



Republic of the Philippines
Supreme Court
Manila

EN BANC

**DEVELOPMENT BANK
OF THE PHILIPPINES,**
Petitioner,

G.R. No. 221706

Present:

SERENO, C.J., *
CARPIO,**
VELASCO, JR.,
LEONARDO-DE CASTRO,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PERLAS-BERNABE,
LEONEN,
JARDELEZA,
CAGUIOA,
MARTIRES,
TIJAM,
REYES, and
GESMUNDO, JJ.

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

March 13, 2018

X ----- X

DECISION

GESMUNDO, J.:

This is a petition for *certiorari* seeking to annul and set aside the December 17, 2014 Decision¹ and the August 18, 2015 Resolution² of the Commission on Audit (COA) in Decision No. 2014-396. The COA affirmed

* On leave.

** Acting Chief Justice per Special Order No. 2539, dated February 28, 2018.

¹ *Rollo*, pp. 35-43; concurred by Chairperson Ma. Gracia M. Pulido-Tan, Commissioner Heidi L. Mendoza and Commissioner Jose A. Fabia.

² *Id.* at 44.

the March 18, 2011 Decision³ of the COA-Corporate Government Sector (CGS) in CGS-A Decision No. 2011-002. The COA-CGS affirmed the May 18, 2007 Notice of Disallowance (ND) No. BOD-2006-007(06)⁴ relative to the compensation and other benefits received by the Board of Directors (Board) of petitioner Development Bank of the Philippines (DBP).

The Antecedents

On March 29, 2006, the DBP Board passed Resolution No. 0121⁵ approving, among others, the entitlement of the DBP Chairman and Board, except for the DBP President and Chief Executive Officer, the following:

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2. ₱1,000.00 per diem for every Board/ExCom meeting attended provided the total amount of per diems for every single month shall not exceed ₱7,500.00 (per Executive Order [EO] No. 81, DBP Charter). No per diem is given for attendance in Committee Meetings;
3. **Reimbursement of reasonable actual transportation and representation expenses such as the following:**
 - a. Expenses for entertainment, promotions, gifts to corporate clients and donations and contributions to hospitals, foundations, hospices, civil and charitable organizations.
 - b. Expenses of the member for travel and other expenses related thereto including travel insurance.
 - c. Convention, workshop, seminar and conference fees and similar expenses relevant to the office and/or profession of the member.
 - d. Membership fee/s of the member concerned in not more than two (2) civic, professional organizations; monthly dues in not more than three (3) cultural, sports and recreation clubs.
 - e. Subscription/s of members to periodicals/publications on finance, banking, law, economics or other relevant subjects, x x x.
 - f. Member's personal medical, dental and optical expenses (including medicines, vitamins, physical therapy, not covered or beyond the limitations of the Health Care Plan) x x x.

³ Id. at 123-128.

⁴ Id. at 70-77.

⁵ Id. at 45-46.

4. Benefits under the Motor Vehicle Lease Purchase Plan (MVLPP).
5. Benefits under the DBP Health Care Plan.

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7. Other benefits that may be allowed to be given pursuant to the Bank's Charter. (emphasis supplied)

On August 23, 2006, the DBP Board passed Resolution No. 0037⁶ approving the following guidelines in determining the entitlement to per diems and other benefits of the Board:

1. [That] members of the Board shall continue to be entitled to ₱1,000.00 for each meeting of the Board actually attended:
2. **That members of the Board shall be compensated at rates comparable to DBP consultants for work undertaken for the Bank including but not limited to Committee assignments, representation in DBP Branch and central office/international activities; client calls and consultations and provision of technical resource for DBP officers and staff;**
3. That a record of such compensable hours shall be kept by the relevant bank officers which shall be the basis of any payments by the bank; [and]
4. **That costs to represent the Bank shall be reimbursed to members of the DBP Board.** (emphases supplied)

On September 20, 2006, the DBP Board sent a Memorandum⁷ (*DBP Memorandum*) to the President of the Philippines requesting the approval of Resolution No. 0037. The DBP alleged that then President Gloria Macapagal Arroyo (*President Arroyo*) attached a Note⁸ stating "No objection" on the said memorandum.

