



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
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EN BANC

SER JOHN PASTRANA, VIVIAN
VERIDIANO DACANAY, and
NORLYN TOMAS,

Petitioners,

G.R. No. 242082

Present:

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

- versus -

COMMISSION ON AUDIT,
Respondent.

X-----X

MARY JANE G. YSMAEL,
Petitioner,

G.R. No. 242083

- versus -

COMMISSION ON AUDIT,
Respondent.

Promulgated:

June 15, 2021

X-----X

DECISION

DELOS SANTOS, J.:

Before the Court are Petitions for *Certiorari*¹ under Rule 64 in relation to Rule 65 of the Rules of Court assailing the Decision² No. 2015-004 dated January 28, 2015 and the Resolution³ No. 2018-201 dated January 30, 2018 of the Commission on Audit (COA) and the Decision⁴ No. 2012-003 of COA-National Government Sector-Cluster B (NGS-Cluster B) dated February 9, 2012. The COA affirmed Notice of Disallowance No. 2011-001-151(10)⁵ (subject ND) dated January 6, 2011 disallowing the payment of Collective Negotiation Agreement (CNA) incentives to the officials and employees of the Land Registration Authority (LRA) for calendar year (CY) 2009.

The Facts

On December 11, 2008, the LRA, represented by former Administrator Benedicto B. Ulep (Administrator Ulep), and Gabay ng LRA Inc., represented by its President Ser John C. Pastrana (petitioner Pastrana), entered into a CNA providing for, among others, the grant of incentives to all officers and employees “in recognition of the joint efforts of labor and management to achieve all planned targets, programs, and services approved in the budget of the [agency] at a lesser cost.” Under the CNA, the incentive shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments.⁶

On February 6, 2009, Administrator Ulep issued Administrative Order (AO) No. 2009-16⁷ directing the Employees – Management Consultative Committee to review the LRA’s financial records and operations report at the end of the fiscal year and arrive at a consensus on the following matters:

- a) the guidelines/criteria to be followed in the grant of the CNA incentive;
- b) the total amount of unencumbered savings at the end of the year which were realized out of cost-cutting measures identified in the CNAs and its supplement and which were the results of the joint efforts of labor and management;
- c) the apportionment of such savings; and

¹ *Rollo* (G.R. No. 242082), pp. 3-22; *rollo* (G.R. No. 242083), pp. 3-26.

² *Rollo* (G.R. No. 242082), pp. 43-45.

³ *Id.* at 46-55.

⁴ *Id.* at 34-42.

⁵ *Id.* at 23-33.

⁶ *Id.* at 5-6, 72.

⁷ *Id.* at 99.

- d) the individual amount of the CNA incentive to be granted to the employee concerned based on the established guidelines/criteria.

Designated as employees' representatives to the consultative committee were petitioner Pastrana, Vivian Dacanay (petitioner Dacanay), Norlyn Tomas⁸ (petitioner Tomas), and Cheryl Morales. Maryjane Ysmael (petitioner Ysmael), Chief Administrative Officer, General Services Division, was also named as the employees' representative to the consultative committee.⁹

On April 7, 2010, Administrator Ulep issued a Memorandum¹⁰ authorizing the payment of the CNA incentive in the amount of ₱15,000.00 to each employee. On the same date, he issued a Circular¹¹ setting forth the guidelines in the payment of the CNA incentive to all rank-and-file employees of the LRA and the LRA-Comprehensive Agrarian Reform Program (CARP).

On January 6, 2011, Audit Team Leader Lolita A. Marquez (ATL Marquez) and Supervising Auditor Herminio B. Cueto (Supervising Auditor Cueto) issued the subject ND disapproving in audit the payment of the CNA incentive to the LRA employees for CY 2009 in the total amount of ₱30,180,000.00.¹²

The subject ND was anchored on the following grounds:

1. The CNA incentive was granted out of the regular fund release intended to cover additional MOOE and capital outlay requirements for CY 2009;
2. The payment of the CNA incentive is an irregular transaction as it was paid without adhering to established guidelines, existing rules and regulations, and the provisions of the CNA; and
3. The amount of CNA incentive was predetermined and fixed in the amount of ₱15,000.00, contrary to subsection 5.6.1. of the Department of Budget and Management (DBM) Budget Circular No. 2006-1¹³ dated February 1, 2006.¹⁴

⁸ Also referred to as Norilyn Tomas in some parts of the *rollo*.

⁹ *Rollo* (G.R. No. 242082), p. 99.

¹⁰ *Rollo* (G.R. No. 242083), p. 107.

¹¹ *Id.* at 108-110.

¹² *Rollo* (G.R. No. 242082), p. 23.

¹³ Grant of Collective Negotiation Agreement (CNA) Incentive.

¹⁴ *Rollo* (G.R. No. 242082), pp. 27-28.

ATL Marquez and Supervising Auditor Cueto noted that the grant of the CNA incentive was not in accordance with the law, established rules and regulations, procedural guidelines, and issuances, to wit:

1. Special provisions in the appropriations of the LRA for CY 2010;
2. DBM Circular No. 2006-1;
3. Administrative Order (AO) No. 135, Series of 2005;¹⁵
4. Public Sector Labor-Management Council (PSLMC) Resolution No. 04, Series of 2002;¹⁶
5. 2008-2011 LRA-CNAs; and
6. Government Accounting and Auditing Manual (GAAM).¹⁷

Petitioners Pastrana, Dacanay, Tomas, and Ysmael were held liable under the subject ND for recommending the approval of the guidelines in the payment of the incentive. Ysmael was also held liable for certifying in the Obligation Request¹⁸ that the charges to the appropriation/allotment were necessary, lawful and made under her direct supervision and that the supporting documents were valid, proper, and legal.¹⁹

On July 14, 2011, Gabay ng LRA Inc. filed an appeal²⁰ from the subject ND.

