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[G.R. No. 142297, June 15, 2004]

HOME DEVELOPMENT MUTUAL FUND, PETITIONER, VS. COMMISSION ON AUDIT, RESPONDENT.

DECISION

AZCUNA, J.:

Before us is a petition for *certiorari* under Rule 65 of the Rules of Court alleging that the Commission on Audit acted in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction in issuing Resolution No. 2000-086 dated March 7, 2000, which affirmed COA Decision No. 98-245 dated June 16, 1998. COA Decision No. 98-245 affirmed the audit disallowance of payment of productivity incentive bonus by petitioner Home Development Mutual Fund (HDMF) to its personnel pursuant to Republic Act No. 6971, otherwise known as the "Productivity Incentives Act of 1990."

The facts are as follows:

Republic Act No. 6971, "An Act to Encourage Productivity and Maintain Industrial Peace by Providing Incentives to Both Labor and Capital," was approved on November 22, 1990, and took effect on December 9, 1990.

Section 3 of said Act states:

Sec. 3. Coverage.-- This Act shall apply to all business enterprises with or without existing and duly recognized or certified labor organizations, including government-owned and controlled corporations performing proprietary functions. It shall cover all employees and workers including casual, regular, supervisory and managerial employees.

The Secretary of Labor and Employment and the Secretary of Finance promulgated the Rules Implementing Republic Act No. 6971^[1] on June 4, 1991. Rule II of said implementing rules provides:

Section 1. *Coverage*. These Rules shall apply to:

- (a) All business enterprises with or without existing duly recognized or certified labor organizations, including government-owned and controlled corporations performing proprietary functions;
- (b) All employees and workers including casual, regular, rank-and-file, supervisory and managerial employees.

On November 21, 1991, petitioner HDMF granted Productivity Incentive Bonus equivalent to one month salary plus allowance to all its personnel pursuant to

Republic Act No. 6971, and its Implementing Rules.^[2]

The HDMF granted said bonus despite the advice on August 26, 1991 of Undersecretary Salvador Enriquez of the Department of Budget and Management (DBM) to all government-owned and controlled corporations (GOCCs) and government financial institutions (GFIs) with original charters performing proprietary functions to defer payment of the productivity incentive bonus to their employees, pending the issuance of a definite ruling by the Office of the President on the matter.^[3]

On December 27, 1991, the Department of Labor and Employment and the Department of Finance issued the Supplemental Rules Implementing Republic Act No. 6971, which provides, thus:

Section 1.—Paragraph (a) Section 1, Rule II of the Rules Implementing RA 6971, shall be amended to read as follows:

Coverage. These Rules shall apply to:

(a) All business enterprises with or without existing duly certified labor organizations including government-owned and controlled corporations performing proprietary functions which are established solely for business or profit or gain and accordingly ***excluding those created, maintained or acquired in pursuance of a policy of the state, enunciated in the constitution or by law, and those whose officers and employees are covered by the Civil Service.*** (Emphasis supplied.)

On November 29, 1996, the grant of productivity incentive bonus to the HDMF personnel in the total amount of P5,136,710.91 was disallowed in audit under Notice of Disallowance No. 96-006-101 (91).^[4] The disallowance was based on COA Decision No. 96-288, dated June 4, 1996, stating that Republic Act No. 6971 does not apply to government-owned or controlled corporations or to government financial institutions with original charters performing proprietary functions, such as the HDMF.^[5]

In a letter-request dated May 28, 1997, HDMF, through its President and Chief Executive Officer, Zorayda Amelia C. Alonzo, requested for the lifting of the disallowance.^[6] Alonzo argued that Republic Act No. 6971 applies to the employees of HDMF since the coverage of the said law includes government-owned and controlled corporations performing proprietary functions, and the supplemental rules excluding it from coverage was issued after the HDMF had already granted the productivity incentive bonus to its employees.

In its Decision No. 98-245^[7] dated June 16, 1998, the Commission on Audit affirmed the audit disallowance. It ruled, thus:

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Appellant (petitioner herein) further averred that while the Supplemental Rules Implementing R.A. No. 6971 issued by the Department of Labor and Employment and the Department of Finance dated December 27,

1991, exclude from the coverage of R.A. No. 6971 GOCCs whose officers and employees are covered by the Civil Service Law (like the HDMF), payment of the incentive bonus have been effected prior to the issuance of the said supplemental rules. Simply stated, it is the position of the appellant that the supplemental rules should not be given retroactive effect.