DBP paid its Board members benefits which were accounted as Representation and Entertainment – Others. It likewise paid the Board members rice subsidy and anniversary bonuses. Based on the DBP Schedule of Allowance granted to Chairman and Members of the Board,⁹ as of December 31, 2006, DBP has paid the members of the Board rice subsidy, anniversary bonuses and representation and entertainment expenses in the total amount of ₱16,656,200.09.

⁶ Id. at 47-48.

⁷ Id. at 49-51.

⁸ Id. at 52.

⁹ Id. at 77.

Upon post-audit of the DBP accounts, the Supervising Auditor from the COA issued Audit Observation Memorandum¹⁰ (AOM) No. HO-BODC-AOM-2006-001 dated March 20, 2007. It stated therein that the Board's compensations, which were charged under Representation and Entertainment – Others expense, were contrary to Section 8 of Executive Order (E.O.) No. 81,¹¹ as amended by Republic Act (R.A.) No. 8523 (DBP Charter).¹² The AOM stated that pursuant to the law, the Board members are only entitled to per diem.

On April 23, 2007, DBP submitted its Comment¹³ to the AOM arguing that there is no prohibition under the law in granting additional benefits to its Board members; and that it secured the approval of President Arroyo before granting the assailed benefits.

Notice of Disallowance

Not satisfied with its explanation, the Supervising Auditor issued a ND against the DBP, which stated: that pursuant to the DBP Charter, the Board members are only entitled to per diems; that the approval of the President under Section 8 of DBP Charter only refers to the increase of the per diem for each meeting attended; and that COA Decision No. 2001-026 dated January 25, 2001, provided that granting additional compensation to the Board members other than those prescribed requires legislative action and that it cannot be substituted by administrative authorization. It declared that the total amount disallowed of ₱16,565,200.09 must be returned by the Board members, Certify Payroll/HRM, Accountant, Cashier, and all payees per attached payrolls and schedules.

Aggrieved, the DBP appealed to the Director of COA-CGS.

The COA-CGS Ruling

In its decision, dated March 18, 2011, the COA-CGS affirmed the ND. It held that Section 8 of the DBP Charter mentions only of per diems and no other compensation. The COA-CGS observed the authority of the DBP Board with the approval of the President to “set” compensation is limited to the amount of per diem that may be granted to the Board. It also questioned the authenticity of the alleged approval of President Arroyo

¹⁰ Id. at 53-59.

¹¹ Also known as “The 1986 Revised Charter of the Development Bank of the Philippines.”

¹² Also known as “An Act Strengthening the Development Bank of the Philippines, Amending for the Purpose Executive Order No. 81.”

¹³ *Rollo*, pp. 60-69.

because her signature appeared in a separate note, and not in the DBP's memorandum.

Undaunted, DBP filed a petition for review before the COA.

The COA Ruling

In its decision dated December 17, 2014, the COA denied the petition and affirmed the COA-CGS ruling. It underscored that Section 8 of the DBP Charter only stated per diem and that the authority of the Board, with the approval of the President, is limited in setting the amount of the per diem. The COA reasoned that had Congress intended to allow the Board to receive other benefits, then it would have expressly stated so. It also cited Department and Budget and Management (*DBM*) Circular Letter No. 2002-02, which provides that Board members of agencies are non-salaried officials, thus, they are not entitled to benefits unless expressly provided by law. The COA further questioned the approval of the DBP Memorandum because the signature of the President was contained in a separate note and the said memorandum was not in the file of the Malacañang Records Office.

The DBP filed a motion for reconsideration but it was denied by the COA in its resolution dated August 18, 2015.

Hence, this petition.

