



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

EN BANC

HON. JED PATRICK E. MABILOG
[Substituted by HON. JERRY P.
TREÑAS], City Mayor, Iloilo City, in
his capacity as City Mayor, City of
Iloilo, and in behalf of the RANK
AND FILE EMPLOYEES OF THE
CITY OF ILOILO,

Petitioners,

- versus -

THE COMMISSION ON AUDIT
[COA], COA REGIONAL OFFICE
NO. VI and EVELYN P. REYES, in
her capacity as Regional Director,

Respondents.

G.R. No. 248977

Present:

GESMUNDO, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J., and
DIMAAMPAO, JJ.

Promulgated:

September 28, 2021

X-----*Antonio Lopez*-----X

DECISION

ZALAMEDA, J.:

Benevolence, magnanimity, or nobility of intention in granting employee benefits should never sanction the circumvention of a clear and unambiguous provision of law. Violations of unequivocal budgetary rules and regulations resulting in the grant of employee benefits that are exorbitant and arrestive to the financial condition of a local government could be regarded as gross negligence that would merit a finding of solidary liability

on the part of the officials who approved the grant, and on the part of the recipients on the ground that they received the same by mistake.

The Case

Challenged *via* the present petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court are Decision¹ No. 2017-404 dated 13 December 2017 and Resolution² No. 2019-038 of the Commission on Audit (COA) Proper, which upheld the COA Regional Office's decision affirming the disallowance of the payment of the Productivity Enhancement Incentive (PEI) to the employees of the City of Iloilo for calendar year (CY) 2009 in the total amount of ₱46,424,328.24.³

Antecedents

On 16 December 2009, the *Sangguniang Panlungsod* of the City of Iloilo enacted the following ordinances, which paved the way to the grant of PEI to its officials and employees:

1. **Ordinance No. 2009-095** – approved Supplemental Budget No. 9 of the City for CY 2009, in the total amount of [₱]43,465,085.68, which amount included [₱]31,431,648.00 from the Calamity Fund that was reverted back to the unappropriated surplus to be used as payment of PEI. From this supplemental budget, [₱]20,001,679.00 was appropriated for the payment of the PEI; and,

2. **Ordinance No. 2009-096** – authorized the realignment of the amount of [₱]31,028,321.00 from Personal Services (PS) Savings to augment the payment of PEI.⁴

Pursuant to these ordinances, the City of Iloilo was able to give its officials and employees PEI in the amount of ₱30,000.00 each.

However, upon audit, the Audit Team Leader and Supervising Auditor issued Notice of Disallowance (ND) No. 10-001-100-(09) dated 12 August 2010 disallowing the amount of ₱46,424,328.24, representing the total amount of PEI granted to the officials and employees of Iloilo City. The ND was based on the following reasons:

¹ *Rollo*, pp. 19-27.

² *Id.*

³ *Id.* at 4-5.

⁴ *Id.* at 19-20.

(a) Only the amount of [P]3,228,671.76 was available to the city for costs chargeable against the PS Savings based on the computation of its 45% PS limitation pursuant to Section 325(a) of Republic Act No. (RA) 7160,⁵ and Item 3.0 of the Department of Budget and Management (DBM) Local Budget Circular (LBC) No. 2009-93 dated 17 December 2009; and

(b) The reversion of the amount [P]31,431,648.00 of the Calamity Fund back to the unappropriated surplus contravenes Item No. b.4 of the Implementing Rules and Regulations (IRR) of RA 8185,⁶ which requires that the unexpended balance of the Calamity Fund at the end of the current year be reverted to the unappropriated surplus only for the purpose of reappropriation during the succeeding budget year.⁷

The following were held liable under the Nds:

Name	Position/Designation	Nature of Participation in the Transaction
1. Hon. Jerry P. Treñas	Former City Mayor	Approved the ordinances that appropriated the funds for PEI.
2. Melchor U. Tan	Former City Administrator	Approved the payrolls and disbursement vouchers (DVs), and countersigned the checks.
3. Katherine T. Tingson/ Atty. Mary Joan V. Montaño	City Treasurer/ Asst. City Treasurer	Certified the availability of funds and signed the checks.
4. Michelle O. Lopez	City Accountant	Certified the completeness of the supporting documents in the DVs.
5. Joy Ann Toledo/ Dionisia S. Gargalicana	Assistant City Budget Officer/ Budget Officer IV	Certified the availability of appropriation despite the city exceeding the 45% PS limitation.
6. Ninda D. Atinado	City Budget Officer	Prepared the Supplemental Budget on Funds Actually Available.
7. Hon. Jed Patrick E. Mabilog – City Vice Mayor/ Presiding Officer Hon. Eduardo L. Peñaredondo Hon. Lyndon V. Acap Hon. Eldrid C. Antiquiera Hon. Julienne L. Baronda	Members of the <i>Sangguniang Panlungsod</i>	Enacted Ordinance Nos. 2009-095 and 2009-096, both dated 16 December 2009.