The Ruling of the COA-NGS-Cluster B

On February 9, 2012, COA-NGS-Cluster B rendered Decision²¹ No. 2012-003 with the dispositive portion as follows:

WHEREFORE, premises considered, the instant appeal is hereby DENIED for lack of merit and the ND No. 2011-001-151(10) dated January 6, 2011 is hereby affirmed.²²

The COA-NGS-Cluster B opined that the charging of the CNA incentive against the allotment for MOOE under the Special Account in the General Fund or Fund 151 of the LRA is illegal. It underscored that Fund 151 is limited by the Special Budget submitted by the LRA to the DBM in

¹⁵ Authorizing the Grant of Collective Negotiation Agreement (CNA) Incentive to Employees in Government Agencies; signed on December 27, 2005.

¹⁶ Grant of Collective Negotiation Agreement (CNA) Incentive for National Government Agencies, State Universities and Colleges and Local Government Units; approved on November 14, 2002.

¹⁷ *Rollo* (G.R. No. 242082), p. 24.

¹⁸ *Rollo* (G.R. No. 242083), p. 104.

¹⁹ *Rollo* (G.R. No. 242082), pp. 30-31.

²⁰ *Id.* at 78-83.

²¹ *Id.* at 34-42.

²² *Id.* at 42.

view of Section 35, Chapter 5, Book VI of Executive Order (EO) No. 292 otherwise known as Administrative Code of 1987. However, in this case, the CNA incentive was not among the proposed expenditures requested by the LRA and released by the DBM. The COA-NGS-Cluster B stated that Fund 151 was established for specific purposes other than the payment of the CNA incentive.²³

The COA-NGS-Cluster B further held that the lack of computation showing the amount of the savings generated as provided under DBM Circular No. 2006-1 indicates that the CNA incentive in the amount of ₱15,000.00 was predetermined.²⁴

The Ruling of COA Proper

Gabay ng LRA Inc. filed a petition for review²⁵ before the COA beyond the time remaining of the six-month prescriptive period for the filing of an appeal.

On January 28, 2015, the COA rendered Decision²⁶ No. 2015-004, with the dispositive portion as follows:

WHEREFORE, premises considered, the instant petition for review is hereby **DISMISSED** for having been filed out of time. Accordingly, National Government Sector-Cluster B Decision No. 2012-003 dated February 9, 2012, which affirmed Notice of Disallowance No. 2011-001-151(10) dated January 6, 2011, on the payment of collective negotiation agreement incentives to officials and employees of the Land Registration Authority amounting to P30,180,000.00, is final and executory.²⁷

Gabay ng LRA Inc. filed a Motion for Reconsideration²⁸ of the Decision dated January 28, 2015 of the COA Proper which was partly granted in a Resolution²⁹ dated January 30, 2018, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motion for Reconsideration of Gabay ng Land Registration Authority (LRA), Inc., represented by its President, Mr. Ser John Pastrana, in behalf of the members of the employees' union, is hereby **PARTLY GRANTED**.

²³ Id. at 38-39.

²⁴ Id. at 40-42.

²⁵ Id. at 84-98. LRA filed a motion for reconsideration, herein treated as a petition for review before the COA.

²⁶ Id. at 43-45.

²⁷ Id. at 44.

²⁸ Id. at 56-66.

²⁹ Id. at 46-55.

Accordingly, Commission on Audit Decision No. 2015-004 dated January 28, 2015 and Notice of Disallowance No. 2011-001-151(10) dated January 6, 2011, on the payment of Collective Negotiation Agreement Incentives to LRA officials and employees, in the total amount of P30,180,000.00, are **AFFIRMED with MODIFICATION**. The payees who received the disallowed incentives in good faith need not refund the same. However, the recommending, certifying, and approving officers named liable for the disallowance shall remain liable therefor.

The Prosecution and Litigation Office, Legal Services Sector, this Commission, is hereby directed to forward the case to the Office of the Ombudsman for investigation and filing of appropriate charges, if warranted, against the persons liable for the transaction.³⁰

The COA Proper granted the request of Gabay ng LRA Inc. to relax the application of procedural rules to serve substantial justice. It reiterated its ruling that the grant of CNA incentive to LRA employees violated existing laws and regulations. It ratiocinated that although PSLMC Resolution No. 4 allows the grant of CNA incentive to government personnel, such grant should comply with the requirement on funding source under DBM Circular No. 2006-1, such that the CNA incentive must be sourced solely from savings from released MOOE allotments for the year under review.³¹

As to the settlement of the disallowed amount, the COA Proper sustained its decision to hold the approving, certifying, and recommending officers liable for the return of the CNA incentive as stated in the subject ND. However, the COA Proper held that the employees who were mere passive recipients are not liable to refund the CNA incentive for having received the same in good faith.³²

On October 8, 2018, Pastrana, Dacanay, Tomas, and Ysmael filed their petitions assailing the subject ND, the Decision dated January 28, 2015 and the Resolution dated January 30, 2018 of the COA, and the Decision dated February 9, 2012 of the COA-NGS-Cluster B.

