



Republic of the Philippines
Supreme Court
 Manila
 EN BANC

SUPREME COURT OF THE PHILIPPINES
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NATIONAL POWER CORPORATION BOARD OF DIRECTORS MESSRS. MARGARITO B. TEVES, RONALDO V. PUNO, JOSE L. ATIENZA, AUGUSTO B. SANTOS, PETER B. FAVILA, ARTHUR C. YAP, ROLANDO G. ANDAYA, FROILAN A. TAMPINCO, and VARIOUS PAYEES OF THE NATIONAL POWER CORPORATION,
 Petitioners,

G.R. No. 218052

Present:

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

- versus -

COMMISSION ON AUDIT,
 Respondent.

Promulgated:

January 26, 2021

June 24 A. Lopez-Gracia

X-----X

DECISION

LOPEZ, J.:

Challenged in this Petition for *Certiorari*¹ under Rule 64, in relation to Rule 65, of the Revised Rules of Court is respondent Commission on Audit's (COA) Decision No. 2015-108² dated April 6, 2015. The Decision dismissed the Petition for Review³ filed by petitioners National Power Corporation

* On official business.

¹ *Rollo*, pp. 2-19.

² *Id.* at 22-25.

³ *Id.* at 337-347.

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(NPC) Board of Directors and various NPC payees for being filed out of time, and affirmed the Notice of Disallowance (ND) No. NPC 12-007 (09,10)⁴ dated October 15, 2012.

Facts

On February 1, 2010, the NPC Board of Directors confirmed and ratified Board Resolution No. 2009-72 dated December 18, 2009 that granted Calendar Year (CY) 2009 Performance Incentive Benefits (PIB), equivalent to five and one-half monthly basic salary, to NPC Non-Operation and Maintenance Agreement (NMA)-Small Power Utility Group (SPUG)/Watershed and Operation and Maintenance (OMA) Head Office and Engineering officials and employees. To implement this grant, NPC President and CEO, Froilan A. Tampinco (Tampinco), approved NPC Circular No. 2009-58⁵ dated December 21, 2009. The total amount released for this purpose was ₱327,272,424.91.⁶

On February 15, 2012, the NPC Audit Team issued a Notice of Suspension, requiring NPC to explain why the PIB should not be disallowed in audit on the following grounds: (1) the grant of PIB lacked prior approval of the President as required under Section 3⁷ of Administrative Order (AO) No. 103⁸ dated August 31, 2004; and (2) the grant was extravagant under Section 3.4⁹ of COA Circular No. 85-55A¹⁰ dated September 5, 1985,¹¹ considering that it was given despite the NPC-SPUG's incurrence of a net loss, amounting to ₱2,874,144,564.00 in CY 2009.¹²

⁴ *Id.* at 35-37.

⁵ *Id.* at 115-118.

⁶ *Id.* at 3.

⁷ SEC. 3. All NGAs, SUCs, GOCCs and OGCEs, whether exempt from the Salary Standardization Law or not, are hereby directed to:

X X X X

(b) Suspend the grant of new or additional benefits to full-time officials and employees, except for (i) Collective Negotiation Agreement (CNA) Incentives which are agreed to be given in strict compliance with the provisions of the Public Sector Labor-Management Council Resolutions No. 04, s. 2002 and No. 2, s. 2003, and (ii) those expressly provided by presidential issuance[.] (Emphasis supplied.)

⁸ DIRECTING THE CONTINUED ADOPTION OF AUSTERITY MEASURES IN THE GOVERNMENT.

⁹ 3.4. "EXTRAVAGANT" EXPENDITURES

Definition: The term "extravagant expenditure" signifies those incurred without restraints, judiciousness and economy. Extravagant expenditures exceed the bounds of propriety. These expenditures are immoderate, prodigal, lavish, luxurious, waste grossly excessive, and injudicious.

Standards for "Extravagant" Expenditures

Factors such [as] the nature of the agencies' operations, agency missions, **profitability of their past operational performance, and availability of financial resources derived from income or retained earnings must be taken into account in the matter of determining whether or not an expenditure is extravagant.** The term "extravagant expenditure" pertains to the variables of quality relative to level or rank of the user and the purpose for such expenditure. (Emphasis supplied.)

¹⁰ Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures or Uses of Funds and Property.

¹¹ *Rollo*, p. 136.

¹² *Id.* at 36.