ISSUES

I

THE AUTHORITY OF THE BOARD UNDER SECTION 8 OF THE DBP CHARTER, WITH THE APPROVAL OF THE PHILIPPINE PRESIDENT, IS NOT LIMITED TO THE AMOUNT OF THE PER DIEM THAT MAY BE GRANTED TO THE BOARD OF DIRECTORS (BOD).

II

THE NOTATION "NO OBJECTION" OF THEN PRESIDENT GLORIA MACAPAGAL ARROYO IN THE MEMORANDUM DATED SEPTEMBER 20, 2006 OF THE DBP BOD REQUESTING APPROVAL OF BOARD RESOLUTION NO. 0037 IS TANTAMOUNT TO A STAMP OF APPROVAL AND SHOULD BE ACCORDED DUE RESPECT AND CREDENCE. IN FACT, THE SUPERVISING AUDITOR OF DBP DID NOT EVEN DISPUTE SAID APPROVAL.

III.

THE NOTICE OF DISALLOWANCE VIOLATED THE RIGHT OF DBP TO DUE PROCESS SINCE THE SUPERVISING AUDITOR ADDED AS A GROUND FOR DISALLOWANCE THE COA DECISION NO. 2001-026 DATED 25 JANUARY 2001 WHICH WAS NEVER MENTIONED IN AOM NO. HO-BODC-AOM-2006-001 DATED 20 MARCH 2007.

IV.

THE SUBJECT TRANSACTIONS WERE SUPPORTED BY THE FAVORABLE OPINION OF THE THEN COA GENERAL COUNSEL ON ISSUES SIMILAR TO THE INSTANT CASE.

V.

ASSUMING THAT THERE WAS A LEGAL BASIS IN DISALLOWING THE SUBJECT COMPENSATION AND OTHER BENEFITS, THE BOD AND ALL THE ACCOUNTABLE OFFICERS SHOULD NOT BE HELD LIABLE TO REFUND THE SAME SINCE THEY RELIED IN GOOD FAITH ON THE PERTINENT PROVISIONS OF THE DBP CHARTER AND THE PRESIDENTIAL APPROVAL.¹⁴

DBP argues that the authority of the Board under Section 8 of the DBP Charter is not limited to the amount of per diem that may be granted to the Board; that the President's note containing the words "No objection" is tantamount to her approval; that the President's approval of the DBP Memorandum, granting the Board members benefits other than per diems, should be accorded due respect, which was even recognized by the Supervising Auditor; and that the ND violated DBP's right to due process because it cited COA Decision No. 2001-026 even though it was not included in the AOM.

DBP avers that the COA General Counsel's opinion - that the affairs and properties of the DBP should be managed by the Board - renders COA estopped from assailing the Board's benefits; and that assuming there was legal basis in disallowing the entitlements, the Board and its accountable officers should not be held liable for refund by reason of good faith. It prays for the issuance of a Temporary Restraining Order (*TRO*) against COA.

In its Comment,¹⁵ the OSG counter that DBP failed to prove that there was grave abuse of discretion on the part of the COA. It contended that Section 8 of the DBP Charter indicates only per diem as compensation of the Board. The OSG emphasized that when a statute mentions one person, thing

¹⁴ Id. at 12-13.

¹⁵ Id. at 213-243.

or consequence, it implies the exclusion of all others; and that the DBP Charter is similar to the Bases Conversion and Development Authority (BCDA) Charter, which limited the Board's benefits to per diem.

The OSG highlighted that the alleged approval of President Arroyo deserves scant consideration because it was written on a separate sheet of paper and its authenticity was unverified; that DBP's right to due process was not violated because it could still appeal the assailed ND; that the COA General Counsel's opinion is not applicable because it pertained to staff assistance and incidental expense of the Board; and that the Board and its officers cannot claim good faith because the DBP Charter states that the Board is only entitled to per diem.

