



Republic of the Philippines
SUPREME COURT
Manila

EN BANC

TERESITA P. DE GUZMAN, in her capacity as former General Manager; BERNADETTE B. VELASQUEZ, in her capacity as Finance Manager; ATTY. RODOLFO T. TABANGIN, ATTY. ANTONIO A. ESPIRITU, ATTY. MOISES P. CATING, in their capacities as former members of the Baguio Water District (BWD) Board of Directors; and SONIA A. DAOAS and ENGR. FELINO D. LAGMAN, in their capacities as incumbent members of the Board of Directors,
Petitioners,

- versus -

COMMISSION ON AUDIT, CENTRAL OFFICE, represented by its Chairperson MICHAEL G. AGUINALDO, Commissioner JUANITO G. ESPINO, JR., Commissioner HEIDI MENDOZA, and NILDA B. PLARAS, Director IV, Commission Secretary,
Respondents.

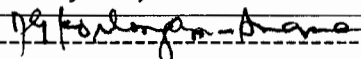
G.R. No. 217999

Present:

SERENO, *C.J.*,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN,*
JARDELEZA, and
CAGUIOA, *JJ.*

Promulgated:

July 26, 2016

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X-----

DECISION

VELASCO, JR., J.:

The Case

Before the Court is a Petition for Certiorari under Rule 64 of the Rules of Court, assailing the September 25, 2012 Decision¹ and February 27, 2015 Resolution of the Commission on Audit (COA).

* No part.

¹ *Rollo*, pp. 39-43. Penned by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza.

The Facts

Petitioners Atty. Rodolfo T. Tabangin (Tabangin), Atty. Antonio A. Espiritu (Espiritu), Atty. Moises P. Cating (Cating), Sonia A. Daoas (Daoas) and Engr. Felino D. Lagman (Lagman) were members of the board of the Baguio Water District (BWD). For the month of September 2004, they received per diems amounting to ₱33,600 each.

Following a routine audit of the BWD, the COA-Cordillera Administrative Region (COA-CAR) issued Audit Observation Memorandum No. 04-003 pointing out that petitioners' per diems exceeded the limit prescribed under Sec. 3 (c) (ii) of Administrative Order No. (AO) 103, entitled: *Directing The Continued Adoption of Austerity Measures in The Government*. AO 103 was issued on August 31, 2004 by then President Gloria Macapagal-Arroyo and limits the per diems of the members of the governing board of government-owned and controlled corporations to ₱20,000.

Thereafter, COA-CAR issued Notice of Disallowance No. 06-026 disapproving the per diems of the BWD directors in excess of the ₱20,000 prescribed by AO 103, or a total aggregate amount of ₱68,000, for the month of September 2004.² Under the Notice of Disallowance, petitioners De Guzman and Velasquez were liable as the approving officers for the per diems, while petitioners Lagman, Espiritu, Tabangin, Daoas and Cating were liable as payees thereof.

Petitioners appealed the Notice of Disallowance claiming that the per diems they received were approved by the Local Water Utilities Administration (LWUA) through Memorandum Circular No. (MC) 004-02 issued on May 21, 2002. MC 004-02 prescribed per diems of ₱8,400.00 for each director every meeting, not exceeding four (4) meetings in a month.³ For the petitioners, the LWUA was authorized to lay down the per diems of the BWD directors pursuant to Presidential Decree No. (PD) 198 or the *Provincial Water Utilities Act of 1973*, as amended by Republic Act No. (RA) 9286.

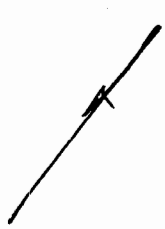
COA-CAR, however, sustained the Notice of Disallowance in its Decision No. 2009-012⁴ and disposed of the petitioners' appeal as follows:

Foregoing premises considered, herein appeal by the BWD is denied and the disallowance sustained.

² Id. at 18-19.

³ Id. at 9.

⁴ Id. at 26-29.



In the presently assailed September 25, 2012 Decision, the COA-Commission Proper similarly affirmed the Notice of Disallowance and sustained the Regional Office's decision, ruling in this wise:

WHEREFORE, premises considered, the instant appeal is DENIED for lack of merit and the COA-CAR Decision No. 2009-012 dated September 14, 2009 is AFFIRMED.

Hence, the present petition.

The Issues

As asserted by petitioners, the issues in the present case are two-fold. *First*, did the COA commit grievous error in relying on AO 103 instead of PD 198? And *second*, should petitioners refund the alleged excess per diems they received in the total amount of ₱68,000?⁵

The Court's Ruling

The petition is unmeritorious.

PD 198 and AO 103 are not irreconcilable; MC No. 004-02 is overruled

It is a basic principle in statutory construction that when faced with apparently irreconcilable inconsistencies between two laws, the first step is to attempt to harmonize the seemingly inconsistent laws.⁶ In other words, courts must first exhaust all efforts to harmonize seemingly conflicting laws and only resort to choosing which law to apply when harmonization is impossible.⁷

In the present case, petitioners posit that AO 103 and PD 198 are conflicting and so maintain that PD 198, a law, must prevail over AO 103, a mere executive issuance. This Court, however, need not choose between PD 198 and AO 103 as there is no irreconcilable conflict between them.