In a Letter¹³ dated April 10, 2012, the NPC management rationalized the grant by citing the successful privatization of several power plants; the “High Very Satisfactory (VS)” rating of the corporate performance under the balanced scorecard; and the implementation of the organization’s right-sizing in 2010. No law or presidential issuance was, however, invoked as basis of the grant.

Unsatisfied, the COA Audit Team disallowed the PIB in ND No. NPC 12-007 (09,10) dated October 15, 2012 for lack of presidential approval and for being extravagant. Petitioners were charged liable to settle the disallowed transaction, namely:¹⁴

Name	Position/Designation	Nature of Participation in the Transaction
Margarito B. Teves Froilan A. Tampinco Ronaldo V. Puno Jose L. Atienza Augusto B. Santos Peter B. Favila Arthur C. Yap Rolando G. Andaya	Board of Directors	Confirmed and ratified on February 1, 2010 Board Resolution 2009-72 dated December 18, 2009, circulated via referendum granting 2009 [PIB]
Froilan A. Tampinco	NPC President and CEO	Approved NPC Circular 2009-58 dated December 21, 2009 re: Prescribing rules and regulations in the grant and payment of the CY 2009 PIB
Various payees (Schedules I and II)	Various	Received PIB ¹⁵

The ND was addressed to Tampinco with the notation “[ATTN]: Lorna T. Dy (Dy), Vice President, [Human Resources Administration and Finance] (HRAF).”¹⁶ Tampinco received the ND on October 23, 2012.¹⁷ On April 11, 2013, petitioners filed an appeal to the COA Corporate Government Sector (CGS) Cluster 3 – Public Utilities.¹⁸ This time, petitioners averred that the PIB was authorized by President Fidel V. Ramos through Memorandum Order (MO) No. 198¹⁹ dated March 24, 1994, which

¹³ *Id.* at 86.

¹⁴ *Id.* at 35-37.

¹⁵ *Id.* at 36.

¹⁶ *Supra* note 14.

¹⁷ *Rollo*, p. 3.

¹⁸ *Id.* at 73-82.

¹⁹ DIRECTING AND AUTHORIZING THE UPGRADING OF COMPENSATION OF PERSONNEL OF THE NATIONAL POWER CORPORATION AT RATES COMPARABLE WITH THOSE PREVAILING IN PRIVATELY-OWNED POWER UTILITIES AND FOR OTHER PURPOSES.

was issued pursuant to Section 5²⁰ of Republic Act (RA) No. 7648²¹ or the “Electric Power Crisis Act of 1993.” Petitioners posited that the PIB is a “pay for performance,” which was made part of the NPC Compensation Plan under Section 2.2²² of MO No. 198. They also argued that even without referring to MO No. 198, the PIB was deemed approved by the President because the NPC Board, which confirmed and ratified Board Resolution No. 2009-72, was composed of cabinet secretaries who were alter egos of the President.²³ As for the imputed extravagance, petitioners stood firm that the officials and employees deserved the PIB equivalent to five and one-half monthly basic salaries for their efforts to privatize several power plants as mandated by RA No. 9136 or the “Electric Power Industry Reform Act of 2001” (EPIRA); for getting a “High VS” rating in 2009; and for implementing an organizational right-sizing in 2010. Lastly, petitioners contended that the disbursements were well-within the four-months-basic-salary limitation provided under Section 2.2 of MO No. 198 because the PIB released in 2009 was equivalent to only four months basic salary, while the remaining one and one-half months were not given until 2010.²⁴

COA CGS Cluster 3 – Public Utilities Ruling

The disallowance was affirmed in Decision No. 2014-03²⁵ dated February 28, 2014. The COA CGS ruled that AO No. 103, which ordered the suspension of new or additional benefits, already superseded MO No. 198; and assuming that MO No. 198 applies, the PIB was not based on a Productivity Enhancement Program (PEP), which was a clear disregard of an explicit requirement under Section 2.2 of MO No. 198. Further, gauged against the parameters set in Section 3.4 of COA Circular 85-55A, the PIB equivalent to five and one-half months basic salary for the year was extravagant considering the NPC’s net loss of more than ₱2.87 Billion in CY 2009. The decretal portion of Decision No. 2014-03 reads:

²⁰ SEC. 5. *Reorganization of the National Power Corporation.* – x x x x

The President may upgrade the compensation of the personnel of the [NPC] at rates comparable to those prevailing in privately-owned power utilities to take effect upon approval by Congress of the [NPC’s] budget for 1994.

²¹ AN ACT PRESCRIBING URGENT RELATED MEASURES NECESSARY AND PROPER TO EFFECTIVELY ADDRESS THE ELECTRIC POWER CRISIS AND FOR OTHER PURPOSES; approved on April 5, 1993.