The Arguments of the Parties

In their petition, Pastrana, Dacanay, and Tomas opt not to discuss the validity of the subject ND, admitting that they lack knowledge on the formulation of budget for the CNA incentive.³³ However, they insist that they should not be held liable for the return of the disallowed amount by

³⁰ Id. at 53-54.

³¹ Id. at 49-51.

³² Id. at 52-53.

³³ Id. at 8.

reason of their good faith.³⁴ They posit that as mere employees and/or representatives of employees to the CNA, they are neither in possession nor in custody of the government funds so as to authorize them to grant the release of certain allowances and benefits. They also allege that their participation in the grant of the CNA incentive is limited to ensuring that the distribution of the incentive will be just, fair, and in accordance with the CNA.³⁵

Meanwhile, Ysmael argues that as Chief of the General Services Division, she has no personal knowledge of the existence of funds for any given obligation.³⁶ She asserts that her authority is limited to determining whether or not the documents supporting the grant of the CNA incentive, *i.e.*, CNA, Memorandum dated April 7, 2010, LRA Circular No. 05-2010, and the disbursement vouchers, are complete.³⁷

The COA, through the Office of the Solicitor General, for its part, counters that as employees' representatives to the CNA, petitioners Pastrana, Dacanay, and Tomas are presumed to have adequate knowledge of existing laws, rules and regulations that they are tasked to implement. They could not have made an intelligible recommendation if they were ignorant of the pertinent laws and the COA rules on the matter. The COA advances that Pastrana, Dacanay, and Tomas participated in the illegal disbursement of fund by recommending the favorable approval of the guidelines for the payment of the illegal CNA incentive.³⁸

The COA also asseverates that petitioner Ysmael clearly participated in the illegal disbursement by the mere act of affixing her signature to the Obligation Request which is an indispensable requirement for the issuance or release of the CNA incentive. It contends that Ysmael failed to check the attached or accompanying documents as to whether no existing law or rule was violated. It maintains that Ysmael should have exercised extra caution because her signature in the Obligation Request paved the way for the disbursement of public funds.³⁹

On September 3, 2019, the Court ordered the consolidation of the instant petitions.⁴⁰

The Issue

³⁴ *Id.* at 9-10.

³⁵ *Id.* at 10-12.

³⁶ *Rollo* (G.R. No. 242083), p. 11.

³⁷ *Id.* at 13.

³⁸ *Rollo* (G.R. No. 242082), p. 231.

³⁹ *Rollo* (G.R. No. 242083), pp. 285-286.

⁴⁰ *Rollo* (G.R. No. 242082), unpaginated.

The consolidated petitions present the sole issue of whether or not the COA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in finding petitioners liable for the refund of the disallowed CNA incentive.

The Court's Ruling

The petitions are bereft of merit.

Both petitions do not task the Court to scrutinize the propriety of the issuance of the ND subject of the assailed COA Decision and Resolution but rather to determine petitioners' liability to refund the disallowed amounts disbursed. In fact, Pastrana, Dacanay, and Tomas expressly state in their petition that they did not tackle the "validity of the Notice of Disallowance No. 2011-001-151(10) as they do not possess personal and technical knowledge on the process on how the budget for the CNA Incentives was created."⁴¹ Similarly, Ysmael centers her arguments on the nature of her functions to support the claim that she had no material participation in the alleged illegal expenditure. Nevertheless, the Court is constrained to discuss the propriety of the disallowance pursuant to Section 103 of Presidential Decree No. 1445⁴² which 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.

Based on the above provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present: (1) there must be an expenditure of government funds or use of government property; (2) the expenditure is in violation of law or regulation; and (3) the official is found directly responsible therefor.⁴³

Related to this is Section 19 of the Manual of Certificate of Settlement and Balances, *viz.*:

SECTION 19. DETERMINATION OF PERSONS LIABLE FOR AUDIT DISALLOWANCES OR CHARGES

19.1. The liability of public officers and other persons for audit disallowances shall be determined on the basis of: (a) the nature of the disallowance; (b) the duties, responsibilities or obligations of the

⁴¹ Id. at 8.

⁴² Government Auditing Code of the Philippines; approved on June 11, 1978.

⁴³ *Sambo v. Commission on Audit*, 811 Phil. 344, 354 (2017).

officers/persons concerned; (c) the extent of their participation or involvement in the disallowed transaction; and (d) the amount of losses or damages suffered by the government thereby. (Underscoring supplied)

It is clear from the foregoing that the determination of the extent of personal liability of public officers in disallowance cases essentially calls for the identification of the reason behind the disallowance.⁴⁴ A person can be held liable under a notice of disallowance when it is shown that he or she is directly responsible for the transaction characterized as illegal, irregular, unnecessary, excessive, extravagant, or unconscionable.⁴⁵ Thus, the validity of the disallowance must necessarily have to be determined first before the extent of the public officer's personal liability can be ascertained. If the Court finds that the COA committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the notice of disallowance and sets aside said notice, there is no longer any civil liability/obligation to return to speak of.

The payment of the CNA incentive was correctly disallowed in audit.

PSLMC Resolution No. 4, AO No. 135, and Budget Circular No. 2006-1 lay down the legal groundwork for the grant of CNA incentives to the officials and employees of government agencies.

