

Republic of the Philippines
Supreme Court
Manila

EN BANC

FRANCIS SATURNINO C. G.R. No. 237835
JUAN, ISABELO JOSEPH P.
TOMAS II, NOEL J.
SALVANERA, SHARON O.
MONTAÑER, FLORESINDA G.
BALDO-DIGAL and MARIA
CORAZON C. GINES,
Petitioners,

-versus-

COMMISSION ON AUDIT,
HON. MICHAEL G.
AGUINALDO, in his official
capacity as Chairperson, and
HON. JOSE A. FABIA and
HON. ISABEL D. AGITO, in
their official capacity as
Commissioners, of the
Commission on Audit,
Respondents.

X-----X
ELLEN C. EBCAS,
Petitioner,

G.R. No. 237860

-versus-

**COMMISSION ON AUDIT,
HON. MICHAEL G.
AGUINALDO, in his official
capacity as Chairperson, and
HON. JOSE A. FABIA and
HON. ISABEL D. AGITO, in
their official capacity as
Commissioners, of the
Commission on Audit,**
Respondents.

X-----X

LUZVIMINDA N. CABALBAG,
Petitioner,

G.R. No. 237883

-versus-

**HON. MICHAEL G.
AGUINALDO, in his official
capacity as Chairperson, and
HON. JOSE A. FABIA and
HON. ISABEL D. AGITO, in
their official capacity as
Commissioners, of the
Commission on Audit,**
Respondents.

X-----X

MARIANO D. GARCIA,
Petitioner,

G.R. No. 237884

Present:

-versus-

COMMISSION ON AUDIT,
Respondent.

**GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,**

MA

LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, JJ.

Promulgated:

February 7, 2023

X-----

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DECISION

ROSARIO, J.:

At bench are four (4) Petitions for *Certiorari*¹ assailing the Decision No. 2015-387² and Resolution No. 2017-452³ of the respondent Commission on Audit (COA).

The antecedents:

ERC Educational Allowance and the Notice of Disallowance

The Energy Regulatory Commission (ERC) is a government regulatory agency created under Republic Act (RA) No. 9136. Under Section 39 of RA No. 9136,⁴ the compensation and other emoluments for

¹ *Rollo* (G.R. No. 237835), pp. 3-46; *rollo* (G.R. No. 237860), pp. 14-46; *rollo* (G.R. No. 237883), pp. 24-38; and *rollo* (G.R. No. 237884), pp. 1-12. All petitions were filed under Rule 64 in relation to Rule 65 of the Rules of Court.

² *Rollo* (G.R. No. 237883), pp. 92-94. The Decision, dated December 21, 2015, was signed by COA Chairperson Michael G. Aguinaldo and COA Commissioner Jose A. Fabia.

³ *Id.* at 7-15. The Resolution, dated December 27, 2017, was signed by COA Chairperson Michael G. Aguinaldo and COA Commissioners Jose A. Fabia and Isabel D. Agito.

⁴ SECTION 39. *Compensation and Other Emoluments for ERC Personnel.* — The compensation and other emoluments for the Chairman and members of the Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the "Salary Standardization Act". For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented

ERC officials and personnel were exempted from the coverage of RA No. 6758 or the Salary Standardization Act.

In 2010, the ERC granted educational allowance at the rate of ₱35,000.00 per personnel or ₱7,433,834.00 in total. The ERC released the allowance in three (3) tranches, to wit:

1. *First tranche* – released in February 2010 at ₱5,000.00 per personnel.⁵
2. *Second tranche* – released in March 2010 at ₱5,000.00 per personnel.⁶
3. *Third tranche* – released in May 2010 at ₱25,000.00 per personnel.⁷

The above educational allowance was granted on top of the Collective Negotiation Agreement (CNA) incentive given to each ERC personnel in the amount of ₱35,000.00 per individual.

On post audit, however, the grant of educational allowance was disallowed. On August 3, 2011, the COA audit team leader and supervising auditor in the ERC issued Notice of Disallowance (ND) No. 2011-002-101-(10)⁸ against the ₱7,433,834.00 grant on the ground of lack of legal basis. In particular, the ND faulted the grant of educational allowance for the following:

1. Violation of Section 17 (*Restriction on the Use of Government Funds*), General Provisions, of the General Appropriations Act of CY

within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: Provided, that in no case shall the rate be upgraded more than once a year.

xxx.

- ⁵ See *rollo* (G.R. No. 237883), pp. 53-54. The first tranche was paid out through the following checks: (1) **Check No. 1067276** dated February 11, 2010 for ₱1,060,000.00 in favor of ERC personnel per Payroll No. 101-2010-02-2018, (2) **Check No. 1067278** dated February 12, 2010 for ₱5,000.00 in favor of Commissioner Alejandro Barin and (3) **Check No. 1067279** dated February 12, 2010 for ₱5,000.00 in favor of Commissioner Jose C. Reyes.
- ⁶ See *id.* The second tranche was paid out through the following checks: (1) **Check No. 1090176** dated March 23, 2010 for ₱1,055,834.00 in favor of ERC personnel per Payroll No. 101-2010-03-0475, (2) **Check No. 1090179** dated March 24, 2010 for ₱5,000.00 in favor of Commissioner Alejandro Barin and (3) **Check No. 1090180** dated March 24, 2010 for ₱5,000.00 in favor of Commissioner Jose C. Reyes.
- ⁷ See *id.* The third tranche was paid out through the following checks: (1) **Check No. 1090631** dated May 24, 2010 for ₱5,248,000.00 in favor of ERC personnel per Payroll No. 101-2010-05-0901, (2) **Check No. 1090664** dated May 26, 2010 for ₱25,000.00 in favor of Commissioner Alejandro Barin and (3) **Check No. 1090665** dated May 26, 2010 for ₱25,000.00 in favor of Commissioner Jose C. Reyes.
- ⁸ *Id.*

2010 which states that no government funds shall be utilized to, among others, pay for honoraria and other allowances except those authorized by law;

2. Violation of item (9) of the Joint Resolution No. 4, s. 2009 of the Senate and House of Representative, approved by President Macapagal-Arroyo on 17 June 2009, to wit:

“(9) Exempt Entities – x x x That any increase in the existing salary rates as well as the grant of new allowances, benefits, and incentives, or increase in the rates thereof shall be subject to the approval of the President, upon recommendation of the DBM x x x.”

