

EN BANC

G.R. No. 244128 – MARIO M. MADERA, BEVERLY C. MANANGUITE, CARISSA D. GALING, and JOSEFINA O. PELO, *Petitioners*, v. COMMISSION ON AUDIT (COA) PROPER and COA REGIONAL OFFICE NO. VIII, *Respondents*.

Promulgated:

September 8, 2020

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SEPARATE CONCURRING OPINION

LEONEN, J.:

Before this Court are Mario Madera, Beverly Mananguite, Carissa Galing, and Josefina Pelo—the mayor, municipal accountant, and budget officers, respectively, of the municipality of Mondragon, Northern Samar. In their Petition for Certiorari under Rule 64 of the Rules of Court, they question the disallowances of Sangguniang Bayan Ordinance No. 08 and Sangguniang Bayan Resolution Nos. 41, 42, 43, and 48, series of 2013, which had granted various allowances¹ to the municipality's officials and employees amounting to ₱7,706,253.10.² They likewise contest being jointly and severally liable to refund the disbursed amounts, insisting that they approved the disbursements in good faith.

I concur with the *ponencia* that respondent Commission on Audit was correct in issuing the Notices of Disallowance, and that the public officers who authorized the disallowed benefits should be free of liability. Nevertheless, I qualify the additional guidelines on the liability that may attach to the authorizing officers, as well as the recipients (either passive or active) of the disallowed benefits.

I

I agree with the *ponencia* that petitioners applied the wrong reglementary period in filing their Petition. A petition for certiorari under Rule 64 applies Rule 65 provisions suppletorily. Although the sections for a petition for certiorari under Rule 64 and the ones under Rule 65 are almost identical, they provide different reglementary periods: Rule 64 provides a period of 30 days, while Rule 65 gives a period of 60 days.

¹ Ponencia, p. 2. These disallowed allowances were: (1) Economic Crisis Assistance; (2) Monetary Augmentation of Municipal Agency; (3) Agricultural Crisis Assistance; and (4) Mitigation Allowance to Municipal Employees.

² Id. at 4.

To be sure, Rule 64 governs reviews of judgments or final orders of the Commission of Audit. Thus, its reglementary period will prevail here.

The 30-day period for filing a petition for certiorari began when petitioners received respondent's Decision on February 23, 2018. When they moved for reconsideration five days later, the reglementary period was interrupted. Thus, when petitioners received the subsequent Resolution on November 12, 2018, they still had 25 days, or until December 7, 2018, to file a petition. Unfortunately, they applied the 60-day period under Rule 65 and filed their petition on January 11, 2019.³ Clearly, the Petition was filed out of time.

Nevertheless, I agree with the *ponencia* that this Petition presents an avenue to clarify the guidelines in cases involving disallowed benefits or incentives, as well as the corresponding liability of authorizing officers and recipients.⁴

II

It is well established that petitions for certiorari against Commission on Audit rulings are only granted when there is a sufficient finding of grave abuse of discretion. This is to give deference to the specialization of the Commission, whose power is constitutionally endowed:

SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis[.]⁵

In *Yap v. Commission on Audit*:⁶

We have previously declared that it is the general policy of the Court to sustain the decisions of administrative authorities, especially one that was constitutionally created like herein respondent COA, not only on the basis of the doctrine of separation of powers, but also of their presumed expertise in the laws they are entrusted to enforce. It is, in fact, an oft-repeated rule that findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. Thus, only when the COA acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess

³ Id. at 10.

⁴ Id.

⁵ CONST., art. IX-D, sec. 2(1).

⁶ 633 Phil. 174 (2010) [Per J. Leonardo-De Castro, En Banc].

of jurisdiction, may this Court entertain a petition for certiorari under Rule 65 of the Rules of Court.

There is grave abuse of discretion when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim and despotism.⁷ (Citations omitted)

Under Article IX-D, Section 2(2) of the 1987 Constitution, the Commission on Audit shall have exclusive authority to “promulgate accounting and auditing rules and regulations, including those for the prevention of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.” This was reiterated in Section 33 of the Government Auditing Code of the Philippines,⁸ which states:

SECTION 33. Prevention of irregular, unnecessary, excessive, or extravagant expenditures of funds or uses of property; power to disallow such expenditures. — The Commission shall promulgate such auditing and accounting rules and regulations as shall prevent irregular, unnecessary, excessive, or extravagant expenditures or uses of government funds or property.

