

EN BANC

[G.R. No. 147392, March 12, 2004]

**BENEDICTO ERNESTO R. BITONIO, JR., PETITIONER, VS.
COMMISSION ON AUDIT AND CELSO D. GANGAN, CHAIRMAN OF
THE COMMISSION ON AUDIT, RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

The instant petition filed under Rule 64 of the Revised Rules of Court seeks the annulment of the Decision^[1] of the Commission on Audit (COA) dated January 30, 2001 denying the petitioner's motion for the reconsideration of the COA Notices of Disallowance Nos. 98-008-101 (95) and 98-017-101 (97) dated July 31, 1998 and October 9, 1998, respectively, *involving* the per diems the petitioner received from the Philippine Economic Zone Authority (PEZA). In order to avoid multiplicity of suits, an Amended Petition^[2] dated August 16, 2002 was later filed to include in the resolution of the instant petition Notice of Disallowance No. 98-003-101 (96) dated July 31, 1998 which was belatedly received by the petitioner on August 13, 2002.

The antecedent facts are as follows:

In 1994, petitioner Benedicto Ernesto R. Bitonio, Jr. was appointed Director IV of the Bureau of Labor Relations in the Department of Labor and Employment.

In a Letter dated May 11, 1995 addressed to Honorable Rizalino S. Navarro, then Secretary of the Department of Trade and Industry, Acting Secretary Jose S. Brillantes of the Department of Labor and Employment designated the petitioner to be the DOLE representative to the Board of Directors of PEZA.^[3] Such designation was in pursuance to Section 11 of Republic Act No. 7916, otherwise known as the Special Economic Zone Act of 1995, which provides:

Section 11. The Philippine Economic Zone Authority (PEZA) Board. —
There is hereby created a body corporate to be known as the Philippine Economic Zone Authority (PEZA)...

X X X

X X X

X X X

The Board shall be composed of the Director General as *ex officio* chairman with eight (8) members as follows: the *Secretaries or their representatives* of the Department of Trade and Industry, the Department of Finance, the Department of Labor and Employment, the Department of [the] Interior and Local Government, the National Economic and Development Authority, and the *Bangko Sentral ng Pilipinas*, one (1) representative from the labor sector, and one (1) representative from the investor/business sector in the ECOZONE.

X X X

X X X

X X X

Members of the Board shall receive a *per diem* of not less than the amount equivalent to the representation and transportation allowances of the members of the Board and/or as may be determined by the Department of Budget and Management: *Provided, however,* That the *per diem* collected per month does not exceed the equivalent of four (4) meetings.

As representative of the Secretary of Labor to the PEZA, the petitioner was receiving a *per diem* for every board meeting he attended during the years 1995 to 1997.

After a post audit of the PEZA's disbursement transactions, the COA disallowed the payment of *per diems* to the petitioner and thus issued the following:

(a) Notice of Disallowance No. 98-008-101 (95) dated July 31, 1998 for the total sum of P24,500 covering the period of July-December 1995;

(b) Notice of Disallowance No. 98-003-101 (96) also dated July 31, 1998 for a total amount of P100,000 covering the period of January 1996 to January 1997;^[4]

(c) Notice of Disallowance No. 98-017-101 (97) dated October 9, 1998 for the total amount of P210,000 covering the period of February 1997 to January 1998.

The uniform reason for the disallowance was stated in the Notices, as follows:

Cabinet members, their deputies and assistants holding other offices in addition to their primary office and to receive compensation therefore was declared unconstitutional by the Supreme Court in the *Civil Liberties Union vs. Executive Secretary*. Disallowance is in pursuance to COA Memorandum No. 97-038 dated September 19, 1997 implementing Senate Committee Report No. 509.^[5]

On November 24, 1998, the petitioner filed his motion for reconsideration to the COA on the following grounds:

1. The Supreme Court in its Resolution dated August 2, 1991 on the motion for clarification filed by the Solicitor General modified its earlier ruling in the *Civil Liberties Union* case which limits the prohibition to Cabinet Secretaries, Undersecretaries and their Assistants. Officials given the rank equivalent to a Secretary, Undersecretary or Assistant Secretary and other appointive officials below the rank of Assistant Secretary are not covered by the prohibition.
2. Section 11 of R.A. No. 7916 provides the legal basis for the movant to receive *per diem*. Said law was enacted in 1995, four years after the *Civil Liberties Union* case became final. In expressly authorizing *per diems*, Congress should be conclusively presumed to have been aware of the parameters of the constitutional prohibition as interpreted in the *Civil Liberties Union* case.^[6]

On January 30, 2001, the COA rendered the assailed decision denying petitioner's motion for reconsideration.

Hence, this petition.

