Republic of the Philippines
Supreme Court
Manila

EN BANC

FR. RANHILIO CALLANGAN AQUINO, DR. PABLO F. NARAG, in representation of PERMANENT EMPLOYEES OF THE CAGAYAN STATE UNIVERSITY, Petitioners,	**G.R. No. 227715** Present: PERALTA, *Chief Justice,* PERLAS-BERNABE, LEONEN, CAGUIOA, GESMUNDO, HERNANDO, CARANDANG, LAZARO-JAVIER, INTING, ZALAMEDA, LOPEZ, DELOS SANTOS, GAERLAN, BALTAZAR-PADILLA, and ROSARIO. *JJ.*
-versus-	
COMMISSION ON AUDIT, Respondent.	**Promulgated:** November 3, 2020

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DECISION

LEONEN, *J.*:

Year-end incentives given to state university officials and employees are not allowable disbursements from the savings of its special trust fund. The recipients of illegally and irregularly disbursed funds are generally required to return the amounts they erroneously received regardless of good

faith and lack of participation.

This resolves the Petition for Certiorari[1] filed by Fr. Ranhilio Callangan Aquino and Dr. Pablo F. Narag (petitioners), for themselves and on behalf of the Permanent Employees of the Cagayan State University. The Petition questions the disallowance of the Commission on Audit[2] of year-end incentives given to officers and employees of Cagayan State University for not being in accord with Republic Act No. 8292.[3]

On December 19, 2014, Dr. Romeo Quilang (Quilang), as president of Cagayan State University, issued Special Order No. OP-2005-SO-2014-736 (Special Order) granting the payment of incentives not exceeding ₱40,000.00 to all its officials and employees.[4] The incentives were sourced from the unused appropriated income for 2014:

> In the spirit of the Yuletide Season, authority is hereby granted to pay incentives to all officials, regular and casual employees of the University with an amount not exceeding ₱40,000.00 subject to existing guidelines on payment of incentives pursuant to CHED CMO No. 20, s. 2011.
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> The incentive shall be sourced from the unused appropriated income for FY 2014 as agreed by the Campus Executive Officers during the Academic and Administrative Council meeting held on December 16, 2014 at the Andrews Gymnasium.
>
> The receipt of the incentive is without prejudice to the refund by the employees concerned if the incentive is found not in order in the post audit by the Commission on Audit. A waiver shall be executed by individual employees stating therein their willingness to refund the full amount in case of disallowance.
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> Issued in the best interest of public service. All orders and other issuances contrary are hereby rescinded or modified accordingly.[5]

The year-end incentives were deposited in the respective United Coconut Planters Bank accounts of the officials and employees of Cagayan State University.[6]

On May 18, 2015, the Commission on Audit issued a Notice of

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1 *Rollo*, pp. 3–11.

2 Id. at 3. *See* pp. 18–23, the May 18, 2015 Notice of Disallowance in N.D. No. 15–001–164–(14) was issued by Audit Group 1 - State Universities and Colleges, Team 2, headed by Irene P. Salvanera and supervised by Jovito T. Ilagan.

3 Id at 3–4. *See* p. 12, the August 1, 2016 Notice of Finality of Decision was issued by Audit Group 1 - State Universities and Colleges, Team 2, headed by Irene P. Salvanera and supervised by Corazon A. Bassig.

4 Id. at 4.

5 Id. at 4 and 24.

6 Id. at 5.

Disallowance for the incentives stating that:[7]

> The amount of P7,688,000.00 was disallowed in audit since the bases of payment of the year-end incentive to all CSU officials and employees has legal infirmity as it is not in accord with the provision of R.A. 8292 otherwise known as the Education Modernization Act.
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> ....
>
> Please direct the aforementioned persons liable to settle immediately the said disallowance. Audit disallowance not appealed within six (6) months from receipt hereof shall become final and executory as prescribed under Sections 48 and 51 of P.D. 1445.[8]

The following persons were held liable for the disallowance:[9]

Name	Position/Designation	Nature of Participation in the Transaction
Dr. Romeo R. Quilang	University President	Issued Special Order OP-2005-SO-2014-736 re: Granting Authority to Pay Incentives to all Officials, Regular, and Casual employees of the University chargeable from Unused Appropriations of Internally Generated Income for FY 2014. Issued Memorandum OP-5005-MEMO-2014-12-167 re: Guidelines on the Payment of Incentives from the Unused Appropriated Funds from Internally Generated Income for FY 2014.
Atty. Honorato M. Carag	Chief Administrative Officer	Approved the payment
Ms. Monaliza V. Guzman	University Accountant	Certified the availability of funds/supporting documents complete and proper
All the payees listed above[10]		

On June 6, 2015, the Office of the President of the university received the notice of disallowance.[11] The payees were allegedly not informed of the disallowance, which prevented them from appealing the notice of

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7 Id.
8 Id. at 22–23.
9 Id. at 22.
10 Id.
11 Id. at 5.

disallowance before it attained finality.[12]

On August 31, 2016, the Commission on Audit issued a notice of finality of decision which was received by the Office of the Vice-President for Academic Affairs.[13]

Petitioners allegedly discovered the disallowance when Dr. Mariden V. Cauilan, the OIC President of Cagayan State University, issued Memorandum OP-5004-MEMO-2016-08-175 directing all employees to return the disallowed year-end incentive by virtue of the notice of finality.[14]

Hence, petitioners instituted this action for themselves and in representation of the Permanent Employees of the Cagayan State University.[15]

They allege that the Commission on Audit committed grave abuse of discretion amounting to lack or excess of jurisdiction in holding that the grant of the 2014 year-end incentives was in violation of Republic Act No. 8292, or the Higher Education Modernization Act of 1997, and in ordering that the employees return the amounts they received.[16]

Petitioners argue that Section 4 of Republic Act No. 8292 gives the governing board of the Cagayan State University the discretion to receive and appropriate funds in support of the purposes of the university.[17] They allege that "'incentivizing' efficiency in teaching and rewarding loyalty to the state or university or college"[18] is a purpose and function of a university for which sums may be appropriated. They urge this Court to take judicial notice of the fact that providing incentives to instructors and professors ameliorates the condition of instructional corps and keeps them faithful to the institution.[19] Finally, they claim that the grant of year-end incentives is expressly authorized under CHED Memorandum Order No. 20, series of 2011 (CMO No. 20-2011).[20] Supposedly, CMO No. 20-2011 is an executive

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12 Id.
13 Id. at 5 and 12.
14 Id. at 5.
15 Id. at 3.
16 Id. at 5–6.
17 Id. at 6, Petition. Republic Act No. 8292 (1997), sec. 4(b) states:
To receive and appropriate all sums as may be provided, for the support of the university or college in the manner it may determine, in its discretion, to carry out the purposes and functions of the university or college;
...
(d) Any provision of existing laws, rules and regulations to the contrary notwithstanding, any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of regents/trustees for instruction, research, extension, or other programs/projects of the university or college: *Provided*, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected[.]
18 Id.
19 Id. at 7.
20 Id.

construction of Republic Act. No. 8292, and must be accorded respect.[21]

Further, petitioners argue that they are not required to return the incentives because they received it in good faith, having relied on the validity of the Special Order.[22] They also claim that they received similar incentives in the past which were not disallowed.[23] They assert that they neither participated in the issuance of the incentives nor did they personally receive the same since these were deposited in their respective bank accounts.[24]

In its Comment,[25] respondent argues that the Petition should be dismissed for its failure to comply with various procedural requirements.

First, it points out that the Permanent Employees of the Cagayan State University has no existing juridical personality. The Certification authorizing petitioners to file the Petition was issued by the Cagayan State University Faculty Association and not the Permanent Employees of the Cagayan State University.[26]

Second, petitioners failed to attach in their Petition certified true copies of the assailed judgment, order, or resolution, in violation of Section 1, Rule 65 of the Rules of Court.[27]

Finally, respondent argues that certiorari is not the proper remedy for petitioners' lost appeal. Petitioners had adequate recourse by appealing the Notice of Disallowance to it but failed to do so.[28]

Respondent further alleges that it did not commit grave abuse of discretion in disallowing the year-end incentives. It states that under Republic Act No. 8292, the power to disburse a state university's funds belongs to the board of regents and not the university president.[29] Here, there was no showing that the president was authorized by the board of regents to disburse the unappropriated funds as year-end incentives to its officials and employees.[30]

However, respondent agrees with petitioners that they should not be

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21 Id.
22 Id. at 9.
23 Id. at 8.
24 Id.
25 Id. at 63–73.
26 Id. at 65–66.
27 Id. at 66–67.
28 Id at 67–68.
29 Id at 69.
30 Id.

required to refund the incentives they received in good faith.[31]

In their Reply,[32] petitioners allege that the administration of Cagayan State University prevented them from appealing the notice of disallowance by not informing them of the disallowance before it attained finality.[33] They also allege that petitioners' authority to file the case on behalf of the Permanent Employees of the Cagayan State University is stated in Resolution No. 3, series of 2016 of the University Faculty Association which they attached in their Petition and in their Reply.[34] They assert that when the incentives were deposited in their bank accounts, they gained every right to assume that its issuance was authorized and had basis in law.[35]

The issues in this case are as follows:

First, whether or not petitioners have the legal personality to file the Petition;

Second, whether or not petitioners' direct recourse to this Court is proper;

Third, whether or not respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in disallowing the year-end incentives; and

Lastly, whether or not petitioners are required to return the amount.

