



Republic of the Philippines
 Supreme Court
 Manila

EN BANC

RENE FIGUEROA,
 Petitioner,

G.R. No. 213212

- versus -

COMMISSION ON AUDIT,
 Respondent.

X-----X

**PHILIP G. LO and
 MANUEL C. ROXAS,**
 Petitioners,

G.R. No. 213497

- versus -

COMMISSION ON AUDIT,
 Respondent.

X-----X

EFRAIM C. GENUINO,
 Petitioner,

G.R. No. 213655

- versus -

**COMMISSION ON AUDIT
 (COA), COA OFFICE OF THE
 DIRECTOR, CORPORATE
 GOVERNMENT SECTOR,
 CLUSTER 6, represented by
 HON. DIRECTOR JOSEPH B.
 ANACAY, and the OFFICE OF
 THE COA SUPERVISING
 AUDITOR – PHILIPPINE
 AMUSEMENT AND GAMING
 CORPORATION (PAGCOR),
 represented by ATTY.
 RESURRECCION C. QUIETA**

Present:


GESMUNDO, Chief Justice,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,*
HERNANDO,
CARANDANG,*
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
LOPEZ, J., JJ

* No part.

**AND AUDITOR BELEN B.
LADINES,**
Respondents.

Promulgated:

April 27, 2021

X----------X

DECISION

GAERLAN, J.:

Before Us are three (3) consolidated petitions for *certiorari* under Rule 64 of the Rules of Court, as amended, assailing Decision No. 2013-191¹ dated 20 November 2013 and Decision No. 2014-115² dated 18 June 2014 issued by public respondent Commission on Audit (COA). The challenged issuances affirmed the Notice of Disallowance (ND) No. 2011-002(08)³ dated 30 June 2011 which, in turn, disallowed the Philippine Amusement and Gaming Corporation's (PAGCOR) release of funds amounting to ₱26,700,000.00, as purchase price for 89,000 tickets to the movie "Baler," in favor of Batang Iwas Droga (BIDA) Foundation, Inc. (BFI).

The Antecedents

PAGCOR is a government-owned and controlled corporation (GOCC) created under Presidential Decree (P.D.) No. 1869,⁴ as amended by P.D. No. 1993,⁵ Executive Order (E.O.) No. 260⁶ and Republic Act (R.A.) No. 9487,⁷ for the purpose of enabling the Government to regulate, centralize and integrate all games of chance authorized by existing franchise or permitted by law.

In a Memorandum⁸ dated 3 December 2008, Edward F. King (King), then Vice President of PAGCOR's Corporate Communications and Services Department (CCSD), requested from petitioner Efraim C. Genuino (Genuino), then Chairman and Chief Executive Officer (CEO) of PAGCOR, and the Board of Directors of said GOCC the allocation of movie passes for "Baler," a film starring actors Anne Curtis and Jericho Rosales which won the Best Picture award in the 2008 Metro Manila Film Festival (MMFF).⁹ Based on

¹ *Rollo* (G.R. No. 213212), pp. 45-60; signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

² *Id.* at 38-44; signed by Chairperson Ma. Gracia M. Pulido-Tan and Commissioner Heidi L. Mendoza.

³ *Rollo* (G.R. No. 213497), pp. 88-90.

⁴ Signed on 11 July 1983.

⁵ Signed on 31 October 1985.

⁶ Signed on 25 July 1987.

⁷ Signed on 20 June 2007.

⁸ *Rollo* (G.R. No. 213497), p. 75.

⁹ "Baler' big winner in MMFF awards night" <<https://news.abs-cbn.com/entertainment/12/27/08/baler-big-winner-mmff-awards-night>> last accessed on 4 January 2021.

King's plan, the movie passes shall be distributed to 12 PAGCOR casino branches which shall, in turn, be chargeable against the patrons' respective Player Tracking System (PTS) points. Thereafter, King issued another Memorandum¹⁰ dated 10 December 2008, informing the General Managers and Branch Managers of PAGCOR's casino branches on the guidelines for Baler's ticket allocations.

On 16 December 2008, the Board of Directors of PAGCOR held a regular meeting which, *inter alia*, approved the ticket purchases requested by King.¹¹ Accordingly, on 19 December 2008, King wrote a letter¹² to PAGCOR's Vice President for Accounting, requesting the full remittance of the amount of ₱26,700,000.00 in favor of BFI on or before 22 December 2008.

On 22 December 2008, the following documents were executed:

1. Request for Payment (RFP) No. PR 08-12-05252,¹³ executed by King, asking PAGCOR's Accounting Department to process the payment of the said amount of ₱26,700,000.00 in favor of BFI;
2. Accounts Payable Voucher (APV) No. 0818945¹⁴ in the amount of ₱26,700,000.00, signed by Ester P. Hernandez, Vice President for Accounting. The particulars box states: "Payment for BALER tickets" and "board approval to follow"; and
3. Check Voucher No. 081219076¹⁵ approving the payment of ₱26,700,000.00 to BFI.