⁵ Otherwise known as the "Local Government Code of 1991."

⁶ An Act Amending Section 324 (D) of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.

⁷ *Rollo*, p. 20.

<p>Hon. Jose S. Espinosa III Hon. Ely A. Estante, Jr. Hon. Jeffrey P. Ganzon Hon. John Melchor Mabilog Hon. Ma. Irene D. Ong Hon. Armand S. Parcon Hon. Antonio V. Pesña, Jr. Hon. Erwin J. Plagata Hon. Nielex C. Tupas Hon. Perla S. Zulueta</p>		
<p>8. Hon. Jerry P. Treñas Hon. Jed Patrick E. Mabilog Melchor U. Tan Joy Ann Toledo Katherine T. Tingson Atty. Mary Joan V. Montaña Elsie Segaya Michello O. Lopez Dr. Tomas J. Forteza, Jr. Dr. Julie L. Baronda Jose Roni SJ. Peñalosa Noel Z. Hechanova Benito T. Jimena Alfredo A. Villanueva Dr. Erlinda G. Gencaya Romeo Caesar L. Manikan Atty. Angelo M. Geremias Karl C. Quimsing Agustin C. Sangrador, Jr. Engr. Raul T. Gallo Edna Querubin Dr. Urminico M. Baronda, Jr. Josegil L. Parreñas Atty. Edgardo J. Gil Judge Amalik P. Espinosa, Jr. Nelson E. Parreño Thelma E. Golez</p>	<p>Heads and assistant heads of department/offices</p>	<p>Certified that the charges to appropriation/allotment are necessary and lawful and the supporting documents valid, proper, and legal.</p>
<p>9. Delmo, Rodrigo, et al. (Annex B)</p>	<p>Payees</p>	<p>Received payment of the PEI.⁸</p>

Mayor Jed Patrick E. Mabilog (Mayor Mabilog), in his capacity as

⁸ *Id.* at 49-50.

then City Mayor and in behalf of the rank-and-file employees of Iloilo City (collectively, petitioners), appealed the disallowance before the COA Regional Office. He argued that the grant of PEI was motivated by good faith and by the generosity and magnanimity of Iloilo City to its officials and employees. According to Mayor Mabilog, most of the funds used in the grant of the PEI were sourced from PS Savings and partly from Maintenance and Other Operating Expenses (MOOE), which in no way affected appropriations for the general services and the welfare of the city. Although Iloilo City may have exceeded the PS limitation, Mayor Mabilog claimed that the purpose of the said limitation is the fiscal sustainability of a local government unit (LGU).⁹

The COA Regional Office, through Decision¹⁰ No. 2015-026 dated 29 June 2015, denied petitioners' appeal and affirmed the subject NDs. The Regional Director explained that under Administrative Order No. (AO) 276, s. 2009, the issuance that sanctioned the grant of PEI for Fiscal Year (FY) 2009, the PEI released by LGUs shall be subjected to the PS limitation under RA 7160.¹¹ By Mayor Mabilog's own admission, the City of Iloilo already exceeded its PS limitation, hence, the disallowance of the PEI was proper.¹² This is bolstered by the similar finding of Officer-In-Charge (OIC) Director Alfonso B. Bedonia, Jr., of the DBM who reviewed Appropriation Ordinance No. 2009-095.¹³

Citing *Casal v. Commission on Audit*,¹⁴ the Regional Director ruled that Mayor Mabilog and the other officials who authorized the PEI cannot invoke good faith considering that the payment of the benefit is a clear violation of AO 276 and DBM LBC No. 2009-93.¹⁵ Neither could petitioners, as recipients, claim good faith since they executed waivers that they will return the amounts received in case of disallowance.¹⁶ Thus, petitioners are liable to return what they received pursuant to the principle of *solutio indebiti*.¹⁷

Aggrieved, Mayor Mabilog elevated the matter before the COA Proper. To justify their prayer for exoneration, petitioners advanced the following arguments:

1. PEI should not be subjected to PS limitation;

⁹ *Id.* at 21-22.

¹⁰ *Id.* at 42-47.

¹¹ *Id.* at 44.

¹² *Id.* at 45.

¹³ *Id.*

¹⁴ 538 Phil. 634 (2006).

¹⁵ *Rollo*, pp. 45-46.

¹⁶ *Id.* at 46.