In its Reply,¹⁶ the DBP reiterated that there is no prohibition in granting additional benefits to the Board members and that President Arroyo approved the said benefits. It underscored that, even assuming that there is basis to disallow the said entitlements, the Board and the accountable officers should not be held liable to refund the same since they relied in good faith on the pertinent provisions of the DBP Charter and the President's approval.

The Court's Ruling

The petition is partially meritorious.

Section 8 of the DBP Charter provides:

Board of Directors — Composition — Tenure — Per Diems. — The affairs and business of the Bank shall be directed and its properties managed and preserved and its corporate powers exercised, unless otherwise provided in this Charter, by a Board of Directors consisting of nine (9) members, to be appointed by the President of the Philippines. The term of office of the Chairman, President and the members of the Board of Directors shall be for a period of one year or until such time as their successors are appointed.

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Unless otherwise set by the Board and approved by the President of the Philippines, members of the Board shall be paid a per diem of One Thousand Pesos (₱1,000.00) for each meeting of the Board of Directors actually attended: Provided, That the total amount of per diems for every single month shall not exceed the sum of Seven Thousand Five Hundred Pesos (₱7,500.00). (emphases supplied)

¹⁶ Id. at 269-287.



DBP essentially argues that Section 8 grants the Board authority to impart additional benefits other than per diem provided it has the approval of the President. It emphasizes on the phrase “[u]nless otherwise set by the Board and approved by the President of the Philippines.” On the other hand, the OSG counters that the only compensation mentioned under Section 8 is per diem, hence, under the doctrine of *expressio unius est exclusio alterius*, all other benefits are excluded. It added that the authority of the Board, with the approval of the President, only refers to the increase of the per diem’s amount, and not to the grant of additional benefits.

The Court finds that the COA did not commit grave abuse of discretion when it disallowed the amount of ₱16,565,200.09 from the benefits of the DBP Board members.

*The law only mentions
per diem as the Board’s
compensation*

Section 8 of the DBP Charter only mentions per diem as the compensation of the members of its Board. It does not declare any additional benefit, other than per diems, which the said members of the Board may receive. Conspicuously, the heading of the provision states that Section 8 only refers to the Board, their composition, tenure and **per diems**.

It is a settled rule of statutory construction that the express mention of one person, thing, act, or consequence excludes all others. This rule is expressed in the familiar maxim *expressio unius est exclusio alterius*. Where a statute, by its terms, is expressly limited to certain matters, it may not, by interpretation or construction, be extended to others. The rule proceeds from the premise that the legislature would not have made specified enumerations in a statute had the intention been not to restrict its meaning and to confine its terms to those expressly mentioned.¹⁷

Accordingly, the phrase “[u]nless otherwise set by the Board and approved by the President of the Philippines,” at the beginning of the 8th paragraph, Section 8 of the DBP Charter refers to the authority of the Board, with the approval of the President, to increase the per diems of Board members only. The second sentence therein, which states that “[t]he total amount of per diems for every single month shall not exceed the sum of Seven thousand five hundred pesos (₱7,500.00),” bolsters the interpretation that the provision only refers to the per diem and not to the payment of any additional benefit of the Board.

¹⁷ *Commissioner of Customs v. Court of Tax Appeals*, 296 Phil. 549 (1993); *San Pablo Manufacturing Corp. v. Commissioner of Internal Revenue*, 525 Phil. 281, 290 (2006).

The issue of whether Board members are entitled to benefits other than per diems has been settled in *Bases Conversion and Development Authority v. COA (BCDA v. COA)*.¹⁸ In said case, the BCDA alleged that the Board can grant the year-end benefit to its members because R.A. No. 7227, or the BCDA Charter, does not expressly prohibit it from doing so. In dismissing its argument, the Court ruled:

The Court is not impressed. A careful reading of Section 9 of RA No. 7227 reveals that the Board is prohibited from granting its members other benefits. Section 9 states:

Members of the Board shall receive a *per diem* of not more than Five [T]housand [P]esos (P5,000) for every board meeting: *Provided, however*, That the *per diem* collected per month does not exceed the equivalent of four (4) meetings: *Provided, further*, That the amount of *per diem* for every board meeting may be increased by the President but such amount shall not be increased within two (2) years after its last increase.