²² 2.2. “Pay for Performance.” Pay for performance is a variable component of the total annual cash compensation consisting of bonuses and incentives but excluding the 13th month pay, earned on the basis of corporate and/or group performance or productivity, following a Productivity Enhancement Program (PEP), and step-increases given in recognition of superior individual performance using a performance rating system, duly approved by the [NPC] Board. The corporate or group productivity or incentive bonus shall range from zero (0) to four (4) months basic salary, to be given in lump-sum for each year covered by the PEP. The in-step increases on the other hand, once granted, shall form part of the monthly basic salary.

²³ *Rollo*, pp. 79-80.

²⁴ *Id.* at 80-81.

²⁵ *Id.* at 136-141.

WHEREFORE, foregoing premises considered, the herein Appeal is hereby **DENIED**. Accordingly, [ND] No. NPC 12-[007] (09,10) dated October 15, 2012 in the total amount of [P]327,272,424.91 is hereby **AFFIRMED**.²⁶ (Emphasis in the original.)

On March 14, 2014, petitioners received the COA CGS Decision,²⁷ and on March 26, 2014, they filed their Petition for Review²⁸ before the COA Proper, reiterating the same arguments.

COA Proper Ruling

In its Decision No. 2015-108²⁹ dated April 6, 2015, the COA Proper found that the Petition for Review was filed beyond the reglementary period of six months or 180 days in violation of Section 48³⁰ of Presidential Decree (PD) No. 1445 or the “Government Auditing Code of the Philippines” and Section 3,³¹ Rule VII of the COA Revised Rules of Procedure, thus:

WHEREFORE, premises considered, the [P]etition for [R]eview is hereby **DISMISSED** for having been filed out of time. Accordingly, [COA CGS Cluster 3 – Public Utilities] Decision No. 2014-03 dated February 28, 2014, sustaining [ND] No. NPC 12-007 (09,10) dated October 15, 2012, on the payment of [PIB] to the officials and employees of [NPC NMA-SPUG/Watershed]; and OMA, Head Office, Engineering, for the year 2009, in the total amount of [P]327,272,424.91, is final and executory.³² (Emphasis in the original.)

Hence, this Petition.

Without filing a motion for reconsideration, petitioners come directly to this Court, and impute grave abuse of discretion on the part of the COA in dismissing their appeal for being filed out of time. Petitioners claim that the period to file an appeal has not yet commenced because they were not individually served with the ND. The constructive service to Tampinco was improper since the ND imposes personal liability on each petitioner. Insisting that up to present, “all of [them] are not yet aware of the x x x ND, and x x x that [they] were not given any opportunity at all to be heard,”³³ petitioners implore this Court to exercise liberality and resolve the case on its merits. Petitioners then reiterate that the PIB did not violate AO No. 103

²⁶ *Id.* at 141.

²⁷ *Id.* at 4.

²⁸ *Id.* at 337-347.

²⁹ *Supra* note 2.

³⁰ SEC. 48. *Appeal from Decision of Auditors.* — Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within six months from receipt of a copy of the decision appeal in writing to the Commission.

³¹ SEC. 3. *Period of Appeal.* — The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director’s decision, x x x.

³² *Rollo*, p. 24.

³³ *Id.* at 10.

as its grant was authorized by the President through MO No. 198 and/or through the NPC Board who were his alter egos. In addition, petitioners claim that they all acted in good faith in disbursing and receiving the PIB.

In its Comment,³⁴ the COA counters that petitioners' failure to file their Petition for Review within the reglementary period rendered Decision No. 2014-03 final and immutable. The COA asserts that constructive service of the ND was validly resorted to in accordance with Section 12.1³⁵ of COA Circular No. 2009-006³⁶ dated September 15, 2009. On the merits, the COA maintains the propriety of the disallowance due to non-compliance with the requirements under MO No. 198, and the extravagance of the grant considering the net loss incurred by NPC during the year when the PIB was granted. Finally, the COA insists that petitioners are liable to settle the disallowed amount regardless of their good faith pursuant to the principle of *solutio indebiti*.

Issues

- (1) Whether the COA acted with grave abuse of discretion in dismissing the appeal for being filed beyond the reglementary period;
- (2) Whether the COA acted with grave abuse of discretion in affirming the disallowance; and
- (3) In case the disallowance is upheld, whether the COA acted with grave abuse of discretion in holding petitioners liable to refund the disallowed amounts.

Ruling

The Petition lacks merit.