¹⁷ *Id.*

2. There was an error in the computation of PS limitation;
3. The reversion of the Calamity Fund to the unappropriated surplus for the payment of PEI for CY 2009 is valid;
4. There is legal basis for the grant of the PEI; and
5. The employees and officials of the city received the PEI in good faith.¹⁸

Ruling of the COA Proper

On 13 December 2017, the COA Proper promulgated the assailed decision affirming the COA Regional Office's ruling, thus:

WHEREFORE, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. Accordingly, Commission on Audit Regional Office No. VI Decision No. 2015-026 dated June 29, 2015, affirming Notice of Disallowance No. 10-001-100-(09) dated August 12, 2010, on the payment of Productivity Enhancement Incentive for calendar year 2009 amounting to [P]46,424,328.24, is **AFFIRMED**.¹⁹

The COA Proper explained that the relevant issuances on the matter, *i.e.*, AO 276, DBM Budget Circular No. 2009-5, and DBM LBC No. 2009-93, all provide that the grant of PEI by LGUs shall be subject to the PS limitation. Moreover, the finding that Iloilo City exceeded its PS limitation is factually proven as the computation of the remaining amount available to Iloilo City for its PS costs was corroborated by the OIC Director of DBM, who, in his review of Administrative Ordinance No. 2009-095, stated that the payment of PEI for Iloilo City's officials and employees may not be allowed for violating the provision on the PS limitation and the use of the Calamity Fund.²⁰

The COA Proper also found no merit in Mayor Mabilog's argument that the computation of the PS limitation is erroneous because of the non-deduction from the total PS expenditures of the salaries, wages, and allowances of officials and employees of public markets and slaughterhouses that are allegedly considered as economic enterprises, and therefore, excluded from the computation of PS limitation under the law. According to the COA Proper, petitioners failed to substantiate their claim by their own computation. A scrutiny of the computation of the available PS cost made by the State Auditor showed that no expenditures of the economic

¹⁸ *Id.* at 22-23.

¹⁹ *Id.* at 26.

²⁰ *Id.* at 23-24.

enterprises were included in the computation.²¹

Mayor Mabilog moved for the reconsideration of the Decision but the COA Proper denied the same. Thus, the filing of the present petition. Aside from seeking the nullification the assailed COA issuances, the petition also contains a motion praying that Mayor Mabilog, who is no longer in public service, be substituted by the incumbent Mayor of the City of Iloilo, petitioner Jerry P. Treñas (Mayor Treñas).²² On 24 September 2019, the Court issued a Resolution²³ granting the motion for substitution.

Issues

Mayor Treñas now comes before the Court to assail COA Proper's decision, raising the following issues:

1. The Commission on Audit committed a grave abuse of discretion in finding that the PEI granted for FY 2009 by Iloilo City Government to its officials and employees is subject to the Personal Services limitation provided for under Section 325(a) of R.A. 7160.
2. The Commission on Audit committed a grave abuse of discretion in failing to appreciate that the reversion of the Calamity Fund to the unappropriated surplus for the payment of Productivity Enhancement Incentive for FY 2009 is valid.
3. The Commission on Audit committed a grave abuse of discretion in failing to appreciate that there is a legal basis for the City of Iloilo in granting of PEI for FY 2013 [sic].
4. The Commission on Audit committed a grave abuse of discretion in finding that the government employees and officials of the Iloilo City Government who received the subject Productivity Enhancement Incentive did not act in good faith.²⁴

Ruling of the Court

The Petition lacks merit.

²¹ *Id.* at 24.

²² *Id.* at 6.

²³ *Id.* at 61-63.

²⁴ *Id.* at 8.



The Court accords respect to, and generally sustains the decisions of administrative authorities in deference to the doctrine of separation of powers and also for their presumed expertise in the laws they are entrusted to enforce. 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. Abuse of discretion is grave 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, whim, and despotism.²⁵

To overturn the assailed decision, it must be shown that the COA committed grave abuse of discretion when it affirmed the NDs for the payment of PEI to the employees of Iloilo City. Petitioner, however, failed miserably in this undertaking.

AO 276 and the relevant issuances of the DBM subject the grant of the PEI to the PS limitation.

As mentioned, AO 276 authorized the grant of PEI to government employees, including those in the LGUs, for CY 2009. To clarify the guidelines in granting PEI to local government personnel, DBM LBC No. 2009-93²⁶ was issued, hence:

2.0 Grant of the PEI

2.1 The respective sanggunian may grant the PEI to local government personnel depending on the financial capability of the local government unit (LGU). The PEI shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years.

X X X X

3.0 Funding Source

The PEI for local government personnel shall be charged against LGU funds, subject to the budgetary conditions and Personal Services limitation in LGU budgets pursuant to Sections 325 (a) and 331 (b) of R.A. No. 7160.

Meanwhile, Sections 325(a) of RA 7160 provides:

SECTION 325. *General Limitations.* — The use of the provincial,

²⁵ See *Veloso v. Commission on Audit*, 672 Phil. 419, 432 (2011) [Per J. Peralta].