Section 1 of PSLMC Resolution No. 4 explicitly states that the CNA incentive is intended to recognize the joint efforts of labor and management to achieve all planned targets, programs and services approved in the budget of the agency at a lesser cost. However, it mandates that only savings generated after the signing of the CNA may be used for the CNA incentive. For greater clarity in the funding source, the term "savings" refers to "such balances of the agency's released allotment for the year, free from any obligation or encumbrance and which are no longer intended for specific purpose/s." It represents the available funds:

- a. after completion of the work/activity for which the appropriation is authorized;
- b. arising from unpaid compensation and related costs pertaining to vacant positions; or
- c. realized from the implementation of the provisions of the CNA which resulted in improved systems and efficiencies, thus, enabled the agency to meet and deliver the required or planned

⁴⁴ See Separate Concurring Opinion of Associate Justice Marvic Mario Victor F. Leonen in *Madera v. Commission on Audit*, G.R. No. 244128, September 8, 2020.

⁴⁵ *Catu-Lopez v. Commission on Audit*, G.R. No. 217997, November 12, 2019.

targets, programs and services approved in the annual budget at a lesser cost.⁴⁶

In AO No. 135, former President Gloria Macapagal-Arroyo confirmed the grant of the CNA incentive to rank-and-file employees of national government agencies (NGAs), local government units (LGUs), state universities and colleges (SUCs), government-owned or controlled corporations (GOCCs), and government financial institutions (GFIs). Under Section 4 thereof, the CNA incentive shall be sourced only from the savings generated during the life of the CNA.

To provide comprehensive policy and procedural guidelines and impose limitations on the grant of the CNA incentive, the DBM issued Budget Circular No. 2006-1 which prescribes:

5.0. Policy Guidelines

x x x x

5.6. The amount/rate of the individual CNA Incentive:

5.6.1. **Shall not be pre-determined in the CNAs or in the supplements** thereto since it is **dependent on savings generated from cost-cutting measures and systems improvement**, and also from improvement of productivity and income in GOCCs and GFIs;

x x x x

5.7. The CNA Incentive for the year shall be paid as a one-time benefit after the end of the year, **provided that the planned programs/activities/projects have been implemented and completed in accordance with the performance targets for the year.**

6.0. Procedural Guidelines

6.1. An Employees' Organization – Management Consultative Committee or a similar body composed of designated representatives from the management and the accredited employees' organization shall review the agency's financial records and report of operations at the end of the fiscal year, and shall arrive at a consensus on the following items:

6.1.1. The guidelines/criteria to be followed in the grant of the CNA Incentive;

6.1.2. **The total amount of unencumbered savings at the end of the year which were realized out of**

⁴⁶ Section 3 of PSLMC Resolution No. 4, S. 2002.

cost-cutting measures identified in the CNAs and supplements thereto, and which were the results of the joint efforts of labor and management;

6.1.3. The apportioned amounts of such savings shall cover the following items:

“Fifty percent (50%) for CNA Incentive

Thirty percent (30%) for improvement of working conditions and other programs and/or to be added as part of the CNA Incentive, as may be agreed upon in the CNA

Twenty percent (20%) to be reverted to the General Fund for the national government agencies or to the General Fund of the constitutional commissions, state universities and colleges, and local government units concerned, as the case may be;” or for GOCCs and GFIs, the twenty percent (20%) is to be retained and “to be used for the operations of the agency to include among others, purchase of equipment critical to the operations and productivity improvement programs”

6.1.4. The individual amount of the CNA Incentive to be granted to the employees concerned based on the established guidelines/criteria.

Such agreements shall be incorporated **in a written resolution to be signed by the representatives of both parties and noted by the agency head.** This resolution shall serve as **basis for accounting and auditing purposes.**

x x x x

7.0. Funding Source

7.1. The CNA Incentive **shall be sourced solely from savings from released Maintenance and Other Operating Expenses (MOOE) allotments** for the year under review, still valid for obligation during the year of payment of the CNA, subject to the following conditions:

7.1.1. Such savings were generated **out of the cost-cutting measures** identified in the CNAs and supplements thereto;

7.1.2. Such savings shall be reckoned from the date of signing of the CNA and supplements thereto;

7.1.3. Such savings shall be net of the priorities in the use thereof such as augmentation of amounts set aside for compensation, bonus, retirement gratuity,



terminal leave benefits, old-age pension of veterans and other personnel benefits authorized by law and in special and general provisions of the annual General Appropriations Act, as well as other MOOE items found to be deficient. Augmentation shall be limited to the actual amount of deficiencies incurred; and

x x x x

- 7.4. NGAs shall submit to DBM a report on the utilization of savings for the payment of the CNA Incentive. (Emphases supplied)

The rule is that to justify the grant of the CNA incentive, it is not enough that savings are attained by the concerned NGA, LGU, SUC, GOCC, or GFI, as the case may be. It must be clearly demonstrated that the savings from which the payment of the CNA incentive was sourced are: first, derived from the released MOOE allotments; and second, generated out of the cost-cutting measures specified in the CNA and its supplements. Further, since it is exclusively sourced from the savings generated from cost-cutting measures and systems improvement, the amount/rate of the CNA incentive must not have been previously agreed upon in the CNA or fixed in its supplements.

In the present case, We find that the release of the CNA incentives was not in accordance with the foregoing established policies and guidelines.