3. No legal basis or Presidential authorizations on the grant of the allowances per letter-reply dated July 11, 2011 of Director Myrna S. Chua, Organization, Position Classification and Compensation Bureau, Department of Budget and Management, to the letter dated May 23, 2011 of the undersigned.⁹

As for the persons liable for the disallowed amount, the ND implicated 15 ERC officials and employees who supposedly either approved or made certifications that were necessary for the release of the educational allowance.¹⁰ These officials and employees are:¹¹

	Name	Position
1	Zenaida G. Cruz-Ducut	ERC Chairperson
2	Zenaida V. Fortuna	Officer-in-Charge (OIC) of Finance Division
3	Ellen C. Ebcas	OIC of Finance and Administrative Service (FAS)
4	Luzviminda Cabalbag	Finance and Management Officer II
5	Ana Maria T. Jaramillo	Budget Officer III
6	Francis Saturnino C. Juan	Executive Director III
7	Isabelo Joseph P. Tomas II	OIC of Office of the General Counsel and Secretariat (OGCS)

⁹ Id. at 53-54. Italics in the original.

¹⁰ See Annex1-EA of ND No. 2011-002-101- [10]; *rollo* (G.R No. 237883), pp. 125-128.

¹¹ *Rollo* (G.R No. 237883), p. 54.

8	Mariano D. Garcia	Attorney IV
9	Noel J. Salvanera	Director III of Legal Service (LS)
10	Sharon O. Montañer	Planning Officer V
11	Josefina N. Buensuceso	Informaion Officer V
12	Francisco Jose S. Villa	Director III of Planning Information Services (PIS)
13	Floresinda G. Baldo-Digal ¹²	OIC of Regulatory Operations Service (ROS)
14	Debora Anastacia T. Layugan	Director III of Market Operations Service (MOS)
15	Maria Corazon C. Gines	Director III of Consumer Affairs Service (CAS)

Appeals

The ERC officials implicated in the ND appealed the ND before the COA National Government Sector - Cluster A (COA-NGS). They contended that the ERC's grant of educational allowance was legal and justified under Memorandum Circular (MC) No. 174, s. of 2009 of former President Gloria Macapagal-Arroyo. The COA-NGS, however, denied this appeal in its Decision No. 2012-013¹³ dated September 28, 2012.

The ERC officials then appealed the COA-NGS Decision with the COA proper.

On December 21, 2015, the COA rendered Decision No. 2015-387¹⁴ denying the appeal of the ERC officials for being filed out of time. Undeterred, the ERC officials filed a motion for reconsideration.

On December 27, 2017, the COA issued Resolution No. 2017-452¹⁵ partially granting the motion for reconsideration. In the said resolution, the COA conceded that it committed a mistake in denying the appeal of the ERC officials for not being filed on time.¹⁶ After a re-appraisal of the material dates, the COA concluded that the appeal of the ERC officials from the

¹² Referred to in some parts of the *rollo* as Floresinda G. Baldo.

¹³ Id. at 66-70.

¹⁴ Id. at 92-94.

¹⁵ Id. at 7-15.

¹⁶ Id.

Decision of COA-NGS was indeed filed with the commission proper within the reglementary period.¹⁷

Ultimately, however, the COA still affirmed the Decision of the COA-NGS as the former found the disallowance of ERC's educational allowance to be meritorious just the same. Anent the liability for the disallowed amount, on the other hand, the COA ruled that only the ERC officers implicated in the ND—*i.e.*, the officials who approved, authorized or certified the payment of the educational allowance—shall be solidarily liable therefor.¹⁸ The COA absolved all ERC personnel who are mere passive recipients of the allowance in deference to the ruling in *Silang v. Commission on Audit*.¹⁹ The dispositive portion of the COA resolution accordingly reads:

WHEREFORE, premises considered, the Motion for Reconsideration is **PARTIALLY GRANTED** insofar as the Petition for Review is ruled to have been timely filed. However, [COA-NGS] Decision No. 2012-013 dated September 28, 2012, sustaining [ND No. 2011-002-101-(10)] dated August 3, 2011, on the grant of Educational Allowance, in the amount of [₱]7,433,834.00, is **AFFIRMED**. The employees who were mere passive recipients of the benefits are exempted from refunding the disallowed amount, but the officers who approved/authorized/ certified the payment shall be solidarily liable therefor.

x x x x

Hence, the current four (4) petitions filed by nine (9) out of the fifteen (15) ERC officers implicated in the ND. These petitions were docketed as follows:

1. **G.R. No. 237835** — Petition filed by Francis Saturnino C. Juan, Isabelo Joseph P. Tomas II, Noel J. Salvanera, Sharon O. Montaner, Floresinda G. Baldo-Digal and Maria Corazon C. Gines (collectively, **Juan et al.**)

2. **G.R. No. 237860** — Petition filed by Ellen C. Ebcas (**Ebcas**)

¹⁷ Id.

¹⁸ Id.

¹⁹ 769 Phil. 327 (2015). *See rollo* (G.R No. 237883), p. 50.

3. **G.R. No. 237883** – Petition filed by Luzviminda N. Cabalbag (**Cabalbag**)
4. **G.R. No. 237884** – Petition filed by Mariano D. Garcia (**Garcia**)

As of the writing of this Decision, no *certiorari* petition assailing the COA resolutions had been filed before this Court by Zenaida G. Cruz-Ducut, Zenaida Fortuna, Ana Maria T. Jaramillo, Josefina N. Buensuceso, Debora Anastacia T. Layugan and Francisco Jose S. Villa (collectively, **Cruz-Ducut et al.**).

The Petitions

In essence, the petitions raise two issues:²⁰

First. The three petitions²¹ argue that the COA committed grave abuse of discretion in sustaining ND No. 2011-002-101-(10). They posit that the ERC's grant of educational allowance had legal basis in MC No. 174 of former President Macapagal-Arroyo which specifically enjoined all government agencies to provide to their employees, among other benefits, "*scholarship programs for their children with siblings.*"

Second. On the assumption that the disallowance of the educational allowance is proper, however, all four petitions contend that the COA still committed grave abuse of discretion when it held *all* ERC officers implicated in the ND solidarily liable therefor as approving or certifying officers. Juan et al., Ebcas, Cabalbag and Garcia all ask that they be excluded from such liability in view of their supposed limited participation in the release of the educational allowance, *viz*:

1. Juan et al., as well as Garcia, were implicated in the ND for signing the payrolls of their respective offices.²²

Name	Document	Nature of Participation

²⁰ *Rollo* (G.R No. 237883), pp. 24-38.

²¹ Namely, G.R. Nos. 237835, 237860 and 237883.

²² *Rollo* (G.R No. 237883), pp. 125-128.