Thus, PAGCOR issued Land Bank of the Philippines (LBP) Check No. 0000153001¹⁶ dated 23 December 2008, payable to BFI, in the amount of ₱26,700,000.00.

On 18 March 2011, following the conduct of a post-audit examination, COA Supervising Auditor Atty. Resurreccion C. Quieta (Atty. Quieta) issued Audit Observation Memorandum No. 2010-021¹⁷ finding irregularities in the disbursement of the foregoing amount of ₱26,700,000.00, to wit: (1) only the amount of ₱2,039,580.00 was charged against the patrons' PTS points. The

¹⁰ *Rollo* (G.R. No. 213497), p. 76.

¹¹ *Rollo* (G.R. No. 213655), Vol. I, pp. 287-289.

¹² *Rollo* (G.R. No. 213497), p. 77.

¹³ *Rollo* (G.R. No. 213212), p. 170.

¹⁴ *Id.* at 169.

¹⁵ *Id.* at 168.

¹⁶ *Rollo* (G.R. No. 213497), p. 81.

¹⁷ *Id.* at 83-86.

balance of ₱24,660,420.00 was charged to other accounts without the approval of the Board of Directors; and (2) the payment of ₱26,700,000.00 was made despite the absence of supporting documents. On 4 April 2011, Cristino L. Naguiat, Jr., the new Chairman and CEO of PAGCOR, commented that “[t]he payment made for the transaction may be included in the case that will be filed against some PAGCOR personnel of the past administration.”¹⁸

Accordingly, on 30 June 2011, COA issued ND No. 2011-002(08)¹⁹ finding the following persons liable for the allegedly anomalous transaction in the total amount of ₱26,700,000.00:

Name	Position/Designation	Nature of Participation in the Transaction
Efraim C. Genuino	Chairman and CEO	Approved the payment / Approved the purchase of Baler tickets
Manuel C. Roxas	Member, PAGCOR Board of Directors	Approved the purchase of Baler tickets
Philip G. Lo	Member, PAGCOR Board of Directors	Approved the purchase of Baler tickets
Gamaliel A. Cordoba	Member, PAGCOR Board of Directors	Approved the purchase of Baler tickets
Rene C. Figueroa	Senior Vice President	Signed the Check and Check Voucher on behalf of the Chairman
Edward F. King	Vice President - CCSD	Certified in the RFP that [the] expense was necessary, lawful and incurred under his direct supervision
Ester P. Hernandez	Vice President - Accounting Dept.	Certified that [the] supporting documents were complete[,] and proper, and [that the] expenditure [was] properly certified per RFP
BIDA Foundation, Inc. / BIDA Production, Inc. c/o Josephine Sumangil-Evangelista	Payee	Received the payment

Excoriating the finding of liability against them, herein petitioners interposed their respective challenges against ND No. 2011-002(08), arguing as follows:

¹⁸ Id. at 87-88.

¹⁹ Id. at 89-90.

On the part of Rene C. Figueroa

Petitioner Rene C. Figueroa (Figueroa) argued that ND No. 2011-002(08) is void for failure to comply with Rule IV, Section 4²⁰ of the 2009 Revised Rules of Procedure of the Commission on Audit (RRPC),²¹ the same having been issued without any factual or legal basis;²² and that he signed the subject Check Voucher No. 081219076 and LBP Check No. 0000153001 in good faith.²³ As the designated alternate signatory of Genuino,²⁴ he merely relied on the fact that the said documents were cleared and certified as proper for release by PAGCOR's Finance and Treasury Department.²⁵

On the part of Philip G. Lo and Manuel C. Roxas

Petitioners Philip G. Lo (Lo) and Manuel C. Roxas (Roxas) asserted that they did not sign any Board Resolution approving the use of PAGCOR's operating expenses for the purchase of the "Baler" movie tickets.²⁶ They espouse the position that only the executive officials who deviated from the manifest intention of PAGCOR's Board of Directors must be held liable for the irregularities involving the payment made in favor of BFI.²⁷ Thus, petitioners Lo and Roxas should be excluded from liability under ND No. 2011-002(08).