Gabay ng LRA Inc. maintained that the subject CNA incentive was sourced from the savings generated out of the regular fund releases for MOOE allotment for the year 2009. It noted that from its 2009 MOOE allotment of ₱226,299,000.00, the LRA deducted its total obligation of ₱168,744,911.88. The LRA treated the difference of ₱57,524,088.12 as savings “due to the joint agency’s and employees’ strict implementation of austerity, cost-cutting measures and systems improvement,” from which the CNA incentive in the total amount of ₱30,180,000.00 was applied.⁴⁷

The records, however, are bereft of evidence showing that the LRA’s purported savings in the amount of ₱57,524,088.12 stemmed from the cost-cutting and systems improvement measures undertaken by the agency and its personnel. There is glaring absence of proof that the savings were realized on account of the cost-saving initiatives and strategies of the LRA and its employees, as stipulated in the CNA, such as the reduction of bulk office supply purchase, utilization of office vehicles for official business, fuel and energy conservation, and the reduction of energy consumption.⁴⁸ It is not even clear that the balance of ₱57,524,088.12 actually represents the LRA’s

⁴⁷ *Rollo* (G.R. No. 242083), p. 84.

⁴⁸ *Rollo* (G.R. No. 242082), p. 73.

unencumbered savings after the satisfaction of all of its obligations at the end of the year because of the lack of detailed computation and proper documentation to substantiate this claim. The LRA could have satisfactorily convinced the COA that the payment of the CNA incentive was solely attributed to the agency's cost-cutting efforts had it endeavored to present a comparative statement of DBM-approved operating expenses and the agency's actual operating expenses for 2009.⁴⁹ Unfortunately, all the LRA offered was a sweeping and unfounded declaration that "the amount of ₱57,524,088.12 representing the unobligated balance of allotment of LRA is its savings for FY 2009"⁵⁰ and nothing more.

Equally telling, the grant of the CNA incentive requires that the planned programs, activities or projects of the agency are implemented and completed in accordance with the performance targets for the year.⁵¹ It is also essential that the representatives from the management and the employees' organization come to an agreement establishing the following matters: (1) the guidelines/criteria for the grant of the CNA incentive; (2) the total amount of unencumbered savings at the end of the year; and (3) the apportionment of savings. The consensus shall be integrated in a written resolution signed by the representatives of the management and the employees' organization and noted by the agency head, which shall serve as basis for accounting and auditing purposes.⁵² None of these requirements were shown to have been complied with by the management and the employees' organization. It was not shown that the target programs, activities or projects of the LRA had been implemented and accomplished and that the CNA incentive of ₱15,000.00 per employee was pegged in view of the employees' contribution to LRA's accomplishment. Further, the guidelines issued in the payment of the CNA incentive were embodied in the LRA Circular dated April 7, 2010 which was solely signed by Administrator Ulep.

The 2009 General Appropriations Act (GAA)⁵³ provided for special provisions on the LRA that state:

Special Provisions

1. Use of Income. In addition to the amounts appropriated herein, Two Hundred Twenty Six Million Two Hundred Ninety Nine Thousand Pesos (P226,299,000) for MOOE and Forty Two Million Pesos

⁴⁹ In *Montejo v. Commission on Audit* (G.R. No. 232272, July 24, 2018), the Court agreed with the pronouncement of the COA *En Banc* that the Department of Science and Technology (DOST) could have easily proven that the payment of the CNA incentive was solely sourced from the savings generated from the cost-cutting measures conducted by showing a comparative statement of DBM-approved level of operating expenses and actual operating expenses. The Court sustained the disallowance of the grant/release of the CNA Incentives to the officials and employees of the DOST for failure to comply with the directive of DBM Budget Circular No. 2006-1.

⁵⁰ *Rollo* (G.R. No. 242083), p. 85.

⁵¹ Item 5.7 of DBM Circular No. 2006-1.

⁵² Item 6.1 of DBM Circular No. 2006-1.

⁵³ Republic Act No. 9524; approved on March 12, 2009.

(P42,000,000) for Capital Outlays shall be sourced from the twenty (20%) percent of the land registration fees/collections of the Register of Deeds and Land Registration Authority pursuant to P.D. No. 1529, subject to the submission of a Special Budget pursuant to Section 35, Chapter 5, Book VI of E.O. No. 292.

(CONDITIONAL IMPLEMENTATION – President’s Veto Message, March 12, 2009, page 1259, R.A. No. 9524)⁵⁴ (Underscoring supplied)

The first LRA special provision expressly provides that its implementation is subject to the following conditions: (1) the submission of a special budget pursuant to Section 35,⁵⁵ Chapter 5, Book VI of EO 292, otherwise known as the Administrative Code of 1987; and (2) the issuance of the guidelines by the DBM in accordance with the President’s Veto Message.⁵⁶

A Special Budget Request is a document executed by the head of the department or agency that is necessary when requesting for allotment of funds from the DBM.⁵⁷ It is required for the issuance of the Special

⁵⁴ GAA 2009 Archives, <<https://www.dbm.gov.ph/index.php/dbm-publications/general-appropriations-act-gaa/167-publications/general-appropriations-act-gaa/496-general-appropriations-act-gaa-archives>> last accessed July 27, 2021.