Section 9 specifies that Board members shall receive a *per diem* for every board meeting; limits the amount of *per diem* to not more than P5,000; limits the total amount of *per diem* for one month to not more than four meetings; and does not state that Board members may receive other benefits. In *Magno, Cabili, De Jesus, Molen, Jr., and Baybay Water District*, the Court held that **the specification of compensation and limitation of the amount of compensation in a statute indicate that Board members are entitled only to the *per diem* authorized by law and no other.**

The specification that Board members shall receive a *per diem* of not more than P5,000 for every meeting and the omission of a provision allowing Board members to receive other benefits lead the Court to the inference that Congress intended to limit the compensation of Board members to the *per diem* authorized by law and no other. *Expressio unius est exclusio alterius*. **Had Congress intended to allow the Board members to receive other benefits, it would have expressly stated so.**¹⁹ (citations omitted, emphases supplied)

BCDA v. COA declared that the BCDA Charter does not state that Board members may receive benefits other than per diems. Had its Charter intended the Board to receive other such benefits, then it would have expressly provided it. Similarly, in the present case, Section 8 of the DBP Charter only mentions per diem as the Board's compensation, hence, all other compensations are excluded.

¹⁸ 599 Phil. 455 (2009).

¹⁹ Id. at 466-467.

DBM Circular Letter No. 2002-02 explains the non-entitlement of the Board to benefits other than those specifically provided by law, to wit:

- 2.0 To clarify and address issues/requests concerning the same, the following compensation policies are hereby reiterated:
 - 2.1 PERA, ADCOM, YEB and retirement benefits are personnel benefits granted in addition to salaries. As fringe benefits, these shall be paid only when the basic salary is also paid.
 - 2.2 **Members of the Board of Directors of agencies are not salaried officials of the government. As non-salaried officials, they are not entitled to PERA, ADCOM, YEB and retirement benefits unless expressly provided by law.** xxx.²⁰
(emphasis supplied)

In this case, the COA properly held that the DBP Board members are not salaried officials of the government, hence, they are not entitled to benefits unless specifically provided by law. Again, Section 8 of the DBP Chapter only mentions per diems as the compensation of the Board members; it does not expressly provide the grant of other benefits to the said members.

*Interpretation that gives life
to the law; avert arbitrary
grant of benefits*

In *BCDA v. COA*, the Court explained the rationale why the Board cannot grant its members benefits other than those expressly mentioned by law, to wit:

The Court cannot, in the guise of interpretation, enlarge the scope of a statute or insert into a statute what Congress omitted, whether intentionally or unintentionally.

When a statute is susceptible of two interpretations, the Court must “adopt the one in consonance with the presumed intention of the legislature to give its enactments the most reasonable and beneficial construction, the one that will render them operative and effective.” The Court always presumes that Congress intended to enact sensible statutes. **If the Court were to rule that the Board could grant the year-end benefit to its members, Section 9 of RA No. 7227 would become inoperative and ineffective** — the specification that Board members shall receive a *per diem* of not more than ₱5,000 for every meeting; the

²⁰ Id. at 461-462.

specification that the *per diem* received per month shall not exceed the equivalent of four meetings; the vesting of the power to increase the amount of *per diem* in the President; and the limitation that the amount of *per diem* shall not be increased within two years from its last increase would all become useless because the Board could always grant its members other benefits.²¹ (citations omitted, emphasis supplied)

Applying the rationale in this case, Section 8 of the DBP Charter, which expressly states that Board members will receive per diems, would be rendered inoperative if the Board, with the approval of the President, would grant additional benefits not cited under the law. Further, limitations on the increase of the per diems would also be rendered futile because the Board could disregard the same in allowing additional and higher benefits.