On the part of Efraim C. Genuino

Petitioner Genuino likewise asserted that ND No. 2011-002(08) violated Rule IV, Section 4 of the 2009 RRPC.²⁸ He contended that charging of the payment of the "Baler" tickets to the PTS was well within PAGCOR Board's management prerogative.²⁹ The amount released by PAGCOR for the purchase of "Baler" tickets came from its private corporate funds, not public funds.³⁰ The said transaction was made in furtherance of PAGCOR's

²⁰ Section 4. *Audit Disallowances/Charges/Suspensions*. - In the course of the audit, whenever there are differences arising from the settlement of accounts by reason of disallowances or charges, the auditor shall issue Notices of Disallowance/Charge (ND/NC) which shall be considered as audit decisions. Such ND/NC shall be adequately established by evidence and the conclusions, recommendations or dispositions shall be supported by applicable laws, regulations, jurisprudence and the generally accepted accounting and auditing principles. The Auditor may issue Notices of Suspension (NS) for transactions of doubtful legality/validity/propriety to obtain further explanation or documentation.

²¹ *Rollo* (G.R. No. 213212), p. 86.

²² *Id.* at 88.

²³ *Id.* at 95.

²⁴ *Id.* at 90.

²⁵ *Id.* at 80-81.

²⁶ *Rollo* (G.R. No. 213497), p. 62.

²⁷ *Id.* at 63.

²⁸ *Rollo* (G.R. No. 213655), Vol. I, p. 272.

²⁹ *Id.* at 279.

³⁰ *Id.* at 280.

corporate social responsibility.³¹ At any rate, even if ND No. 2011-002(08) was admitted to be well-grounded, it does not automatically make Genuino liable for the disallowed transaction for the mere reason that he was the head of PAGCOR.³²

The COA CGS-C Ruling

On 28 September 2012, the COA Corporate Government Sector (CGS), Cluster C, issued Decision No. 2012-07 modifying ND No. 2011-002(08). While the issuance of the said ND was affirmed, the amount of liability was reduced to ₱24,660,420.00. In addition, petitioners Figueroa, Lo and Roxas, among others, were excluded from liability therein.³³

The COA Ruling

On automatic review, the COA Proper rendered the assailed Decision No. 2013-191 dated 20 November 2013, disposing as follows:

WHEREFORE, premises considered, Corporate Government Sector-C Decision No. 2012-007 dated September 28, 2012 is hereby **AFFIRMED WITH MODIFICATION**. Accordingly, Notice of Disallowance No. 2011-002(08) dated June 30, 2011 is hereby **AFFIRMED** sustaining the disallowance amounting to 26,700,000.00 and all the persons named liable therefor, except Mr. Edward F. King, who shall be excluded therefrom. Board of Directors Member Rafael A. Francisco, Ms. Estela P. Ramos and Mr. Pedro Michael M. Cendaña IV, shall however be included as persons liable in the Notice of Disallowance.³⁴

The COA Proper sustained the propriety of the issuance of ND No. 2011-002(08), the same being consistent with existing laws and jurisprudence. It ruled, *inter alia*, that PAGCOR's purchase of movie tickets is *ultra vires*; that PAGCOR cannot exploit its customers' accumulated PTS points without their consent; that the amount disallowed did not come from private funds; and that the entire amount of disallowance of ₱26,700,000.00 must be sustained because the entire approval process is null and void.³⁵

In reinstating all of the findings and conclusions of Atty. Quieta in ND No. 2011-002(08), the COA Proper emphasized that petitioners Genuino,

³¹ Id. at 284.

³² Id. at 279.

³³ *Rollo* (G.R. No. 213212), p. 52.

³⁴ Id. at 59.

³⁵ Id. at 53-54.

Figueroa, Lo and Roxas are indeed liable for the subject anomalous transaction in their respective capacities as PAGCOR officers.

Petitioner Genuino's liability stems from his fiscal responsibility as Chairman and CEO of PAGCOR, his failure to raise any objection to Figueroa's act of signing Check Voucher No. 081219076 and LBP Check No. 0000153001 on his behalf, and his personal knowledge that the subject payment was made to BFI, a party-list where his daughter was named first nominee.³⁶ Figueroa, on the other hand, was named liable for signing the subject check voucher and check without written notice that the same lacked the requisite supporting documents.³⁷ As to Lo and Roxas, the COA Proper affirmed their liability for approving the purchase of the subject movie tickets, and on the basis of their fiscal responsibility as members of PAGCOR's Board of Directors.³⁸

Petitioners interposed separate motions for reconsideration of the foregoing Decision No. 2013-191, but the same were denied by the COA Proper in its 18 June 2014 Decision No. 2014-115, *viz.*:

WHEREFORE, the instant Motions for Reconsideration of Mr. Efraim C. Genuino, Mr. Philip G. Lo and Mr. Manuel C. Roxas, Mr. Gamaeliel A. Cordoba, Mr. Rene C. Figueroa and Ms. Ester P. Hernandez are hereby **DENIED** for lack of merit. Accordingly, COA Decision No. 2013-191 dated November 20, 2013, affirming Notice of Disallowance No. 2011-002(08) dated June 30, 2011, is **AFFIRMED WITH FINALITY**, with respect to the aforesaid Movants.