The constitutional commission is granted enough autonomy and authority to fulfill its role of maintaining checks and balances within the government. In *Delos Santos v. Commission on Audit*,⁹ this Court, in upholding the Commission on Audit’s disallowance of the irregularly disbursed Priority Development Assistance Fund, stated:

At the outset, it must be emphasized that the CoA is endowed with enough latitude to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant or unconscionable expenditures of government funds. It is tasked to be vigilant and conscientious in safeguarding the proper use of the government’s, and ultimately the people’s, property. The exercise of its general audit power is among the constitutional mechanisms that gives life to the check and balance system inherent in our form of government.

Corollary thereto, it is the general policy of the Court to sustain the decisions of administrative authorities, especially one which is constitutionally-created, such as the CoA, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. Findings of administrative agencies are accorded not only respect but also finality when the decision and order are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion. It is only when the CoA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack

⁷ Id. at 195–196.

⁸ Presidential Decree No. 1445 (1978).

⁹ 716 Phil. 322 (2013) [Per J. Perlas-Bernabe, En Banc].

or excess of jurisdiction, that this Court entertains a petition questioning its rulings.¹⁰ (Emphasis supplied, citation omitted)

Nevertheless, pursuant to the Constitution, the Commission on Audit's power to disallow is limited to transactions deemed "irregular, unnecessary, excessive, extravagant, illegal, or unconscionable"¹¹ expenditures or uses of government funds and property.¹²

Illegal expenditures are simply those that are contrary to law.¹³ On the other hand, irregular, unnecessary, excessive, extravagant, or unconscionable transactions are comprehensively defined in Commission on Audit Circular No. 2012-003,¹⁴ as follows:

"IRREGULAR" EXPENDITURES¹⁵

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" EXPENDITURES¹⁶

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 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" EXPENDITURES¹⁷

¹⁰ Id. at 332–333.

¹¹ *Miralles v. Commission on Audit*, 818 Phil. 380, 384 (2017) [Per J. Bersamin, En Banc].

¹² Id. at 390–391.

¹³ Id. at 392.

¹⁴ Updated Guidelines for the Prevention and Disallowance of Irregular, Unnecessary, Excessive, Extravagant and Unconscionable Expenditures, available at <https://www.coa.gov.ph/phocadownload/userupload/Issuances/Circulars/Circ2012/COA_C2012-003.pdf> (last accessed on September 7, 2020).

¹⁵ COA Circular No. 2012-003 (2012), item no. 3.1.

¹⁶ COA Circular No. 2012-003 (2012), item no. 4.1.

¹⁷ COA Circular No. 2012-003 (2012), item no. 5.1.

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” EXPENDITURES¹⁸

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” EXPENDITURES¹⁹

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.

Based on these definitions, it is apparent that the disallowed benefits here are illegal, irregular government expenditures.

In issuing the disallowances, respondent cited Section 12 of the Salary Standardization Law, which explicitly provides that the allowances not specified in the provision would be deemed included in the standard salary rates prescribed. It provides:

SECTION 12. Consolidation of Allowances and Compensation. — All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized.

Existing additional compensation of any national government official or employee paid from local funds of a local government unit shall be absorbed into the basic salary of said official or employee and shall be paid by the National Government.

Respondent also cited Item II of its Circular No. 2013-003 to emphasize that “[g]overnment officials and employees shall be entitled only to allowances, incentives, and other benefits expressly provided by law, and

¹⁸ COA Circular No. 2012-003 (2012), item no. 6.1.

¹⁹ COA Circular No. 2012-003 (2012), item no. 7.1.

other statutory authority, and the rules and regulations promulgated by competent authority.”²⁰ As the allowances issued by petitioners were not authorized in Circular No. 2013-003 or in the exemptions mentioned in the Salary Standardization Law, it is patently clear that petitioners’ claim that respondent’s disallowances were erroneous is without basis.

Aside from this, petitioners did not present in their Petition any new arguments regarding respondent’s supposed grave abuse of discretion. Instead, they focused on their liability to refund the disallowed amounts. For that, I concur with the *ponencia* that petitioners failed to show that respondent had gravely abused its discretion in issuing the disallowances. The disallowances are, therefore, valid.