Francis Saturnino C. Juan	Payrolls under 1 st , 2 nd and 3 rd tranches (Check Nos. 1067276, 1090176 and 1090631)	(1) Approved payroll of FAS, LS, PIS, ROS, MOS CAS, Cebu and Davao; (2) Certified payroll of OCCC and IED as correct
Isabelo Joseph P. Tomas II	Payroll under 2 nd tranche (Check No. 1090716)	Certified payroll of OGCS, OEO and IA as correct
Noel J. Salvanera	Payrolls under 1 st , 2 nd and 3 rd tranches (Check Nos. 1067276, 1090176 and 1090631)	Certified payroll of LS as correct
Sharon O. Montañer	Payroll under 1 st tranche (Check No. 1067276)	Certified payroll of LS as correct
Floresinda G. Baldo-Digal	Payrolls under 1 st , 2 nd and 3 rd tranches (Check Nos. 1067276, 1090176 and 1090631)	Certified payroll of ROS as correct
Maria Corazon C. Gines	Payrolls under 1 st , 2 nd and 3 rd tranches (Check Nos. 1067276, 1090176 and 1090631)	Certified payroll of CAS as correct
Mariano D. Garcia	Payroll under 3 rd tranche (Check No. 1090631)	Certified payroll of OGCS, OEO and IA as correct

Juan et al. and Garcia argue that they cannot be held liable as approving and certifying officers because, in signing the payrolls, they merely certified to the correctness of the list of employees for their respective offices as appearing in the payrolls.²³ As such, they claim that they had nothing to do with

²³ Rollo (G.R. No. 237835), pp. 3-46; rollo (G.R. No. 237884), pp. 1-12.

approving or certifying the legality of the disallowed educational allowance.

To further distance himself from the disallowed allowance, Garcia also points out that he signed the payroll attributed to him merely as a substitute for the real authorized signatory thereof—Isabelo Joseph P. Tomas II (*Tomas*), the OIC of ERC-OGCS. Garcia claims that Tomas was indisposed and not present at the time the subject payroll was routed to their office.²⁴

2. Ebcas, on the other hand, was implicated in the ND for signing the following documents related to the release of the *second* and *third* tranches of the educational allowance:

Document	Nature of Participation
Obligation Request under 2 nd tranche (Check No. 1090716)	(1) Certified charges to appropriation/allotment as necessary, lawful and under her direct supervision; (2) Certified supporting documents as valid, proper and legal
Payroll under 2 nd tranche (Check No. 1090716)	Certified payroll of FAS, Cebu and Davao as correct
Disbursement Voucher under 2 nd tranche (Check Nos. 109019-80)	(1) Approved the payment, (2) certified charges to appropriation/allotment as necessary, lawful and under her direct supervision, (3) Certified supporting documents as valid, proper and legal
Obligation Request under 3 rd tranche (Check No. 1090631)	(1) Certified charges to appropriation/allotment as necessary, lawful and under her direct supervision; (2) Certified supporting documents as valid, proper and legal

²⁴ *Rollo* (G.R. No. 237884), pp. 1-12.

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Payroll under 3rd tranche (Check No. 1090631)	Certified payroll of FAS, Cebu and Davao as correct
Obligation Request under 3rd tranche (Check Nos. 1090664-65)	(1) Certified charges to appropriation/allotment as necessary, lawful and under her direct supervision; (2) Certified supporting documents as valid, proper and legal

Ebcas calls attention to the fact that she had absolutely no participation in the release of the *first* tranche of the educational allowance. She argues that since her participation only came *after* the first tranche of the educational allowance was released, she cannot properly be considered as an officer that “approved” the said allowance.²⁵

3. Lastly, Cabalbag was implicated in the ND for signing the following documents related to the release of the *first* and *third* tranches of the educational allowance:

Document	Nature of Participation
Obligation Request under 1 st tranche (Check No. 1067276)	(1) Certified charges to appropriation/allotment as necessary, lawful and under her direct supervision; (2) Certified supporting documents as valid, proper and legal
Payroll under 1 st tranche (Check No. 1067276)	Certified payroll of FAS, Cebu and Davao as correct
Disbursement Voucher under 1 st tranche (Check Nos. 1067278-79)	(1) Approved the payment, (2) certified charges to appropriation/allotment as necessary, lawful and under her direct supervision, (3) Certified supporting documents as valid, proper and legal
Disbursement Voucher under 3 rd tranche (Check Nos. 1090664-65)	Approved the payment

²⁵ *Rollo* (G.R. No. 237860), pp. 14-46.

Cabalbag asks for absolution on the ground that she was a mere subordinate who merely acted on behalf of her superior. She claimed that she only signed the documents related to the release of the first and third tranches of the educational allowance on behalf of or upon the instruction of her superior Ebcas who, through the latter's secretary, told her to sign the said documents in view of Ebcas' absence. Cabalbag professes that it was Ebcas—the OIC of ERC-FAS—who was supposedly the real authorized signatory of the documents that she signed.²⁶

OUR RULING

We grant the petitions in part.

I

The ERC's grant of educational allowance was properly disallowed for lack of legal basis. Hence, we affirm COA Resolution No. 2017-452 insofar as it upheld ND No. 2011-002-101-(10).

A. MC No. 174 Does Not Authorize the Grant of Educational Allowance

Contrary to petitioner's submission, the educational allowance granted by the ERC cannot be justified as a scholarship program under MC No. 174. The full text of the circular reads:

MEMORANDUM CIRCULAR NO. 174

ENJOINING ALL GOVERNMENT AGENCIES, INCLUDING GOVERNMENT OWNED AND CONTROLLED CORPORATIONS, STATE UNIVERSITIES AND COLLEGES TO SUPPORT THE PHILIPPINE GOVERNMENT EMPLOYEES ASSOCIATION'S PUBLIC SECTOR AGENDA

WHEREAS, the Government recognizes the important role of government employees in nation building.

WHEREAS, it is necessary that the needs of government employees, especially in the face of the present global economic crisis, be addressed in

²⁶ *Rollo* (G.R. No. 237883), pp. 24-38.

a manner that will improve and promote their social and economic welfare.

In view thereof, all government agencies, including Government Owned and Controlled Corporations, State Universities and Colleges are hereby enjoined to provide the following to their employees:

- shuttle service
- financial subsidy and other heeded support to make the Botika ng Bayan more accessible to them
- **scholarships programs for their children with siblings**
- PX mart that sell affordable commodities and the provision of its seed fund

The DOLE is hereby directed to monitor and to ensure the implementation of this Circular.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed thereto.

Done in the City of Manila, this 13th day MAY, in the year of Our Lord Two Thousand and Nine.

(Sgd.) GLORIA MACAPAGAL-ARROYO

By the President:
(Sgd.) EDUARDO R. ERMITA
Executive Secretary

(Emphasis supplied)

MC No. 174 does not sanction the grant of just any kind of educational endowment. As its plain text clearly shows, the circular only authorizes "*scholarship programs*" for the benefit of "*children [of government employees] with siblings.*" Verily, MC No. 174 contemplates of a scholarship benefit meant, not for every personnel of a government agency, but only for employees who have more than one child.