²⁶ *Clarificatory Guidelines on the Grant of the Productivity Enhancement Incentive (PEI) to Local Government Personnel for FY 2009*, 17 December 2009.

city, and municipal funds shall be subject to the following limitations:

(a) The total appropriations, whether annual or supplemental, for personal services of a local government unit for one (1) fiscal year shall not exceed forty-five percent (45%) in the case of first to third class provinces, cities and municipalities, and fifty-five percent (55%) in the case of fourth class or lower, of the total annual income from regular sources realized in the next preceding fiscal year. The appropriations for salaries, wages, representation and transportation allowances of officials and employees of the public utilities and economic enterprises owned, operated, and maintained by the local government unit concerned shall not be included in the annual budget or in the computation of the maximum amount for personal services. The appropriations for the personal services of such economic enterprises shall be charged to their respective budgets;

x x x x (Emphases supplied)

From the foregoing, it is clear that while the PEI shall be charged from LGU funds, the amount to be given should not exceed the concerned LGU's PS limitation. The COA found that Iloilo City had already used 44.64% of their 45% PS limitation and only had ₱3,228,671.76 to spend for the PEI given to its officials and employees. Thus, the amount of ₱46,424,328.24 appropriated for the PEI is far in excess of what Iloilo City is only allowed to spend for it.

Mayor Treñas insists that the disallowance of the PEI would be unduly injurious to the employees considering that petitioners received the same as a motivational incentive to improve their productivity, as provided by AO 276. Allegedly, had the City of Iloilo known that the PEI is subject to the PS limitation, the LGU would have been more prudent to ensure that said limit is not breached.²⁷

We are not persuaded. It is settled that when the law is clear and unambiguous, the Court only has to apply the same, nothing more.²⁸ No amount of good intention could justify noncompliance with the clear provision of law. Ignorance of the law of the officials who authorized the payment of the PEI does not excuse their noncompliance.²⁹

Section 3 of AO 276 is unequivocal that the PEI is subject to the PS limitation under RA 7160. Thus:

SECTION 3. PEI for Employees of LGUs. Employees in the local government units (LGUs) may also be granted PEI by their respective

²⁷ *Rollo*, p. 10.

²⁸ *Association of International Shipping Lines, Inc. v. Secretary of Finance*, G.R. No. 222239, 15 January 2020.

²⁹ *See Turks Shawarma Co. v. Pajaron*, 803 Phil. 315 (2017).

sanggunian, depending on the LGU financial capability, chargeable to local government funds, subject to the Personal Services limitation in their respective local government budgets under RA No. 7160 and subject further to the conditions in Section 1 hereof. The PEI shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years. (Emphasis supplied)

Moreover, the allegation of Mayor Treñas that the City of Iloilo is unaware of the PS limitation is belied by Ordinance No. 2009-096³⁰ issued by its own *Sangguniang Panlalawigan*. The said ordinance made reference to DBM Budget Circular No. 2009-5,³¹ which reiterates, unequivocally, that the PEI shall be subject to the PS limitation in accordance with AO 276:

6.0 PEI for LGU Personnel

x x x x

6.3 The PEI for LGU Personnel shall be charged against LGU funds subject to the budgetary conditions and Personal Services limitation in LGU budgets pursuant to Sections 325(a) and 331(b) of R.A. No. 7160. (Emphasis supplied.)

Notwithstanding, Mayor Treñas asserts that complying with the PS limitation in the grant of PEI is violative of the equal protection clause under the Constitution. Allegedly, employees and officials of LGUs would receive varying amounts depending on what is left in their PS allocation, and would effectively discriminate LGUs that could no longer afford granting PEI because they already reached the limit.

We disagree. This constitutional challenge should not be allowed; the constitutionality or legality of a law or administrative regulation could only be assailed in a direct action before a competent court.³² We ruled in *Tan v. Bausch & Lomb Inc.*,³³

Furthermore, the order of the trial court was a patent nullity. In resolving the pending incidents of the motion to transfer and motion to quash, the trial court should not have allowed petitioners to collaterally attack the validity of A.O. Nos. 113-95 and 104-96. We have ruled time and again that the constitutionality or validity of laws, orders, or such other rules with the force of law cannot be attacked collaterally. **There is a legal presumption of validity of these laws and rules. Unless a law or rule is annulled in a direct proceeding, the legal presumption of its validity stands. The trial court's order was consequently null and**

³⁰ *Rollo*, pp. 51-52.

³¹ *Id.* at 51.

³² *See National Association of Electricity Consumers for Reforms v. Manila Electric Co.*, 797 Phil. 12 (2016).

³³ 514 Phil. 307 (2005).

void.³⁴ (Emphasis supplied)

Anent the alleged error in the computation of the PS limitation, We agree with the COA Proper that the allegation of Mayor Treñas is devoid of any probative value *sans* competent evidence of what the correct computation is.