Finality of the Disallowance

The 2009 Revised Rules of Procedure of the COA prescribed the procedure to appeal the COA decision, to wit:

RULE IV PROCEEDINGS BEFORE THE AUDITOR

X X X X

³⁴ *Id.* at 442-476.

³⁵ 12.1. A copy of the NS/ND/NC shall be served to each of the persons liable/responsible, by the Auditor, through personal service. If personal service is not practicable, it shall be served by registered mail. **In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.** (Emphasis supplied.)

³⁶ Prescribing the Use of the Rules and Regulations on Settlement of Accounts.

Section 8. *Finality of the Auditor's Decision.* — Unless an appeal to the Director is taken, the decision of the Auditor shall become final upon the expiration of six (6) months from the date of receipt thereof.

x x x x

RULE V
PROCEEDINGS BEFORE THE DIRECTOR

x x x x

Section 4. *When Appeal Taken.* — An Appeal must be filed within six (6) months after receipt of the decision appealed from.

Section 5. *Interruption of Time to Appeal.* — The receipt by the Director of the Appeal Memorandum shall stop the running of the period to appeal which shall resume to run upon receipt by the appellant of the Director's decision.

x x x x

RULE VII
PETITION FOR REVIEW TO THE COMMISSION PROPER

x x x x

Section 3. *Period of Appeal.* — The appeal shall be taken within the time remaining of the six (6) months period under Section 4, Rule V, taking into account the suspension of the running thereof under Section 5 of the same Rule in case of appeals from the Director's decision, x x x.

Records show that the ND subject of this Petition had already attained finality for petitioners' failure to timely file their appeal before the COA Proper. Tampinco received the ND on October 23, 2012, and petitioners filed an appeal to the COA CGS on April 11, 2013. From receipt of the ND, 170 days of the 180-day appeal period had already lapsed when petitioners filed their appeal to the COA CGS. Thus, petitioners were left with only 10 days, from the receipt of an adverse decision, to file a petition for review to the COA Proper. Petitioners received the CGS Director's Decision denying their appeal on March 14, 2014, and then filed a Petition for Review to the COA Proper on March 26, 2014 or 12 days after receipt of the COA CGS Decision. Clearly, the Petition for Review was filed beyond the 180-day reglementary period to appeal. Section 51 of PD No. 1445 categorically states that "[a] decision of the Commission or of any auditor upon any matter within its or his jurisdiction, if not appealed as herein provided, **shall be final and executory.**" Indeed, well-settled is the rule that the perfection of an appeal in the manner and within the period permitted by law is not



only mandatory but also jurisdictional, and the failure to perfect the appeal renders the questioned judgment final and executory.³⁷

Petitioners now entreat this Court to exercise liberality in the application of procedural rules on the ground that the period to file an appeal has not yet commenced because the ND was not yet served to the individual persons involved. We disagree.

Section 7,³⁸ Rule IV of the 2009 Revised Rules of Procedure of the COA provides:

RULE IV
PROCEEDINGS BEFORE THE AUDITOR

Section 7. *Service of Copies of ND/NC/NS, Order or Decision.* — The ND, NC, NS, order, or decision shall be served to each of the persons liable/responsible by the Auditor, through personal service, or if not practicable through registered mail. **In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.** (Emphasis supplied.)

This was echoed in Section 12.1 of COA Circular No. 2009-006:

SECTION 12. SERVICE OF COPIES OF ND/NS/NC


12.1 A copy of the NS/ND/NC shall be served to each of the persons liable/responsible, by the Auditor, through personal service. If personal service is not practicable, it shall be served by registered mail. **In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.** (Emphasis supplied.)

In the recent case of *National Power Corporation v. Commission on Audit*,³⁹ we sustained the propriety of the constructive service of the ND upon Tampinco and the NMA Department Manager-Finance for practical purposes as it is impossible to serve the ND to the numerous recipients, thus:

³⁷ See *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222710, September 10, 2019; *Orlina v. Ventura*, G.R. No. 227033, December 3, 2018; *Philippine Health Insurance Corp. v. Commission on Audit*, G.R. No. 222838, September 4, 2018; and *Republic v. Heirs of Cirilo Gotengco*, 824 Phil. 568, 581 (2018).

³⁸ Sec. 7. *Service of Copies of ND/NC/NS, Order or Decision.* — The ND, NC, NS, order, or decision shall be served to each of the persons liable/responsible by the Auditor, through personal service, or if not practicable through registered mail. In case there are several payees, as in the case of a disallowed payroll, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll.