III

In discussing the liability of authorizing or certifying officers of disallowed disbursements, the *ponencia* took the opportunity to clarify conflicting jurisprudence on the issue. It adequately discussed the applicable laws and regulations and reviewed the relevant cases, which led to this Court’s creation of a new set of guidelines in determining liability. In doing so, the *ponencia* went on to absolve petitioners from their liability to refund the disallowed amounts disbursed.

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. 2009-006,²¹ 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.²² 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

²⁰ COA Circular 2013-003 (2013), item II. Reiteration of Audit Disallowance of Payments without Legal Basis of Allowances, Incentives, and Other Benefits of Government Officials and Employees in the NGAs, LGUs, and GOCCs and their Subsidiaries, available at <https://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ2013/COA_C2013-003.pdf> (last accessed on September 7, 2020).

²¹ Rules and Regulations on the Settlement of Accounts (2009).

²² COA Circular No. 2009-006 (2009), sec. 16.1.

properly demand their refund. The authorizing officers are to pay the 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*,²³ 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*,²⁴ 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:

....

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.²⁵ (Citations omitted)

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.

²³ 427 Phil. 464 (2002) [Per J. Carpio, En Banc].

²⁴ 538 Phil. 634 (2006) [Per J. Carpio Morales, En Banc].

²⁵ Id. at 644–645.

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.

In *Blaquera v. Alcala*,²⁷ officers and employees of several government agencies questioned the disallowance of productivity incentive benefits and their corresponding liability to return these benefits. While this Court upheld the disallowance since the benefits exceeded what was allowed, it excused the return of the amount, absent a showing of bad faith or malice. It held:

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. *Indeed, no indicia of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.*²⁸ (Emphasis supplied)

²⁶ 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.

²⁷ 356 Phil. 678 (1998) [Per J. Purisima, En Banc].

²⁸ Id. at 765-766.

In *Lumayna v. Commission on Audit*,²⁹ officers of the municipality of Mayoyao, Ifugao assailed the disallowance of the 5% salary increase of municipality personnel, as well as the directive for them to refund. This Court affirmed the disallowance but excused both the authorizing officials and passive employees from returning the disallowed amounts. It stated:

In the instant case, although the 5% salary increase exceeded the limitation for appropriations for personal services in the Municipality of Mayoyao, this alone is insufficient to overthrow the presumption of good faith in favor of petitioners as municipal officials. It must be mentioned that the disbursement of the 5% salary increase of municipal personnel was done under the color and by virtue of resolutions enacted pursuant to LBC No. 74, and was made only after the *Sangguniang Panlalawigan* declared operative the 2002 municipal budget. In fact, the Notice of Disallowance was issued only on 16 May 2003, after the municipality had already implemented the salary increase. Moreover, in its Resolution No. 2004-1185, the *Sangguniang Panlalawigan* reconsidered its prior disallowance of the adoption of a first class salary schedule and 5% salary increase of the Municipality of Mayoyao based on its finding that the municipal officials concerned acted in good faith, thus:

....

Furthermore, granting arguendo that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith. It does not simply connote bad moral judgment or negligence. Rather, there must be some dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will. It partakes of the nature of fraud and contemplates a state of mind affirmatively operating with furtive design or some motive of self-interest or ill will for ulterior purposes. *As we see it, the disbursement of the 5% salary increase was done in good faith. Accordingly, petitioners need not refund the disallowed disbursement in the amount of ₱895,891.50.*³⁰ (Emphasis supplied, citations omitted)

In both *Blaquera* and *Lumayna*, the authorizing officers granted the disallowed benefits believing that they had basis for their implementation, and only upon audit did they discover that these exceeded what was allowed. Thus, when the authorizing officers have a colorable basis for the benefits that were disallowed, this Court refrains from ordering them to refund the wrongfully released amounts. The officers will not be liable to return the amount released.

Recipients of the disallowed benefits enjoy an even wider leniency on liability. For illegal, irregular, or unnecessary transactions, recipients are not

²⁹ 616 Phil. 929 (2009) [Per J. Del Castillo, En Banc].