The Audit Team Leader and Supervising Auditor, Philippine Amusement and Gaming Corporation are instructed to issue a Supplemental Notice of Disallowance to Mr. Rafael Francisco, Ms. Estela Ramos and Mr. Pedro Michael M. Cendaña IV as additional persons liable, copy furnished the General Counsel, this Commission.³⁹

Hence, the present recourse.

The Issues and Arguments

In G.R. No. 213212, petitioner Figueroa raises the following arguments for Our consideration:

³⁶ Id. at 57.

³⁷ Id. at 58.

³⁸ Id. at 58-59.

³⁹ Id. at 42-43.

RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION:

- i. In ignoring the factual findings of its own auditor, not to mention its own director;
- ii. In deeming petitioner liable for the subject transaction despite having acted in good faith;
- iii. In not affording petitioner his right to equal protection;
- iv. In overlooking the fact that petitioner was not actually even an accountable officer in this case.⁴⁰

In G.R. No. 213497, petitioners Lo and Roxas expound:

I.

THE COMMISSION ON AUDIT, WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, GRAVELY ERRED IN ITS FINDING THAT THE BOARD AUTHORIZED THE PURCHASE OF BALER MOVIE TICKETS FOR PAGCOR[;]

II.

THE COMMISSION ON AUDIT, WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION, GRAVELY ERRED IN ITS FINDING THAT THE CHARGING OF THE COST OF THE TICKETS TO THE PTS POINTS OF THE PLAYERS IS EQUIVALENT TO PAGCOR PURCHASING THE BALER TICKETS.⁴¹

Finally, in G.R. No. 213655, petitioner Genuino argues in the affirmative of the following issues:

RESPONDENTS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING AND AFFIRMING NOTICE OF DISALLOWANCE (N.D.) NO. 211-002(08) DATED 30 JUNE 2011 BECAUSE:

- A. RESPONDENTS HAVE NO AUDIT JURISDICTION OVER PAGCOR'S OPERATING EXPENSES FUND, MUCH LESS THE *BALER* TRANSACTION;
- B. RESPONDENTS ARROGATED UNTO THEMSELVES THE AUTHORITY NOT CONFERRED BY LAW OR THE CONSTITUTION WHEN THEY STRUCK DOWN AS ULTRA VIRES THE BOARD'S APPROVAL OF THE *BALER* TRANSACTION;

⁴⁰ Id. at 9.

⁴¹ *Rollo* (G.R. No. 213497), pp. 11-12.

C. DESPITE RESPONDENTS' LACK OF JURISDICTION, N.D. NO. 2011-002(08) DATED 30 JUNE 2011 WAS ISSUED IN CONTRAVENTION OF PERTINENT RULES AND REGULATIONS; AND

D. PETITIONER COULD NOT BE HELD LIABLE FOR THE QUESTIONED BALER TRANSACTION.⁴²

The Ruling of the Court

By reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies such as the COA are in a better position to pass judgment thereon, and their findings of fact are generally accorded great respect, if not finality, by the courts.⁴³ In *Delos Santos, et al. v. Commission on Audit*,⁴⁴ the Court held:

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 or excess of jurisdiction, that this Court entertains a petition questioning its rulings. x x x⁴⁵

Notwithstanding the foregoing principle, however, the Court declared in *Joson III v. Commission on Audit*⁴⁶ that:

However, We are reminded that said general policy should not be applied in a straitjacket as there are instances wherein the decisions of these agencies should be reviewed by this Court. One of those instances is when the administrative agency committed grave abuse of discretion, as in this

⁴² *Rollo* (G.R. No. 213655), Vol. I, p. 11.

⁴³ See *Paraiso-Aban v. Commission on Audit*, 777 Phil. 730, 737 (2016).

⁴⁴ 716 Phil. 322 (2013).

⁴⁵ *Id.* at 332-333 (Citations omitted).

⁴⁶ 820 Phil. 485 (2017).

case. 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.⁴⁷

Measured against these standards, We find that the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in rendering the herein assailed issuances. Accordingly, the petitions must be granted.

The scope of the COA's audit jurisdiction

The 1987 Constitution created the constitutional commissions as independent constitutional bodies, tasked with specific roles in the system of governance that require expertise in certain fields.⁴⁸ In this regards, the COA was made the guardian of public funds, vesting it with broad powers over all accounts pertaining to government revenues and expenditures and the use of public funds and property, including the exclusive authority to define the scope of its audit and examination; to establish the techniques and methods for the review; and to promulgate accounting and auditing rules and regulations.⁴⁹ Article IX-D, Section 2 of the Constitution thus states:

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: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination,

⁴⁷ Id. at 496.