Based on the foregoing, We find no grave abuse of discretion on the part of the COA Proper in affirming the disallowance of the PEI on the ground that it exceeded Iloilo City's PS limitation. Moreover, the factual findings of administrative bodies charged with their specific field of expertise, such as COA, are afforded great weight by the courts. In the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.³⁵

The portion of the Calamity Fund allegedly "unexpended" and "reverted" was erroneously used to fund the PEI.

Mayor Treñas argues that while the IRR of RA 8185 requires that unexpended balances of the Calamity Fund should be reverted to the unappropriated surplus for re-appropriation during the succeeding budget year, no such provision could be found in the law itself.³⁶

We do not agree.

RA 8185 was enacted as an amendment to Section 324 of RA 7160. In particular, said law made available for LGUs the Calamity Fund to defray for expenses brought about by calamities. As an amendatory law, RA 8185 should not be read in isolation but in conjunction with the other provisions of the amended law.

Under Section 322 of RA 7160, unexpended balances of appropriations shall revert to the unappropriated surplus of the general fund at the end of the fiscal year and would no longer be available except by subsequent enactment. In this case, the Calamity Fund was erroneously used to fund the PEI because at the time of its appropriation or

³⁴ *Id.* at 316.

³⁵ *Lumayna v. Commission on Audit*, 616 Phil. 929, 940 (2009).

³⁶ *Rollo*, pp. 12-13.

realignment on 16 December 2009, the same could still not be considered as “unexpended” and “reverted.” Section 322 of RA 7160 is clear that reversion of unexpended balances of appropriation occurs only at the end of the fiscal year, which is on the 31st of every year according to Section 353³⁷ of RA 7160. To quote Section 322:

SECTION 322. Reversion of Unexpended Balances of Appropriations, Continuing Appropriations. – Unexpended balances of appropriations authorized in the annual appropriations ordinance shall revert to the unappropriated surplus of the general fund at the end of the fiscal year and shall not thereafter be available for the expenditure except by subsequent enactment. However, appropriations for capital outlays shall continue and remain valid until fully spent, reverted or the project is completed. Reversions of continuing appropriations shall not be allowed unless obligations therefor have been fully paid or otherwise settled. (Emphasis supplied)

Section 322 attains far more significance when applied to the Calamity Fund. Section 324(d) of RA 7160, as amended by RA 8185, provides:

(d) Five percent (5%) of the estimated revenue from regular sources shall be set aside as annual lump sum appropriations for relief, rehabilitation, reconstruction and other works or services **in connection with calamities which may occur during the budget year**. Provided, however, That such fund shall be used only in the area, or a portion thereof, of the local government unit or other areas affected by a disaster or calamity, as determined and declared by the local sanggunian concerned.

x x x x (Emphasis supplied)

Thus, Section 324(d) implies that the calamity fund should be available to meet contingencies brought about by calamities until the end of the fiscal year. **Before the expiration of said period, appropriations for the calamity fund should remain as such and could not be used for any other purpose.** This justifies the provision in the IRR of RA 8185 stating that the unexpended balance of the Calamity Fund at the end of the current year be reverted to the unappropriated surplus **only for the purpose of reappropriation during the succeeding budget year.**³⁸

Supplemental Budget No. 9 of Iloilo City for CY 2009, which included the appropriation for the Calamity Fund for said year, was enacted on 16 December 2009, or before the end of the fiscal year on 31 December 2009. Hence, at the time of its approval by the *Sangguniang Panlungsod*

³⁷ SECTION 353. The Official Fiscal Year. – The official fiscal year of local government units shall be the period beginning with the first (1st) day of January and ending with the thirty-first (31st) day of December of the same year.

³⁸ Emphases supplied.

under Ordinance No. 2009-095, the calamity fund was yet to revert to the general fund. What the *Sangguniang Panlungsod* did in this case could constitute a violation of Section 336 of RA 7160 which states that “[f]unds shall be available exclusively for the specific purpose for which they have been appropriated.”³⁹

By disallowing the PEI, the COA did not invalidate the legislative act of the *Sangguniang Panlungsod*, rather, it only fulfilled its duty as the guardian of public funds. Under the constitution, COA is vested with a wide latitude of powers to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of government funds; to determine whether the government entities comply with laws and regulations in disbursing government funds; and to disallow illegal or irregular disbursements.⁴⁰

With the validity of the disallowance finally put to rest, the Court will now turn its attention to the determination of the liability of those identified in the ND.

The approving and certifying officers were grossly negligent in failing to observe the City of Iloilo’s PS limitation before granting the PEI to its officials and employees.