Moreover, because the scholarship benefit sanctioned under MC No. 174 is intended only for a specific group of beneficiaries, the grant of such benefit must necessarily proceed from a set of guidelines, rules or mechanics—or a "*scholarship program*" as mentioned in the circular itself. A *bona fide* scholarship program is essential for it is what would enable the benefactor agencies to properly identify which among their personnel may be considered as qualified to receive the scholarship benefit pursuant to MC No. 174, as well as determine the amount of benefit that each qualified personnel may be entitled to.

In this case, however, it is indubitable that the educational allowance given by the ERC does not share any of the characteristics of a scholarship grant authorized under MC No. 174. **ERC's educational allowance did not emanate from any scholarship program as contemplated under the circular; it is merely an across-the-board cash endowment given indiscriminately to every personnel of the agency regardless of their personal circumstances.** Certainly, the educational allowance of the ERC cannot, by any stretch of reason or interpretation, be justified as a scholarship grant sanctioned under MC No. 174.

B. ERC's Grant of Educational Allowance Lacks Legal Basis

Since the ERC's grant of educational allowance does not find footing in MC No. 174, or in any other law or regulation for that matter, it becomes apparent that the said grant is indeed devoid of any legal basis. As such, the grant is clearly prohibited under Section 17(e), General Provisions, of RA No. 9970 or the General Appropriations Act for 2010:

SECTION 17. *Restrictions on the Use of Government Funds.*— No government funds shall be utilized for the following purposes:

xxx

(e) Pay *honoraria* and other allowances except those specifically authorized by law; and

xxx

Also, the grant of educational allowance may be faulted for being devoid of any presidential approval as required under Sections 5 and 6 of Presidential Decree (*P.D.*) No. 1597²⁷ in relation to Item 9 of Joint Resolution (*J.R.*) No. 4, series of 2009, of Congress.²⁸

²⁷ Entitled "*Rationalizing the System of Compensation and Position Classification in the National Government.*" PD No. 1597 is the amendatory law to PD No. 958 which, in turn, is the precursor to RA No. 6758—the current Salary Standardization Act.

²⁸ Entitled "*Joint Resolution Authorizing the President of the Philippines to Modify the Compensation and Position Classification System of Civilian Personnel and the Base Pay Schedule of Military and Uniformed Personnel in the Government, and for Other Purposes.*" In *Ang Nars Party List v. The Executive Secretary* (G.R. No. 215476, 8 October 2019) the Court held that while Joint Resolution No. 4, series of 2009 is neither a law nor a bill that can mature into law, the same may still be considered as an implementing rule of RA No. 6758.

P.D. No. 1597

SECTION 5. *Allowances, Honoraria, and Other Fringe Benefits.* — **Allowances, honoraria and other fringe benefits which may be granted to government employees, whether payable by their respective offices or by other agencies of government, shall be subject to the approval of the President upon recommendation of the Commissioner of the Budget.** For this purpose, the Budget Commission shall review on a continuing basis and shall prepare, for the consideration and approval of the President, policies and levels of allowances and other fringe benefits applicable to government personnel, including honoraria or other forms of compensation for participation in projects which are authorized to pay additional compensation.

SECTION 6. *Exemptions from OCPC²⁹ Rules and Regulations.* — **Agencies positions, or groups of officials and employees of the national government, including government owned or controlled corporations, who are hereafter exempted by law from OCPC coverage, shall observe such guidelines and policies as may be issued by the President governing position classification, salary rates, levels of allowances, project and other honoraria, overtime rates, and other forms of compensation and fringe benefits.** Exemptions notwithstanding, agencies shall report to the President, through the Budget Commission, on their position classification and compensation plans, policies, rates and other related details following such specifications as may be prescribed by the President. (Emphasis supplied)

J.R. No. 4, series of 2009

(9) Exempt Entities – **Government agencies which by specific provision/s of laws are authorized to have their own compensation and position classification system shall not be entitled to the salary adjustments provided herein.** Exempt entities shall be governed by their respective Compensation and Position Classification Systems: *Provided,* That such entities shall observe the policies, parameters and guidelines governing position classification, salary rates, categories and rates of allowances, benefits and incentives, prescribed by the President: *Provided, further,* That any increase in the existing salary rates as well as the grant of new allowances, benefits and incentives, or an increase in the rates thereof shall be subject to the approval by the President, upon recommendation of the DBM: *Provided, finally,* That exempt entities which still follow the salary rates for positions covered by Republic Act No. 6758, as amended, are entitled to the salary adjustments due to the implementation of this Joint Resolution, until such time that they have implemented their own compensation and position classification system. (Emphasis supplied)

²⁹ Refers to “*Office of Compensation and Position Classification*” now replaced by “*Compensation and Position Classification Bureau*” (See Section 15 of RA No. 6758).

As can be seen, the requirement of presidential approval in the grant of new allowances, benefits, incentives or honoraria applies *even* to government agencies whose schedule of compensation is not covered by RA No. 6758 or the Salary Standardization Act, such as the ERC.

Verily, We find the COA's disallowance of ERC's grant of educational allowance to be proper and in accord with law. ND No. 2011-002-101-(10) was correctly sustained.

II

The COA's findings regarding: (1) the persons liable for the disallowed educational allowance as well as (2) the nature and amount of their liability, however, needs to be revisited in light of recent jurisprudence *vis-à-vis* the peculiar circumstances of this case. Hence, with respect to such matters, we modify COA Resolution No. 2017-452.

A. Liability as Approving and Certifying Officers

As can be recalled, the COA held all ERC officers implicated in the ND—including Juan et al., Ebcas, Cabalbag and Garcia—solidarily liable for the disallowed educational allowance. The holding is underpinned by the commission's finding that all such individuals were the officers who had "*approved/authorized/certified*" the payment of the disallowed allowance.

Juan et al., Ebcas, Cabalbag and Garcia, however, contend that they cannot be held so liable in view of their limited involvement in the grant of the educational allowance. As they point out:

1. Juan et al. and Garcia argue that they cannot be held liable as approving and certifying officers because they merely certified as correct the payrolls for their respective offices. Such act had nothing to do with approving or certifying the legality of the disallowed educational allowance.

To further distance himself from the disallowed allowance, Garcia also points out that he signed the payroll attributed to him only on behalf of the real authorized signatory thereof—Tomas, the OIC of ERC-OGCS.