⁴⁸ *The Special Audit Team, COA v. Court of Appeals, et al.*, 709 Phil. 167, 181 (2013).

⁴⁹ *Dela Llana v. The Chairperson, Commission on Audit, et al.*, 681 Phil. 186, 195 (2012).

establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties. (Emphasis ours)

Indeed, the Constitution has conferred upon the COA broad and extensive powers, having been envisioned by the Framers as a dynamic, effective, efficient and independent watchdog of the Government.⁵⁰ The COA is vested with the authority to determine whether government entities, including LGUs, comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of these funds.⁵¹ It has the power to ascertain whether public funds were utilized for the purpose for which they had been intended.⁵²

In *Funa v. Manila Economic and Cultural Office*,⁵³ the Court enumerated the government agencies and instrumentalities which are covered by the COA's audit jurisdiction, *viz.*:

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; *and*
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.⁵⁴

Indeed, the COA's audit jurisdiction generally covers public entities. In addition, the COA's authority to audit extends even to non-governmental entities insofar as the latter receives financial aid from the government.⁵⁵

Nevertheless, the circumstances obtaining in the instant case have led the Court to conclude that the COA's audit jurisdiction over PAGCOR is neither absolute nor all-encompassing.

⁵⁰ *Caltex Philippines, Inc. v. Commission on Audit*, 284-A Phil. 233, 257 (1992).

⁵¹ *Veloso, et al. v. Commission on Audit*, 672 Phil. 419, 429 (2011).

⁵² *Sanchez, et al. v. Commission on Audit*; 575 Phil. 428, 445 (2008).

⁵³ 726 Phil. 63 (2014).

⁵⁴ *Id.* at 86.

⁵⁵ *Fernando v. Commission on Audit*, G.R. Nos. 237938 and 237944-45, December 4, 2018.

The nature of PAGCOR's funds

PAGCOR is tasked with a dual role, to operate and to regulate gambling casinos⁵⁶ and clubs as a means to promote tourism and generate sources of revenue for the government.⁵⁷ Under Title IV, Section 10 of P.D. No. 1869, PAGCOR's franchise includes the "rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines."⁵⁸ Likewise, it is legally empowered to "do and perform such other acts directly related to the efficient and successful operation and conduct of games of chance in accordance with existing laws and decrees."⁵⁹ It also has regulatory powers over "[a]ll persons primarily engaged in gambling, together with their allied business."⁶⁰

Prescinding from its dual governmental and proprietary functions, PAGCOR is a *sui generis* GOCC. On one hand, it exercises a sovereign function by regulating gambling casinos and clubs. On the other, it generates income for the Government by operating said gambling establishments.

Consistent with PAGCOR's unique corporate and fiscal features, the PAGCOR Charter, as amended, provides a mechanism which effectively segregates PAGCOR's earnings owed to the Government from the rest of its corporate revenue or funds. Section 12 of the PAGCOR Charter thus provides:

Sec. 12. *Special Condition of Franchise.* — After deducting five (5%) percent as Franchise Tax, the fifty (50%) percent share of the government in the aggregate gross earnings of the Corporation from this Franchise, or 60% if the aggregate gross earnings be less than ₱150,000,000.00, shall immediately be set aside and shall accrue to the General Fund to finance the priority infrastructure development projects and to finance the restoration of damaged or destroyed facilities due to calamities, as may be directed and authorized by the Office of the President of the Philippines.

In view of the policy to enable the private sector to take a more active

⁵⁶ See *Basco v. PAGCOR*, 274 Phil. 323, 333 (1991).

⁵⁷ *Yun Kwan Byung v. PAGCOR*, 623 Phil. 23, 28 (2009).

⁵⁸ *Philippine Amusement and Gaming corp. (PAGCOR) v. The Commissioner of Internal Revenue, et al.*, 824 Phil. 508, 512 (2017).

⁵⁹ *Id.*

⁶⁰ *Id.*

role in PAGCOR: (a) Section 4⁶¹ of the PAGCOR Charter allots 550,000 shares of stock of PAGCOR to be subscribed to and paid for by the Government, while the remaining 450,000.00 shares may be subscribed to by private persons or entities; and (b) Section 6⁶² mandates that two (2) of the members of PAGCOR's Board of Directors shall come from the private sector and who shall be elected by its stockholders.