³⁰ Id. at 944-945.

made liable, so as to prevent government employees from losing confidence in their superiors, lest the efficiency of administrative implementation and policy execution suffer. An exception is seen in *Dubongco v. Commission on Audit*,³¹ where this Court affirmed the disallowance of collective negotiation agreement incentives and ordered both the authorizing officers and recipients to return the incentives received:

In this case, it must be emphasized that the grant of CNA Incentive was financed by the CARP Fund, contrary to the express mandate of PSLMC Resolution No. 4, Series of 2002, A.O. No. 135 and DBM Budget Circular No. 2006-01. This is not simply a case of a negotiating union lacking the authority to represent the employees in the CNA negotiations, or lack of knowledge that the CNA benefits given were not negotiable, or failure to comply with the requirement that payment of the CNA Incentive should be a one-time benefit after the end of the year. Here, the use of the CARP Fund has no basis as the three issuances governing the grant of CNA Incentive could not have been any clearer in that the CNA Incentive shall be sourced solely from savings from released MOOE allotments for the year under review. Consequently, the payees have no valid claim to the benefits they received.

Hence, it can be gleaned that unlike ordinary monetary benefits granted by the government, *CNA Incentives require the participation of the employees who are the intended beneficiaries. The employees indirectly participate through the negotiation between the government agency and the employees' collective negotiation representative and directly, through the approval of the CNA by the majority of the rank-and-file employees in the negotiating unit. Thus, the employees' participation in the negotiation and approval of the CNA, whether direct or indirect, allows them to acquire knowledge as to the prerequisites for the valid release of the CNA Incentive. They could not feign ignorance of the requirement that CNA Incentive must be sourced from savings from released MOOE.*³² (Emphasis supplied, citations omitted)

In *Dubongco*, the recipients were made to return the incentives since these were borne from a collective negotiation agreement that they themselves ratified, meaning they were not mere passive recipients and could not deny their participation in its disbursement. Likewise, in *Department of Public Works and Highways, Region IV-A v. Commission on Audit*,³³ the recipients of the disallowed benefits were obligated to return the amounts they had received since they negotiated and approved the disbursement despite no valid justification.

Nevertheless, *Dubongco* admits of an exception where recipients of collective negotiation agreement incentives may be excused from refund: if

³¹ G.R. No. 237813, March 5, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65051>> [Per J.C. Reyes, En Banc].

³² Id.

³³ G.R. No. 237987, March 19, 2019, <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65047>> [Per. J. Reyes, Jr., En Banc].

it is proven that they were not consulted in the agreement's ratification, and that they did not participate in disbursing the disallowed funds. Thus, in *Silang v. Commission on Audit*,³⁴ which also involved a collective negotiation agreement, the city mayor and *Sanggunian* members, who had approved the disallowed benefits, as well as the negotiating members of the union, were held liable for refund. Conversely, the passive recipients were not required to return the amounts since they did not participate in the acts that led to the disbursement. This Court held:

In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and bona fide members of UNGKAT (named-below) who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named below, had participated in any of the negotiations or were, in any manner, privy to the internal workings related to the approval of said incentives; hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement. Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case. Therefore, said petitioners should not be held liable to refund what they had unwittingly received.

....

Similarly, such finding of good faith cannot be made to apply to Silang, who, as City Mayor, approved the allowances, as well as the local *Sanggunian* members, who enacted the ordinances authorizing the payment of the subject CNA Incentives. As City Mayor and members of the local *Sanggunian*, they are presumed to be acquainted with—and, in fact, even duty bound to have full knowledge of—the requirements under the applicable policies for the valid grant of CNA Incentives, *i.e.*, the requisite accreditation of UNGKAT with the CSC at the time of the signing of the CNA as required under DBM Budget Circular No. 2006-01. Indeed, knowledge of basic procedure is part and parcel of their shared fiscal responsibility under Section 305 (1), Chapter I, Title V, Book II of the LGC[.]³⁵ (Emphasis supplied, citations omitted)

It must be highlighted that the liability of the responsible officers and recipients is solidary only to the extent of what should be refunded. This does not include the amounts received by the rank and file who were absolved of liability to return. This is pursuant to *Rotoras v. Commission on Audit*,³⁶ in which this Court stated that the nature of the obligation of approving officials to return “depends on the circumstances”:

³⁴ 769 Phil. 327 (2015) [Per J. Perlas-Bernabe, En Banc].