Likewise, to adopt the view of the DBP would result in unbridled grant of benefits to the Board members. There are no limitations in the law that would restrain the benefits which could be readily created by the Board. The grant of additional compensation of the Board members would rest solely in the hands of the executive branch, through the authority of the DBP and with the approval of the President; and the legislative branch would have no prerogative in determining the limits of such compensation.

Even DBP Resolution No. 0037,²² which sought approval of the President with the DBP Memorandum, contains insufficient guidelines regarding the value, limitation and disbursement of additional compensation to the Board. It simply states that the Board shall be compensated at rates comparable to DBP consultants and that the costs to represent the DBP shall be reimbursed. Verily, the standpoint of the DBP will set a dangerous precedent regarding the grant of benefits to the Board not contemplated by law due to the lack of discernable safeguards.

To prevent the possibility of abuse in the grant of compensation, the law must be followed and it plainly states that the DBP Board is entitled solely to per diems. In the event that the Board believes the existing compensation of its members to be no longer reasonable under the present circumstances, the recourse is to lobby before Congress for the amendment of the DBP Charter and not the unilateral grant or increase of benefits.²³

²¹ Id. at 468.

²² *Rollo*, p. 47.

²³ See *Social Security System v. Commission on Audit*, G.R. No. 210940, September 6, 2016, where the Court held that the Social Security Commission cannot unilaterally increase its benefits without the amendment of its charter.

The approval of the President is immaterial; the DBP was not deprived of due process; the General Counsel's opinion is inapplicable

The COA doubts the alleged approval of President Arroyo of the DBP Memorandum because it was placed in a separate note; in contrast, DBP insists on the said approval being authentic. Nevertheless, considering that the Board cannot grant additional benefits to its members, other than per diems, then the President's approval of the DBP Memorandum is **immaterial**. Again, under the DBP Charter, only the per diems of its members may be increased by the Board with the approval of the President. Notably, in *BCDA v. COA*, the compensation and benefit scheme was approved by then President Fidel V. Ramos²⁴ (*President Ramos*), but the Court affirmed the disallowance of additional benefits because the BCDA Charter only allowed per diems as compensation of the Board members.

DBP's argument – that it was deprived of due process because the ND mentioned COA Decision No. 2001-026 even though it was not included in the AOM – is specious. It is apparent from the assailed decision that COA Decision No. 2001-026 was not the sole basis in denying DBP's petition. Assuming *arguendo* that the decision was cited in the ND, it did not violate DBP's right to due process because it still had the opportunity to question the same through an appeal before the Director of the COA-CGS and, subsequently, to the COA *En Banc*.

In addition, DBP argues that the COA General Counsel's opinion renders the COA estopped from questioning the grant of added benefits. The opinion, however, does not refer to the grant of additional compensation to the Board members other than per diem; rather, it involves the entitlement of qualified staff and other resources to the Board members. The compensation of the Board members is not the subject of the said opinion. Thus, it is evidently inapplicable.

Good faith absolves liable officers from refund

DBP argues that, even assuming that the additional benefits of the Board are disallowed, the responsible officers cited under the ND should not be held liable by reason of good faith.

²⁴ Supra note 18 at 469.

The Court finds the argument impressed with merit.

Good faith is a state of mind denoting “honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.”²⁵

In *Zamboanga City Water District v. COA*,²⁶ the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, to wit:

Further, a thorough [reading] of Mendoza and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy’s are also not obliged either to refund the same. In *de Jesus v. Commission on Audit*, the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to *de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit*. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*, the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.

In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

Untenable is petitioners’ contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.

Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.

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²⁵ *PEZA v. COA*, 690 Phil. 104, 115 (2012), as cited in *Maritime Industry Authority v. COA*, 750 Phil. 288 (2015).

²⁶ 779 Phil. 225 (2016).

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.

A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.²⁷ (citations and emphases omitted)

In *Mendoza v. COA*,²⁸ the Court held that the lack of a similar ruling disallowing a certain expenditure is a basis of good faith. At the time that the disallowed disbursement was made, there was yet to be a jurisprudence or ruling that the benefits which may be received by members of the commission were limited to those enumerated under the law.