⁵⁵ **SECTION 35. Special Budgets for Lump-Sum Appropriations.**—Expenditures from lump-sum appropriations authorized for any purpose or for any department, office or agency in any annual General Appropriations Act or other Act and from any fund of the National Government, shall be made in accordance with a special budget to be approved by the President, which shall include but shall not be limited to the number of each kind of position, the designations, and the annual salary proposed for which an appropriation is intended. This provision shall be applicable to all revolving funds, receipts which are automatically made available for expenditure for certain specific purposes, aids and donations for carrying out certain activities, or deposits made to cover to cost of special services to be rendered to private parties. Unless otherwise expressly provided by law, when any Board, head of department, chief of bureau or office, or any other official, is authorized to appropriate, allot, distribute or spend any lump-sum appropriation or special, bond, trust, and other funds, such authority shall be subject to the provisions of this section.

In case of any lump-sum appropriation for salaries and wages of temporary and emergency laborers and employees, including contractual personnel, provided in any General Appropriation Act or other Acts, the expenditure of such appropriation shall be limited to the employment of persons paid by the month, by the day, or by the hour.

⁵⁶ President’s Veto Message, March 12, 2009, page 1259, R.A. No. 9524:

III. ITEMS FOR CONDITIONAL IMPLEMENTATION

I likewise observe several special and general provisions that should be covered by appropriate guidelines. While Congress may have a laudable intentions in espousing these provisions, it is nonetheless imperative to subject their implementation to certain conditions for consistency with existing policies. Accordingly, I hereby declare that the execution of the following provisions shall be subject to the issuance of guidelines by the appropriate agency of the Executive Department pursuant to Sections 1 and 17, Article VII of the 1987 Constitution.

x x x x

E. USE OF INCOME

x x x x

2. DOJ-LAND REGISTRATION AUTHORITY (LRA), Special Provision No. 1, “Use of Income”, page 513.

The increase in the amounts provided under this special provision effectively allows the LRA to use income in excess of the amounts appropriated in its budget. Said increase should be subject to additional programming. Thus, the implementation of this special provision is subject to guidelines to be issued by the DBM. <<https://www.dbm.gov.ph/wp-content/uploads/GAA/GAA2009/Pveto/pveto.pdf>> last accessed July 27, 2021

⁵⁷ See Concurring Opinion of Associate Justice Marvic Mario Victor F. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 655-705 (2013).

Allotment Release Order (SARO),⁵⁸ a specific authority issued to one or more identified agencies to incur obligations not exceeding a given amount during a specified period **for the purpose indicated.**⁵⁹ The LRA claims that the CNA incentive was granted and sourced out of the savings in appropriations for MOOE released under SARO-BMB-E-09-0030829 dated December 29, 2009 and paid out of the cash allocations under NCA-BMB-E-10-0006824 dated May 4, 2010.⁶⁰ The audit team leader clearly stated that SARO-BMB-E-09-0030829 and NCA-BMB-E-10-0006824 are intended to cover additional MOOE and capital outlays requirements, respectively, for 2009.⁶¹ Nowhere is it provided that the SARO shall cover the payment of the CNA incentive of the LRA employees. Absent an express grant by the DBM, the CNA incentive may not be validly charged against SARO-BMB-E-09-0030829.

In the same vein, there was no showing that the implementation of the LRA special provision was subject to existing guidelines issued by the DBM. It appears that the LRA automatically earmarked the amount of ₱226,299,000.00 from the twenty (20%) percent of the land registration fees/collections and treated it as MOOE allotment for 2009. The LRA did not strive to demonstrate that DBM guidelines were faithfully observed prior to the implementation of this particular budget provision. Accordingly, the Court is hard-pressed to ascribe grave abuse of discretion on the part of the COA when it sustained the subject notice of disallowance. The release of the CNA incentive is inconsistent with the existing policies and rules and regulations and does not correspond to efficient utilization of public funds.

Petitioners are liable for the return of the disallowed amount.

In *Madera v. Commission on Audit*,⁶² (*Madera*) the Court has definitively settled the rules on the refund of amounts disallowed by the COA for a just and equitable outcome among persons liable for disallowances. If the Court does not sustain the notice of disallowance, the persons held liable therein shall no longer be obligated to return the disallowed amount. Conversely, if the Court upholds the notice of disallowance, the persons held liable shall be required to return the disallowed amount and the following rules shall be observed:

1. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence

⁵⁸ Id. at 692.

⁵⁹ Glossary of Terms, <[https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2013/ Glossary.pdf](https://www.dbm.gov.ph/wp-content/uploads/BESF/BESF2013/Glossary.pdf)> last accessed July 27, 2021.

⁶⁰ *Rollo* (G.R. No. 242082), p. 28.

⁶¹ Id. at 35.

⁶² G.R. No. 244128, September 8, 2020.

- of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
2. 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 excludes amounts excused under the succeeding items.
 3. 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.
 4. 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.⁶³

In *National Transmission Corp. v. Commission on Audit*,⁶⁴ the Court explained:

Good faith is essentially a state of mind at a fixed point in time that purports “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.” It has been a valid defense of public officials against the return of disallowed benefits or allowances based on the principle that public officials are entitled to the presumption of good faith when discharging their official duties.⁶⁵

But the presumption is overturned when there is a clear showing of bad faith, malice, or gross negligence⁶⁶ pursuant to Section 38 (1) of the Administrative Code of 1987, *viz.*:

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.