We deny the petition.

I

Only natural, juridical, and authorized entities may become parties to a civil action.[36] A party's legal capacity to sue or be sued must be alleged in its initiatory or responsive pleading:

> SECTION 4. *Capacity.* — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. A party desiring to raise

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31 Id at 70–71.
32 Id. at 86–88.
33 Id. at 86–87.
34 Id. at 87.
35 Id.
36 RULES OF COURT, Rule 3, sec. 1.

> an issue as to the legal existence of any party or the capacity, of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge[.][37]

The action shall be prosecuted and defended in the name of the real party in interest.[38] However, representatives may bring a suit on behalf of a real party in interest:

> SECTION 3. *Representatives as Parties.* — Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, *the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest.* A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal[.][39] (Emphasis supplied)

Two elements must be established to bring a representative suit: "(a) the suit is brought on behalf of an identified party whose right has been violated, resulting in some form of damage, and (b) the representative authorized by law or the Rules of Court to represent the victim."[40]

In this case, petitioners filed this case on their own behalf and in representation of "all employees of the Cagayan State University adversely affected."[41] The caption of the Petition states that the petitioners are "Fr. Ranhilio Callangan Aquino and Dr. Pablo F. Narag, in representation of Permanent Employees of the Cagayan State University."[42] They assert their authority to file the instant case under the Resolution No. 03 series of 2016 attached to their Petition.[43]

Respondent alleges that petitioners do not have legal personality because there is no juridical entity registered under the name of Permanent Employees of the Cagayan State University.[44]

We agree with respondent.

While petitioners identified the Permanent Employees of the Cagayan

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37 RULES OF COURT, Rule 8, sec. 4.
38 RULES OF COURT, Rule 3, sec. 2.
39 RULES OF COURT, Rule 3, sec. 3.
40 J. Leonen, Concurring and Dissenting Opinion in *Paje v. Casino*, 752 Phil. 498, 686 (2015) [Per J. Del Castillo, En Banc], *citing* J. Leonen, Concurring Opinion in *Arigo v. Swift*, 743 Phil. 8 (2014) [Per J. Villarama, Jr., En Banc].
41 *Rollo*, p. 3.
42 Id.
43 Id. at 87.
44 Id. at 65.

State University as their beneficiary, they failed to allege their capacity to sue on its behalf. They also failed to allege the legal existence of the Permanent Employees of the Cagayan State University, in violation of Rule 8, Section 4 of the Rules of Court. Here, there was no showing that the Permanent Employees of the Cagayan State possesses juridical entity. Petitioners failed to refute respondent's allegation that the association does not exist.[45]

Association of Flood Victims v. COMELEC[46] ruled that an unincorporated association may not sue in its own name and may not be designated as a beneficiary in a representative suit. Hence, a representative who files a suit on behalf of an unincorporated association lacks legal standing:

> Under Sections 1 and 2 of Rule 3, only natural or juridical persons, or entities authorized by law may be parties in a civil action, which must be prosecuted or defended in the name of the real party in interest. Article 44 of the Civil Code lists the juridical persons with capacity to sue, thus:
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> > Art. 44. The following are juridical persons:
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> > (1) The State and its political subdivisions;
> >
> > (2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
> >
> > (3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.
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> Section 4, Rule 8 of the Rules of Court mandates that "[f]acts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred."
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> In their petition, it is stated that petitioner Association of Flood Victims "is a non-profit and non-partisan organization *in the process of formal incorporation*, the primary purpose of which is for the benefit of the common or general interest of many flood victims who are so numerous that it is impracticable to join all as parties," and that petitioner Hernandez "is a Tax Payer and the Lead Convenor of the Association of Flood Victims." Clearly, petitioner Association of Flood Victims, which is still in the process of incorporation, cannot be considered a juridical person or an entity authorized by law, which can be a party to a civil action.
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> Petitioner Association of Flood Victims is an unincorporated association not endowed with a distinct personality of its own. ***An unincorporated association, in the absence of an enabling law, has no***

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45 Id.

46 740 Phil. 472 (2014) [Per J. Carpio, En Banc].

juridical personality and thus, cannot sue in the name of the association. Such unincorporated association is not a legal entity distinct from its members. ***If an association, like petitioner Association of Flood Victims, has no juridical personality, then all members of the association must be made parties in the civil action.*** In this case, other than his bare allegation that he is the lead convenor of the Association of Flood Victims, petitioner Hernandez showed no proof that he was authorized by said association. Aside from petitioner Hernandez, no other member was made signatory to the petition. Only petitioner Hernandez signed the Verification and Sworn Certification against Forum Shopping, stating that he caused the preparation of the petition. There was no accompanying document showing that the other members of the Association of Flood Victims authorized petitioner Hernandez to represent them and the association in the petition.

In *Dueñas v. Santos Subdivision Homeowners Association*, the Court held that the Santos Subdivision Homeowners Association (SSHA), which was *an unincorporated association, lacks capacity to sue in its own name*, and that the members of the association cannot represent the association without valid authority, thus:

> There is merit in petitioner's contention. Under Section 1, Rule 3 of the Revised Rules of Court, only natural or juridical persons or entities authorized by law may be parties in a civil action. Article 44 of the Civil Code enumerates the various classes of juridical persons. Under said Article, an association is considered a juridical person if the law grants it a personality separate and distinct from that of its members. The records of the present case are bare of any showing by SSHA that it is an association duly organized under Philippine law. It was thus error for the HLURB-NCR Office to give due course to the complaint in HLURB Case No. REM-070297-9821, given SSHA's lack of capacity to sue in its own name. Nor was it proper for said agency to treat the complaint as a suit by all the parties who signed and verified the complaint. The members cannot represent their association in any suit without valid and legal authority. Neither can their signatures confer on the association any legal capacity to sue. Nor will the fact that SSHA belongs to the Federation of Valenzuela Homeowners Association, Inc., suffice to endow SSHA with the personality and capacity to sue. Mere allegations of membership in a federation are insufficient and inconsequential. The federation itself has a separate juridical personality and was not impleaded as a party in HLURB Case No. REM-070297-9821 nor in this case. Neither was it shown that the federation was authorized to represent SSHA. Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred. Hence, for failing to show that it is a juridical entity, endowed by law with capacity to bring suits in its own name, SSHA is devoid of any legal capacity, whatsoever, to institute any action.
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> More so in this case where there is no showing that petitioner

> Hernandez is validly authorized to represent petitioner Association of Flood Victims.
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> Since ***petitioner Association of Flood Victims has no legal capacity to sue, petitioner Hernandez, who is filing this petition as a representative of the Association of Flood Victims, is likewise devoid of legal personality to bring an action in court***[.][47] (Citations omitted, emphasis supplied)

Similarly, the Permanent Employees of the Cagayan State University has no separate juridical personality. It can neither file a case under its name nor can it sue on behalf of its members. Hence, its members, who are the real parties in interest, should have been impleaded in the petition. Since the beneficiary of this representative suit is an unincorporated association, petitioners are likewise devoid of legal personality to represent it. While it is true that petitioners are real parties-in-interest in their own right,[48] their legal standing is personal to them and cannot cure Permanent Employees of the Cagayan State University's lack of juridical capacity.

As to the second requisite of a representative suit, petitioners also failed to establish their authority to represent the Permanent Employees of the Cagayan State University.

In their Reply, petitioners attached Resolution No. 03 series of 2016 dated September 20, 2016, claiming that it is the same resolution attached to this Petition. However, a reading of the contents of the almost identical resolutions reveals that the documents refer to different associations in Cagayan State University.[49]

The resolution attached in the Reply was purportedly issued by the Cagayan State University *Admin* Association as stated in the title. It bears noting that "ADMIN" was handwritten over a deleted text. However, the body of this resolution refers to the University Administrative Personnel Association and not Cagayan State University Admin Association.[50] This is significantly different from the resolution attached to this Petition, which is also entitled Resolution No. 03 series of 2016 dated September 20, 2016 but issued by the Cagayan State *Faculty* Association.[51]

It appears that the University Administrative Personnel Association adopted a resolution of the Cagayan State Faculty Association to file a petition before this Court assailing respondent's disallowance.[52] In both

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47 Id. at 478–481.
48 *Rollo*, p. 3.
49 Id. at 87.
50 Id. at 89. Annex "A" of the Reply.
51 Id. at 25.
52 Id. at 89. The Resolution issued by the University Administrative Personnel Association in its perambulatory clauses states:
WHEREAS, Ms. Jane Umengan informed the University Administrative Personnel Association

resolutions, the purported association with the name "Permanent Employees of the Cagayan State University" does not appear.

Assuming that petitioners actually intended to represent Cagayan State University Faculty Association and the University Administrative Personnel Association, they should have been designated as the beneficiaries of these associations in the caption of their Petition. The requirement of designation in Rule 3, Section 3 of the Rules of Court is not an empty procedural rule. Its purpose is to remove confusion and doubt from the court's mind as to the party entitled to the reliefs prayed for.[53]

In this case, petitioners are at fault for not complying with this basic procedural requirement. They proved their personal legal standing, but neglected to establish the identity and existence of the association they seek to represent.

Petitioners' negligence in impleading the proper parties prejudiced their intended beneficiaries who now lost their only remedy to assail the notice of disallowance before this Court. Petitioners' negligence effectively allowed the Notice of Disallowance to attain finality as regards the other payees whom respondent held liable. These payees, excluding petitioners, are then bound to return the year-end incentives they received pursuant to the Notice of Disallowance and the Notice of Finality which respondent issued.