By the same token, in *SSS v. COA*,²⁹ the Court pronounced that good faith may be appreciated because the approving officers did not have knowledge of any circumstance or information which would render the disallowed expenditure illegal or unconscientious. The Board members therein could also not be deemed grossly negligent as they believed they could disburse the said amounts on the basis of the provisions of the R.A. No. 8282³⁰ to create their own budget.

On the other hand, in *Silang v. COA*,³¹ the Court ordered the approving officers to refund the disbursed CNA incentives because they were found to be in bad faith as the disallowed incentives were negotiated by the collective bargaining representative in spite of non-accreditation with the CSC.

In *MWSS v. COA*,³² the Court affirmed the disallowance of the grant of mid-year financial, *bigay-pala* bonus, productivity bonus and year-end financial assistance to MWSS officials and employees. It also ruled therein that the MWSS Board members did not act in good faith and may be held

²⁷ Id. at 248-249.

²⁸ 717 Phil. 491 (2013).

²⁹ G.R. No. 210940, September 6, 2016.

³⁰ Also known as the Social Security Law.

³¹ 742 Phil. 327 (2015).

³² G.R. Nos. 195105 & 220729, November 21, 2017.

liable for refund because they approved the said benefits even though these patently contravened R.A. No. 6758, which clearly and unequivocally stated that governing boards of the GOCCs can no longer fix compensation and allowances of their officials or employees.

Based on the foregoing cases, good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: **(1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.**

Here, the DBP believed in good faith that they could grant additional benefits to the Board members based on Section 8 of the DBP Charter. When the Board issued DBP Resolution Nos. 0121 and 0037, they honestly believed they were entitled to the said compensation. More so, the DBP claimed that the additional benefits had the *imprimatur* of President Arroyo.

Likewise, at the time of the issuance of the said DBP resolutions on March 29, 2006 and August 23, 2006, there was still no existing jurisprudence or administrative order or regulation expressly prohibiting the disbursement of benefits and compensation to the DBP Board members aside from per diems. It was only on February 26, 2009 that the Court promulgated *BCDA v. COA* prohibiting the grant of compensation other than per diems to Board members.

Certainly, it is only in the present case that the Court is given the opportunity to construe Section 8 of the DBP Charter. The said provision has to be categorically interpreted by Court in order to conclude that the Board members are not entitled to benefits other than per diems and that the phrase “[u]nless otherwise set by the Board and approved by the President of the Philippines” solely refers to per diems. Thus, the Board members and the accountable officers cannot be faulted for their flawed interpretation of the law.

The Court reached a similar conclusion in *BCDA v. COA* where it held that while the grant of benefits was disallowed, the Board members acted in good faith and were not required to refund the same due to the following reasons: the BCDA Charter authorized its Board to adopt their own compensation and benefit scheme; there was no express prohibition against Board members from receiving benefits other than the per diem; and President Ramos approved the said benefits.

Further, in *DBP v. COA*,³³ the Court affirmed the disallowance of the subsidy granted by DBP to its officers who availed themselves of the Motor Vehicle Lease-Purchase Plan (*MVLPP*) benefits amounting to 50% of the acquisition cost of the motor vehicles. It found that the RR-MVLPP³⁴ did not permit the use of the car funds in granting multi-purpose loans or for investment instruments. Nonetheless, the officers of DBP, including its Board members, were absolved from liability in good faith because there was no specific provision in the RR-MVLPP that prohibited the manner in which DBP implemented the plan and there was no showing that the officers abused the MVLPP benefits.

