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[G.R. No. 127515, May 10, 2005]

RODOLFO DE JESUS, EDELWINA DG. PARUNGAO AND REBECCA A. BARBO, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

[G.R. No. 127544]

ANTONIO R. DE VERA, IN HIS CAPACITY AS ADMINISTRATOR, LOCAL WATER UTILITIES ADMINISTRATION, IN HIS BEHALF AND OF OTHER LWUA OFFICIALS AND EMPLOYEES, PETITIONERS, VS. COMMISSION ON AUDIT, RESPONDENT.

D E C I S I O N

TINGA, J.:

Before this Court are two petitions assailing COA Decision No. 96-650 rendered by respondent Commission on Audit (COA)[1] on November 21, 1996, sustaining the COA Auditor's disallowance of petitioners' rice allowances disbursed on various dates. G.R. No. 127515 is a petition for certiorari filed pursuant to Section 7, Article IX (A) of the 1987 Constitution in relation to Section 50 of Presidential Decree (P.D.) No. 1445 and Rule 45 of the Rules of Court, seeking to nullify COA Decision No. 96-650. G.R. No. 127544 is a petition for review on certiorari pursuant to Section 7, Article IX of the 1987 Constitution in relation to Book V, Title I, Subtitle B, Chapter 5, Section 35 of the Administrative Code of 1987, praying for the reversal of COA Decision No. 96-650 and the issuance of an order authorizing the grant of rice allowances. Upon motion of the Office of the Solicitor General (OSG), the petitions in G.R. Nos. 127515 and 127544 were consolidated since the subject of both petitions is the same COA Decision.

Petitioners in G.R. No. 127515 were the incumbent officers as of June 30, 1989 of the Local Water Utilities Administration (LWUA), a government-owned and/or controlled corporation created under P.D. No. 198. They are Rodolfo S. De Jesus, Deputy Administrator for Administrative Services; Edelwina DG. Parungao, Manager of Human Resource Management Department; and Rebecca A. Barbo, Manager of Property Management. Antonio R. De Vera, petitioner in G.R. No. 127544, is suing in his capacity as Administrator and on behalf of the officials and employees of the LWUA.

Since 1982 officials and employees of the LWUA had been receiving a rice subsidy of P200.00 for every two months pursuant to LWUA Board Resolution No. 05, Series of 1986.[2] The amount was further increased to P350.00 in 1986 pursuant to a series of board resolutions.

In the interim, then President Corazon Aquino issued Memorandum Order No. 177

(M.O. No. 177),[3] prescribing the policies and guidelines in rationalizing compensation structures in government-owned and/or controlled corporations (GOCCs). Pertinently, M.O. No. 177 directed the payment of a "transition allowance" to incumbents of positions in corporate entities receiving additional fringe benefits for a period of at least twelve (12) months prior to its effectivity, the aggregate of which exceeded the standardized rates under existing laws.[4] To implement the directives under M.O. No. 177, the Department of Budget and Management (DBM) issued Corporate Budget Circular No. 15 (DBM-CBC No. 15),[5] which laid down the procedural requirements in availing of the "transition allowance."

On July 1, 1989, Congress passed Republic Act No. 6758 (R.A. No. 6758), entitled *An Act Prescribing A Revised Compensation and Position Classification System in the Government and For Other Purposes,* commonly known as the Salary Standardization Law. Subject to certain exceptions, Section 12 thereof deemed all allowances to be included in the standardized rates prescribed therein. On October 2, 1989, the DBM issued Corporate Compensation Circular No. 10 (DBM-CCC No. 10), to implement the revised compensation and position classification system prescribed under R.A. No. 6758 for GOCCs and government financial institutions (GFIs). Paragraph 5.5.1 of DBM-CCC No. 10 included a rice subsidy as among the allowances/fringe benefits not likewise integrated into the basic salary and allowed to be continued only for incumbents as of June 30, 1989 but subject to the condition that the grant of the same is with appropriate authorization either from the DBM, Office of the President or legislative issuances.

Even after the effectivity of R.A. No. 6758, the grant of rice allowances to LWUA officials and employees continued and was further increased to P600.00 per month per employee when the LWUA Board of Trustees passed Resolution No. 38 on August 14, 1991.

The LWUA Corporate Auditor, however, disallowed a series of payrolls intended for the rice allowances for the years 1991 to 1994, citing Section 12 of R.A. No. 6758 and its implementing rule, paragraph 5.5 of DBM-CCC No. 10, and the provisions of M.O. No. 177 and DBM-CBC No. 15.