*COA's limited audit jurisdiction
under the PAGCOR Charter*

It is a basic rule in statutory construction that every part of the statute must be interpreted with reference to the context, i.e., that every part of the statute must be interpreted together with the other parts, and kept subservient to the general intent of the whole enactment.⁶³ The law must not be read in truncated parts; its provisions must be read in relation to the whole law.⁶⁴ The particular words, clauses and phrases should not be studied as detached and isolated expression, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole.⁶⁵ Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.⁶⁶ We have to take the thought conveyed by the statute as a whole; construe the constituent parts together; ascertain the legislative intent from the whole act; consider each and every provision thereof in the light of the general purpose of the statute; and endeavor to make every part effective, harmonious, sensible.⁶⁷

⁶¹ Section 4. *Authorized Capital Stock*. — The Corporation shall have an authorized capital stock divided into one million voting and no par value shares, to be subscribed, paid for and voted as follows:

a) 550,000 shares of stock to be subscribed to and paid for by the Government of the Republic of the Philippines at an original issue value of P200.00 per share; and

b) 450,000 shares remaining may be subscribed to by persons or entities acceptable to the Board of Directors at issue value to be determined by such Board of Directors.

The voting power pertaining to shares of stock subscribed to by the Government of the Republic of the Philippines shall be vested in the President of the Philippines or in such person or persons as he may designate.

The voting power pertaining to shares of stock subscribed by private persons or entities shall be vested in them.

⁶² Section 6. *Board of Directors*. — The Corporation shall be governed and its activities be directed, controlled and managed by a Board of Directors, hereinafter referred to as the Board, composed of five (5) members, three (3) of whom shall come from the Government sector and shall be appointed by the President, while the other two (2) shall be from the private sector, who own at least 1 share of stock in the Corporation and who shall be elected by the stockholders of the corporation in the annual general meeting or in a special meeting called for such purpose.

Each Director shall serve for a term of one (1) year and until his successor shall have been duly appointed and qualified.

⁶³ *Enriquez v. Enriquez*, 505 Phil. 193, 199 (2005).

⁶⁴ *Mactan-Cebu International Airport Authority v. Urgello*, 549 Phil. 302, 322 (2007), citing *Civil Service Commission v. Joson, Jr.*, 473 Phil. 844, 858 (2004).

⁶⁵ *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*, 744 Phil. 313, 326-327 (2014).

⁶⁶ *Phil. International Trading Corp. v. COA*, 635 Phil. 447, 454 (2010).

⁶⁷ *Rep. of the Phils. v. Reyes, et al.*, 123 Phil. 1035, 1039 (1966).

In this regard, Section 15 of the PAGCOR Charter limits the COA's audit jurisdiction over PAGCOR's funds as follows:

SEC. 15. *Auditor* — The Commission of Audit or any government agency that the Office of the President may designate shall appoint a representative who shall be the Auditor of the Corporation and such personnel as may be necessary to assist said representative in the performance of his duties. The salaries of the Auditor or representative and his staff shall be fixed by the Chairman of the Commission on Audit or designated government agency, with the advice of the Board, and said salaries and other expenses shall be paid by the Corporation. The funds of the Corporation to be covered by the audit shall be limited to the 5% franchise tax and the 50% of the gross earnings pertaining to the Government as its share.

Cognizant of the above-stated principle of statutory construction, Section 15 must not be read in isolation, but as part of the entire PAGCOR Charter. Indeed, it bears stressing that P.D. No. 1869 was enacted to increase the participation of the private sector in the subscription of the authorized capital stock of PAGCOR. To this end, the share of the Government in the gross earnings was adjusted to fifty percent (50%). Likewise, to provide for greater flexibility in PAGCOR's operations, governmental audit was limited to the five percent (5%) franchise tax and the Government's fifty percent (50%) share of the gross earnings. This allows PAGCOR greater flexibility in generating revenues. Towards this end, the relevant provisions of P.D. No. 1869 were decreed.

Here, the COA asserts that Section 15 of the PAGCOR Charter is no longer tenable because it runs afoul of its audit jurisdiction under the 1987 Constitution. The COA is, in effect, collaterally attacking the constitutionality of the said provision.

The Court cannot sustain the COA's position.

Repeals by implication are not favored in this jurisdiction.⁶⁸ All laws are presumed to be consistent with each other.⁶⁹ The established rule is that every law has in its favor the presumption of constitutionality, and to justify its nullification there must be a clear and unequivocal breach of the Constitution, not a doubtful and argumentative one.⁷⁰ Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.⁷¹ Moreover, the

⁶⁸ See *Valdez v. Tuason*, 40 Phil. 943, 950 (1920).

⁶⁹ *UP Board of Regents, et al. v. Auditor General, et al.*, 140 Phil. 393, 409 (1969).

⁷⁰ *Lacson v. The Executive Secretary*, 361 Phil. 251, 263 (1999).