II

Under the 2009 Rules of Procedure of the Commission on Audit, a Notice of Disallowance attains finality if no appeal has been filed within six months from receipt of the Notice.[54] An appeal is taken by filing an Appeal Memorandum with the director of the Commission on Audit within six months from receipt of the Notice of Disallowance.[55] The director may reverse, modify, or affirm a Notice of Disallowance, but in case of reversal

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President, CSU APA Ms. Rachel G. Miguel of the planned action of the UFA and encouraged the CSU APA to adopt the resolution they have formulated, to which Ms. Miguel gratefully agreed[.]

53 *Alliance of Quezon City Homeowners' Association Inc. v. Quezon City Government*, G.R. No. 230651, September 18, 2018 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64552> [Per J. Perlas-Bernabe, En Banc].

54 2009 Rules of Procedure of the Commission on Audit, Rule IV, sec. 8 states:
SECTION 8. *Finality of the Auditor's Decision.* — Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

55 2009 Rules of Procedure of the Commission on Audit, Rule V, secs. 2 and 4 state:
SECTION 2. *How Appeal Taken.* — The appeal to the Director shall be taken by filing an Appeal Memorandum with the Director, copy furnished the Auditor. Proof of service of a copy to the Auditor shall be attached to the Appeal Memorandum. Proof of payment of the filing fee prescribed under these Rules shall likewise be attached to the Appeal Memorandum.
....
SECTION 4. *When Appeal Taken.* — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

or modification, the director's decision is automatically reviewed.[56]

Respondent alleges that petitioners had a "plain, speedy, and adequate remedy" before it but they opted not to move for any reconsideration or appeal the disallowance.[57]

Petitioners allege that they were not informed by the administration of the Notice of Disallowance until it became final, and that they only learned of it through a Memorandum directing them to return the disallowed year-end incentives.[58] They claim that the university administration concealed the disallowance from the permanent employees of the Cagayan State University.[59]

On this issue, We rule for the petitioners.

A notice of disallowance must be served to each and every person that respondent holds liable. However, when there are several payees, service to the accountant is constructive service to all payees held liable:

> SECTION 7. *Service of Copies of ND/NC/NS, Order or Decision.* — The ND, NC, NS, order, or decision shall be served to each of the persons liable/responsible by the Auditor, through personal service, or if not practicable through registered mail. In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.[60]

Development Bank of the Philippines v. Commission on Audit[61] explained that the essence of due process in proceedings before respondent is not the service of notice *per se*, but the opportunity to be heard, or to seek reconsideration of the Notice of Disallowance:

> Under Section 7, Rule IV of the 2009 Revised Rules of Procedure of the COA, DBP has the duty to serve the copies of the Notice of Disallowance, orders and/or decisions of the COA on the individuals to be held liable especially when there were several payees. . .
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> . . . .

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56 2009 Rules of Procedure of the Commission on Audit, Rule V, sec. 7 states:
SECTION 7. *Power of Director on Appeal.* — The Director may affirm, reverse, modify or alter the decision of the Auditor. If the Director reverses, modifies or alters the decision of the Auditor, the case shall be elevated directly to the Commission Proper for automatic review of the Directors' decision. The dispositive portion of the Director's decision shall categorically state that the decision is not final and is subject to automatic review by the CP.

57 *Rollo*, p. 67.

58 Id. at 5.

59 Id. at 86.

60 2009 Rules of Procedure of the Commission on Audit, Rule IV, sec.7.

61 808 Phil. 1001 (2017) [Per J. Bersamin, En Banc].

> The COA received the petitioners' joint motion for reconsideration vis-à-vis the assailed Decision No. 2012-269 dated December 28, 2012 following the submission of the petitioners' individual letters seeking the reconsideration of the questioned issuances. Their joint motion and their letters for reconsideration were considered by the COA in reaching the Resolution dated December 4, 2014. As such, the petitioners had no factual and legal bases to complain. We remind that the essence of due process is simply the opportunity to be heard or, as applied to administrative proceedings, the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. In the application of the guarantee of due process, indeed, what is sought to be safeguarded is not the lack of previous notice but the denial of the opportunity to be heard. As long as the party was afforded the opportunity to defend his interests in due course, he was not denied due process.[62] (Citations omitted)

In *Development Bank of the Philippines*, respondent disallowed petitioner's subsidy program for the motor vehicle lease purchase plan of its board of directors. There, petitioners submitted individual letters of reconsideration to the Commission on Audit Commission Proper En Banc after it denied Development Bank of the Philippines' petition for review. These letters were treated as supplemental motions for reconsideration. Petitioners therein claimed that their due process rights were violated because they did not receive issuances from respondent. This Court held that there was no denial of due process because they were given the chance to be heard on their motions for reconsideration.[63]

This case is different. Records show that respondent did not properly serve the notice of disallowance. Ms. Monaliza Guzman (Guzman), the University Accountant, was not served a copy, contrary to Section 7, Rule IV of the 2009 Revised Rules of Procedure.[64]

Instead, it was received by the Chief Administrative Office through Ms. Norlie Maa on June 3, 2015.[65] While Ms. Guzman was addressed in the letter, there was no showing that the Notice was served to her.[66] Moreover, the proofs of service in the notice of disallowance and notice of finality do not bear the signatures of the persons required to be served.[67] There was no proof that the notices were properly served. While petitioners admitted to hearing "rumors and unconfirmed conjectures" on the disallowance,[68] this does not amount to constructive notice prescribed under the 2009 Revised Rules of Procedure of the Commission on Audit.

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62 Id. at 1014–1015.
63 Id. at 1015.
64 *Rollo*, p. 23.
65 Id. at 64.
66 Id. at 13.
67 Id. at 23.
68 Id. at 5.

The lack of proper service of the notice of disallowance prevented petitioners from appealing or seeking reconsideration before its finality. This Court agrees with petitioners that they only had constructive notice of the disallowance when the Office of the President issued Memorandum OP-5004-MEMO-2016-08-175 directing them to return the disallowed incentives.[69] Thus, we do not find that petitioners opted not to file an appeal or reconsideration before respondent, as they were not properly informed of the notices' issuance.

As petitioners did not have adequate remedies when the disallowance lapsed into finality, they were constrained to file this petition for certiorari consistent with Rule 12, Section 1 of the 2009 Revised Rules of Procedure of the Commission on Audit:

> RULE XII
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> JUDICIAL REVIEW
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> SECTION 1. *Petition for Certiorari.* — Any decision, order or resolution of the Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof in the manner provided by law and the Rules of Court.
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> When the decision, order or resolution adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.

However, even as we excuse petitioners' direct resort to this Court and give due course to their Petition, We still deny it because respondent did not commit grave abuse of discretion in disallowing the year-end incentives.

III

Petitioners assert that the Board of Regents of Cagayan State University has "fiscal autonomy" to appropriate funds to carry out the purpose of the university. They claim that providing incentives to the instructors and professors is consistent with its purpose to instruct for which its income may be utilized.[70]

In addition, they allege that the grant of year-end incentives is expressly provided under Section 3(w) of CHED Memorandum Order No. 020-11 (CMO 020-11):[71]

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69 Id.

70 Id at 7.

71 Id. CHED Memorandum Order No. 020-11 is entitled "Policies and Guidelines for the Use of Income, Special Trust Fund and Programs of Receipts and Expenditures of the State Universities and Colleges."

> SECTION 3. *Definition of Terms.* — The following terms are hereby defined in accordance with its operational meaning, as follows:
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> . . . .
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> w) *Unexpended Amount* — refers to the unobligated balance of the budget. At the end of a given period, the unexpended amount may be declared as savings. At the end of the calendar year, it may be considered as Surplus. This is usually the amount which is included in the cumulative results of operations unappropriated or the acronym popularly known as "CROU", or simply stated, Accumulated Savings. The BOR/T, through the initiative of the finance division, *may use the amount for the payment of additional incentives* or reprogrammed as funding for projects proposed for the next calendar year. (Emphasis supplied)

According to petitioners, CMO 020-11 is an executive construction of the powers of the Board of Regents which must be accorded due respect.[72]

These are erroneous contentions.

Section 4 of Republic Act No. 8292 defines the powers and duties of governing boards of state universities and colleges that include appropriation and disbursement of their funds:

> SECTION 4. *Powers and Duties of Governing Boards.* — The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:
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> . . . .
>
> b) to receive and appropriate all sums as may be provided, for the support of the university or college in the manner it may determine, in its discretion, to carry out the purposes and functions of the university or college;
>
> . . . .
>
> d) to fix the tuition fees and other necessary school charges, such as but not limited to matriculation fees, graduation fees and laboratory fees, as their respective boards may deem proper to impose after due consultations with the involved sectors.
>
> Such fees and charges, including government subsidies and other income generated by the university or college, shall constitute special trust funds and shall be deposited in any authorized government depository bank, and all interests shall accrue therefrom shall part of the same fund for the use of the university or college: Provided, That income derived from university hospitals shall be exclusively earmarked for the operating expenses of the hospitals.

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72 Id.