2. Ebcas, on the other hand, argues that she cannot be held liable as an approving and certifying officer since she only signed obligation requests, payrolls and disbursement vouchers related to the release of the second and third tranches of the educational allowance.
3. Similar to Garcia, Cabalbag asks for absolution on the ground that she was a mere subordinate who merely acted on behalf of her superior. She claimed that she only signed the documents related to the release of the first and third tranches of the educational allowance on behalf of or upon the instruction of her superior Ebcas who, through the latter's secretary, told her to sign the said documents in view of Ebcas' absence.

The contention is inaccurate.

That Juan et al., Ebcas, Cabalbag and Garcia may only have “*limited*” participation in the release of the disallowed educational allowance is not in itself sufficient to cause their absolution. In our jurisdiction, all government officers who are directly responsible for the unlawful expenditure of public funds³⁰—from those who authorized or made the illegal payments up to those who merely took part or contributed to their accomplishment—may be held civilly liable therefor *if* found to be guilty of bad faith or gross negligence.³¹ This rule holds true regardless of whether the said officer acted by himself or on behalf of a superior. Such is the clear import of Section 43 of Book VI of the Administrative Code³² in relation to Sections 38 and 39 of Book I of the same code, to wit:

Book VI

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.**

³⁰ Section 103 of Presidential Decree (PD) No. 1445 reads: “Section 103. *General liability for unlawful expenditures.* Expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor.” See *Bodo v. COA*, G.R. No. 228607, October 5, 2021.

³¹ See *Madera v. COA*, G.R. No. 244128, September 8, 2020.

³² Executive Order No. 292, series of 1987.

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. (Emphasis supplied)

Book I

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.**

xxx.

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.** (Emphasis supplied)

The interplay of the above provisions is, in turn, codified in Rules 2a and 2b of the *Madera*³³ *Rules on Return* which presently govern the civil liability of “*approving and certifying*” officers in a disallowed expenditure:³⁴

2. If a Notice of Disallowance is upheld, the rules on return are as follows:

a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987:

b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.

Verily, the fact that Juan et al. and Garcia may have only signed the payrolls of their respective offices would not, on its own, be sufficient to cause their absolution. It is not disputed that the certifications made by Juan et al. and Garcia in the payrolls are necessary components for the release of the disallowed educational allowance—such that, without them, the release

³³ *Madera v. COA*, supra note 31.

³⁴ *Id.*

of any part of the allowance would not have been possible. Hence, in that sense, Juan et al. and Garcia could be considered as officers “*directly responsible*” for the payment of the illegal allowance and, on that account, are also “*approving and certifying officers*” in contemplation of the Madera Rules on Return.³⁵

The same could be said about Ebcas and Cabalbag’s participation. While Ebcas only signed obligation requests, payrolls and disbursement vouchers relative to the second and third tranches of the educational allowance, and Cabalbag only the requests, payrolls and vouchers for the first and third tranches, there is no doubt that the approvals and certifications of Ebcas and Cabalbag in the said documents have been indispensable requisites for the release of the appropriate tranche of the educational allowance. Thus, from such perspective, Ebcas and Cabalbag may also be considered as officers “*directly responsible*” for the payment of the illegal allowance and, on that account, are “*approving and certifying officers*” in contemplation of the Madera Rules on Return.³⁶

It should be stressed, however, that any potential civil liability of Juan et al., Ebcas, Cabalbag and Garcia, as approving and certifying officers, cannot rest on their participation in the disallowed educational allowance alone. Consistent with the aforecited provisions of the Administrative Code and of the Madera Rules on Return, such liability has to be predicated on the presence of bad faith or gross negligence on the part of Juan et al., Ebcas, Cabalbag and Garcia as well.

What is critical to determine whether Juan et al., Ebcas, Cabalbag and Garcia may be absolved from liability, therefore, is an inquiry into whether such individuals had acted in bad faith or with gross negligence as approving or certifying officers. Apropos to this inquiry, however, the following guideposts—as derived from pertinent laws and jurisprudence—must be considered:

³⁵ See also Section 16.1.2 of COA Circular No. 2009-006 (*Prescribing the Use of the Rules and Regulations on Settlement of Accounts*) dated September 15, 2009, which states:

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

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

³⁶ See also *id.*

1. As public officers engaged merely in the performance of their official duties, Juan et al., Ebcas, Cabalbag and Garcia are, at least from the outset, presumed to have acted in *good faith* when they approved or certified the educational allowance.³⁷

In disallowance cases, “*good faith*” has been defined as a “*state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious.*”³⁸

Applying the above definition to the nuances of the present case, good faith may be taken to mean as lack of knowledge: (1) as to the fact that the educational allowance was not lawful (*i.e.*, actual knowledge) or (2) of circumstances that, with the exercise of reasonable care, would have apprised the concerned officer or officers of the illegality of the educational allowance (*i.e.*, constructive knowledge).

2. To hold Juan et al., Ebcas, Cabalbag or Garcia civilly liable as approving and certifying officers, the presumption of good faith must be overturned by contrary evidence—*i.e.*, evidence that any of the said officers acted in *bad faith* or had been guilty of *gross negligence* in the performance of their duties. This, as already stated, is an express requirement of the Administrative Code as operationalized in the Madera Rules on Return.

If the presumption of good faith is not so overturned, liability as an approving and certifying officer will not attach.

In disallowance cases, an approving or certifying officer is said to be in bad faith when he acted with “*full knowledge of the*

³⁷ *Abellanosa v. COA*, G.R. No. 185806 (Resolution), November 17, 2020. See also Rule 131, Section 3(m) of A.M. No. 19-08-15-SC, or the 2019 Amendments to the 1989 Revised Rules on Evidence, which states:

RULE 131, SECTION 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x

(m) That official duty has been regularly performed;

³⁸ Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Madera v. COA*, supra note 31.

circumstances” and “*with the intention of taking unconscientious advantage of his public position.*”³⁹ On the other hand, an approving or certifying officer may be considered to have been grossly negligent when, despite not having actual knowledge of the cause of the disallowance, his action is nonetheless marked with “*want of even slight care*” or a “*conscious indifference to the consequences*” or otherwise proceeds from a palpable or inexcusable “*breach of duty.*”⁴⁰

Bad faith and gross negligence are, therefore, the antitheses of good faith. As applied to this case, the presence of bad faith or gross negligence presupposes that the approval and certification of the educational allowance were made with either actual or constructive knowledge of the illegality of the educational allowance.

3. In determining whether the obtaining facts and circumstances suffice to overturn the presumption of good faith, the existence of any of the “*badges of good faith and diligence*” enumerated in *Madera* may be considered, to wit:⁴¹

To ensure that public officers who have in their favor the un rebutted presumption of good faith and regularity in the performance of official duty, or those who can show that the circumstances of their case prove that they acted in good faith and with diligence, the Court adopts Associate Justice Marvic M.V.F. Leonen's (Justice Leonen) proposed circumstances or badges for the determination of whether an authorizing officer exercised the diligence of a good father of a family:

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code, (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and no prior disallowance has been issued, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.