⁷¹ *Larin v. Executive Secretary*, 345 Phil. 962, 979 (1997).

constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally.⁷² Unless a law, rule, or act is annulled in a direct proceeding, it is presumed valid.⁷³

There is no law, decree, executive order, or issuance which has specifically repealed Section 15 of the PAGCOR Charter. Neither has there been any pronouncement from the Court declaring the same unconstitutional. Thus, for all intents and purposes, the said provision of the PAGCOR Charter is still in full force and effect.

In the case at bar, it is readily apparent that the subject amount of ₱26,700,000.00 neither comes from the five percent (5%) franchise tax or PAGCOR's fifty percent (50%) gross earnings. This amount was sourced from PAGCOR's Operating Expenses Fund, particularly the corporation's Marketing Expenses.

As shown by PAGCOR's Statement of Income and Expenses, which is integrated in its Annual Audit Report (AAR), PAGCOR's Operating Expenses Fund is not part of the five percent (5%) franchise tax or PAGCOR's fifty percent (50%) gross earnings. In its 2008 AAR,⁷⁴ for instance, PAGCOR's Operating Expenses of ₱12,765,934,118.00⁷⁵ is separate and distinct from the five percent (5%) franchise tax and the fifty percent (50%) share of the Government.

To illustrate, PAGCOR's Marketing Expenses, which are part of its Operating Expenses Fund and are used to promote its casino operations, including, *inter alia*, expenses in its casino branches to pay out the winnings of casino players from their gambling activities, ranging from thousands to millions of pesos; certain privileges given to casino players like room accommodations, food, and bonus chips worth thousands of pesos; and sponsorships and expenses for events, advertisements and other promotions. It is well within PAGCOR's mandate as a casino operator to incur these expenses because they are "necessary or proper for the accomplishment of its purposes and objectives."⁷⁶ The amount of ₱26,700,000.00 for the "Baler" movie tickets was sourced from PAGCOR's Marketing Expenses.

⁷² *Tan v. Bausch & Lomb, Inc.*, 514 Phil. 307, 316. (2005).

⁷³ *Kilusang Mayo Uno, represented by its Secretary General Rogelio Soluta, et al. v. Hon. Benigno Simeon C. Aquino III, et al.*, G.R. No. 210500, April 2, 2019.

⁷⁴ *Rollo* (G.R. No. 213655), Vol. I, pp. 85-150.

⁷⁵ *Id.* at 106.

⁷⁶ PRESIDENTIAL DECREE NO. 1869, Section 7(e).

At any rate, the COA does not have the power to declare ultra vires the acts of PAGCOR's Board of Directors

In affirming ND No. 2011-002(08), the COA ruled that the PAGCOR Board of Directors exceeded its authority and committed an *ultra vires* act by approving the disbursement of the subject amount of ₱26,700,000.00. In so doing, the COA went beyond the bounds of its powers.

A corporation has: (1) express powers, which are bestowed upon by law or its articles of incorporation; and (2) necessary or incidental powers to the exercise of those expressly conferred.⁷⁷ An act which cannot fall under a corporation's express or necessary or incidental powers is an *ultra vires* act.⁷⁸ In the instant case, the determination of whether the PAGCOR Board of Directors acted within the powers of the corporation lies with the provisions of the PAGCOR Charter. It bears stressing, however, that such determination is beyond the jurisdiction of the COA.

To recall, the principal duties of the COA are as follows:

1. 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.
2. Promulgate accounting and auditing rules and regulations including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant or unconscionable expenditures, or uses of government funds and properties.
3. Submit annual reports to the President and the Congress on the financial condition and operation of the government.
4. Recommend measures to improve the efficiency and effectiveness of government operations.
5. Keep the general accounts of government and preserve the vouchers and supporting papers pertaining thereto.

⁷⁷ *Magallanes Watercraft Association, Inc. v. Auguis, et al.*, 785 Phil. 866, 872 (2016).

⁷⁸ *Id.*

6. Decide any case brought before it within sixty (60) days.
7. Performs such other duties and functions as may be provided by law.⁷⁹

Neither the 1987 Constitution nor P.D. No. 1445, also known as the Auditing Code of the Philippines, or any other related statute grants the COA the power to strike down as void or declare *ultra vires* the acts of the Board of Directors of PAGCOR or any other GOCC.