> Any provision of existing laws, rules and regulations to the contrary notwithstanding, *any income generated by the university or college from tuition fees and other charges, as well as from the operation of auxiliary services and land grants, shall be retained by the university or college, and may be disbursed by the Board of Regents/Trustees for instruction, research, extension, or other programs/projects of the university or college*: Provided, That all fiduciary fees shall be disbursed for the specific purposes for which they are collected.
>
> If, for reasons beyond its control, the university or college, shall not be able to pursue any project for which funds have been appropriated and, allocated under its approved program of expenditures, the Board of Regents/Trustees may be authorize the use of said funds for any reasonable purpose which, in its discretion, may be necessary and urgent for the attainment of the objectives and goals of the universities or college[.] (Emphasis supplied)

Benguet State University v. COA[73] held that the authority granted to governing boards of state universities and colleges is subject to limitations under Republic Act No. 8292:

> Furthermore, a reading of the entire provision supports the COA's interpretation that the authority given to the Governing Board of state universities and colleges is not plenary and absolute. It is clear in Section 4 that the powers of the Governing Board are subject to limitations. This belies BSU's claim of plenary and absolute authority.
>
> Neither can BSU find solace in the academic freedom clause of the Constitution. Academic freedom as adverted to in the Constitution and in R.A. No. 8292 only encompasses the freedom of the institution of higher learning to determine for itself, on academic grounds, who may teach, what may be taught, how it shall be taught, and who may be admitted to study. The guaranteed academic freedom does not grant an institution of higher learning unbridled authority to disburse its funds and grant additional benefits sans statutory basis. Unfortunately for BSU, it failed to present any sound legal basis that would justify the grant of these additional benefits to its employees.[74] (Citation omitted)

Under Republic Act No. 8292, any income generated from tuition fees, charges, and all other generated income shall form part of the special trust fund of a state university or college. The disbursement power of the governing board of a state university or college is limited to funding instruction, research, extension, or other similar programs and projects.[75]

In *Chozas v. Commission on Audit*,[76] accomplishment incentive awards disbursed from the special trust fund and given to the Board of

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73 551 Phil. 878 (2007) [Per J. Nachura, En Banc].

74 Id. at 887.

75 Id.

76 G.R. No. 226319, October 8. 2019 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65794> [Per J. A. Reyes, En Banc].

Regents, employees, and faculty members of Bulacan State University were disallowed. This Court upheld the disallowance because the award of incentives was not related to any academic program nor was it an expense necessary for instruction, research, and extension:

> Concededly, R.A. No. 8292 grants the governing boards of state universities and colleges the power to use the STF for any charges or expenses necessary for instruction, research, extension and other programs or projects of the university or college.
>
> It must be stressed, however, that the authority given to the governing boards of state universities and colleges is not plenary and absolute, but is subject to limitations. In *Benguet State University v. COA*, the Court warned against the state university's unbridled exercise of powers, and tempered its right to indiscriminately grant allowances to its employees under the guise of academic freedom. The Court stressed that academic freedom shall not serve as a warrant for any untrammeled authority to disburse funds and grant additional benefits sans statutory basis.
>
> *Besides, the law clearly states that the STF may only be used for expenses necessary for instruction, research and extension. The incentive granted by the BulSU does not in any way relate to any particular academic program or project pertaining to instruction, research, or extension.* In fact, all that the BulSU officers latch on to is the broad and vague excuse that the recipients aided in the university's goal of achieving excellence. An automatic grant of incentives on shallow and unsubstantiated grounds will certainly lead to the hemorrhaging of government funds, which the Court shall not countenance.
>
> Neither may the award be regarded as part of the catch-all phrase "other programs/projects" of the BulSU. Notably, the basic statutory construction principle of *ejusdem generis* states that where a general word or phrase follows an enumeration of particular and specific words of the same class, the general word or phrase must be construed to include, or to be restricted to things akin to, resembling, or of the same kind or class as those specifically mentioned. Thus, the phrase "other programs/projects" must be interpreted to pertain to those relating to instruction, research and extension.
>
> In fact, in the seminal cases of *Benguet State University, and Ricardo E. Rotoras, President, Philippine Association of State Universities and Colleges v. Commission on Audit*, the Court clarified that the rice subsidy and health care allowance, as well as the honoraria of the members of the Board, respectively, do not form part of the state universities' STF.
>
> Finally, the petitioners cannot seek refuge in COA Circular No. 2000-002, which, as petitioners claim allows the use of the STF for "pay[ing] authorized allowances and fringe benefits to teachers and students who render services to the school." Even a simple perusal of the afore-quoted phrase from COA Circular No. 2000-002 clearly shows that the STF shall only be used for "authorized" allowances.
>
> Given the foregoing, it is all too clear that the petitioners-officials

> had no authority to grant the Accomplishment Incentive Award. Thus, such move is undoubtedly an *ultra vires* act that renders the distribution of said Award unlawful.[77]

Here, the year-end incentives were sourced from the "unused appropriated income for [fiscal year] 2014."[78] In other words, it was sourced from the unexpended amount of the budget which forms part of the savings of the university. This Court holds that the savings of a special trust fund must also be utilized for the limited purpose of instruction, research, extension, and other similar projects. Savings of a state university is defined as:

> *Savings* — refer to such portion or balance of the SUC's released allotment for the year, free of any obligation or encumbrance and which are no longer intended for specific purpose/s such as but not limited to 1) Unexpended balance after completion of the work/activity/project for which the appropriation is authorized; or 2) unexpended funds resulting from implementation of improved systems and procedures, cost saving measures and efficiency where the agency was able to meet and deliver the required or planned targets, programs and services approved in the annual budget at a lesser cost, targets, programs and services approved in the annual budget.[79]

Section 3 (w) of CMO No. 020-11 permitting the disbursement of unexpended amounts for incentives should not be interpreted as a wholesale authority for the state university to issue any kind of incentives without regard to its purpose. "[A] rule or regulation must conform to and be consistent with the provisions of the enabling statute."[80] In *Pilipinas Kao, Inc., v. Court of Appeals*:[81]

> As we have consistently ruled, it the statutory purpose is clear, the provisions of the law should be construed so as not to defeat but to carry out such end and purpose. For a statute derives its vitality from the purpose for which it is enacted and to construe it in a manner that disregards or defeats such purpose is to nullify or destroy the law.
>
> An administrative agency may not enlarge, alter or restrict the provisions of the statute being administered. It may not engraft additional non-contradictory requirements on the statute which were not contemplated by the legislature.[82]

While payment of additional incentives is expressly stated in CMO No. 020-11, it should be construed in accordance with Republic Act No. 8292. Thus, the governing board of a state university or college may only

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77 Id.
78 *Rollo*, p. 24.
79 CHED Memorandum Order No. 020-11, art. 1, sec. 3(s).
80 *Perez v. Philippine Telegraph and Telephone Company*, 602 Phil. 522, 537 (2009) [Per J. Corona, En Banc].
81 423 Phil. 834 (2001) [Per J. Kapunan, First Division].
82 Id. at 858.

utilize the unexpended balance or income for the purpose of instruction, research, extension, and other similar projects. To allow a state university to disburse the savings of its special trust fund regardless of the purpose, in effect, allows it to circumvent the rules.

Assuming CMO No. 020-11 may be construed to allow the grant of year-end incentives, Cagayan State University still failed to show compliance with procedural requirements to disburse the funds.

Article VI of CMO No. 020-11 provides the procedure in using the accumulated savings of a state university:

> ARTICLE VI Accumulated Savings/The CROU
>
> SECTION 31. *Use of STF Accumulated Savings or Cumulative Results of Operations-Unappropriated (CROU).* — The disposition of the STF Accumulated Savings or Cumulative Results of Operations-Unappropriated arising from tuition fees, service and other income shall be approved by the BOR/T upon the recommendation of President in consultation with the Administrative Council (ADCO). The BOR/T approval may include proposed major project or to use it in payment of a loan incurred by the SUC from a bank, or other financial institution, or for the *payment of incentives* or any other project or expenditure that would benefit the SUC.
>
> SECTION 32. *Maintenance of Subsidiary Accounts.* — A subsidiary ledger shall be maintained by the Financial Management Services Division to monitor the accumulation of unexpended amount. This shall serve as the common fund account of the whole SUC, regardless of where the unexpended fund was taken. In the case of the budget for Production, and the funds pertaining to fiduciary fund, self-liquidating units, income generating units, and regular funds, a running balance shall be retained. Its inclusion in the CROU shall be expressly approved by the BOR/T by virtue of a board resolution, after due deliberation.

Under the guidelines, payment of incentives may be disbursed from the accumulated savings of the special trust fund, otherwise called as Cumulative Results of Operations-Unappropriated (CROU). Prior to its payment, there must be a consultation with the Administrative Council of the State University. Thereafter, the President recommends the payment of incentives for approval to the Board of Regents.

Respondent argues that the disallowance is valid as there was no showing that the Board of Regents approved the grant of incentives.[83]

We agree. An examination of the Special Order OP-2005-SO-2014-

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[83] *Rollo*, pp. 69–70.

736 shows that it lacks the required approval from the Board of Regents. It was only the President, through the Campus Executive Officers who authorized the payment of incentives:

> The incentive shall be sourced from the unused appropriated income for FY 2014 as agreed by the Campus Executive Officers during the Academic and Administrative Council meeting held on December 16, 2014 at the Andrews Gymnasium.[84]

Petitioners failed to show that the Campus Executive Officers are the same officials who sit on the Board of Regents. CMO No. 020-11 is specific that only the Board of Regents can approve payment of incentives.