Thus, to the extent that these badges of good faith and diligence are applicable to both approving and certifying officers, these should be considered before holding these officers, whose participation in the disallowed transaction was in the performance of their official

³⁹ Id.

⁴⁰ Id.

⁴¹ *Madera v. COA*, supra note 31.

duties, liable. The presence of any of these factors in a case may tend to uphold the presumption of good faith in the performance of official functions accorded to the officers involved, which must always be examined relative to the circumstances attending therein. (Citations omitted, emphasis supplied)

The presence of any of the aforesaid badges may, in the absence of *direct* evidence of bad faith or gross negligence, serve to fortify the presumption of good faith in favor of Juan et al., Ebcas, Cabalbag or Garcia.

Guided by the foregoing, we shall now determine the liability of Juan et al., Ebcas, Cabalbag and Garcia.

B. Presumption of Good Faith in Favor of Juan et al., Ebcas, Cabalbag and Garcia Not Overturned; Only Cruz-Ducut et al. Remain Liable as Approving and Certifying Officers

We begin with Juan et al. and Garcia.

Juan et al. and Garcia signed the payrolls relative to the release of the educational allowance in their official capacities either as heads of their respective offices within the ERC or as substitutes of such heads. By signing the payrolls, they certified to the correctness of the list of employees for their respective offices as it appears in the said payrolls.

The established facts do not show that Juan et al. and Garcia had been guilty of bad faith or of gross negligence in performing their above duties. There was no evidence on record which shows that Juan et al. and Garcia had any actual knowledge of the illegality of the educational allowance. Moreover, the nature of their participation did not require them to inquire into the legal basis of the allowance. All that Juan et al. and Garcia were required to do was to ascertain the accuracy of the list of employees appearing in the payrolls—and this, by all indications, they did properly. Hence, not even constructive knowledge regarding the lack of legal basis of the educational allowance may be validly imputed against Juan et al. and Garcia.

Accordingly, we find that the presumption of good faith and regularity in the performance of official duties accorded to Juan et al. and Garcia was not overturned. Juan et al. and Garcia must then be absolved from liability as approving and certifying officers of the educational allowance.

As for Ebcas and Cabalbag, records show that they signed, not only payrolls of certain offices in the ERC, but also several obligation requests and disbursement vouchers necessary for the release of the educational allowance.⁴² Ebcas signed the obligation requests and disbursement vouchers attributed to her in her capacity as OIC of the ERC-FAS.⁴³ Cabalbag, on the other hand, signed *in lieu* of Ebcas in her capacity as Finance and Management Officer II of the ERC-FAS.⁴⁴

By signing the obligation requests, Ebcas and Cabalbag certified that: (1) the charges to the appropriation/allotment, as embodied in the request, were necessary, lawful and under their direct supervision; and (2) the supporting documents for such charges were valid, proper and legal.⁴⁵ By signing the disbursement vouchers, on the other hand, Ebcas and Cabalbag approved the payment set forth in the voucher, and certified that: (1) charges to the appropriation/allotment were necessary, lawful and under their direct supervision, and (2) the supporting documents for such charges were valid, proper and legal.⁴⁶

Verily, unlike Juan et al. and Garcia, Ebcas and Cabalbag were also tasked to ascertain the lawfulness of the educational allowance. Given that the educational allowance turned out to be without any legal basis, however, it becomes apparent that Ebcas and Cabalbag committed an error when they signed the obligation requests and disbursement vouchers for the said allowance.

Be that as it may, Ebcas and Cabalbag's commission of a mistake in the performance of their duties does not necessarily equate to a finding of bad faith or gross negligence against them. In *Lumayna v. COA*,⁴⁷ it was taught:

⁴² *Rollo* (G.R. No. 237883), pp. 125-128.

⁴³ *Id.* at 126-128.

⁴⁴ *Id.* at 125-126, 128.

⁴⁵ *Id.* at 125-128.

⁴⁶ *Id.*

⁴⁷ 616 Phil. 929 (2009).

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.**⁴⁸ (Citations omitted, emphasis supplied)

Hence, while Ebcas and Cabalbag committed a mistake in signing the obligation requests and disbursement vouchers, evidence of bad faith or gross negligence is still required to hold them liable. And, in this case, we find no such evidence against Ebcas and Cabalbag.

To start, like in the case of Juan et al. and Garcia, there is no evidence on record which shows that Ebcas and Cabalbag had any *actual* knowledge of the illegality of the educational allowance.

Moreover, no constructive knowledge of the illegality of the educational allowance may be imputed against Ebcas and Cabalbag. Though Ebcas and Cabalbag ultimately erred in their assessment of the legality of the educational allowance, we find that such error had not been a product of gross negligence or some palpable breach of duty on their part. The following "*badges of good faith*" surrounding the approval and release of the educational allowance lead us to this conclusion:

1. At the time the educational allowance was approved, there was yet any precedent in case law that outlawed the grant of an educational allowance under MC No. 174.
2. At the same time, there was no previous instance where the COA had disallowed an educational allowance under MC No. 174. The ND issued in this case represents the first time that such kind of allowance had been disallowed by the COA.
3. Before actually issuing the ND in this case, the COA audit team leader found it necessary to first ask clarification from the Department of Budget and Management – Organization, Position, Classification and Compensation Bureau as to whether MC No. 174 or the ERC's CNA may be used to justify the agency's grant of educational

⁴⁸ Id. at 945.

allowance.⁴⁹ Thus, even from the eyes of government auditors, the issue pertaining to the legality or illegality of the educational allowance vis-à-vis the language of MC No. 174 was initially not as clear-cut as it now seems.

The confluence of the foregoing circumstances, to our mind, indicates that the question about the lawfulness of the educational allowance may be considered a doubtful or difficult question of law. Accordingly, Ebcas and Cabalbag's erroneous certifications and approvals—occasioned as they were by that difficult legal question—cannot be regarded as an offshoot of bad faith or gross negligence. Theirs was an error made in good faith.

Verily, we find that Ebcas and Cabalbag should also be absolved from liability as approving and certifying officers of the educational allowance.

C. *The Net Disallowed Amount*

The absolution of Juan et al., Ebcas, Cabalbag and Garcia leaves Cruz-Ducut et al. as the only approving and certifying officers solidarily liable under this Decision. While Cruz-Ducut et al. are not parties to the present consolidated petitions, We find that there is a need to recalibrate the amount of their solidary liability as currently fixed under COA Resolution No. 2017-452.