Petitioners in G.R. No. 127515 wrote respondent COA on May 30, 1994 and on June 27, 1994 to appeal respectively the disallowance totaling an amount of P4,160,400.00 for 1993 and P1,647,400.00 for January to April 1994. They argued that DBM-CCC No. 10, which was unenforceable for lack of publication, cannot supplant and negate Section 12 of R.A. No. 6758.

Administrator Antonio De Vera, petitioner in G.R. No. 127544, also sent a letter-appeal to respondent COA on behalf of LWUA officials and employees for reconsideration of the disallowance of the rice subsidies for 1991 to 1992 in the total amount of P2,059,700.00. For his part, De Vera argued that the disallowance of the rice subsidies was without legal basis considering that DBM-CCC No. 10, upon which the disallowance was based, was never published in the Official Gazette. De Vera also invoked the due process and equal protection clauses and the principle of non-diminution of salary and compensation to further his appeal.

On November 21, 1996, respondent COA rendered the assailed decision denying De Vera's appeal on the ground that until DBM-CCC No. 10 was nullified by the proper

court, respondent COA must faithfully observe and carry out its mandate. Respondent COA also sustained the disallowance of the grant of the rice allowance to LWUA officials and employees for non-submission by LWUA of the list of allowances being received by its employees as required by M.O. No. 177 and DBM-CBC No. 15.

During the pendency of this case, this Court promulgated *De Jesus v. Commission on Audit*[6] declaring the ineffectiveness of DBM-CCC No. 10 due to its non-publication either in the Official Gazette or in a newspaper of general circulation in the country.

From the COA Decision No. 96-650, two separate petitions were filed with this Court. In G.R. No. 127544, petitioner De Vera raises the following issues for resolution:

> I. RESPONDENT COMMISSION ON AUDIT SERIOUSLY ERRED IN RELYING UPON DBM CORPORATE COMPENSATION CIRCULAR NO. 10 AS LEGAL BASIS FOR UPHOLDING OR SUSTAINING THE LWUA CORPORATE AUDITOR'S DISAPPROVAL OF THE RICE ALLOWANCES.
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> II. RESPONDENT COMMISSION ON AUDIT SERIOUSLY ERRED IN DISREGARDING THE CLEAR PROVISIONS OF REPUBLIC ACT 6758 WHICH EXPLICITLY AUTHORIZE THE GRANT OF ADDITIONAL COMPENSATION SUCH AS THE RICE ALLOWANCE EVEN IF THE SAME IS NOT INTEGRATED INTO THE STANDARDIZED SALARY RATES.
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> III. RESPONDENT COMMISSION ON AUDIT SERIOUSLY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT RENDERED A DECISION THAT IS VIOLATIVE OF DUE PROCESS, THE EQUAL PROTECTION CLAUSE, AND THE BASIC RIGHTS OF WORKERS.[7]

In G.R. No. 127515, petitioners assert that respondent COA committed grave abuse of discretion in upholding the disallowance of the rice subsidy, thus:

> RESPONDENT COMMISSION ERRED IN GIVING EFFECT TO DBM CCC NO. 10 DATED OCTOBER 2, 1989 AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN UPHOLDING THE DISALLOWANCE OF THE RICE ALLOWANCE OF LWUA OFFICIALS AND EMPLOYEES.[8]

The Court required the Office of the Solicitor General (OSG) to file respective comments to the two petitions. In a *Manifestation and Motion* dated April 10, 1997, filed in G.R. No. 127544, the OSG prayed for the consolidation of the two cases, which the Court allowed in a *Resolution* dated July 29, 1997. The OSG likewise filed on July 28, 1997 another *Manifestation and Motion (In Lieu of Consolidated Comment*) wherein it posited that DBM-CCC No. 10 was patently without force and effect, rendering respondent and COA's arguments against the grant of additional compensation accordingly unmeritorious.[9] It argued that DBM-CCC No. 10 was superseded by the passage of R.A. No. 6758 or the Salary Standardization Law, which expressly authorized additional allowances which were allowed prior to the effectivity of the Salary Standardization Law and not integrated into the said law.

Moreover, the OSG contended that DBM-CCC No. 10 was not submitted for publication with the Official Gazette, contrary to the rule laid down in *Tañada v. Tuvera*.[10] In light of the adverse position it had taken from that of the COA, the OSG asked that COA instead be allowed to file its own comment, aside from the fact that it is the General Counsel of respondent COA which has been filing pleadings in behalf of the Commission before this Court.