³⁹ G.R. No. 240519, February 19, 2019.



With respect to the issue of notice, the Court finds that COA properly gave the required notice. Section 12.1 of COA Circular No. 2009-006 dated September 15, 2009, or the 2009 Rules and Regulations on the Settlement of Accounts, states that in case there are several payees, service to the accountant who shall be responsible for informing all payees concerned, shall constitute constructive service to all payees listed in the payroll. Here, the ND involved several payees and it was properly issued to Froilan A. Tampinco, President and CEO of NPC, and Alexander P. Japon, Sr., Department Manager-Finance, Non-OMA. These officers were responsible for informing all other payees concerned regarding the ND. Thus, the ND was properly served pursuant to COA Circular No. 2009-006.⁴⁰

Verily, the ND was properly served upon Tampinco, who had the duty to inform all the persons involved in the ND, or at least to direct Dy, the other responsible officer named in the ND to discharge such duty. At any rate, petitioners were able to timely file an appeal to the COA CGS, albeit their appeal to the COA Proper was belatedly filed. Thus, petitioners have no factual and legal bases to complain.⁴¹ Time and again, we have ruled that the essence of due process is simply an opportunity to be heard; an opportunity to explain one's side; or the opportunity to seek a reconsideration of the action or ruling complained of. It safeguards, not the lack of previous notice, but the denial of the opportunity to be heard. As long as the party was afforded the opportunity to defend his interests in due course, there is no denial of due process.⁴² No grave abuse of discretion can, therefore, be imputed against the COA in dismissing the Petition for Review for being filed beyond the reglementary period.

Propriety of the Disallowance

Even if we are to forego the procedural rules, this Petition must still fail on its merits.

Petitioners do not dispute that Section 3(b)⁴³ of AO No. 103 requires presidential approval in the grant of additional benefits, and argue that such presidential imprimatur was given through MO No. 198, wherein a "pay for performance" such as the PIB was authorized in accordance with the NPC Compensation Plan.⁴⁴ This argument is untenable.

⁴⁰ *Id.*

⁴¹ *Development Bank of the Phils. v. Commission on Audit*, 808 Phil. 1001, 1015 (2017).

⁴² *Mendoza v. Commission on Audit*, 717 Phil. 491, 503, citing *Gannapao v. Civil Service Commission*, 665 Phil. 60, 70 (2011).

⁴³ *Supra* note 7.

⁴⁴ SEC. 2. COMPENSATION PLAN. The NPC Compensation Plan consists of the following:

2.1 Total monthly compensation structure as shown in Annex "A" which shall include:

2.1.1 Monthly basic salary schedule as shown in Annex "B[;]" and

2.1.2 Schedule of monthly allowances as provided in Annex "C" which include existing government mandated allowances such as PERA and Additional Compensation, and Rice Subsidy, and Reimbursable Allowances, i.e., RRA, RTA and RDA, provided however, that the

MO No. 198 cannot be invoked as the required presidential approval for the grant of the 2009 PIB because the approved NPC Compensation Plan, wherein such “pay for performance” was incorporated, was meant to be implemented over a four-year period starting from its effectivity in 1994.⁴⁵ Section 4 of MO No. 198 clearly states:

SEC. 4. Four-Year Implementation Plan. — The NPC Compensation Plan shall be implemented over a four (4) year period following the framework shown in Annex “D[.]” provided, however, that fifty percent (50%) of the proposed incremental adjustment to the minimum for 1995 shall be converted into, and incorporated in, the performance-based pay adjustments scheduled for this year as indicated in Annex E, and provided finally, that the 1996 and 1997 phases of the plan shall be implemented only upon Presidential clearance and approval which shall be dependent on a favorable review of the Office of the President in the first quarter of each year, of NPC’s performance for the preceding year. (Emphasis supplied.)

Annex “D”⁴⁶ of MO No. 198 shows that the “pay for performance” component of the NPC Compensation Plan started on the second year of implementation or in 1995 and should have ended in 1997. But, the PIB was implemented and granted in 2009. Besides, the Compensation Plan requires further presidential clearance and approval each year of the last two years before the Plan can be implemented. Such clearance and approval are dependent upon a favorable evaluation conducted by the Office of the

NP Board is hereby authorized to further rationalize and/or revise the rates for such allowances as may be necessary; and


2.2 “Pay for Performance[.]” Pay for Performance is a variable component of the total annual cash compensation consisting of bonuses and incentives but excluding the 13th month pay, earned on the basis of corporate and/or group performance or productivity, following a Productivity Enhancement Program (PEP), and step-increases given in recognition of superior individual performance using a performance rating system, duly approved by the NP Board. The corporate or group productivity or incentive bonus shall range from zero (0) to four (4) months basic salary, to be given in lump-sum for each year covered by the PEP. The in-step increases on the other hand, once granted, shall form part of the monthly basic salary.