It may be recalled that under COA Resolution No. 2017-452, the COA equated the solidary liability of the approving and certifying officers to the *entire* disallowed amount.⁵⁰ This ruling, however, is inaccurate, nay excessive, given the advent of recent jurisprudence *vis-à-vis* the peculiar circumstances in this case. Thus, We are constrained to resolve the solidary liability of Cruz-Ducut et al., the remaining approving and certifying officers solidarily liable under this Decision.

The solidary liability of officers who approved and certified an illegal expenditure under Section 43 of Book VI of the 1987 Administrative Code does not necessarily equate to the total amount of the expenditure. In *Madera*, we clarified that the solidary liability of such officers should be limited only to the "*net disallowed amount*."⁵¹

⁴⁹ See *rollo* (G.R. No. 237835), pp. 131-133.

⁵⁰ *Rollo* (G.R. No. 237883), p. 14.

⁵¹ *Madera v. COA*, supra note 31.

The concept of net disallowed amount is rooted from the notion that the responsibility to return disallowed allowances or benefits is a *civil liability* that *ultimately* rests upon the payees who are individually accountable to return so much of the disallowed amount that they received pursuant to the principle of *solutio indebiti*.⁵² Hence, when any or all of the payees are actually absolved or excused from their liability to return, the notion demands that there must also be a corresponding decrease to the civil liability of the approving and certifying officers under Section 43 of Book VI of the 1987 Administrative Code. This corresponding decrease in the solidary liability of approving and certifying officers, in turn, serves two main purposes:⁵³

1. It assures that no undue burden is passed on to the approving and certifying officers who, otherwise, will be required to reconstitute amounts that they did not actually receive *on their own and without any other recourse*.
2. It prevents the government from being unjustly enriched as the contrary scenario would allow it to recover more than the loss recognized in its favor.⁵⁴

Madera defined the net disallowed amount as the difference between the “*total disallowed amount*” minus “*any amount allowed to be retained by the payees.*”⁵⁵ As *Madera* explained:

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

⁵² Id.

⁵³ Id.

⁵⁴ Id. See also Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Madera*.

⁵⁵ Id.

solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent.⁵⁶ (Citations omitted, emphasis supplied)

Here, the total disallowed amount pertains to the ₱7,433,834.00 educational allowance subject of ND No. 2011-002-101-(10). To determine the amounts allowed to be retained by the payees in this case, on the other hand, the following circumstances should be considered:

1. It may be recalled that, in its Resolution No. 2017-452, the COA held all ERC officers implicated in the ND—*i.e.*, the officials who approved, authorized or certified the payment of the educational allowance—solidarily liable for the entire disallowed amount.⁵⁷ At the same time, the commission absolved all ERC personnel who are mere “*passive*” payees of the educational allowance.⁵⁸ In reaching the said conclusions, the COA applied, albeit with hesitation, the Court’s ruling in *Silang*.⁵⁹ The COA expressed its reservation that, had it not been for *Silang*, each payee would have been required to return what they respectively received pursuant to the principle of *solutio indebiti*.⁶⁰
2. The application of *Silang*, however, also meant that **no payee—whether passive or not—was actually found individually liable for what each received pursuant to the principle of *solutio indebiti*.** The ERC officers found liable under the COA resolution were not made so in their capacities as payees on the basis of *solutio indebiti*, but exclusively in their capacities as approving and certifying officers under the Administrative Code.

Hence, while the dispositive portion of the COA resolution says that it absolves only “*passive*” recipients, the rationale underpinning the said resolution supports the absolution of *all* payees due to the non-application of the principle of *solutio indebiti*. What the COA did in its resolution was merely to transfer the liability for the entire disallowed amount to the approving and certifying officers—the practice observed in *Silang* but already abandoned in *Madera*.

⁵⁶ *Id.*

⁵⁷ *Rollo* (G.R. No. 237883), pp. 7-15.

⁵⁸ *Id.*

⁵⁹ *Id.* at 13-14.

⁶⁰ *Id.* at 14.

3. The COA's reservation, therefore, proved to be well founded. In *Madera*, which was promulgated on September 8, 2020 or five years after *Silang*, we departed from the *Silang* doctrine by affirming that the obligation of payees was indeed based on the civil law principle of *solutio indebiti* and, as such, ought to arise from their mere receipt of the undue benefit regardless of their good faith.⁶¹ Accordingly, the only instances when the payees may be excused from their liability to return is when the exempting circumstances mentioned in Section 2c or 2d of the *Madera Rules on Return*⁶² are obtaining.

None of the exempting circumstances in Section 2c and 2d of the *Madera Rules on Return*, however, obtain in this case. The educational allowance was not paid to the payees in exchange of any service rendered to the ERC. Moreover, there are no valid considerations upon which an absolution of the payees can be predicated. There is no indication that any of the payees would suffer undue prejudice should they be required to return what they received.

4. While the absolution of the payees under COA Resolution No. 2017-452 was essentially erroneous, the same cannot be *fully* corrected *via* the present consolidated petitions. **Except for Juan et al., Ebcas, Cabalbag and Garcia, none of the payees absolved in Resolution No. 2017-452 are parties herein.**⁶³ Hence, only the amounts received by Juan et al., Ebcas, Cabalbag and Garcia may be ordered returned under the Decision in the present Petition. The amounts received by the *other* payees cannot be ordered returned because doing so would prejudice individuals

⁶¹ *Madera v. COA*, supra note 31.

⁶² Id. The *Madera Rules on Return* provides:

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

⁶³ *Rollo* (G.R. No. 237883), p. 29.

who are not parties to the present case. As such, these latter amounts remain effectively excused or “*allowed to be retained*” by the concerned payees.

5. The records show that Juan et al. (*i.e.*, Francis Saturnino C. Juan, Isabelo Joseph P. Tomas II, Noel J. Salvanera, Sharon O. Montañer, Floresinda G. Baldo-Digal and Maria Corazon C. Gines), Ebcas, Cabalbag and Garcia each received ₱35,000.00 as educational allowance.⁶⁴

Given the foregoing, we find that the amount allowed to be retained by the payees in this case refers to the difference between: (1) the amount of educational allowance received by the payees who were absolved in Resolution No. 2017-542 (*i.e.*, ₱7,433,834.00) and (2) the amount received by Juan et al., Ebcas, Cabalbag and Garcia (*i.e.*, ₱315,000.00). Deducting further the difference of those two values from the total disallowed amount, we ascertain that **the net disallowed amount in this case is only ₱315,000.00—which also corresponds to the amount of educational allowance received by Juan et al., Ebcas, Cabalbag and Garcia.**

Thus, in simpler terms, the net disallowed amount is just the equivalent of the sum of the allowances received by the payees who are required to return pursuant to the principle of *solutio indebiti*. As aforementioned, Juan et al., Ebcas, Cabalbag and Garcia are the only payees of the educational allowance that could be required to make individual restitution in this case because they are the only payees that are parties to the present consolidated petitions. Verily, the sum of the allowances received by them—*i.e.*, ₱315,000.00—is the only amount of loss that may be recognized in favor of the government in this case, and so also constitute the net disallowed amount.