The issue in this case is whether or not the COA correctly disallowed the *per diems* received by the petitioner for his attendance in the PEZA Board of Directors' meetings as representative of the Secretary of Labor.

We rule in the affirmative.

The COA anchors the disallowance of *per diems* in the case of *Civil Liberties Union v. Executive Secretary*^[7] where the Court declared Executive Order No. 284^[8] allowing government officials to hold multiple positions in government, unconstitutional. Thus, Cabinet Secretaries, Undersecretaries, and their Assistant Secretaries, are prohibited to hold other government offices or positions in addition to their primary positions and to receive compensation therefor, except in cases where the Constitution expressly provides. The Court's ruling was in conformity with Section 13, Article VII of the 1987 Constitution which reads:

Sec. 13. The President, Vice-President, the Members of the Cabinet, and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during their tenure, directly or indirectly, practice any other profession, participate in any business or be financially interested in any other contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

The spouse and relatives by consanguinity or affinity within the fourth civil degree of the President shall not, during his tenure, be appointed as members of the Constitutional Commissions, or the Office of the Ombudsman, or as Secretaries, Undersecretaries, Chairmen, or heads of bureaus or offices, including government-owned or controlled corporations and subsidiaries.

Pursuant to the Court's ruling in this case and the Senate Committee Report on the Accountability of Public Officers and Investigations (Blue Ribbon),^[9] the COA issued Memorandum No. 97-038 which authorized the issuance of the Notices of Disallowances for the *per diems* received by the petitioner. It states:

The Commission received a copy of Senate Committee Report No. 509 urging "the Commission on Audit to immediately cause the disallowance of any payment of any form of additional compensation or remuneration to cabinet secretaries, their deputies and assistants, or their representatives in violation of the rule on multiple positions and to effect the refund of any and all such additional compensation given to and received by the officials concerned, or their representatives, from the time of the finality of the Supreme Court ruling in *Civil Liberties Union vs. Executive Secretary* to the present." In the *Civil Liberties Union* case, the Supreme Court ruled that Cabinet Secretaries, their deputies and assistants may not hold any other office or employment. It declared Executive Order No. 284 unconstitutional insofar as it allows Cabinet members, their deputies and assistants to hold other offices in addition to their primary office and to receive compensation therefor. The said decision became final and executory on August 19, 1991.

In view thereof, all unit heads/auditors/team leaders of the national government agencies and government-owned or controlled corporations which have effected payment of subject allowances are directed to implement the recommendation contained in the subject Senate Committee Report by undertaking the following audit action: ...^[10]

The petitioner maintains that he is entitled to the payment of *per diems*, as R.A. No. 7916 specifically and categorically provides for the payment of a *per diem* for the attendance of the members of the Board of Directors at board meetings of PEZA. The petitioner contends that this law is presumed to be valid; unless and until the law is declared unconstitutional, it remains in effect and binding for all intents and purposes. Neither can this law be rendered nugatory on the basis of a mere memorandum circular — COA Memorandum No. 97-038 issued by the COA. The petitioner stresses that R.A. No. 7916 is a statute more superior than an administrative directive and the former cannot just be repealed or amended by the latter.

The petitioner also posits that R.A. No. 7916 was enacted four (4) years after the case of *Civil Liberties Union* was promulgated. It is, therefore, assumed that the legislature, before enacting a law, was aware of the prior holdings of the courts. Since the constitutionality or the validity of R.A. No. 7916 was never challenged, the provision on the payment of per diems remains in force notwithstanding the *Civil Liberties Union* case. Nonetheless, the petitioner's position as Director IV is not included in the enumeration of officials prohibited to receive additional compensation as clarified in the Resolution of the Court dated August 1, 1991; thus, he is still entitled to receive the *per diems*.

The petitioner's contentions are untenable.

It must be noted that the petitioner's presence in the PEZA Board meetings is solely by virtue of his capacity as representative of the Secretary of Labor. As the petitioner himself admitted, there was no separate or special appointment for such position.^[11] Since the Secretary of Labor is prohibited from receiving compensation for his additional office or employment, such prohibition likewise applies to the petitioner who sat in the Board only in behalf of the Secretary of Labor.

The petitioner's case stands on all fours with the case of *Dela Cruz v. Commission on Audit*.^[12] Here, the Court upheld the COA in disallowing the payment of honoraria and per diems to the officers concerned who sat as members of the Board of Directors of the National Housing Authority. The officers concerned sat as alternates of their superiors in an ex officio capacity. Citing also the *Civil Liberties Union* case, the Court explained thus:

"The *ex-officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. It should be obvious that if, say, the Secretary of Finance attends a meeting of the Monetary Board as an *ex-officio* member thereof, he is actually and in legal contemplation performing