Under Republic Act No. 8292[85] and CMO No. 020-11, the Board of Regents may delegate the disbursement of accumulated savings to the University President, whose action is still subject to the approval of the Board of Regents. The PRAISE Committee and the Administrative Council must also agree to it, before the University President can endorse additional incentives from the accumulated savings for the Board of Regents' approval. As stated in Article VI, Section 33 of CHED Memorandum Order No. 020-11:

> SECTION 33. *Discretion of the BOR/T.* — The power vested in the BOR/T to delegate to the SUC President to administer or manage the accumulated savings of the SUC is justified by his accountability as head of agency, as long as it is in furtherance of the goals and objectives of the SUC as a whole. The respective fund administrators have already been given the authority to execute their respective budget using their respective allocations upon the approval of the BOR/T. Their failure to do so may cause the increase of accumulated savings to the SUC, but is not a credit to their performance.
>
> *In case decision is to use the accumulated savings for personal services, such as additional incentive, the PRAISE committee and the ADCO shall agree on it*, and the same shall undergo the usual BOR/T approval upon favorable endorsement by the SUC President. (Emphasis supplied)

In this case however, it does not appear that the Board of Regents of Cagayan State University delegated its power to Dr. Quilang, the University President. While petitioners rely on CMO No. 020-11, they did not allege whether the disbursement of the savings was done with the required Board of Regents' approval. The Special Order granting the incentives states that

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84 Id at 24.

85 Republic Act No. 8292 (1997), sec. 4(o) states:
SECTION 4. *Powers and Duties of Governing Boards.* —
. . . .
o) to delegate any of its powers and duties provided for hereinabove to the president and/or other officials of the university or college as it may deem appropriate so as to expedite the administration of the affairs of the university or college;

only the President, in coordination with the Campus Executive Officers, agreed to its issuance.[86]

Therefore, the grant of year-end incentives is an illegal and irregular disbursement. Aside from being contrary to the allowable purpose for disbursement under Republic Act No. 8292, there was no showing that the procedure for disbursement of savings was complied with. Thus, the Court of Appeals did not commit grave abuse of discretion in upholding the disallowance of the year-end incentives.

IV

Relying on *Casal v. Commission on Audit*,[87] petitioners contend that they are not liable to return the year-end incentives they received in good faith.[88] Respondent agrees, citing *Philippine Ports Authority v. Commission on Audit*[89] and *Benguet State University v. Commission on Audit*.[90]

However, this Court holds that petitioners, as recipients of the year-end incentives, are required to return the amounts they erroneously received.

In *Madera v. Commission on Audit*,[91] this Court harmonized the conflicting pronouncements regarding the liability of payees as well as approving and certifying officers in returning amounts erroneously received. It outlined the following guidelines in determining liability of payees:

> 1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
>
> 2. If a Notice of Disallowance is upheld, the rules on return are as follows:
>
> > a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
> >
> > b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

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86 *Rollo*, p. 24.
87 538 Phil. 634 (2006) [Per J. Carpio Morales, En Banc].
88 *Rollo*, p. 8.
89 517 Phil. 677 (2006) [Per J. Azcuna, En Banc].
90 *Rollo*, pp. 70–71, *citing* 551 Phil. 878 (2007) [Per J. Nachura, En Banc].
91 G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

> c. Recipients - whether approving or certifying officers or mere passive recipients - are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
>
> d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other bona fide exceptions as it may determine on a case to case basis.

Undoubtedly, consistent with the statements made by Justice Inting, the ultimate analysis of each case would still depend on the facts presented, and these rules are meant only to harmonize the previous conflicting rulings by the Court as regards the return of disallowed amounts - after the determination of the good faith of the parties based on the unique facts obtaining in a specific case has been made.

To reiterate, the assessment of the presumptions of good faith and regularity in the performance of official functions and proof thereof will be done by the Court on a case-to-case basis. Moreover, the additional guidelines eloquently presented by Justice Leonen will greatly aid the Court in determining the good faith of officers and resultantly, whether or not they should be held solidarily liable in disallowed transactions.[92]

This Court reasoned that the personal liabilities of recipients in returning the amounts that they erroneously received is civil in nature:

D. Nature of payee participation

Verily, excusing payees from return on the basis of good faith has been previously recognized as an exception to the laws on liability for unlawful expenditures. However, being civil in nature, the liability of officers and payees for unlawful expenditures provided in the Administrative Code of 1987 will have to be consistent with civil law principles such as *solutio indebiti* and unjust enrichment. These civil law principles support the propositions that (1) the good faith of payees is not determinative of their liability to return, and (2) when the Court excuses payees on the basis of good faith or lack of participation, it amounts to a remission of an obligation at the expense of the government.

To be sure, the application of the principles of unjust enrichment and *solutio indebiti* in disallowed benefits cases does not contravene the law on the general liability for unlawful expenditures. In fact, these principles are consistently applied in government infrastructure or procurement cases which recognize that a payee contractor or approving and/or certifying officers cannot be made to shoulder the cost of a correctly disallowed transaction when it will unjustly enrich the government and the public who accepted the benefits of the project.

These principles are also applied by the Court with respect to disallowed benefits given to government employees. In characterizing the

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92 Id.

obligation of retirees-payees who received benefits properly disallowed by the COA, the Resolution in the 2004 case of *Government Service Insurance System v. Commission on Audit* stated:

> Anent the benefits which were improperly disallowed, the same rightfully belong to respondents without qualification. As for benefits which were justifiably disallowed by the COA, the same were erroneously granted to and received by respondents who now have the obligation to return the same to the System.
>
> It cannot be denied that respondents were recipients of benefits that were properly disallowed by the COA. These COA disallowances would otherwise have been deducted from their salaries, were it not for the fact that respondents retired before such deductions could be effected. The GSIS can no longer recover these amounts by any administrative means due to the specific exemption of retirement benefits from COA disallowances. Respondents resultantly retained benefits to which they were not legally entitled which, in turn gave rise to an obligation on their part to return the amounts under the principle of *solutio indebiti.*
>
> Under Article 2154 of the Civil Code, if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises. Payment by reason of mistake in the construction or application of a doubtful or difficult question of law also comes within the scope of *solutio indebiti*
>
> xxxx
>
> While the GSIS cannot directly proceed against respondents' retirement benefits, it can nonetheless seek restoration of the amounts by means of a proper court action for its recovery. Respondents themselves submit that this should be the case, although any judgment rendered therein cannot be enforced against retirement benefits due to the exemption provided in Section 39 of RA 8291. However, there is no prohibition against enforcing a final monetary judgment against respondents' other assets and properties. This is only fair and consistent with basic principles of due process.

The COA similarly applies the principle of *solutio indebiti* to require the return from payees regardless of good faith. The COA Decisions in the cases of *Jalbuena v. COA*, *DBP v. COA*, and *Montejo v. COA*, are examples to that effect. In the instant case, the COA Decision expressly articulated this predicament of exempting recipients who are in good faith and expressed that the same is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment:

> Clearly, the approving officer and each employee who received the disallowed benefit are obligated, jointly and severally, to refund the amount so received. The

> Supreme Court has ruled that by way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits and other allowances need not refund such disallowed amounts if they received the same in good faith. Stated otherwise, government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.
>
> **The result of exempting recipients who are in good faith from refunding the amount received is that the approving officers are made to shoulder the entire amount paid to the employees. This is perhaps an inequitable burden on the approving officers, considering that they are or remain exposed to administrative and even criminal liability for their act in approving such benefits, and is not consistent with the concept of *solutio indebiti* and the principle of unjust enrichment.**
>
> **Nevertheless, in deference "to the Supreme Court** ruling in *Silang v. COA*, the Commission rules that government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith. Public official who are directly responsible for or participated in making illegal expenditures shall be solidarily liable for their reimbursement."

With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term "net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.

Consistent with the foregoing, the Court shares the keen observation of Associate Justice Henri Jean Paul B. Inting (Justice Inting) that payees generally have no participation in the grant and disbursement of employee benefits, but their liability to return is based on *solutio indebiti* as a result of the mistake in payment. Save for collective negotiation agreement incentives carved out in the sense that the employees are not considered passive recipients on account of their participation in the negotiated incentives as in *Dubongco v. COA* (Dubongco), payees are generally held in good faith for lack of

participation, with their participation limited to "accept[ing] the same with gratitude, confident that they richly deserve such benefits."

On the other hand, the RRSA provides:

> **SECTION 16. DETERMINATION OF PERSONS RESPONSIBLE/LIABLE**
>
> 16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:
>
> x x x x
>
> 16.1.5 The **payee** of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.
>
> 16.3 The liability of persons determined to be liable under an ND/NC shall be **solidary** and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

To recount, as noted from the cases earlier mentioned, retention by passive payees of disallowed amounts received in good faith has been justified on said payee's "lack of participation in the disbursement." However, this justification is unwarranted because a payee's mere receipt of funds not being part of the performance of his official functions still equates to him unduly benefiting from the disallowed transaction; this gives rise to his liability to return.

As may be gleaned from Section 16 of the RRSA, "the extent of their participation [or involvement] in the disallowed/charged transaction" is one of the determinants for liability. The Court has, in the past, taken this to mean that payees should be absolved from liability for lack of participation in the approval and disbursement process. However, under the MCSB and the RRSA, a "transaction" is defined as "[a]n event or condition the recognition of which gives rise to an entry in the accounting records." To a certain extent, therefore, payees always do have an indirect "involvement" and "participation" in the transaction where the benefits they received are disallowed because the accounting recognition of the release of funds and their mere receipt thereof results in the debit against government funds in the agency's account and a credit in the payees' favor. Notably, when the COA includes payees as persons liable in an ND, the nature of their participation is stated as "received payment."