Accordingly, Cruz-Ducut et al. (*i.e.*, the ERC officers implicated in the ND but did not challenge COA Resolution No. 2017-452 before this Court) are only solidarily liable for the net disallowed amount *i.e.*, for ₱315,000.00.⁶⁵

⁶⁴ Id. at 37.

⁶⁵ The pronouncement reducing the amount of liability under Section 43 of Book VI of the 1987 Administrative Code may inure to the benefit of Cruz-Ducut et al. despite them not being parties to the present case. As the previous discussions revealed, the solidary liability of Cruz-Ducut et al. is so intricately related to the individual liabilities of Juan et al., Ebcas, Cabalbag and Garcia such that a determination of the latter necessarily affects the former. In this regard, we apply by analogy the rules on the effect of an appellate judgment when not all parties to the original judgment appealed, as articulated in *Government v. Tizon*, 127 Phil. 607, 613 (1967).

It should be stressed, however, that the above finding of civil liability is without prejudice to the filing of any appropriate administrative case against Cruz-Ducut et al.

D. Liability as a Recipient

Being themselves recipients of the disallowed allowance, however, Juan et al. (*i.e.*, Francis Saturnino C. Juan, Isabelo Joseph P. Tomas II, Noel J. Salvanera, Sharon O. Montañer, Floresinda G. Baldo-Digal and Maria Corazon C. Gines), Ebcas, Cabalbag and Garcia are ultimately liable to return the ₱35,000.00 educational allowance that each of them personally received. This is in line with the principle of *solutio indebiti* which, as may be gleaned from the previous discussion, finds unequivocal application insofar as the receipt of the educational allowance is concerned.

FOR THESE REASONS, premises considered, the petitions are **PARTIALLY GRANTED**. Resolution No. 2017-452 dated December 27, 2017 of the Commission on Audit is **AFFIRMED** with the following **MODIFICATIONS**:

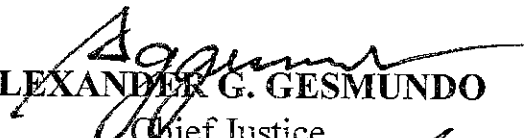
1. Except for Francis Saturnino C. Juan, Isabelo Joseph P. Tomas II, Noel J. Salvanera, Sharon O. Montañer, Floresinda G. Baldo-Digal, Maria Corazon C. Gines, Ellen C. Ebcas, Luzviminda N. Cabalbag and Mariano D. Garcia, all officers and employees of the Energy Regulatory Commission who approved and certified the educational allowance, as identified under Annex 1-EA of Notice of Disallowance No. 2011-002-101-(10) dated August 3, 2011,⁶⁶ are solidarily liable for the net disallowed amount in the amount of ₱315,000.00.
2. Francis Saturnino C. Juan, Isabelo Joseph P. Tomas II, Noel J. Salvanera, Sharon O. Montañer, Floresinda G. Baldo-Digal, Maria Corazon C. Gines, Ellen C. Ebcas, Luzviminda N. Cabalbag and Mariano D. Garcia are individually liable to return the amount of ₱35,000.00 each.

SO ORDERED.

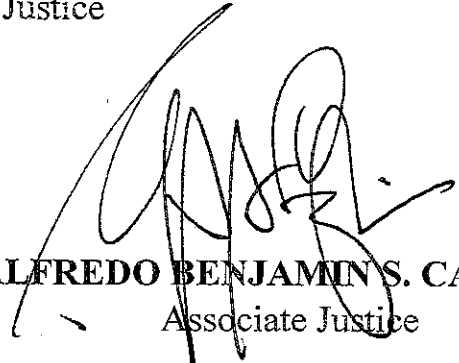
⁶⁶ Rollo (G.R No. 237883), pp. 125-128.

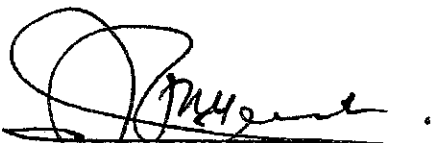

RICARDO R. ROSARIO
Associate Justice

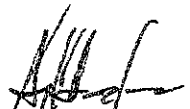
WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice

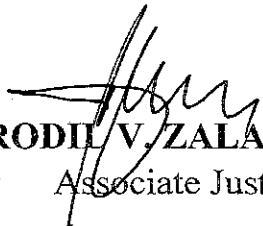

MARVIC MARIO VICTOR F. LEONEN
Senior Associate Justice

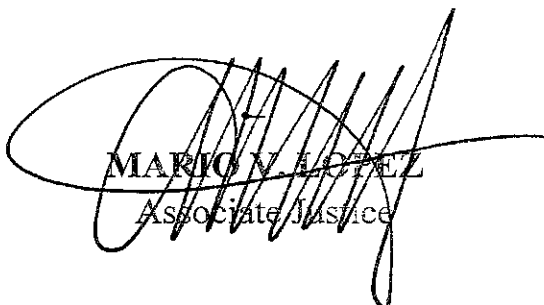

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice

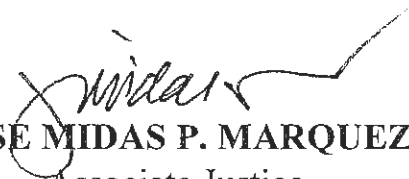

RODIL V. ZALAMEDA
Associate Justice


MARIO V. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


JHOSEP V. LOPEZ
Associate Justice


JAPAR B. DIMAAMPAO
Associate Justice

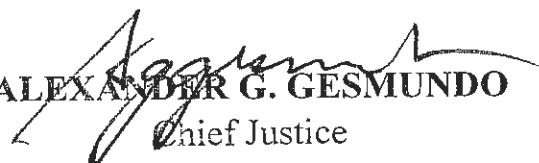

JOSE MIDAS P. MARQUEZ
Associate Justice

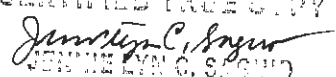

ANTONIO T. KHO, JR.
Associate Justice


MARIA FILOMENA D. SINGH
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

JENNIFER C. SAGUN
SG Chief Judicial Staff Officer
Office of the Clerk of Court
Supreme Court of the Philippines

Handwritten mark