The PAGCOR Board acted well within the limits of its power and authority

In any event, there is no merit in the finding that the PAGCOR Board of Directors exceeded its statutory authority when it approved the purchase of the movie tickets in question. Section 7 of the PAGCOR Charter reads:

SEC. 7. *Powers, Functions and Duties of the Board of Directors.* — The Board shall have the following powers, functions and duties;

- a) To allocate and distribute, with the approval of the Office of the President of the Philippines, the earnings of the Corporation earmarked to finance infrastructure and socio-civic projects;
- b) To designate the commercial bank that shall act as the depository bank of the Corporation and/or trustee of the funds of the Corporation;
- c) To prepare and approve at the beginning of each calendar year the budget that may be necessary under any franchise granted to it, to insure the smooth operation of the Corporation; and to evaluate and approve budgets submitted to it by other corporations or entities with which it might have any existing contractual arrangement;
- d) To submit to the Office of the President of the Philippines before the end of February of each year a list of all the infrastructure and/or socio-civic projects that might have been financed from the Corporation's earnings, and to submit such periodic or other reports as may be required of it from time to time; and
- e) To perform such other powers, functions and duties as may be directed and authorized by the President of the Philippines or as may be necessary or proper for the accomplishment of its purposes and objectives.

⁷⁹ *Principal Duties* <<https://www.coa.gov.ph/index.php/2013-06-19-13-06-03/principal-duties>> Last accessed on 25 January 2021.

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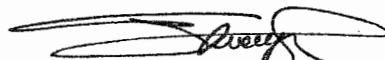
Petitioners assert that PAGCOR had purchased and sponsored, in previous years, projects that may be considered as socio-civic in nature, such as the concerts of Frank Sinatra and Andrea Bocelli, and the musical "Miss Saigon." As far as the records show, these disbursements were never questioned by the COA.

Verily, the purpose of purchasing "Baler" movie tickets, taking into consideration the film's history-based plot, squarely falls under the category of a socio-civic project which is well within the power of the PAGCOR Board to approve. Moreover, taking into consideration the fact that the funds used to implement this undertaking came from PAGCOR's Marketing Expenses, the same is beyond the COA's audit jurisdiction.

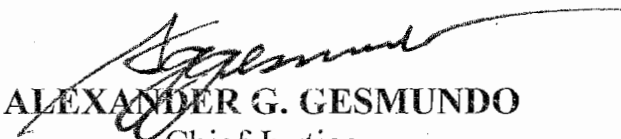
All told, the subject disallowance which found liability against the petitioners is bereft of any factual and legal basis. In decreeing such disallowance, the COA acted with grave abuse of discretion, which "pertains to acts of discretion exercised in areas *outside* an agency's granted authority and, thus, abusing the power granted to it."⁸⁰ The same must, perforce, be struck down in the greater interest of justice.

WHEREFORE, the petitions are **GRANTED**. Accordingly, the assailed Decision No. 2013-191 dated 20 November 2013, Decision No. 2014-115 dated 18 June 2014, and Notice of Disallowance No. 2011-002(08) dated 30 June 2011 issued by the Commission on Audit are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.



SAMUEL H. GAERLAN
Associate Justice

WE CONCUR:

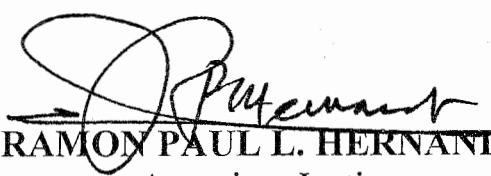

ALEXANDER G. GESMUNDO
Chief Justice

⁸⁰ *Kilusang Mayo Uno, represented by its Secretary General Rogelio Soluta, et al. v. Hon. Benigno Simeon C. Aquino III, et al.*, supra note 73.


*Please see separate concurring
opinion
of Justice*
ESTELA M. PERLAS-BERNABE
Associate Justice


*see separate concurring
opinion*

MARVIC M.V.F. LEONEN
Associate Justice


(No part)
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

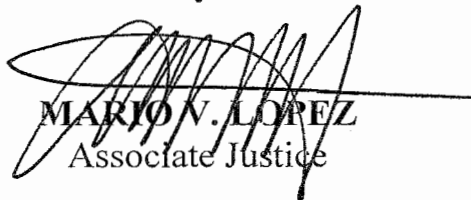

RAMON PAUL L. HERNANDO
Associate Justice

(No part)
ROSMARI D. CARANDANG
Associate Justice

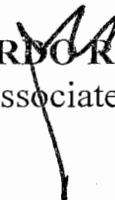

AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice

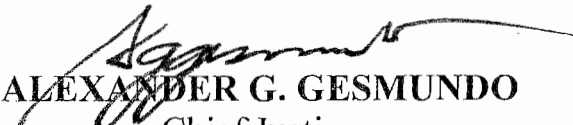

EDGARDO L. DELOS SANTOS
Associate Justice

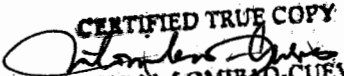

RICARDO R. ROSARIO
Associate Justice


JHOSEP V. LOPEZ
Associate Justice

CERTIFICATION

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


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFE M. LOMBAO-CUEVAS
Clerk of Court
Supreme Court