Consistent with this, "the amount of damage or loss [suffered by] the government [in the disallowed transaction]," another determinant of liability, is also indirectly attributable to payees by their mere receipt of the disallowed funds. This is because the loss incurred by the government stated in the ND as the disallowed amount corresponds to the amounts

received by the payees. Thus, cogent with the application of civil law principles on unjust enrichment and *solutio indebiti*, the return by payees primarily rests upon this conception of a payee's undue receipt of amounts as recognized **within the government auditing framework**. In this regard, it bears repeating that the extent of liability of a payee who is a passive recipient is only with respect to the transaction where he participated or was involved in, i.e., only to the extent of the amount that he unduly received. This limitation on the scope of a payee's participation as only corresponding to the amount he received therefore forecloses the possibility that a passive recipient may be held solidarily liable with approving/certifying officers beyond the amount that individually received.

The exception to payee liability is when he shows that he is, as a matter of fact or law, actually entitled to what he received, thus removing his situation from Section 16.1.5 of the RRSA above and the application of the principle of *solutio indebiti*. This includes payees who can show that the amounts received were granted in consideration for services actually rendered. In such situations, it cannot be said that any undue payment was made. Thus, the government incurs no loss in making the payment that would warrant the issuance of a disallowance. Neither payees nor approving and certifying officers can be held civilly liable for the amounts so paid, despite any irregularity or procedural mistakes that may have attended the grant and disbursement.

Returning to the earlier cases of *Blaquera, Lumayna, and Querubin*, the good faith of all parties was basis to excuse the return of the entire obligation from any of the debtors in the case. Thus, either the COA or the Court through their respective decisions exercised an act of liberality by renouncing the enforcement of the obligation as against payees - persons who received the moneys corresponding to the disallowance, a determinate "respective share" in the resulting solidary obligation. This redounds to the benefit of officers.

Clearly, therefore, cases which result in a clear transfer of economic burden cannot have been the intention of the law in exacting civil liability from payees in disallowance cases. Where the ultimate beneficiaries are excused, what can only be assumed as the legislative policy of achieving the highest possibility of recovery for the government unwittingly sanctions unjust enrichment.

In *Dubongco*, the Court affirmed the disallowance of CNA incentives sourced out of CARP funds. Even as it recognized that the payees therein committed no fraud, the Court ordered the return, thus:

> Finally, the payees received the disallowed benefits with the mistaken belief that they were entitled to the same. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person from whom the property comes. A constructive trust is substantially an appropriate remedy against unjust enrichment. It is raised by equity in respect of property, which has been acquired by fraud, or where, although acquired originally without fraud, it is against equity that it should be retained by the person holding it. In fine, payees are considered trustees of the disallowed amounts, as although they committed no

> fraud in obtaining these benefits, it is against equity and good conscience for them to continue holding on to them.

Similarly, in *DPWH v. COA*, the disallowance of CNA incentives sourced out of the Engineering Administrative Overhead (EAO) was upheld, and the recipients of the disallowed benefits were held liable to return. In finding that the payees are obliged to return the amounts they received, the Court stated:

> Jurisprudence holds that there is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The statutory basis for the principle of unjust enrichment is Article 22 of the Civil Code which provides that "[e]very person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him."
>
> The principle of unjust enrichment under Article 22 requires two conditions: (1) that a person is benefited without a valid basis or justification, and (2) that such benefit is derived at another's expense or damage. There is no unjust enrichment when the person who will benefit has a valid claim to such benefit.

The conditions set forth under Article 22 of the Civil Code are present in this case.

It is settled that the subject CNA Incentive was invalidly released by the DPWH IV-A to its employees as a consequence of the erroneous application by its certifying and approving officers of the provisions of DBM Budget Circular No. 2006-1. As such, it only follows that the DPWH IV-A employees received the CNA Incentive without valid basis or justification; and that the DPWH IV-A employees have no valid claim to the benefit. Moreover, it is clear that the DPWH IV-A employees received the subject benefit at the expense of another, specifically, the government. Thus, applying the principle of unjust enrichment, the DPWH IV-A employees must return the benefit they unduly received.

That the incentives were negotiated and approved by the employees was only one of several reasons for the return in the said case. The excerpt cited above sufficiently signals that the elements of unjust enrichment are completed as soon as a payee receives public funds without valid basis or justification - without necessarily requiring participation in the grant and disbursement.

For other incentives not negotiated by the recipients, the Court promulgated its decision in *Chozas v. COA* which dealt with the accomplishment incentive sourced out of Bulacan State University Special Trust Fund. Notably, this case relied upon the Court's ratiocination in Dubongco on the question of liability to return, without any showing of participation on the part of the payees as to the grant and disbursement. This is jurisprudential recognition that that the judge made rule of absolving good faith payees is the exception, and not the rule.

9

In *Rotoras v. COA*, the Court held that it will be unjust enrichment to allow the members of the governing boards to retain additional honoraria that they themselves approved and received. Here, the Court ruled that the nature of the obligation of approving officials to return "depends on the circumstances," with the officers' obligation to return expressly determined to not be solidary. This case illustrates how approving officers may still be held liable to return in their capacity as payees, notwithstanding their good faith or bad faith.

In the ultimate analysis, the Court, through these new precedents, has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply regardless of the good faith of passive recipients. **This, as well, is the foundation of the rules of return that the Court now promulgates**.

Moreover, *solutio indebiti* is an equitable principle applicable to cases involving disallowed benefits which prevents undue fiscal leakage that may take place if the government is unable to recover from passive recipient amounts corresponding to a properly disallowed transaction.

Nevertheless, while the principle of *solutio indebiti* is henceforth to be consistently applied in determining the liability of payees to return, the Court, as earlier intimated, is not foreclosing the possibility of situations which may constitute *bonafide* exceptions to the application of *solutio indebiti*. As Justice Bernabe proposes, and which the Court herein accepts, the jurisprudential standard for the exception to apply is that the amounts received by the payees constitute disallowed benefits that were genuinely given in consideration of services rendered (or to be rendered) negating the application of unjust enrichment and the *solutio indebiti* principle. As examples, Justice Bernabe explains that these disallowed benefits may be in the nature of performance incentives, productivity pay, or merit increases that have not been authorized by the Department of Budget and Management as an exception to the rule on standardized salaries. In addition to this proposed exception standard, Justice Bernabe states that the Court may also determine in the proper case bona fide exceptions, depending on the purpose and nature of the amount disallowed. These proposals are well-taken.

Moreover, the Court may also determine in a proper case other circumstances that warrant excusing the return despite the application of *solutio indebiti*, such as when undue prejudice will result from requiring payees to return or where social justice or humanitarian considerations are attendant. Verily, the Court has applied the principles of social justice in COA disallowances. Specifically, in the 2000 case of *Uy v. Commission on Audit* (Uy), the Court made the following pronouncements in overturning the COA's decision:

> x x x *Under the policy of social justice, the law bends over backward to accommodate the interests of the working -class on the humane justification that those with less privilege in life should have more in law.:*
>
> *Rightly, we have stressed that social justice legislation, to be truly meaningful and rewarding to our workers, must not be hampered in its application by long-*

> *winded arbitration and litigation. Rights must be asserted and benefits received with the least inconvenience. And the obligation to afford protection to labor is incumbent not only on the legislative and executive branches but also on the judiciary to translate this pledge into a living reality. Social justice would be a meaningless term if an element of rigidity would be affixed to the procedural precepts Flexibility should not be ruled out. Precisely, what is sought to be accomplished by such a fundamental principle expressly so declared by the Constitution is the effectiveness of the community's effort to assist the economically underprivileged For under existing conditions, without such succor and support, they might not, unaided, be able to secure justice for themselves. To make them suffer, even inadvertently, from the effect of a judicial ruling, which perhaps they could not have anticipated when such deplorable result could be avoided, would be to disregard what the social justice concept stands for.*
>
> The pronouncements in *Uy* illustrate the Court's willingness to consider social justice in disallowance cases. These considerations may be utilized in assessing whether there may be an exception to the rule on *solutio indebiti* so that the return may be excused altogether. As Justice Inting correctly pointed out, "each disallowance case is unique, inasmuch as the facts behind, nature of the amounts involved, and *individuals* so charged in one notice of disallowance are hardly ever the same with any other."[93] (Emphasis in the original)

Petitioners allege that they are not required to return the year-end incentives because they neither participated in its issuance nor received it personally as it was merely deposited in their respective bank accounts. Moreover, they claim to have received the same benefit for several years which were not disallowed.[94]

Applying the *Madera* guidelines, We hold that the payees are not excused from returning the disallowed year-end incentives. Regardless of the manner of receipt, petitioners benefited when the amounts were transferred to their bank accounts. As in *Madera*, the personal liabilities of the payees to return the amount is a civil obligation. There being no basis for their entitlement to the year-end incentives in 2014, they must return the amounts they erroneously received based on the principle of *solutio indebiti*. Allowing petitioners to keep the disallowed incentives will result in unjust enrichment to the prejudice of the government.

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While the officers of Cagayan State University who approved and

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93 Id.

94 *Rollo*, p. 8.

certified the disbursement of the year-end incentives are not parties to this case, We find it opportune to discuss their liability for illegal and irregular expenditures of their special trust fund to guide governing boards of state universities and colleges.