In *Madera v. Commission on Audit*,⁴¹ the Court had provided a definitive set of rules (*Madera* rules) in determining the liability of government officers and employees being made to return employee benefits that were disallowed in audit, thus:

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

³⁹ SECTION 336. Use of Appropriated Funds and Savings. – Funds shall be available exclusively for the specific purpose for which they have been appropriated. No ordinance shall be passed authorizing any transfer of appropriations from one item to another. However, the local chief executive or the presiding officer of the sanggunian concerned may, by ordinance, be authorized to augment any item in the approved annual budget for their respective offices from savings in other items within the same expense class of their respective appropriations.

⁴⁰ *Supra* note 36 at 429.

⁴¹ G.R. No. 244128, 8 September 2020.

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.

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.⁴²

Rules 2a and 2b of the *Madera* rules were based on Sections 38⁴³ and 39,⁴⁴ in relation to Section 43,⁴⁵ of the Administrative Code of 1987,⁴⁶ which provide that government officials who approved and certified the grant of disallowed benefits are held solidarily liable to return said disallowed amount when they are found to have acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties. These rules are further anchored on the principle that “public officers are accorded with the presumption of regularity in the performance of their official functions — [t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer

⁴² *Id.*

⁴³ 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.

x x x x

(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.

⁴⁴ 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.

⁴⁵ 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.

⁴⁶ Executive Order No. 292, 25 July 1987.

authorized by law to do it.”⁴⁷

Interestingly, in *The Officers and Employees of Iloilo Provincial Government v. Commission on Audit*⁴⁸ (*The Officers and Employees of Iloilo Provincial Government*), which similarly involved the disallowance of the PEI granted to the officers and employees of the Province of Iloilo for CY 2009, the Court found the approving/certifying officers grossly negligent for their failure to observe and consider the Province’s PS limitation. The Court explained:

In this case, the Court finds no justification for the failure of the approving and certifying officials to observe the province’s Personal Services limitation cap. They failed to faithfully discharge their respective duties and exercise the required diligence resulting to the illegal and excessive disbursements paid to the employees of the Province of Iloilo. Even if the grant of PEI was not for a dishonest purpose, the patent disregard of the issuance by the DBM on the Personal Services limitation constitutes gross negligence, making them liable for the refund thereof.

Gross negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences insofar as other persons may be affected. As discussed by Senior Associate Justice Perlas-Bernabe, “[g]ross negligence may become evident through the non-compliance of an approving/authorizing officer of clear and straightforward requirements of an appropriation law, or budgetary rule or regulation, which because of their clarity and straightforwardness only call for one [reasonable] interpretation.”

x x x x

Their failure to do so demonstrates a callous frame of mind without care of the financial health of the Province of Iloilo. Their indifference to the financial state of the province is made more evident by the amount in excess of the province’s Personal Services limitation, which is already at Php38,701,198.90 even before the grant of PEI. With the additional disbursement of Php102.7M due to the subject benefit, the excess of the province’s Personal Services limitation rose up to roughly Php141.4 million.⁴⁹

The same observations could be made here. As previously discussed, AO 276 is unambiguously explicit and direct that the grant of PEI is subject to the PS limitation, and no other interpretation could be derived from this provision. Also, it was already found that the *Sangguniang Panlungsod*, through Ordinance No. 2009-096, was already acquainted with DBM Budget Circular No. 2009-5. Had they really studied said circular, it would have

⁴⁷ *Madera v. Commission on Audit*, *supra* at note 42; Emphasis omitted.

⁴⁸ G.R. No. 218383, 5 January 2021.

⁴⁹ *id.*

been instantly apparent that it reiterated that the PEI is subject to the PS limitation in accordance to AO 276. Indeed, prudence and diligence should have dictated the approving/certifying officers to check Iloilo City's PS limitation considering that they appropriated for the PEI the amount of ₱46,424,328.24, which is 1,400% larger than ₱3,228,671.76, or the sum available in Iloilo's City's PS allocation.

For their gross negligence, the Court finds the approving/certifying officers solidarily liable for the disallowed amount pursuant to Section 43, Chapter 5, Book VI of the Administrative Code, which reads:

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. (Emphases supplied; citations omitted)

The payees are liable to return the amount they received pursuant to principle of solutio indebiti.

By promulgating the *Madera* rules, the Court veered away from the previously prevalent "good faith doctrine" applied in exonerating passive recipients, and returned to the basic standpoint of applying the principles of *solutio indebiti* and unjust enrichment in determining liability for disallowed amounts.⁵⁰ This Court now views the receipt by payees of disallowed benefits as one by mistake, thus creating an obligation on their part to return the same. Further, the Court had interpreted COA Circular No. 2009-006⁵¹ dated 15 September 2009 as basis to the extent of their liability for the amount they unduly received, as well as the solidary liability of officers who are guilty of bad faith, malice or gross negligence in the disbursement of the

⁵⁰ *Madera v. Commission on Audit*, *supra* at note 42.

