

Republic of the Philippines
Supreme Court
Manila

EN BANC

NOTICE

Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated **MARCH 10, 2020** which reads as follows:

“**G.R. No. 238369 (Department of Energy, et al. v. Commission on Audit)**”

X-----X

RESOLUTION

The Case

This Petition for *Certiorari* assails the Decision dated December 29, 2015 and Resolution dated December 28, 2017 of the Commission on Audit (COA) denying the appeal of the Department of Energy (DOE) against the disallowance of the Collective Negotiation Agreement (CNA) incentives paid to its officials and employees, and its subsequent motion for reconsideration, respectively.¹

Antecedents

On March 8, 2011, the DOE received sixteen (16) notices of suspension (NS) from its Supervising Auditor (SA) and Audit Team Leader (ATL) on the amount of ₱60,358,000.00 paid to its officials, employees, and other personnel as CNA incentives.² These notices also required the DOE to submit the bases for the payment.

By letter dated April 6, 2011, then Energy Secretary Jose Rene D. Almendras cited the following bases:

1. Resolution No. 04, s. 2002 of the Public Sector Labor-

¹ Rollo, p. 9.

² NS No.11-002-151-(10) to NS No.11-017-151-(10); Rollo, p. 5.

Management Council (PSLMC) granting CNA incentives;³

2. CNA between the DOE and its employees dated March 20, 2005;
3. Administrative Order No. 135,⁴ dated December 23, 2005, authorizing the grant of CNA incentives to government agency employees;
4. Department of Budget and Management (DBM) Budget Circular No. 2006-1 dated February 1, 2006;⁵
5. Memorandum dated December 17, 2010 on the subject CNA Incentives signed by DOE officials.

On December 26, 2011, the SA and ATL issued seventeen (17) Notices of Disallowance (NDs)⁶ on the amount for alleged lack of legal basis.⁷ They pointed out that this amount was sourced from a special fund which the DOE could not have used for payment of employees' benefits without the President's approval pursuant to Sec.8 of PD 910.⁸ Thus, the DOE was required to immediately refund the amount in question.⁹

On June 22, 2012, the DOE¹⁰ appealed to the COA Cluster Director, raising the following arguments:

1. Sec. 8, PD 910 had already been amended by Sec. 21 (2) RA 9

³ Entitled "GRANT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVES FOR NATIONAL GOVERNMENT AGENCIES, STATE UNIVERSITIES AND COLLEGES AND LOCAL GOVERNMENT UNITS".

⁴ Entitled "Authorizing the Grant of Collective Negotiation Agreement (CNA) Incentive to Employees in Government Agencies.

⁵ Entitled "Grant of Collective Negotiation Agreement (CNA) Incentive".

⁶ Nos. 11-051-151(10) to 11-061-151(10) and 11-065-151(10) to 11-069-151(10) dated December 22, 2011 and ND No. 11-025-151-11 dated November 17, 2011.

⁷ Including Job Order personnel, personnel detailed at the Office of the Secretary, personnel of several private corporations, and personnel of other government offices.

⁸ Section 8. Appropriations. The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President.

⁹ *Rollo*, p. 7.

¹⁰ Including Department Secretary Jose Rene D. Almendras; Officer-in-Charge of Accounting Division Mr. Arturo M. Cudia; Budget Division Chief Ms. Araceli M. Soluta; Director of Administrative Services of DOE, Ms. Angelina V. Manga; President of DOE Employees Association, Mr. Renante M. Sevilla; and its other officials and employees.

7638¹¹ which no longer requires the President’s approval before a government agency may use its savings from its Special Accounts in the General Fund (SAGF);¹²

2. The grant of CNA incentives was in accordance with the General Appropriations Act (GAA) of 2010;¹³
3. The CNA incentive was sourced from items in the Maintenance and Other Operating Expenses (MOOE) of programmed projects, and the Special Allotment Release Order (SARO) for these projects were issued by DBM itself upon compliance with applicable rules and regulations then in effect;¹⁴
4. The amount being disallowed was merely 0.27% of the DOE’s total revenues for 2010; and
5. Sec. 21 (2), RA 7638 also grants the DOE authority to disburse 20% of the outstanding balance of special funds for expenses necessary for the effective discharge of its powers and functions. This includes disbursement of savings for personnel benefits, such as CNA incentives.

On the other hand, the SA and ATL countered:

1. Sec. 21, RA 7638 amended Section 6, PD 1573, not Sec. 8, PD 910;¹⁵

¹¹ SECTION 21. Appropriations. — Such sums as may be necessary for the implementation of this Act shall be taken from the current fiscal year appropriations of the Office of Energy Affairs, the Office of Energy Affairs’ special fund created under Section 8 of Presidential Decree No. 910, and such amounts as the President of the Philippines may allocate from other resources in accordance with law: Provided, That the total amount shall not exceed Three hundred million pesos (P300,000,000). Thereafter, the amount needed for the operation and maintenance of the Department shall be included in the annual General Appropriations Act.