Madera v. Commission on Audit,[95] chronicled the bases of imposing liability for illegal expenditures:

> A. *Bases for Responsibility/Liability*
>
> The Budget Reform Decree of 197747 (PD 1177) provides:
>
> > SEC. 49. *Liability for Illegal Expenditures*. - Every expenditure or obligation authorized or incurred in violation of the provisions of this Decree or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.
> >
> > Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.
>
> Parenthetically, the Government Auditing Code of the Philippines (PD 1445), promulgated a year after PD 1177, provides:
>
> > SECTION 102. *Primary and secondary responsibility*. - (1) The head of any agency of the government is immediately and primarily responsible for all government funds and property pertaining to his agency. (2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the government.
> >
> > SECTION 103. *General liability for unlawful expenditures*. Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.
> >
> > SECTION 104. *Records and reports required by*

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[95] G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

primarily responsible officers. - The head of any agency or instrumentality of the national government or any government-owned or controlled corporation and any other self-governing board or commission of the government shall exercise the diligence of a good father of a family in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, otherwise he shall be jointly and solidarily liable with the person primarily accountable therefore. The treasurer of the local government unit shall likewise exercise the same degree of supervision over accountable officers under his supervision otherwise, he shall be jointly and solidarily liable with them for the loss of government funds or property under their control.

SECTION 105. *Measure of liability of accountable officers.* (1) Every officer accountable for government property shall be liable for its money value in case of improper or unauthorized use or misapplication thereof, by himself or any person for whose acts he may be responsible. He shall likewise be liable for all losses, damages, or deterioration occasioned by negligence in the keeping or use of the property whether or not it be at the time in his actual custody.

(2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

These provisions of PD 1177 and PD 1445 are substantially reiterated in the Administrative Code of 1987, thus:

SECTION 51. *Primary and Secondary Responsibility.* - (1) The head of any agency of the Government is immediately and primarily responsible for all government funds and property pertaining to his agency;

(2) Persons entrusted with the possession or custody of the funds or property under the agency head shall be immediately responsible to him, without prejudice to the liability of either party to the Government.

SECTION 52. *General Liability for Unlawful Expenditures.* – Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.

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SECTION 40. *Certification of Availability of Funds.* – No funds shall be disbursed, and no expenditures or obligations chargeable against any authorized allotment shall be incurred or authorized in any department, office or agency without first securing the certification of its Chief Accountant or head of accounting unit as to the availability

> of funds and the allotment to which the expenditure or obligation may be properly charged.
>
> No obligation shall be certified to accounts payable unless the obligation is founded on a valid claim that is properly supported by sufficient evidence and unless there is proper authority for its incurrence. Any certification for a non-existent or fictitious obligation and/or creditor shall be considered void. The certifying official shall be dismissed from the service, without prejudice to criminal prosecution under the provisions of the Revised Penal Code. Any payment made under such certification shall be illegal and every official authorizing or making such payment, or taking part therein or receiving such payment, shall be jointly and severally liable to the government for the full amount so paid or received.
>
> xxxx
>
> SECTION 43. Liability for Illegal Expenditures. - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.
>
> Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

It is well-settled that administrative, civil, or even criminal liability, as the case may be, may attach to persons responsible for unlawful expenditures, as a wrongful act or omission of a public officer. It is in recognition of these possible results that the Court is keenly mindful of the importance of approaching the question of personal liability of officers and payees to return the disallowed amounts through the lens of these different types of liability.

Correspondingly, personal liability to return the disallowed amounts must be understood as civil liability based on the loss incurred by the government because of the transaction, while administrative or criminal liability may arise from irregular or unlawful acts attending the transaction. This should be the starting point of determining who must return. The existence and amount of the loss and the nature of the transaction must dictate upon whom the liability to return is imposed.

Sections 38 and 39, Chapter 9, Book I of the Administrative Code

of 1987 cover the civil liability of officers for acts done in performance of official duties:

> SECTION 38. Liability of Superior Officers. - (1) A public officer shall not be civilly liable for acts done in the performance of his official duties, unless there is a clear showing of bad faith, malice or gross negligence.
>
> xxxx
>
> (3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.
>
> SECTION 39. Liability of Subordinate Officers. - No subordinate officer or employee shall be **civilly liable** for acts done by him in **good faith** in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

By the very language of these provisions, the liability for unlawful expenditures is civil. Nonetheless, since these provisions are situated in Chapter 9, Book I of the Administrative Code of 1987 entitled "General Principles Governing Public Officers," the liability is inextricably linked with the administrative law sphere. Thus, the civil liability provided under these provisions is hinged on the fact that the public officers performed his official duties with bad faith, malice, or gross negligence.

The participation of these public officers, such as those who approve or certify unlawful expenditures, *vis-a-vis* the incurrence of civil liability is recognized by the COA in its issuances, beginning from COA Circular No. 81-15654 dated January 19, 1981 (Old CSB Manual):

> C. Liability of Head of Agency, Accountable Officer and Other Officials and Employees
>
> The liability of an official or employee for disallowances or discrepancies in accounts audited shall depend upon his participation in the transaction involved. **The accountability and responsibility of officials and employees for government funds and property** as provided in Sections lO 1 and 102 of P.D.1445 **do not necessarily give rise to liability for loss or government funds or damage to property**.
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> xxxx
>
> III. GENERAL INSTRUCTIONS:
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> xxxx
>
> 5. The Head of Agency, who is immediately and primarily responsible for all government funds and

property pertaining to his agency, shall see that the audit suspensions/disallowances are immediately settled. (Emphasis and underscoring supplied)

Subsequent to the Old CSB Manual, COA Circular No. 94-001 55 dated January 20, 1994 (MCSB) distinguished liability from responsibility and accountability, and provided the parameters for enforcing the civil liability to refund disallowed amounts:

SECTION 3, DEFINITION OF TERMS

The following terms shall be understood in the sense herein defined, unless the context otherwise indicates:

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3.10 **LIABILITY**. - A **personal obligation arising from an audit disallowance/charge which may be satisfied through payment or restitution** as determined by competent authority and in accordance with law.

xxxx

3.12 **PECUNIARY LIABILITY**. - the amount of **consequential loss or damage** arising from an act or omission and for which restitution, reparation, or indemnification is required.

xxxx

SECTION 18. SETTLEMENT OF DISALLOWANCES AND CHARGES

Disallowances and charges shall be settled through submission of the required explanation/justification and/or documentations by the person or persons determined by the auditor to be liable therefor, or **by payment of the amount disallowed in audit; or by such other applicable modes of extinguishment of obligation** as provided by law.

xxxx

SECTION 34. **ENFORCEMENT OF CIVIL LIABILITY**.

To enforce civil liability, the auditor shall submit a report on the disallowances and charges to the COA Chairman (Thru: The Director concerned), requesting that the matter be referred to the Office of the Solicitor General (National Government agencies), or to the Office of the Government Corporate Counsel (for government-owned or controlled corporations) or to the appropriate Provincial or City Attorney (in the case of local government units). The report shall be duly supported with certified copies of the subsidiary records, the CSB, and the payrolls/vouchers/collections disallowed and charged together with all necessary documents, official receipts for

> the filing of the appropriate civil suit. (Emphasis and underscoring supplied)

These provisions are also substantially reproduced in COA Circular No. 2009-00656 dated September 15, 2009 (RRSA) and the 2009 Revised Rules of Procedure of the Commission on Audit (RRPCOA). Under Section 4 of the RRSA:

> 4.17 **Liability** - a **personal obligation** arising from an audit disallowance or charge which may be **satisfied through payment or restitution** as determined by competent authority or by other modes of extinguishment of obligation as provided by law.
>
> xxxx
>
> 4.24 **Settlement** - refers to the **payment/restitution or other act of extinguishing an obligation as provided by law** in satisfaction of the liability under an ND/NC, or in compliance with the requirements of an NS, as defined in these Rules. (Emphasis and underscoring supplied)

The procedure for the enforcement of civil liability through the withholding of payment of money due to persons liable and through referral to the OSG is found in Rule XIII of the RRPCOA, particularly, Section 3 and Section 6.[96]

In *Madera,* it was suggested that the first layer of determination should focus on the kind and nature of disallowance as defined in Commission on Audit Circular No. 2012-003:

> "IRREGULAR" EXPENDITURES
>
> The term "irregular expenditure" signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in laws. Irregular expenditures are incurred if funds are disbursed without conforming with prescribed usages and rules of discipline. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. A transaction which fails to follow or violates appropriate rules of procedure is, likewise, irregular.
>
> "UNNECESSARY" EXPENDITURES
>
> The term pertains to expenditures which could not pass the test of prudence or the diligence of a good father of a family, thereby denoting non-responsiveness to the exigencies of the service. Unnecessary expenditures are those not supportive of the implementation of the objectives and mission of the agency relative to the nature of its operation. This would also include incurrence of expenditure not dictated by the

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96 J. Leonen, Concurring Opinion in *Madera v. Commission* on Audit G.R. No. 244128, September 8, 2020 <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66435> [Per J. Caguioa, En Banc].

demands of good government, and those the utility of which cannot be ascertained at a specific time. An expenditure that is not essential or that which can be dispensed with without loss or damage to property is considered unnecessary. The mission and thrusts of the agency incurring the expenditures must be considered in determining whether or not an expenditure is necessary.

"EXCESSIVE" EXPENDITURES

The term "excessive expenditures" signifies unreasonable expense or expenses incurred at an immoderate quantity and exorbitant price. It also includes expenses which exceed what is usual or proper, as well as expenses which are unreasonably high and beyond just measure or amount. They also include expenses in excess of reasonable limits.