⁴⁵ *Rollo*, p. 138.

⁴⁶ MO No. 198, Annex “D.”

COMPONENTS	PAY FOR PERFORMANCE			
	CATCH-UP YEAR 1 (1994)	YEAR 2 (1995)	YEAR 3 (1996)	YEAR 4 (1997)
Guaranteed Cash Compensation	- Adopt Pay Plan - Structural Adjustments • Adj. to the Minimum • Realignment to the Salary Steps	- Adjustment to the Minimum - Realignment to the Salary Steps PERFORMANCE AND PAY PLAN REVIEW BY THE PRESIDENT OF THE PHILIPPINES		
Variable Cash Compensation		- Individual Merit-Based Step Increase - Corporate and/or Group Productivity Incentives and Bonuses	- Individual Merit-Based Step Increase - Corporate and/or Group Productivity Incentives and Bonuses	- Individual Merit-Based Step Increase - Corporate and/or Group Productivity Incentives and Bonuses
Fringe Benefits	Collective Negotiation[s] Agreement	Collective Negotiation[s] Agreement	Collective Negotiation[s] Agreement	Collective Negotiation[s] Agreement

(Emphasis supplied.)



President (OP) every first quarter of each year, on the NPC's performance for the preceding year. In other words, MO No. 198 itself requires a specific presidential clearance and approval before such performance benefits may be granted. However, the records are bereft of any evidence of such assessment from the OP and the required presidential clearance/approval for the grant of the 2009 PIB.

Further, while petitioners invoke MO No. 198 as their authority in the grant of the PIB, they entirely ignored its explicit requirements under Section 2.2, which states:

2.2. "Pay for Performance." Pay for performance is a **variable component of the total annual cash compensation consisting of bonuses and incentives** but excluding the 13th month pay, **earned on the basis of corporate and/or group performance or productivity, following a Productivity Enhancement Program (PEP)**, and step-increases given in recognition of superior individual performance using a performance rating system, duly approved by the [NPC] Board. **The corporate or group productivity or incentive bonus shall range from zero (0) to four (4) months basic salary, to be given in lump-sum for each year covered by the PEP.** The in-step increases on the other hand, once granted, shall form part of the monthly basic salary. (Emphasis supplied.)

As a corporate performance incentive under Section 2.2 of MO No. 198, the PIB is required to be: (1) based on a PEP applicable for a specific year; (2) limited to zero to four months basic salary; and (3) given in lump-sum for the year covered by the PEP. **The 2009 PIB failed to comply with all these requisites.** *First*, Section 2.2 of MO No. 198 requires a specific "program" (PEP) for every year, upon which the personnel's entitlement to and amount of the productivity bonus shall be based. Hence, contrary to petitioners' stance, the accomplishment of certain projects or targeted plans does not suffice to be the basis of the productivity bonus under MO No. 198. In the audit, the COA correctly observed that there was no mention, much less proof, of a PEP, which could have been the basis of the 2009 PIB. In addition, we observed that in the previous grants of PIB, the NPC board resolutions stated in detail the PEP used in granting performance bonus for each year, wherein certain factors were considered such as achievement of tangible and highly commendable performance against the targets and standards set for the year, along with the following performance factors: Net Operating Income, Reliability Indicator, System Efficiency, Capital Expenditure Utilization, Collection Efficiency and Operating Ratio.⁴⁷ Surprisingly, none of these were shown to have been considered in 2009. *Second*, Section 2.2 limits the performance incentive to zero to four months basic salary. Here, the PIB given was equivalent to five and one-half monthly basic salary. *Third*, Section 2.2 requires that the performance incentive be given in lump sum for each year covered by the PEP, while the

⁴⁷ Rollo, pp. 87-114.



2009 PIB was released in installments in 2009 and 2010 in obvious contravention of this requirement. Surely, we cannot permit the means undertaken by the NPC Board of Directors in the grant of the PIB, only to circumvent these unequivocal requirements under MO No. 198.