Subject to existing rules and regulations, the funds and monies collected or which otherwise come into the possession of the Department and its bureaus from fees, surcharges, fines, and penalties which the Department and its bureaus may impose and collect under this Act, as well as an amount to be determined at the beginning of every calendar year representing twenty percent (20%) of the outstanding balance of the funds and monies forming part of the special fund under Section 8 of Presidential Decree No. 910, shall be disbursed for expenses necessary for the effective discharge of the powers and functions of the Department under this Act.

¹² *Rollo*, pp. 33-34.

¹³ *Id.* at 34.

¹⁴ *Id.* at 36.

¹⁵ *Id.* at 37.

Section 6 (2), PD 1573	Section 21 (2), RA 7638
1. As to the concerned Agencies:	
DOE and its Bureaus, Philippine Atomic Energy Commission and Board of Energy	DOE and its Bureaus
2. As to percentage of allocation from the outstanding balance of the Special Fund under PD 910	
Ten percent (10%)	Twenty percent (20%)
3. As to purposes/expenses:	

2. Under PD 910, the special fund cannot be utilized for payment of personnel benefits and may only be used for purposes authorized by the law which created such special fund;¹⁶
3. CNA incentives may only be sourced from savings coming from general funds and refer only to balances of allotment released for the year which are no longer intended for any specific purpose;

COA Cluster Director Ruling

By Decision¹⁷ dated August 26, 2014, the COA Cluster Director denied the DOE’s appeal and affirmed the NDs.

COA Commission Proper Ruling

On DOE’s further appeal, the COA Proper rendered its Decision dated December 29, 2015 denying the appeal. On April 21, 2016, the DOE received a copy of the Decision. Twenty-seven (27) days later, on May 18, 2016, the DOE filed its motion for reconsideration which the COA denied under Resolution dated December 28, 2017. The DOE received a copy of the Resolution on March 23, 2018.¹⁸

Present Petition

Undaunted, the DOE now seeks affirmative relief from the Court via Rule 64 of the Rules of Court. But instead of filing its petition for *certiorari* within the remaining five (5)-day period, the DOE filed the same only on April 19, 2018 or twenty-two (22) days late.

In its Comment, the COA prays for the dismissal of the petition for having been filed out of time.¹⁹

Replying,²⁰ the DOE admits the late filing of its petition, but pleads for leniency.

<p>For:</p> <ol style="list-style-type: none"> a. Health, welfare and other similar benefits of their personnel; b. Acquisition, maintenance and repair of urgently needed equipments; and c. Effective discharge of their functions 	<p>For:</p> <ol style="list-style-type: none"> a. The effective discharge of the powers and functions of the Department
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¹⁶ *Id.* at 39.

¹⁷ Penned by Cecila B. Camon.

¹⁸ *Rollo*, p. 9.

¹⁹ *Id.* at 109-132.

²⁰ *Id.* at 140-157.

Ruling

Rule 64 of the Rules of Court provides:

Section 3. Time to file petition. — The petition shall be filed within thirty (30) days from notice of the judgment or final order or resolution sought to be reviewed. The **filing of a motion for new trial or reconsideration** of said judgment or final order or resolution, if allowed under the procedural rules of the Commission concerned, **shall interrupt the period herein fixed. If the motion is denied, the aggrieved party may file the petition within the remaining period, but which shall not be less than five (5) days in any event, reckoned from notice of denial. (n)**
(Emphases supplied)

Notably, the DOE received a copy of the Decision dated December 29, 2015 on April 21, 2016. It filed a Motion for Reconsideration on May 18, 2016, or twenty-seven (27) days from notice.

As it was, the COA denied the DOE's motion through Decision dated December 28, 2017. The DOE received copy of the Decision on March 23, 2018. Thus, it only had until March 28, 2018 to file the present petition. The DOE, however, filed the petition on April 19, 2018, twenty-two (22) days late.²¹ The DOE admits this procedural lapse, albeit it pleads leniency.

A judgment becomes final when the reglementary period to appeal lapses and no appeal is perfected within such period. No court can exercise appellate jurisdiction to review a case or modify a decision that has lapsed into finality and it becomes immutable and unalterable. It may no longer be modified in any respect, even by this Court.²²

The Court finds no compelling reason to afford the DOE a liberal application of the rules, especially because this issue is not by any means novel. Settled is the rule that a Rule 64 petition has a unique period for filing petitions for *certiorari* which must strictly be followed, absent a showing of an exceptional circumstance, as in this case.²³

At any rate, the DOE clearly failed to establish that the disbursement of ₱60,358,000.00 CNA is a **necessary expense** for the effective discharge of the powers and functions of the Department. Granted that this monetary benefit is an incentive for work productivity, it is by no means *necessary* for the effective discharge of the Department's powers and functions.