"EXTRAVAGANT" EXPENDITURES

The term "extravagant expenditure" signifies those incurred without restraint, judiciousness and economy. Extravagant expenditures exceed the bound of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, grossly excessive, and injudicious.

"UNCONSCIONABLE" EXPENDITURES

The term "unconscionable expenditures" pertains to expenditures which are unreasonable and immoderate, and which no man in his right sense would make, nor a fair and honest man would accept as reasonable, and those incurred in violation of ethical and moral standards.[97]

The kind and nature of disallowance must first be established since certain presumptions in determining the liability of payees attach to each type of disallowance. Thereafter, the relevant circumstances should be considered to determine whether the approving and certifying officers exercised the diligence of a good father of a family:

While I ultimately agree with the *ponencia's* conclusion, I propose that the nature of the transaction or the reason behind its disallowance be the basis in determining the liability of authorizing officers and recipients, instead of whether or not they acted in good faith.

Under Section 16.1 of Commission on Audit Circular No. 2009-006, the liability of public officers and other persons for audit disallowances shall be determined based on the following: (a) the nature of the disallowance; (b) the duties of officers/employees concerned; (c) the extent of their participation in the disallowed transaction; and (d) the amount of damage or loss to the government. *Thus, the determination of liability will begin with identifying the reason behind the disallowance. Depending on the nature of the disallowance, various presumptions and liabilities for the responsible officers and employees will attach.*

For expenditures disallowed for being excessive, extravagant, or ostentatious, there is no question that the Commission on Audit may properly demand their refund. The authorizing officers are to pay the

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97 Id.

disallowed benefits, not only for their blatant disregard of laws and regulations, but for their gross excessiveness and unreasonableness. That said, they would have no justification to excuse them from liability. This is illustrated in *National Electrification Administration v. Commission on Audit*, where this Court found that the officers who had approved the advanced release of salary increases-which were later disallowed blatantly disregarded the President's directives and orders. Accordingly, all officers and employees who had received the compensation were directed to refund the amounts received.

This was similarly applied in *Casal v. Commission on Audit*, in which the incentive awards for employees, also released without authority from the President, were disallowed. This Court said:

> The failure of petitioners-approving officers to observe all these issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof. The following ruling in *National Electrification Administration v. COA* bears repeating:
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> . . . .
>
> > This case would not have arisen had NEA complied in good faith with the directives and orders of the President in implementation of the last phase of the Salary Standardization Law II. The directives and orders are clearly and manifestly in accordance with all relevant laws. The reasons advanced by NEA in disregarding the President's directives and orders are patently flimsy, even ill-conceived. This cannot be countenanced as it will result in chaos and disorder in the executive branch to the detriment of public service.

On the other hand, this Court has been more forgiving in disallowed expenditures that were unnecessary-those not supportive of the government agency's main objective, inessential, or dispensable. For these, the participants need not return the expenditures to allow the executives or implementers leeway in carrying out their functions. They are expected to create contingencies in light of circumstances that are fluid and susceptible to change. Given that the Commission on Audit merely reviews expenditures in hindsight, to make authorizing officers liable to return the disallowed amounts will hamper the decision-making of an executive and further constrain the implementation of government programs. Moreover, it may cause a chilling effect on government officials.

To avoid this, authorizing officers for unnecessary disallowances generally have no liability to return the expenditures. Nevertheless, liability may attach if it is proven that the officers purposely and knowingly issued the unnecessary funds.

> As for disallowances of illegal or irregular expenditures, a more objective approach is taken. First, the authorizing officer's basis for issuing the benefit must be reviewed. For one to be absolved of liability, the following requisites must be present: (1) a certificate of availability of funds, pursuant to Section 4026 of the Administrative Code; (2) an in-house or a Department of Justice legal opinion; (3) lack of jurisprudence disallowing a similar case; (4) the issuance of the benefit is traditionally practiced within the agency and no prior disallowance has been issued; and (5) on the question of law, that there is a reasonable textual interpretation on the expenditure or benefit's legality.
>
> If all of these requirements are met, the authorizing officer is absolved of liability for having shown that they exercised the diligence of a good father of the family in the performance of their duty.[98]

Certain badges of good faith should be considered in relation to other circumstances to determine whether the approving officers performed their official functions in good faith:

> *B. Badges of good faith in the determination of approving/certifying officers ' liability*
>
> As mentioned, **the civil liability under Sections 38 and 39 of the Administrative Code of 1987, including the treatment of their liability as solidary under Section 43, arises only upon a showing that the approving or certifying officers performed their official duties with bad faith, malice or gross negligence. For errant approving and certifying officers, the law justifies holding them solidarily liable for amounts they may or may not have received considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties**, as further emphasized by Senior Associate Justice Estela M. Perlas-Bernabe (Justice Bernabe). This treatment contrasts with that of individual payees who, as will be discussed below, can only be liable to return the full amount they were paid, or they received pursuant to the principles of *solutio indebiti* and unjust enrichment.
>
> Notably, the COA's regulations relating to the settlement of accounts and balances illustrate when different actors in an audit disallowance can be held liable either based on their having custody of the funds, and having approved or certified the expenditure. The Court notes that officers referred to under Sections 19.1.1 and 19.1.3 of the MCSB, and Sections 16.1.1 and 16.1.3 of the RRSA, may nevertheless be held liable based on the extent of their certifications contained in the forms required by the COA under Section 19.1.2 of MCSB, and Sections 16.1.2 of the RRSA. To ensure that public officers who have in their favor the unrebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

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98 Id.

> x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.
>
> Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official duties, liable. **The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein.**[99] (Emphasis supplied)

It is implied that the failure of the approving and certifying officers to perform their duties with the required diligence of a good father of a family will make them solidary liable in returning the illegally disbursed funds. In her separate opinion in *Madera*, Senior Associate Justice Estela M. Perlas-Bernabe expounded on this implication after a finding of bad faith, malice, or gross negligence in the approving and certifying officers' performance of duties:

> Once the existence of bad faith, malice, or gross negligence as contemplated under Section 38, Chapter 9, Book I of the Administrative Code is clearly established, the civil liability of approving/authorizing officers to return disallowed amounts based on an unlawful expenditure is solidary together with all other persons taking part therein, as well as every person receiving such payment. This solidary liability is found in Section 43, Chapter 5, Book VI of the Administrative Code, which states:
>
> > Section 43. *Liability for Illegal Expenditures.* — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received. (Emphases and underscoring supplied)
>
> Notably, with respect to "every official or employee authorizing or making such payment" in bad faith, with malice, or gross negligence, the law justifies holding them solidarily liable for the amounts they may or

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99 Id.

may not have received, considering that the payees would not have received the disallowed amounts if it were not for the officers' irregular discharge of their duties.

Since the law characterizes their liability as solidary in nature, it means that once this provision is triggered, the State can go after each and every person determined to be liable for the full amount of the obligation; this holds true irrespective of the actual amounts individually received by each co-obligor, without prejudice to claims for reimbursement from one another. As defined, a "solidary obligation [is] one in which each of the debtors is liable for the entire obligation, and each of the creditors is entitled to demand the satisfaction of the whole obligation from any or all of the debtors." However, "[h]e who made the payment may claim from his co-debtors only on the share which corresponds to each [co-debtor]." Of course, ***the decision as to who the State will go after and the extent of the amount to be claimed falls within the discretion and prerogative of the COA***. As provided for in Section 16.3 of COA Circular 2009-006:

> 16.3 The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable. (Emphasis supplied)

That being said, it must be observed that a disallowed amount under a Notice of Disallowance does not only comprise of amounts received by guilty public officials but also of amounts unwittingly received by passive recipients..."[100] (Citations omitted, emphasis supplied)

However, We stress that the solidary liability of the approving and certifying officers is limited only to the extent of the net disallowed amount:

With the liability for unlawful expenditures properly understood, payees who receive undue payment, regardless of good faith, are liable for the return of the amounts they received. Notably, in situations where officers are covered by Section 38 of the Administrative Code of 1987 either by presumption or by proof of having acted in good faith, in the regular performance of their official duties, and with the diligence of a good father of a family, payees remain liable for the disallowed amount unless the Court excuses the return. For the same reason, any amounts allowed to be retained by payees shall reduce the solidary liability of officers found to have acted in bad faith, malice, and gross negligence. In this regard, Justice Bernabe coins the term ***"net disallowed amount" to refer to the total disallowed amount minus the amounts excused to be returned by the payees***. Likewise, Justice Leonen is of the same view that the officers held liable have a solidary obligation only to the extent of what should be refunded and this does not include the amounts received by those absolved of liability. In short, the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.[101]

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[100] Id.
[101] Id.

(Emphasis supplied, citations omitted)

WHEREFORE, the Petition is **DENIED**. The May 18, 2015 Notice of Disallowance ND No. 15–001–164–(14), and the August 1, 2016 Notice of Finality of Decision of the Commission on Audit are **AFFIRMED**.

Petitioners Fr. Ranhilio Aquino and Dr. Pablo Narag are **DIRECTED** to return the year-end incentives they received with six percent (6%) legal interest from the finality of this Decision.[102] Since their representation of the other employees are not valid and there was no appeal filed by the other officers, no pronouncement is made in this case with respect to their liability.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

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[102] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, En Banc].

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

CERTIFICATION

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.

DIOSDADO M. PERALTA
Chief Justice