More, Section 2.2 of MO No. 198 described “pay for performance” as a **variable component** of the total annual cash compensation. As a variable component, the pay for performance is not a fixed or regular part of the total annual compensation under the NPC Compensation Plan, but an **additional benefit**, the grant of which was categorically **suspended** by the President in a later issuance (AO No. 103) to aid in the implementation of austerity measures in the government. We stress that under Section 3(b)⁴⁸ of AO No. 103, only Collective Negotiation Agreement (CNA) Incentives and those expressly authorized by a presidential issuance were exempted from the suspension. The 2009 PIB is neither a CNA Incentive nor a benefit expressly authorized by a presidential issuance.

Petitioners then advanced the argument that the grant of the PIB through Board Resolution No. 2009-72 was deemed authorized by the President considering that the NPC Board is comprised of cabinet secretaries who are alter egos of the President. They are mistaken.

When the cabinet secretaries approved Board Resolution No. 2009-72, they did not act as alter egos of the President, but as members of the NPC Board in their *ex officio* capacity under the EPIRA.⁴⁹ Hence, their assent to the grant of the PIB cannot be deemed as the required approval of the President. In the recent case of *National Power Corporation Board of Directors v. Commission on Audit*,⁵⁰ the Court distinguished the department secretaries’ functions as cabinet members and those performed in *ex officio* capacity, in relation to the alter ego doctrine or the doctrine of qualified political agency:

[T]he doctrine of qualified political agency could not be extended to the acts of the Board of Directors of TIDCORP despite some of its members being themselves the appointees of the President to the Cabinet. x x x Such Cabinet members sat on the Board of Directors of TIDCORP *ex officio*, or by reason of their office or function, not because of their direct appointment to the Board by the President. **Evidently, it was the law, not the President, that sat them in the Board.**

Under the circumstances, when the members of the Board of Directors effected the assailed 2002 reorganization, **they were acting as the responsible members of the Board of Directors of TIDCORP constituted pursuant to Presidential Decree No. 1080, as amended by Republic Act No. 8494, not as the alter egos of the President. We**

⁴⁸ *Supra* note 7.

⁴⁹ Republic Act No. 9136 (2001), Sec. 48.

⁵⁰ G.R. No. 242342, March 10, 2020.



cannot stretch the application of a doctrine that already delegates an enormous amount of power. Also, it is settled that the delegation of power is not to be lightly inferred.⁵¹ (Emphases supplied; citations omitted.)

Furthermore, the PIB was granted at the time when the NPC was operating at a massive net loss of ₱2,874,144,564.00, negating its capability to grant and the recipients' entitlement to a performance-based bonus. Despite several opportunities to show its financial capability and condition before the COA Audit Team, the COA CGS Director, the COA Proper, and this Court, petitioners failed to address this issue. Therefore, the extravagance or unconscionability of the payment of five and one-half months' salary as PIB cannot be denied.

Liability of Petitioners

As to the matter of refund, we reiterate that the ND had already attained finality due to petitioners' failure to timely file an appeal to the COA Proper. The assailed ND is not void, unjust, or inequitable as the grant of the PIB clearly lacks factual and legal basis; and there are no supervening events or special circumstances that would warrant a denouement of reversal or modification. The COA did not commit any grave abuse of discretion and its ruling is well in accord with the relevant rules and prevailing jurisprudence.⁵² In *Madera v. Commission on Audit*,⁵³ we clarified the jurisprudential variations in the refund of disallowed amounts and formulated rules for the liabilities of the persons involved, *viz.*:

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

x x x x

- 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

⁵¹ *Id.*, citing *Atty. Manalang-Demigilio v. Trade and Investment Development Corp. of the Phils. (TIDCORP)*, 705 Phil. 331, 348-349 (2013).

⁵² *Madera v. COA*, G.R. No. 244128, September 8, 2020.

⁵³ *Id.*

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.

Section 43, Chapter 5, Book VI of the Administrative Code of 1987 states that “**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.” Section 38,⁵⁴ Chapter 9, Book I of the Administrative Code explains that such civil liability of the officers is grounded upon the showing of bad faith, malice, or gross negligence in the performance of their official duties. In this case, the COA CGS aptly observed the NPC Board of Directors’ non-compliance with the clear mandate of AO No. 103 and MO No. 198. By jurisprudence, the palpable disregard of laws, prevailing jurisprudence, and other applicable directives amounts to gross negligence, which betrays the presumption of good faith and regularity in the performance of official functions enjoyed by public officers.⁵⁵ Hence, the COA correctly held the NPC Board of Directors liable despite not being recipients of the disallowed amounts. Accordingly, we find it proper to specify the NPC Board of Directors’ solidary liability to refund the disallowed amounts consistent with the COA’s findings, as well as the established rules and jurisprudence.