In 1976, PD 910 created the Energy Development Board, providing:

²¹ *Id.* at 117.

²² *Torres v. Aruego*, 818 Phil. 524, 538 (2017), citing *PCI Leasing and Finance, Inc. v. Milan*, 631 Phil. 257, (2010).

²³ *Pates v. COMELEC*, 609 Phil. 260, 267 (2009) [Per Brion, J., En Banc].

Section 8. Appropriations. The sum of Five Million Pesos out of any available funds from the National Treasury is hereby appropriated and authorized to be released for the organization of the Board and its initial operations. Henceforth, funds sufficient to fully carry out the functions and objectives of the Board shall be appropriated every fiscal year in the General Appropriations Act.

All fees, revenues and receipts of the Board from any and all sources including receipts from service contracts and agreements such as application and processing fees, signature bonus, discovery bonus, production bonus; all money collected from concessionaires, representing unspent work obligations, fines and penalties under the Petroleum Act of 1949; as well as the government share representing royalties, rentals, production share on service contracts and similar payments on the exploration, development and exploitation of energy resources, **shall form part of a Special Fund to be used to finance energy resource development and exploitation programs and projects of the government and for such other purposes as may be hereafter directed by the President.**

In 1977, PD 1206 created the Department of Energy with the following appropriation:

Section 20. Appropriation. To carry out the purposes of this Decree, there is hereby **appropriated out of any funds in the National Treasury not otherwise appropriated, the sum of ten million pesos (₱10,000,000.00) for the operation of the Department and its bureaus**, including such amount thereof as may be needed to augment the appropriations of the Board of Energy, for the remaining period of FY 1977 in addition to whatever applicable appropriation that may be transferred to it from among the government agencies reorganized under this Decree. **Thereafter, the appropriation for the Department, its bureaus and the Board of Energy shall be included in the Annual General Appropriation Act.**

In 1978, PD 1573 amended PD 1206, *viz*:

Section 6. Section 20 of the same Decree is amended to read as follows:

"Sec. 20. Appropriation [t]o carry out the purposes of this Decree there is hereby appropriated out of any funds in the National Treasury not otherwise appropriated, the sum of Ten million pesos (₱10,000,000.00) for the operation of the Department and its Bureaus, including such amount thereof as may be needed to augment the appropriations of the Board of Energy, for the remaining period of FY 1978 in addition to whatever applicable appropriation that may be transferred to it from among the government agencies reorganized under this Decree. Thereafter, the appropriation for the Department, its bureaus and the Board of Energy shall be included in the Annual General Appropriation Act.

"Subject to existing rules and regulations, the funds and monies, collected or which otherwise come into the possession of the Department, its Bureaus and the Philippine Atomic Energy Commission from fees, surcharges, fines and penalties which they are authorized to impose and collect including those under Section 4(c), Section 6 (e), Section 7(d) and (e) of this Decree as well as an amount to be determined at the beginning of every fiscal year representing ten percent (10%) of the outstanding balance of funds and monies, forming part of the Special Fund under Section (g) of Presidential Decree No. 910, shall be disbursed for the health, welfare and other similar benefits of their personnel; for the acquisition, maintenance and repair of urgently needed equipment and for expenses necessary for the effective discharge of their powers and functions under this Decree.

"Provisions of existing laws, rules and regulations to the contrary notwithstanding, officials and employees of government departments, bureaus, offices, instrumentalities including government-owned and controlled corporations, may be appointed in the interest of the service to serve through temporary detail assignment in the Department of Energy, its Bureaus, and Commissions as well as the Board of Energy and may receive allowances and other emoluments therefrom, in addition to their regular compensation from their permanent office of employment."



Finally, RA 7638 enacted in 1992 provides:

Section 21. Appropriations. – **Such sums as may be necessary for the implementation of this Act shall be taken from the current fiscal year appropriations** of the Office of Energy Affairs, the Office of Energy Affairs' **special fund created under Section 8 of Presidential Decree No. 910**, and such amounts as the President of the Philippines may allocate from other resources in accordance with law: Provided, That the total amount shall not exceed Three hundred million pesos (P300,000,000). Thereafter, the amount needed for the operation and maintenance of the Department shall be included in the annual General Appropriations Act.

Subject to existing rules and regulations, the funds and monies collected or which otherwise come into the possession of the Department and its bureaus from fees, surcharges, fines, and penalties which the Department and its bureaus may impose and collect under this Act, as well as an amount to be determined at the beginning of every calendar year representing twenty percent (20%) of the outstanding balance of the funds and monies forming part of the special fund under Section 8 of Presidential Decree No. 910, shall be **disbursed for expenses NECESSARY for the effective discharge of the powers and functions of the Department under this Act.** (Emphases supplied)

(11) **WHEREFORE**, the petition is dismissed for being filed out of time.”

Very truly yours,


EDGAR O. ARICHETA
Clerk of Court 

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