized that the Department of Budget and Management (DBM) did not disapprove the appropriation for the EPSA of the City which indicate that the same is valid.^[12]

Upon review, the COA rendered the assailed Decision No. 2008-088 sustaining ND No. 06-010-100-05.^[13] The motion for reconsideration was likewise denied in Decision No. 2010-077.^[14] The COA opined that the monetary reward under the EPSA is covered by the term "compensation." Though it recognizes the local autonomy of LGUs, it emphasized the limitations thereof set forth in the Salary Standardization Law (SSL). It explained that the SSL does not authorize the grant of such monetary reward or gratuity. It also stressed the absence of a specific law passed by Congress which ordains the conferment of such monetary reward or gratuity to the former councilors.^[15] In Decision No. 2010-077, in response to the question on its jurisdiction to rule on the legality of the disbursement, the COA held that it is vested by the Constitution the power to determine whether government entities comply with laws and regulations in disbursing government funds and to disallow irregular disbursements.^[16]

Aggrieved, petitioners Veloso, Cabochan, Dawis-Asuncion and Lacson come before the Court in this special civil action for *certiorari* alleging grave abuse of discretion on the part of the COA. Specifically, petitioners claim that:

The respondent Commission on Audit did not only commit a reversible error but was, in fact, guilty of grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the monetary award given under the EPSA partakes of the nature of an additional compensation prohibited under the Salary Standardization Law, and other existing laws, rules and regulations, and not a GRATUITY "voluntarily given in return for a favor or services rendered purely out of generosity of the giver or grantor." (*Plastic Tower Corporation vs. NLRC*, 172 SCRA 580-581).

Apart from being totally oblivious of the fact that the monetary award given under the EPSA was intended or given in return for the exemplary service rendered by its recipient(s), the respondent COA further committed grave abuse of discretion when it effectively nullified a duly-enacted ordinance which is essentially a judicial function. In other words, in the guise of disallowing the disbursement in question, the respondent

Commission arrogated unto itself an authority it did not possess, and a prerogative it did not have.^[17]

On November 30, 2010, the Court issued a *Status Quo Ante* Order^[18] requiring the parties to maintain the *status quo* prevailing before the implementation of the assailed COA decisions.

There are two issues for resolution: (1) whether the COA has the authority to disallow the disbursement of local government funds; and (2) whether the COA committed grave abuse of discretion in affirming the disallowance of P9,923,257.00 covering the EPSA of former three-term councilors of the City of Manila authorized by Ordinance No. 8040.

In their Reply,^[19] petitioners insist that the power and authority of the COA to audit government funds and accounts does not carry with it in all instances the power to disallow a particular disbursement.^[20] Citing *Guevara v. Gimenez*,^[21] petitioners claim that the COA has no discretion or authority to disapprove payments on the ground that the same was unwise or that the amount is unreasonable. The COA's remedy, according to petitioners, is to bring to the attention of the proper administrative officer such expenditures that, in its opinion, are irregular, unnecessary, excessive or extravagant.^[22] While admitting that the cited case was decided by the Court under the 1935 Constitution, petitioners submit that the same principle applies in the present case.

We do not agree.

As held in *National Electrification Administration v. Commission on Audit*,^[23] the ruling in *Guevara* cited by petitioners has already been overturned by the Court in *Caltex Philippines, Inc. v. Commission on Audit*.^[24] The Court explained^[25] that under the 1935 Constitution, the Auditor General could not correct irregular, unnecessary, excessive or extravagant expenditures of public funds, but could only bring the matter to the attention of the proper administrative officer. Under the 1987 Constitution, however, the COA is vested with the authority to determine whether government entities, including LGUs, comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of these funds.

Section 2, Article IX-D of the Constitution gives a broad outline of the powers and functions of the COA, to wit:

Section 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled

corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for ***the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.***^[26]

Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987 echoes this constitutional mandate to COA.

Under the first paragraph of the above provision, the COA's audit jurisdiction ***extends to the government, or any of its subdivisions, agencies, or instrumentalities,*** including government-owned or controlled corporations with original charters. Its jurisdiction likewise covers, albeit on a post-audit basis, the constitutional bodies, commissions and offices that have been granted fiscal autonomy, autonomous state colleges and universities, other government-owned or controlled corporations and their subsidiaries, and such non-governmental entities receiving subsidy or equity from or through the government. The power of the COA to examine and audit government agencies cannot be taken away from it as Section 3, Article IX-D of the Constitution mandates that "no law shall be passed exempting any entity of the Government or its subsidiary in any guise whatever, or any investment of public funds, from the jurisdiction of the [COA]."

Pursuant to its mandate as the guardian of public funds, the COA is vested with broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property.^[27] This includes the exclusive authority to define the scope of its audit and examination, establish the techniques and methods for such review, and promulgate accounting and auditing rules and regulations.^[28] The COA is endowed with enough latitude to determine, prevent and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds.^[29] It is tasked to be vigilant and conscientious in safeguarding the proper use of the government's, and ultimately the people's, property.^[30] The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.^[31]

The Court had therefore previously upheld the authority of the COA to disapprove payments which it finds excessive and disadvantageous to the Government; to