Settled is the rule that the patent disregard of several case laws and COA directives amounts to gross negligence.⁶⁷ In *Casal v. Commission on Audit*,⁶⁸ the Court found the approving officials liable for the refund of the incentive award due to their complete disregard of the issuances of the

⁶³ Id.

⁶⁴ G.R. No. 244193, November 10, 2020.

⁶⁵ Id.

⁶⁶ See *Torreta v. Commission on Audit*, G.R. No. 242925, November 10, 2020.

⁶⁷ *Tetangco, Jr. v. Commission on Audit*, 810 Phil. 459, 467 (2017).

⁶⁸ 538 Phil. 634 (2006).

President and the directives of the COA. The officials' failure to observe the issuances amounted to gross negligence, which is inconsistent with the presumption of good faith.⁶⁹

Here, petitioners' failure to show compliance with the unequivocal requirements of PSLMC Resolution No. 4, AO No. 135, and Budget Circular No. 2006-1, and the LRA special provision under the 2009 GAA constitutes gross negligence, which is defined as:

[N]egligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.⁷⁰

Petitioners Pastrana, Dacanay, and Tomas were the duly designated representatives in the Employees' Organization-Management Consultative Committee as provided in Administrative Order No. 2009-16.⁷¹ They took part in the review of the LRA's financial records and operations at the end of the fiscal year. They were expected to reach an agreement with the LRA management outlining the guidelines for the grant of the CNA incentive and determining the total amount of unencumbered savings, the apportionment of such savings, and the individual amount of the CNA incentive to be granted to the employees. They knew fully well that the agreement must be contained in a written resolution and signed by them and the management's representatives. But there was no such consensus alleged and presented in this case. The guidelines for the grant of the CNA incentive and the authorization for the release of the individual amount thereof were reflected in separate documents signed by Administrator Ulep alone. To Our mind, the lack of consensus among the members of the Employees' Organization-Management Consultative Committee even lends support to the COA's finding that the amount of the CNA incentive pegged at ₱15,000.00 per employee was predetermined and thus violative of Item 5.6.1. of the DBM Circular No. 2006-1. As aptly pointed out by the COA, the deliberate disregard of the existing policy and procedural guidelines negates their claim of good faith.

About petitioner Ysmael's claim, the Court cannot subscribe to her assertion that she cannot be held liable for the questioned CNA incentive because she merely affixed her signature on the obligation request form. She

⁶⁹ *Technical Education and Skills Development Authority v. Commission on Audit*, 729 Phil. 60, 76 (2014).

⁷⁰ *De Guzman v. Commission on Audit*, G.R. No. 245274, October 13, 2020.

⁷¹ *Rollo* (G.R. No. 242082), p. 99.

cannot deny liability by claiming that she did not place check signs on the boxes appearing in the obligation request certifying: (1) that the charges to appropriation/allotment are necessary, lawful and made under her direct supervision; and (2) that the supporting documents are valid, proper, and legal.⁷² On the contrary, the presence of petitioner Ysmael's signature in the obligation request is an indication that she is fully cognizant of the availability of the allotment and the details of the obligation. Petitioner Ysmael's act of affixing her signature is a recognition that the supporting documents attached in the obligation request are complete and satisfactory so as to warrant the use of public funds.

It is lamentable that petitioner Ysmael is of the mistaken belief that her role is confined to signing obligation request forms which have been previously reviewed and approved by the Budget and Finance Division.⁷³ To accept such contention is to acknowledge that the Chief Administrative Officer of the General Services Division, a senior officer of the agency, routinely signs the obligation request form presented to her without fully reading it nor understanding that her signature bears crucial significance to the completion of the disbursement. Had petitioner Ysmael carefully looked into the attached documents, she would have noticed that they did not sufficiently comply with the requirements of relevant law, policies, guidelines and procedure on the payment of the CNA incentive. Ultimately, she would not have signed the obligation request form and the disbursement of the incentive payment would not have been made.

Rule 2b of the *Madera* Rules on Return states that the approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43⁷⁴ of the Administrative Code of 1987, solidarily liable to return **only the net disallowed amount**, which excludes the amounts excused under Rules 2c and 2d.⁷⁵ Senior Associate Justice Estela M. Perlas-Bernabe defines the term "net disallowed amount" as "the total disallowed amount minus the amounts excused to be returned by the payees."⁷⁶

⁷² *Rollo* (G.R. No. 242083), p. 13.

⁷³ *Id.* at 10.

⁷⁴ SECTION 43. *Liability for Illegal Expenditures.* — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be **jointly and severally liable** to the Government for the full amount so paid or received.

Any official or employee of the Government knowingly incurring any obligation, or authorizing any expenditure in violation of the provisions herein, or taking part therein, shall be dismissed from the service, after due notice and hearing by the duly authorized appointing official. If the appointing official is other than the President and should he fail to remove such official or employee, the President may exercise the power of removal.

⁷⁵ *Madera v. Commission on Audit*, supra note 62.

⁷⁶ See Separate Concurring Opinion of Senior Associate Justice Estela M. Perlas-Bernabe in *Madera v. Commission on Audit*, supra note 62.

Generally, Rule 2c of the *Madera* Rules obligates the recipients, whether approving or certifying officers or mere passive recipients, to return the disallowed amounts respectively received by them, subject to certain exceptions. However, considering that the payee-recipients in this case had already been absolved from liability by the COA in its Resolution⁷⁷ dated January 30, 2018 and that said Resolution had already attained finality, the amounts respectively received by said payee-recipients shall be discounted in the determination of the civil liability of petitioners as approving/certifying officers.