⁵¹ Prescribing the Use of the Rules and Regulations on Settlement of Accounts.

disallowed amounts.⁵² Thus:

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.

16.2 The liability for audit charges shall be measured by the individual participation and involvement of public officers whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

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. (Emphases supplied)

Nevertheless, despite the deletion good faith as a defense available to passive-recipients, their liability to return disallowed benefits may still be excepted based on this grounds now embodied in Rules 2c and 2d of the *Madera* rules: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; (3) where social justice or humanitarian considerations are attendant; and (4) other *bona fide* exceptions as may be determined on a case to case basis.⁵³

None of these exceptions are present here.

In *Abellanosa v. Commission on Audit (Abellanosa)*,⁵⁴ the Court explained that for the first exception under Rule 2c to apply, certain requisites must be present. Thus:

As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:

⁵² *Madera v. Commission on Audit*, *supra* at note 42.

⁵³ *Id.*

⁵⁴ G.R. No. 185806, 17 November 2020.

- (1) the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and
- (2) the personnel incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.⁵⁵ (Emphasis omitted)

Abellanosa instructs that the legality of the expenditure is the primary consideration before a benefit could be considered as genuinely given in consideration of services rendered.⁵⁶ This "legality" includes compliance with all the legal conditions for the disbursement. Further, the disallowance should have been the result of some procedural error not affecting the genuineness of the payout.⁵⁷ These circumstances would show that the payees would have no issue receiving the benefit disallowed were it not for that minor mistake.⁵⁸ Here, the non-observance of the City's PS limitation is not a mere procedural misstep but a non-compliance of a legal condition, making it more apparent that the PEI received by the employees and officers of Iloilo City failed to pass this "legality" test.

The ratiocination in *The Officers and Employees of Iloilo Provincial Government* is equally applicable here:

More importantly, the grant of PEI to employees of the Province of Iloilo for CY 2009 was actually unauthorized for non-compliance with a legal condition, *i.e.*, financial capability to the LGU to grant PEI to its personnel. To recall, DBM Local Budget Circular No. 2009-93 stated that the respective *sanggunian* may grant PEI to their personnel "depending on the financial capability of the local government unit." Such financial capability was dependent on the amount available to the LGU before exceeding its Personal Services limit.

Needless to say, the Province of Iloilo did not have the required

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *The Officers and Employees of Iloilo Provincial Government v. Commission on Audit*, G.R. No. 218383, 5 January 2021.

financial capability to grant PEI in an amount five (5) times more than the standard. The funding source of the benefit, as identified and mandated by law, had already been depleted even before granting the subject benefit. Hence, the disbursement is deemed unauthorized and illegal. (Emphasis supplied)

As regards the second requisite, *Abellanosa* explains:

Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits "genuinely given in consideration of services rendered"; in order to be considered as "genuinely given," not only does the benefit or incentive need to have an ostensible statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover. (Emphasis supplied)⁵⁹

Moreover, in *The Officers and Employees of Iloilo Provincial Government*, We ruled that this clear, direct, and reasonable relation between the benefit received and the recipient's work or function is an evidentiary matter, the burden of proving which, belongs to the passive-recipients.⁶⁰ Unfortunately for petitioners, the present petition is bereft of any evidence to convince Us that such connection exists between the PEI and the work of the individual recipients.

Neither could passive-recipients be exonerated on the grounds of undue prejudice, social justice or humanitarian considerations, or other *bona fide* exceptions, all of which are subsumed under Rule 2d of the *Madera* rules. *Abellanosa* explains:

The same considerations ought to underlie the application of Rule 2d as a ground to excuse return. In *Madera*, the Court also recognized that the existence of undue prejudice, social justice considerations, and other *bona fide* exceptions, as determined on a case-to-case basis, may also negate the strict application of *solutio indebiti*. This exception was borne from the recognition that in certain instances, the attending facts of a given case may furnish an equitable basis for the payees to retain the amounts they had received. While Rule 2d is couched in broader language as compared to Rule 2c, the application of Rule 2d should always remain true to its purpose: it must constitute a *bona fide* instance which strongly impels the Court to prevent a clear inequity arising from a directive to return. Ultimately, it is only in highly exceptional

⁵⁹ *Supra* note 42.

⁶⁰ *Supra* note 55.

circumstances, after taking into account all factors (such as the nature and purpose of the disbursement, and its underlying conditions) that the civil liability to return may be excused. For indeed, it was never the Court's intention for Rules 2c and 2d of *Madera* to be a jurisprudential loophole that would cause the government fiscal leakage and debilitating loss. (Emphasis in the original)⁶¹

A review of the present petition reveals two reasons advanced by the petitioners to justify their exoneration: (1) the PEI was granted because of Iloilo City's benevolence, magnanimity, and desire to motivate its employees; and (2) to require the officers and employees to return the amount they received would cause them injury. These reasons would not suffice as they are not peculiar only to the present case and may very well apply to many disallowance cases decided or yet to be decided by the Court. It must be emphasized that employee benefits are, by their very nature, granted for a benevolent or magnanimous purpose – usually to alleviate the conditions and welfare of the employees of the granting entity.