The Commission finds the appellant's arguments untenable. It must be noted that the grant of the Productivity Incentive Bonus was made on November 21, 1991 or after receipt of the advice of the Department of Budget and Management Undersecretary dated August 26, 1991 to defer payment of Productivity Incentive Bonus to all GOCCs/GFIs with original charters performing proprietary functions, pending definite ruling of the Office of the President. Despite the said notice, management proceeded with the payment.

Likewise, the issue as to whether or not GOCCs/GFIs with original charters which are performing proprietary functions are covered by R.A. No. 6971 had been resolved by the Secretary of Justice in his letter dated November 8, 1995, stating that GOCCs with original charter, being covered by the Civil Service Law, and not by the labor laws, are clearly outside the ambit of R.A. No. 6971.

Verily, the grant of the incentive bonus is contrary to the Supplemental Rules Implementing R.A. No. 6971 issued by the Department of Labor and Employment and the Department of Finance dated December 27, 1991, portion of which pertinently reads as follows:

'All business enterprises x x x established solely for business of profit or gain and accordingly, excluding those created, maintained or acquired in pursuance of a policy of the state, enunciated in the constitution or by law, and those whose officers and employees are covered by the Civil Service (underscoring supplied).'

Moreover, the issue raised by the appellant that the supplemental rules excluding GOCCs/GFIs from the coverage of R.A. No. 6971 should not be given retroactive effect is not tenable since the HDMF from the very beginning is not covered by the aforesaid law.

Premises considered, the audit disallowance is hereby affirmed, and the refund of the amount of P5,136,710.91 granted as Productivity Incentive Bonus to HDMF personnel based on the provisions of R.A. No. 6971 shall be enforced accordingly.

HDMF filed a motion for reconsideration that was denied by the Commission on Audit in Resolution No. 2000-086 dated March 7, 2000. [8]

Hence, this petition.

Petitioner raises three issues:[9]

1. What is the applicable rule at the time of the grant of the Productivity Incentive Bonus?
2. Whether the Memorandum from the Department of Finance signed by Secretary Jesus P. Estanislao dated January 16, 1992 constitutes appropriate authorization for the grant of Productivity Incentive Allowance for 1991.
3. Whether the Supplemental Implementing Rules are valid? If so, whether it may be given retroactive effect?

Petitioner contends that when it granted the productivity incentive bonus to its personnel on November 21, 1991, no other rule but the Implementing Rules of Republic Act No. 6971 dated June 4, 1991 was in existence. Said Rule includes in its coverage government-owned and controlled corporations performing proprietary functions, without any qualification. The Supplementary Rules, which excluded petitioner from coverage, was issued only after it had already granted the productivity incentive bonus to its personnel. Hence, the employees already acquired a vested right over the productivity incentive bonus.

The contention is without merit.

Association of Dedicated Employees of the Philippine Tourism Authority (ADEPT) v. Commission on Audit,^[10] held that the legislature intended Republic Act No. 6971 to cover only government-owned and controlled corporations incorporated under the general corporation law, thus:

Petitioner cites an entry in the journal of the House of Representatives to buttress its submission that PTA is within the coverage of RA 6971, to wit:

"Chairman Veloso: The intent of including government-owned and controlled corporations within the coverage of the Act is the recognition of the principle that when government goes into business, it (divests) itself of its immunity from suit and goes down to the level of ordinary private enterprises and subjects itself to the ordinary laws of the land just like ordinary private enterprises. Now, when people work therefore in government-owned or controlled corporations, it is as if they are also, just like in the private sector, entitled to all the benefits of all laws that apply to workers in the private sector. In my view, even including the right to organize, bargain..." VELOSO (Bicameral Conference committee on Labor and Employment, pp. 15-16).

After a careful study, the Court is of the view, and so holds, that contrary to petitioner's interpretation, the government-owned and controlled corporations Mr. Chairman Veloso had in mind were government-owned and controlled corporations incorporated under the general corporation law. This is so because only workers in private corporations and government-owned and controlled corporations, incorporated under the general corporation law, have the right to bargain (collectively). Those in government corporations with special charter, which are subject to Civil Service Laws, have no