At this juncture, it is well to clarify that while petitioners were also payee-recipients of the CNA incentives, they were explicitly named as approving/certifying officers liable for the disallowance. In the recent case of *Securities and Exchange Commission v. Commission on Audit*,⁷⁸ the Court held that the approving/certifying officers in good faith are on the same plane as the payee-recipients absolved at the COA level. Hence, the absolution of civil liability extended by the COA to the payee-recipients equally applies to the approving/certifying officers **in good faith** who have also received the disallowed amounts. The Court concluded that the SEC officers would suffer undue prejudice should they be compelled to return the amounts paid under their names in the provident fund using SEC's retained earnings, a scenario contemplated in Rule 2d of the *Madera* Rules. Under Rule 2d, payee-recipients may be excused from returning the disallowed amount when undue prejudice will result from requiring them to return or where social justice or humanitarian considerations are attendant.

Unfortunately, in this case, petitioners – who had also received the CNA incentives – are **not in good faith** as they are grossly negligent in the performance of their duties as approving/certifying officers. Consequently, they cannot avail of the equitable exceptions under Rule 2d because equity should not be accorded to a party in bad faith or who is grossly negligent. On this score, petitioners should individually return the amounts they respectively received.

The Court made it plain in *Madera* that the net disallowed amount shall be solidarily shared by the approving/authorizing officers who were clearly shown to have acted in bad faith, with malice, or were grossly negligent, pursuant to Section 43 of the Administrative Code. Hence, as aptly pointed out by Senior Associate Justice Estela M. Perlas-Bernabe during the deliberations of this case, in addition to their individual liability for the amounts they respectively received, the liability of petitioners is also solidary for the entire net disallowed amount, which, in this situation, pertains to the “**total disallowed amount minus the amounts received by**

⁷⁷ *Rollo* (G.R. No. 242082), pp. 46-55.

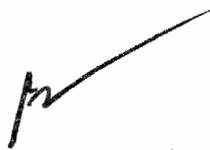
⁷⁸ G.R. No. 252198, April 27, 2021.

the payee-recipients who were absolved by the COA.” The COA may go against any of the approving/certifying officers named liable in the notice of disallowance, without prejudice to the latter's claim against the rest of the persons liable.⁷⁹

All told, the COA did not gravely abuse its discretion in disallowing the payment of the CNA incentive and ordering petitioners Pastrana, Dacanay, Tomas, and Ysmael liable for the return of the disallowed amount. We shall, however, modify the assailed COA Decision to clarify that petitioners, as erring approving/certifying officers, shall be liable for the net disallowed amount which would effectively be the amounts they received in their capacity as payee-recipients.

WHEREFORE, in view of the foregoing reasons, the Court **DISMISSES** the Petition for *Certiorari* of Ser John Pastrana, Vivian Veridiano Dacanay, Norlyn Tomas, and Mary Jane G. Ysmael and **AFFIRMS** with **MODIFICATION** the Commission on Audit Decision No. 2015-004 dated January 28, 2015. Petitioners are solidarily liable to return the net disallowed amount. This pronouncement is without prejudice to the filing of appropriate administrative or criminal charges against the officials responsible for the illegal disbursement.

SO ORDERED.



EDGARDO L. DELOS SANTOS
Associate Justice

⁷⁹ Section 16.3 of the 2009 Rules and Regulations on the Settlement of Accounts.; approved on September 15, 2009.

WE CONCUR:

A. G. Gesmundo
ALEXANDER G. GESMUNDO
 Chief Justice

Please see Concurring Opinion

I join SAs Bernabe's concurring opinion

M. P. Bernabe
ESTELA M. PERLAS-BERNABE
 Associate Justice

M. V. F. Leonen
MARVIC M.V.F. LEONEN
 Associate Justice

A. B. S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

R. P. L. Hernando
RAMON PAUL L. HERNANDO
 Associate Justice

R. D. Carandang
ROSMARI D. CARANDANG
 Associate Justice

A. C. Lazaro-Javier
AMY C. LAZARO-JAVIER
 Associate Justice

H. J. P. B. Inting
HENRI JEAN PAUL B. INTING
 Associate Justice

R. V. Zalameda
RODIL V. ZALAMEDA
 Associate Justice

M. V. Lopez
MARION V. LOPEZ
 Associate Justice

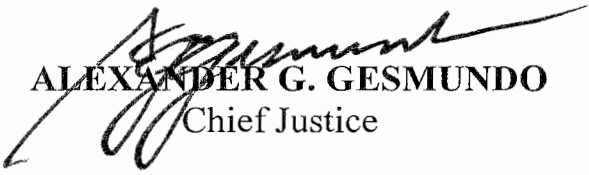
S. H. Gaerlan
SAMUEL H. GAERLAN
 Associate Justice

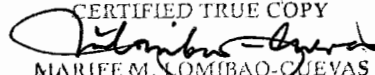
R. R. Rosario
RICARDO R. ROSARIO
 Associate Justice

J. Lopez
JHOSEP Y. LOPEZ
 Associate Justice

CERTIFICATION

I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court.


ALEXANDER G. GESMUNDO
Chief Justice

CERTIFIED TRUE COPY

MARIFE M. LOMIBAO-CUEVAS
Clerk of Court
Supreme Court