Section 13 of PD 198, as amended by RA 9286, provides:

Sec. 13. Compensation. - Each director shall receive per diem to be determined by the Board, for each meeting of the Board actually attended by him, but no director shall receive per diems in any given month in excess of the equivalent of the total per diem of four meetings in any given month.

⁵ Id. at 8.

⁶ *Office of the Solicitor General v. Court of Appeals*, G.R. No. 199027, June 9, 2014, 725 SCRA 469.

⁷ *Dreamwork Construction, Inc. v. Janiola*, G.R. No. 184861, June 30, 2009, 591 SCRA 466, 474-475.

Any per diem in excess of One hundred fifty pesos (P150.00) shall be subject to the approval of the Administration. In addition thereto, each director shall receive allowances and benefits as the Board may prescribe subject to the approval of the Administration. (emphasis supplied)

Meanwhile, Section 3(c) of AO 103 states:

SEC. 3. All NGAs, SUCs, GOCCs, GFIs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

x x x x

(c) For other non-full-time officials and employees, including members of their governing boards, committees, and commissions: (i) suspend the grant of new or additional benefits, such as but not limited to per diems, honoraria, housing and miscellaneous allowances, or car plans; and (ii) **in the case of those receiving per diems, honoraria and other fringe benefits in excess of Twenty Thousand Pesos (P20,000.00) per month, reduce the combined total of said per diems, honoraria and benefits to a maximum of Twenty Thousand Pesos (P20,000.00) per month.** (emphasis supplied)

Plainly stated, PD 198 allows the BWD to prescribe per diems greater than ₱150 per member for each meeting, subject to the approval of the LWUA, while AO 103 prescribes a limit on the total amount of per diems a director can receive in a month. There is clearly no conflict between PD 198 and AO 103, as AO 103 does not negate the power of the LWUA to approve applications for per diems greater than ₱150.


The conflict lies between AO 103 and MC 004-02, which prescribed a per diem of ₱8,400 for each director every meeting, not exceeding four (4) meetings in a month—way beyond the ₱20,000 cap provided under AO 103. Thus, the question is begged: can the President overrule MC 004-02 by issuing AO 103? The answer is a resounding yes.

Section 17, Article VII of the 1987 Constitution provides:

Section 17. The President shall have **control** of all the executive departments, bureaus, and offices. He shall ensure that the laws be faithfully executed. (emphasis supplied)

The President's power of control was explained in *Province of Negros Occidental v. Commissioners, Commission on Audit*⁸ as "the power to alter or modify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the President over that of the subordinate officer."

⁸ G.R. No. 182574, September 28, 2010, 631 SCRA 431, 441-442.



As the LWUA is a government-owned and controlled corporation,⁹ it is subject to the control of the President and its rulings and issuances can be modified and set aside by the President.¹⁰ MC 004-02 was, thus, effectively abrogated when President Arroyo limited the monthly per diems to ₱20,000 in AO 103. Necessarily, directors of GOCCs can no longer receive per diems in excess of ₱20,000 in a month after AO 103 took effect.

Petitioners were properly ordered to reimburse the excess of the allowed amount of pier diems

With that said, petitioners argue that they received the excessive per diems in good faith and, following this Court's rulings in *Blaquera v. Alcala*¹¹ and *De Jesus v. Commission on Audit*,¹² they should not be made to reimburse the subject amounts.

The COA refutes petitioners' claim of good faith,¹³ asserting that AO 103 was published in Malaya Newspaper on September 3, 2004 and petitioners admitted receiving a copy of the same on September 16, 2004. Yet, petitioners still accepted the fourth check for the fourth board meeting in the amount of ₱8,400 each. For the COA, this negates petitioners' defense of good faith.¹⁴

Preliminarily, it bears pointing out that Section 7 of AO 103 requires the publication of the administrative order in two (2) newspapers of general circulation for its effectivity, viz:

SEC. 7. This Administrative Order shall take effect immediately upon its publication in two (2) newspapers of general circulation.

Clearly, the effectivity of AO 103 does not hinge upon the receipt of a copy thereof by the affected offices. Whether or not the LWUA actually received a copy of the AO is of no moment. AO 103 is unequivocal that it "shall take effect IMMEDIATELY upon its publication in two (2) newspapers of general circulation." Thus, AO 103 became effective upon its publication on September 3, 2004. This means that **AO 103 was already effective when the third and fourth checks were issued on September 15**

⁹ *Espinosa v. Commission on Audit*, G.R. No. 198271, April 1, 2014, 720 SCRA 302. (The Local Water Utilities Administration [LWUA] is a government-owned and controlled corporation [GOCC] created pursuant to Presidential Decree No. [PD] 198, as amended, otherwise known as the 'Provincial Water Utilities Act of 1973); *National Marketing Corporation v. Arca*, No. L-25743, September 30, 1969, 29 SCRA 648 (controlled by the government, such as the NAMARCO, partake of the nature of government bureaus or offices, which are administratively supervised by the Administrator of the Office of Economic Coordination, "whose compensation and rank shall be that of a head of an Executive Department" and who "shall be responsible to the President of the Philippines under whose control his functions ... shall be exercised.").