Nevertheless, some benevolent purpose are more compelling than others. By way of example, in *Abellanosa*, the Court considered the displacement suffered by employees and the risk to their personal safety engendered by their being assigned to hazardous areas as highly exceptional reasons to justify their receipt of the allowance intended to compensate these risks.⁶² While this should not be understood as the only reasons that the Court finds acceptable, there is simply no justification or circumstance of this magnitude or importance that is present here. As regards the injury sustained by the recipients for returning the amount they received, it was already discussed that pursuant to the principle of *solutio indebiti*, this is but a natural and legal consequence of receiving the disallowed benefit by mistake and without any legal right to do so.

WHEREFORE, the petition is **DISMISSED**. Decision No. 2017-404 dated 13 December 2017 and the Resolution No. 2019-038 dated 28 March 2019 of the Commission on Audit are hereby **AFFIRMED**. The approving and certifying officers are solidarily liable for the disallowed amount while the payees are liable for the amounts they personally received.

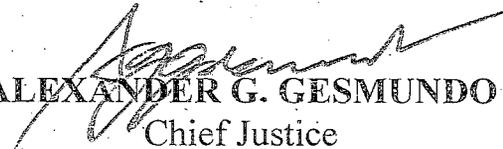
SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

⁶¹ *Supra* note 42.

⁶² *Id.*

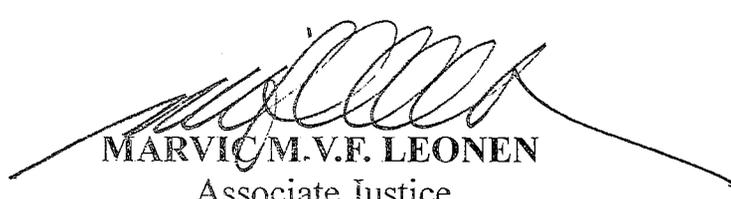
WE CONCUR:



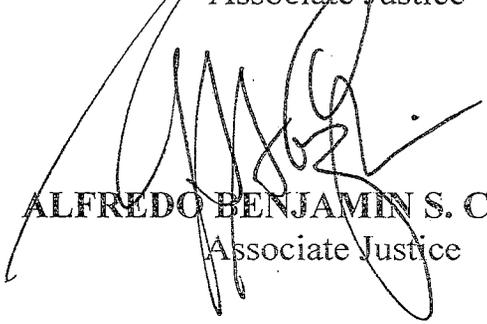
ALEXANDER G. GESMUNDO
Chief Justice



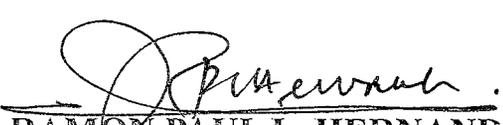
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



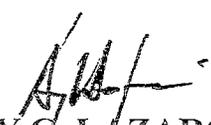
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



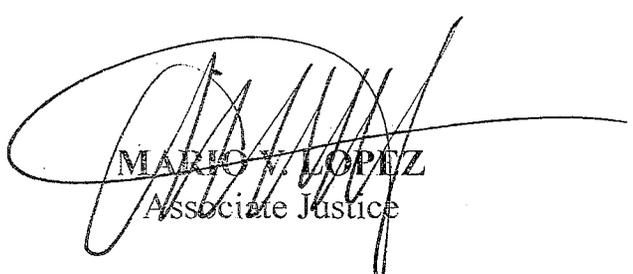
ROSMARI D. CARANDANG
Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



MARIO V. LOPEZ
Associate Justice



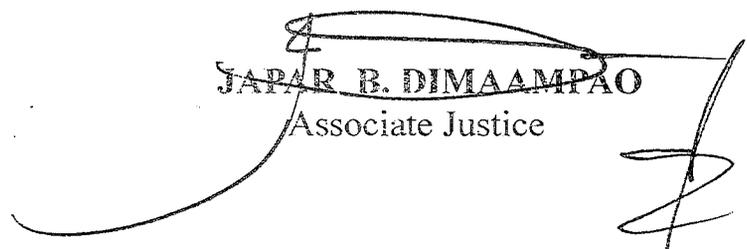
SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



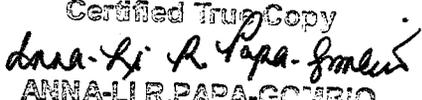
JAPAR B. DIMAAMPAO
Associate Justice

CERTIFICATION

Pursuant to the 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

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