³⁵ Id. at 347–349.

³⁶ G.R. No. 211999, August 20, 2019, <<http://sc.judiciary.gov.ph/8130/>> [Per J. Leonen, En Banc].


The defense of good faith is, therefore, no longer available to members of governing boards and officials who have approved the disallowed allowance or benefit. Neither would the defense be available to the rank and file should the allowance or benefit be the subject of collective negotiation agreement negotiations. Furthermore, the rank and file's obligation to return shall be limited only to what they have actually received. They may, subject to the Commission on Audit's approval, agree to the terms of payment for the return of the disallowed funds. For the approving board members or officers, however, the nature of the obligation to return—whether it be solidary or not—depends on the circumstances.³⁷

In this regard, Section 16.3 of Commission on Audit Circular No. 2009-006, series of 2009, states:

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.

Based on this, those held liable have a solidary obligation only to the extent of what should be refunded. This does not include the amounts received by those absolved of liability.

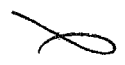
For ease of review, the matrix below illustrates the liability of each of the parties involved given the different reasons behind the disallowance.



³⁷ Id. at 24.

Nature of Disallowance	Presumption and Liability		Extent of Obligation for Refund
Illegal, Irregular	<u>Authorizing officer</u> Not liable if the following are present: 1) Certificate of availability of funds; 2) In-house or Department of Justice legal opinion; 3) No precedent disallowing a similar case in jurisprudence; 4) It is traditionally practiced within the agency and no prior disallowance has been issued; and 5) There is a reasonable textual interpretation on its legality.	<u>Recipients</u> Generally, not liable <i>Except</i> if the recipients participated in the negotiations for the implementation and release of the benefits. <i>Exception to exception:</i> Recipient is a rank-and-file employee who was absent during the negotiations and did not ratify the agreement releasing the benefit.	Solidary, but see <i>Rotoras v. Commission on Audit</i> regarding extent.
Unnecessary	Authorizing officers and recipients are not liable, unless it is shown that expenditures are purposely or knowingly made.		Solidary, but see <i>Rotoras v. Commission on Audit</i> regarding extent.
Excessive, Extravagant, Unconscionable, Ostentatious	Authorizing officers and recipients are liable.		Entire amount is disallowed.

With this matrix, we move away from a subjective determination of “good faith,” and therefore provide better guidelines for the management of branches and offices in government.



IV

In this case, the disbursements were validly disallowed for being illegal and irregular. However, circumstances exist showing that petitioners exercised the diligence of a good father of the family when they implemented the release of the benefits.

It appears that petitioners implemented the disbursements in an honest belief that their release and distribution had legal basis. Records show that a Certificate of Availability of Funds was issued, showing that the municipality had enough savings to release the amounts. Moreover, believing that the disbursements were lawful, the *Sangguniang Bayan* even issued ordinances and resolutions appropriating a budget for the benefits. These disallowed benefits have been traditionally released to the municipality's employees and have never been disallowed in the past. There are also no jurisprudential precedents disallowing benefits of the like.

Clearly present here are all the requisites that absolve petitioners from liability on the amounts disbursed. Thus, as the *ponencia* declares, to order them to reimburse the disallowed amounts, including those received by the rank and file, would lead to undue prejudice.³⁸

This is not to say that public officers are not to be held to a higher standard and do not need to be more circumspect in the performance of their duties. Given that our public officials discharge their functions as a public trust,³⁹ they are accountable for their actions that affect government funds and property they hold in trust for the public. However, when it is shown that they followed the required guidelines in the policy implementation, there is no need to penalize them by asking them to refund the disbursed amounts which they believed to be legal.

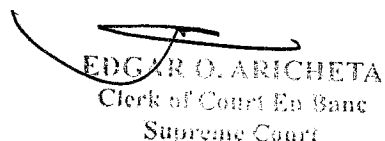
ACCORDINGLY, I vote to PARTIALLY GRANT the Petition.


MARVIC M. V. F. LEONEN
Associate Justice

³⁸ Ponencia, p. 34.

³⁹ CONST., art. XI, sec. 1.

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Supreme Court