As for the recipients, while the disallowed benefit was denominated as a “performance incentive,” there was no showing that the incentive had proper legal basis and was denied based on a mere procedural infirmity. Neither was it shown that the incentive has a clear, direct, and reasonable connection to the work performed.⁵⁶ Moreover, their entitlement to the PIB was not proven, which gave rise to the duty to return the amount that they unduly received in accordance with the principles of unjust enrichment⁵⁷ and *solutio indebiti*.⁵⁸ Neither is there any genuine and *bona fide* justification

⁵⁴ SEC. 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. (Emphasis supplied.)

⁵⁵ *Tetangco, Jr. v. Commission on Audit*, 810 Phil. 459, 467 (2017); *Metropolitan Waterworks and Sewerage System v. Commission on Audit*, 821 Phil. 117, 140 (2017).

⁵⁶ *Abellanosa v. Commission on Audit and National Housing Authority*, G.R. N. 185806, November 17, 2020.

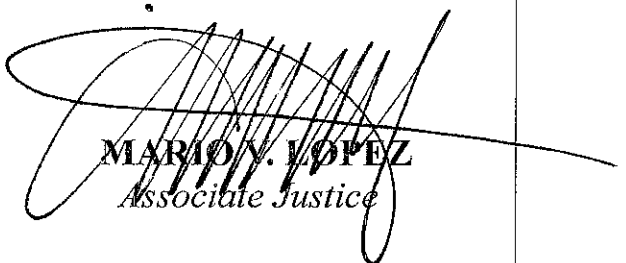
⁵⁷ CIVIL CODE, Art. 22. Every person who through an act of performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.

⁵⁸ CIVIL CODE, Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

that would warrant the application of equitable considerations to absolve the recipients' civil obligation to the government. Thus, the COA did not err in holding all the recipients individually liable to return the amounts that they received.

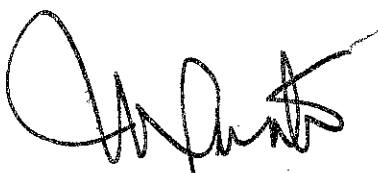
FOR THESE REASONS, the Petition is **DISMISSED**. The Commission on Audit Decision No. 2015-108 dated April 6, 2015 is **AFFIRMED**. The National Power Corporation Board of Directors, as approving and certifying officers, are solidarily liable to refund the disallowed amounts; while the payees are individually liable to return the amounts that they received.

SO ORDERED.

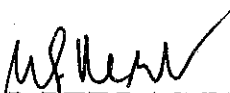


MARIO V. LOPEZ
Associate Justice

WE CONCUR:

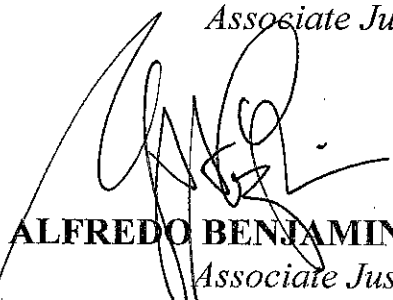


DIOSDADO M. PERALTA
Chief Justice



ESTELA M. PERLAS-BERNABE
Associate Justice

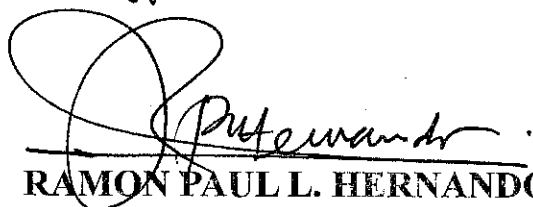
(On official business)
MARVIC M.V. F. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice




ALEXANDER G. GESMUNDO
Associate Justice



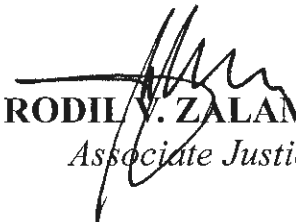
RAMON PAUL L. HERNANDO
Associate Justice




ROSMARI D. CARANDANG
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AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice

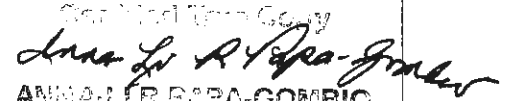

SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
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.


DIOSDADO M. PERALTA
Chief Justice

Noted True Copy

ANNA L. R. PARA-GOMBIC
 Deputy Clerk of Court in Charge
 Office of the Clerk of Court