Petitioner De Vera in G.R. No. 127544 filed suit in his capacity as LWUA Administrator in behalf of all other officials and employees of the agency, and is represented by the Office of the Government Corporate Counsel (OGCC). On the other hand, the petitioners in G.R. No. 127515, three employees of the LWUA, filed the petition in their own behalf and have been representing themselves, they being lawyers apparently.

Interestingly, respondent COA, in its *Memorandum*, questions the legal personality of the petitioners in G.R. No. 127515, asserting that the petitioners had failed to allege in their petition their legal capacities in bringing suit against the COA. Citing relevant Civil Service rules, respondent COA alleges petitioners in G.R. No. 127515 are barred from suing the Commission in their individual capacities as officers of the LWUA as they are barred in engaging private practice of their profession. This argument, belatedly raised as it is, deserves scant consideration. The petitioners in G.R. No. 127515 are not barred by Civil Service rules from suing the COA in their own behalf, and we are satisfied that they have the requisite legal personality to institute suit before this Court. Moreover, upon consolidation of the two petitions, the OGCC submitted a *Memorandum* on behalf of all of the petitioners in the two petitions. Assuming *arguendo* that the petitioners in G.R. No. 127515 improperly filed suit without proper representation by counsel, such defect is now deemed cured and mooted by the subsequent representations in their behalf by the OGCC.

The procedural aspect having been dispensed with, a discussion on the merits is now in order. The petitions are mainly anchored on the theory that DBM-CCC No. 10, upon which the disallowance of the rice subsidy was based, is without force and effect.

The inefficaciousness of DBM-CCC No. 10 was declared in *De Jesus v. COA,*[11] where the Court was faced with the question whether petitioners therein, who are the same petitioners in G.R. No. 127515, suing on behalf of fellow LWUA employees were still entitled to the honoraria which they were receiving prior to the effectivity of R.A. No. 6758. Finding it unnecessary to resolve the issue whether paragraph 5.6 of DBM-CCC No. 10 had unduly supplanted the pertinent provisions of R.A. No. 6758, the Court altogether struck down DBM-CCC No. 10 as ineffective in the absence of the requisite publication in the Official Gazette or newspaper of general circulation. Pertinent portion of the decision reads:

> On the need for publication of subject DBM-CCC No. 10, we rule in the affirmative. Following the doctrine enunciate in *Tañada,* publication in the Official Gazette or in a newspaper of general circulation in the Philippines is required since DBM-CCC No. 10 is in the nature of an administrative circular the purpose of which is to enforce or implement an existing law. Stated differently, to be effective and enforceable, DBM-CCC No. 10 must go through the requisite publication in the Official Gazette or in a newspaper of general circulation in the Philippines.

> In the present case under scrutiny, it is decisively clear that DBM-CCC No. 10, which completely disallows payment of allowances and other additional compensation to government officials and employees, starting November 1, 1989, is not a mere interpretative or internal regulation. It is something more than that. And why not, when it tends to deprive government workers of their allowances and additional compensation sorely needed to keep body and soul together. At the very least, before the said circular under attack may be permitted to substantially reduce their income, the government officials and employees concerned should be apprised and alerted by the publication of subject circular in the Official Gazette or in a newspaper of general circulation in the Philippines – to the end that they be given amplest opportunity to voice out whatever position they may have, and to ventilate their stance on the matter. This approach is more in keeping with democratic precepts and rudiments of fairness and transparency.[12]

Lest this Court be reproached for taking the path of least resistance, a scrutiny of whether or not the disallowance of the rice subsidy was meritorious is in order. The bone of contention is whether or not the rice subsidy granted to LWUA officials and employees after the effectivity of R.A. No. 6758 is already included in the standardized salary rates and, therefore, may no longer be given separately.

The consolidation of allowances is mandated by Section 12 of R.A. No. 6758, which incidentally is the same provision petitioners and respondent COA cite to advance their arguments. Section 12, R.A. No. 6758 reads:

> SECTION 12. Consolidation of Allowances and Compensation. – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. **Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.**
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> Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.[13]

This is not the first time that the Court is called upon to rule on respondent COA's application and interpretation of the letter and intent of Section 12, R.A. No. 6758 in light of its power to disallow unauthorized disbursement of public funds.

In *Philippine Ports Authority v. Commission on Audit,*[14] the Court emphasized the intention of the legislature to protect incumbents receiving allowances over and above those authorized by R.A. No. 6758 so that they may continue to receive them even after the passage of R.A. No. 6758. Thus, the Court declared petitioners