In fine, the responsible officers of the DBP in this case have sufficiently established their defense of good faith, thus, they cannot be held liable to refund the additional benefits granted to the Board members. To reiterate, good faith may be appreciated because the approving officers were without knowledge of any circumstance or information which would render the transaction illegal or unconscientious.³⁵ Likewise, they had the belief that the President approved their expenditure. Neither could they be deemed grossly negligent as they also believed they could disburse the said amounts on the basis of the provisions of the DBP Charter.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The December 17, 2014 Decision and the August 18, 2015 Resolution of the Commission on Audit in Decision No. 2014-396 are **AFFIRMED** with **MODIFICATION** that the persons identified as personally liable under the Notice of Disallowance No. BOD-2006-007(06) are not required to refund the disallowed amounts therein.

SO ORDERED.


ALEXANDER G. GESMUNDO
Associate Justice

³³ G.R. Nos. 216538 & 216954, April 18, 2017.

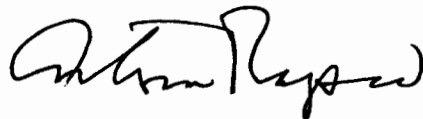
³⁴ Rules and Regulations for the Implementation of the Motor Vehicle Lease-Purchase Plan for Government Financial Institution.

³⁵ *Supra* note 28.


WE CONCUR:

(On Leave)

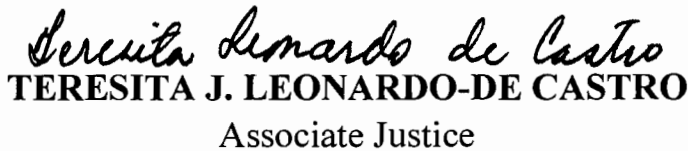
MARIA LOURDES P. A. SERENO
Chief Justice



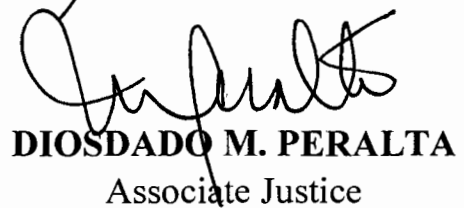
ANTONIO T. CARPIO
Acting Chief Justice



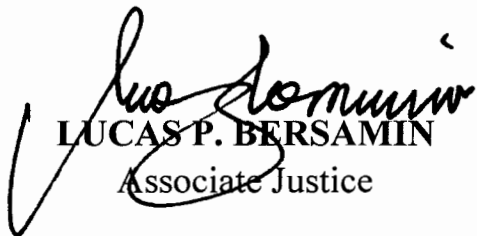
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



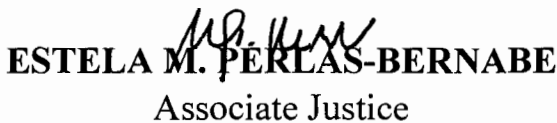
DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



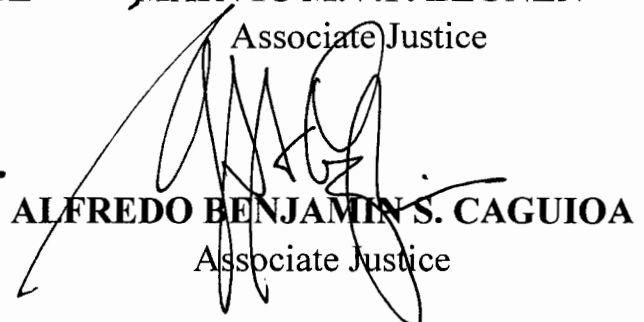
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice




FRANCIS H. JARDELEZA
Associate Justice



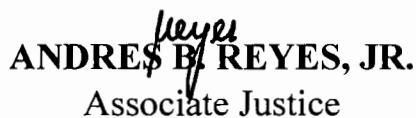
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



SAMUEL R. MARTIRES
Associate Justice



NOEL GOMEZ TIJAM
Associate Justice



ANDRES B. REYES, JR.
Associate Justice



CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ANTONIO T. CARPIO
Acting Chief Justice

Certified True Copy



ANNA-LUR.PAPA-GOMBIO
Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court