¹⁰ *Id.*

¹¹ G.R. No. 109406, September 11, 1998, 295 SCRA 366.

¹² G.R. No. 149154, June 10, 2003, 403 SCRA 666.

¹³ *Rollo*, pp. 77-85.

¹⁴ *Id.* at 83.

and 16, 2004. As correctly pointed out by the COA, petitioners' claim of good faith is, therefore, unfounded.

Further, the cases cited by petitioners in support of their position are inapplicable. Consider:

In *Blaquera*, the disallowed amounts were released **prior** to the issuance of AO 29 which regulated the release of the incentive awards. Meanwhile, in the instant case, AO 103 was issued **after** the effectivity of PD 198 and MC 004-02. Thus, the more recent *Casal v. Commission on Audit*¹⁵ is more apt where the Court stressed that:

First, while the incentive benefits in *Blaquera* were for CY 1992 and **paid prior to the issuance of A.O. 29 on January 19, 1993**, the incentive awards subject of the instant petition were released in December of 1993. When, therefore, the heads of departments and agencies in *Blaquera* erroneously authorized the incentive benefits to the employee, **they did not then have the benefit of the categorical pronouncement of the President in A.O. 29** x x x. (emphasis supplied)

Plainly, in the case at bar, the payment of the per diems was uncalled for inasmuch as AO 103 was issued after and superseded MC 004-02.

In like manner, our ruling in *De Jesus* relied upon by petitioners finds no application in the present case. The main issue in *De Jesus* was whether in the prohibition under PD 198 that “[n]o director shall receive other compensation for services to the district,” the term “compensation” also includes “Representation and Transportation Allowance, bonuses and other benefits disallowed therein.” In clarifying, the Court held that petitioners cannot be made accountable given the previously unclarified ambiguity in the decree. We held:

At the time petitioners received the additional allowances and bonuses, the Court had not yet decided *Baybay Water District*. **Petitioners had no knowledge that such payment was without legal basis.** Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.¹⁶ (emphasis supplied)


Such is not the case here where AO 103 **categorically and clearly** ordered the discontinuance of per diems in excess of ₱20,000. There is no room for interpretation and so petitioners' failure to adhere to AO 103 is unwarranted and cannot be countenanced. Petitioners BWD directors each received ₱33,600 for the month of September 2004. Petitioners must, therefore, reimburse the amount they received in excess of the allowed ₱20,000, that is, ₱13,600 each or the aggregate amount of ₱68,000.

¹⁵ G.R. No. 149633, November 30, 2006, 509 SCRA 138, 148.

¹⁶ *Supra* note 12, at 677.

WHEREFORE, the instant petition is **DISMISSED**. Decision No. 2012-150 dated September 25, 2012 and the Resolution dated February 27, 2015 of the Commission on Audit, Commission Proper, are hereby **AFFIRMED**.

SO ORDERED.



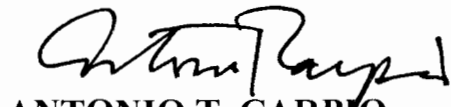
PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice



ANTONIO T. CARPIO

Associate Justice



TERESITA J. LEONARDO-DE CASTRO

Associate Justice



ARTURO D. BRION

Associate Justice



DIOSDADO M. PERALTA

Associate Justice



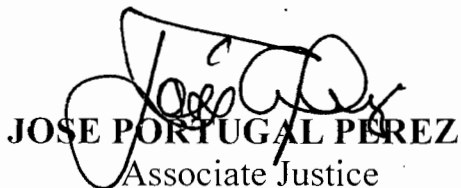
LUCAS P. BERSAMIN

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



JOSE PORTUGAL PEREZ

Associate Justice



JOSE CATRAL MENDOZA

Associate Justice



BIENVENIDO L. REYES

Associate Justice



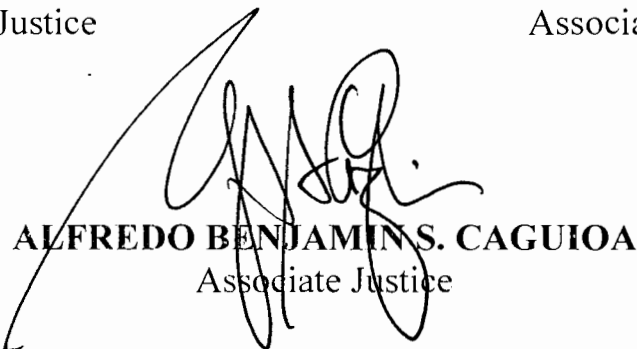
ESTELA M. PERLAS-BERNABE

Associate Justice

(No Part)
MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

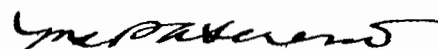


ALFREDO BENJAMINS S. CAGUIOA
Associate Justice



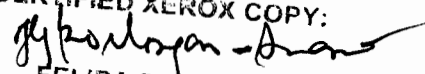
CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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.



MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED XEROX COPY:



FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT

