



Republic of the Philippines
 Supreme Court
 Manila

EN BANC

**NAYONG PILIPINO
 FOUNDATION, INC.,**

G.R. No. 213200

Petitioner,

Present:

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

- versus -

**CHAIRPERSON MA. GRACIA M.
 PULIDO TAN, COMMISSIONER
 HEIDI L. MENDOZA,
 COMMISSIONER ROWENA V.
 GUANZON, THE
 COMMISSIONERS,
 COMMISSION ON AUDIT (COA),**
 Respondents.

Promulgated:

September 19, 2017

x-----*Reyes*-----x

DECISION

REYES, JR., J.,

This is a petition for *certiorari*¹ under Rule 64 and Rule 65 of the Rules of Court filed by petitioner Nayong Pilipino Foundation, Inc. (NPFI), seeking to annul respondent Commission on Audit's (COA) Decision dated November 20, 2013, and Resolution dated April 4, 2014.

* On leave.
 ** Designated Acting Chief Justice per Special Order No. 2483 dated September 14, 2017.
 *** On official leave.
¹ *Rollo*, pp. 3-17.

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The Decision dated November 20, 2013 affirmed Decision No. 2011-074 dated June 7, 2011 of the Adjudication and Settlement Board (ASB) and Decision No. 2007-031 dated May 25, 2007 of the Legal and Adjudication Office (LAO)-Corporate, both of which sustained Notice of Disallowance (ND) No. 2007-001 dated June 14, 2007 relating to the payments of Anniversary Bonus and Extra Cash Gift to NPFI's officers and employees amounting to Php 108,000.00 and Php 90,500.00, respectively, and excess *honoraria* to the members of the Bids and Awards Committee (BAC) and Technical Working Group (TWG) in the amount of Php 132,000.00.

The Facts

On June 6, 2000, in commemoration of NPFI's 30th Founding Anniversary, NPFI Board of Trustees, through Board Resolution No. 63-0606000, authorized the grant to its officers and employees who have rendered services for at least one (1) year, an Anniversary Bonus amounting to Php 3,000.00 each.

In May 2004, NPFI's Board of Trustees issued Board Resolution No. 82-052104, where on the occasion of NPFI's 35th Founding Anniversary, it authorized the grant of Anniversary Bonus amounting to a total of Php 108,000.00 to its trustees, employees, and Job Order personnel.² On even date, Board Resolution No. 95-120804 was passed authorizing the release to the same recipients, Extra Cash Gift in the total amount of Php 90,500.00.³

For 2004, NPFI paid a total of Php 132,000.00 as *honoraria* to the members of its BAC and TWG.

On February 4, 2005, COA issued Audit Observation Memorandum (AOM) No. 2004-002, finding that the grant of NPFI in May 2004 of Anniversary Bonus and Extra Cash Gift amounting to Php 108,000.00 and Php 90,500.00, respectively have no legal basis nor approval of the President;⁴ and AOM No. 2004-003, stating that NPFI did not submit the required exemption from the Department of Budget and Management (DBM) for the payment of *honoraria* to its BAC and TWG members.

In response to AOM No. 2004-002, on April 28, 2005, NPFI sent separate letters to the Office of the President⁵ (OP) and DBM⁶ requesting approval of the grant of Anniversary Bonus and Extra Cash Gift to NPFI

² Id. at 53.

³ Id. at 54-55.

⁴ Id. at 56-58.

⁵ Id. at 59-60.

⁶ Id. at 61.

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officials and employees on the basis of Administrative Order No. 263 dated March 28, 1996 and National Budget Circular No. 452 dated May 20, 1996 and Budget Circular No. 2002-4 dated November 28, 2002.

On September 30, 2005, acting on the referral for comment and/or recommendation by the OP, the DBM issued a letter-resolution.⁷ Therein, DBM Secretary Romulo L. Neri concluded that the payment to NPFI personnel of Anniversary Bonus for the years 2000 and 2004 is unauthorized and contrary to existing policy, as the reckoning date of the NPFI's anniversary is November 6, 1972, the date of its establishment as a public corporation under Presidential Decree (P.D.) No. 37, instead of June 11, 1969, when it was a private corporation. Thus, NPFI's entitlement to Anniversary Bonus shall be in 1987 on its 15th anniversary, 1992 on its 20th, 1997 on its 25th, 2002 on its 30th and 2007 on its 35th anniversary.

Similarly, the DBM found the grant of Extra Cash Gift for the year 2004 to be improper, considering that it was not specifically authorized by law or approved by the President.

NPFI sought reconsideration⁸ of the DBM Letter-Resolution but the same remain unresolved.

On July 28, 2005, COA LAO-Corporate issued Notice of Suspension No. NPFI-05-001-(04)⁹ dated July 28, 2005, suspending the subject disbursements and requiring NPFI to submit the required documents. On reconsideration, COA LAO-Corporate found the documents submitted by NPFI in its letter manifestation insufficient; thus on May 25, 2007, it issued Notice of Disallowance No. NPFI 2007-001¹⁰ and Decision No. 2007-031, the dispositive portion of which reads:

WHEREFORE, the premises considered, and in view of Management's compliance with our requirements on the allowances granted to OGCC lawyers charged to NPFI, this Office LIFTS the suspension thereon and accordingly allows the same in audit. However, as regard the other suspended payments for anniversary bonus and Christmas cash gift as well as the excessive honoraria to BAC members under the same NS, said payments have matured into disallowance for non-compliance of the audit requirements. Accordingly, Notice of Disallowance No. 2007-001 is hereby issued by this Office.¹¹

⁷ Id. at 62-63.

⁸ Id. at 64-65.

⁹ Id. at 66-71.

¹⁰ Id. at 41-46.

¹¹ Id. at 9, 48.

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On appeal, the Adjudication and Settlement Board (ASB) dismissed the appeal and affirmed the Decision of the LAO-Corporate through its Decision No. 2011-074 dated June 7, 2011.¹²

NPFI filed a Petition for Review before the COA but the same was denied by the Commission proper *en banc* in its Decision No. 2013-206 dated November 20, 2013.¹³ Motion for Reconsideration¹⁴ of the said Decision was denied in a Resolution dated April 4, 2014,¹⁵ prompting NPFI to file the instant petition for *certiorari*.

NPFI maintains in this petition that the COA gravely abused its discretion when it disallowed the payment of the total aggregate amount of Php 330,500.00 comprising of Anniversary Bonus, Extra Cash Gift, to its trustees, officials, and personnel; and *honoraria* to the members of its BAC and TWG.

NPFI argues that Administrative Order (A.O.) No. 263 dated March 28, 1996 and DBM National Budget Circular No. 452 dated May 20, 1996 explicitly authorize the grant of Anniversary Bonus to agencies in celebration of their milestone year in the amount of Php 3,000.00, as in the case at bar where it was granted in celebration of NPFI's 30th and 35th anniversary. Further, NPFI argues that COA should have allowed the 35th Anniversary Bonus given in 2004 to be applied in 2007 considering that the pronouncement that NPFI's anniversary should be reckoned from November 6, 1972 instead of June 11, 1969, was made only on September 11, 2005.

Anent the allowance of Extra Cash Gift, NPFI claims that same is supported by DBM Budget Circular No. 2002-04 dated November 28, 2002, which then President Gloria Macapagal-Arroyo approved.

All told, NPFI points out that COA should not have disallowed the grant of Anniversary Bonus and Extra Cash Gift as it is still the subject of a Motion for Reconsideration pending before the OP through the DBM.

On the matter of *honoraria* given to its BAC and TWG members, NPFI alleges that COA erred in making a sweeping disallowance absent any evidence that the same is in excess of the 25% (of the basic salary) ceiling set forth under Section 15 of Republic Act (R.A.) No. 9184.

Finally, NPFI, citing good faith at the time the disallowed benefits were granted and received, seeks this Court's consideration to rule in its favor.

¹² Id. at 47-52.

¹³ Id. at 24-30.

¹⁴ Id. at 32-40.

¹⁵ Id. at 31.

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On the other hand, the respondents claim, in sum, that no grave abuse of discretion may be attributed to them in affirming the disallowance of the Anniversary Bonus and Extra Cash Gift granted to NPMI's trustees, officials and personnel; and *honoraria* to its BAC and TWG members, as the same is supported by pertinent laws, circulars, and orders.

The Issue

The lone issue presented for resolution in this case is whether the COA gravely abused its discretion when it disallowed NPMI's payment of Anniversary Bonus and Extra Cash Gift to its trustees, officials and personnel; and *honoraria* to its BAC and TWG members.

Ruling of the Court

The petition is partly meritorious.

The COA, by mandate of the 1987 Constitution, is the guardian of public funds, vested of broad powers over all accounts pertaining to government revenue and expenditures and the uses of public funds and property, including the exclusive authority to define the scope of its audit and examination, to establish the techniques and methods for such review, and to promulgate accounting and auditing rules and regulations.¹⁶

In the exercise of its constitutional duty, the COA is given a wide latitude of discretion "to determine, prevent, and disallow irregular, unnecessary, excessive, extravagant, or unconscionable expenditures of government funds"¹⁷ and has the power to ascertain whether public funds were utilized for the purpose for which they had been intended by law.¹⁸

In the performance of COA's functions, the Court has been consistent with its policy enunciated in the case of *Nazareth v. Hon. Villar, et al.*:¹⁹

Verily, the Court has sustained the decisions of administrative authorities like the COA as a matter of general policy, not only on the basis of the doctrine of separation of powers but also upon the recognition that such administrative authorities held the expertise as to the laws they are entrusted to enforce.²⁰

¹⁶ *Yap v. Commission on Audit*, 633 Phil. 174 (2010).

¹⁷ *Technical Education and Skills Development Authority v. The Commission on Audit, et al.*, 753 Phil. 434 (2015).

¹⁸ *Nazareth v. Villar*, 702 Phil. 319 (2013).

¹⁹ *Id.*

²⁰ *Id.* at 324.

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Thus, the Court has accorded not only respect but also finality to COA's findings particularly when their decisions are not tainted with unfairness or arbitrariness that would amount to grave abuse of discretion.²¹

To warrant the issuance of the extraordinary writ of *certiorari* under Rule 64 in relation to Rule 65 of the Rules of Court and set aside the Decision of the COA, the petitioner must show that the latter acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Mere abuse of discretion is not enough. The abuse of discretion must be grave in that there is a capricious and whimsical exercise of judgment which is equivalent to lack of jurisdiction. Abuse of discretion is grave when there is an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law as when the judgment rendered is not based on law and evidence but on caprice, whim, and despotism.²²

In this case, the Court finds that the petitioner NPMI failed to discharge this burden. The respondents did not commit any grave abuse of discretion as their concurrence to the decisions of the LAO-Corporate and ASB is based on cogent legal grounds.

First, the Court agrees with the COA in that the award of Anniversary Bonus for the year 2004 is unwarranted for failure to comply with the requirements set forth under A.O. No. 263 and DBM NBC No. 452-96.

A.O. No. 263,²³ issued on March 28, 1996 provides for general

²¹ Id.

²² *Espinosa, et. al. v. Commission on Audit*, 731 Phil. 67 (2014).

²³ AUTHORIZING THE GRANT OF ANNIVERSARY BONUS TO OFFICIALS AND EMPLOYEES OF GOVERNMENT ENTITIES

WHEREAS, certain Government Financial Institutions (GFIs) have been authorized to celebrate and commemorate milestone anniversaries with the traditional grant of Anniversary Bonus to their officials and employees;

WHEREAS, the government deems it desirable and fitting to commemorate milestone anniversaries of GOCCs, GFIs, and national government agencies as well by way of granting anniversary bonus to their employees;

WHEREAS, the grant of anniversary bonus on the occasion of milestone years of government agencies will directly improve and enhance employee morale consistent with Section 36(2), Chapter 5, Subtitle A, Title I, Book V of Executive Order No. 292, the Administrative Code of 1987;

WHEREAS, there is a need to regulate the grant of such benefit by adopting a uniform scheme for its implementation to ensure fairness and equity and to conform with the policy of standardization of compensation enunciated under Republic Act No. 6758;

WHEREAS, Section 17 Article VII of the 1987 Constitution vests in the President of the Philippines prerogatives which include, among others the determination of the rates, timing and schedule of payment, and final authority to commit limited resources of government for the payment of personnel incentives, cash rewards, bonuses and other forms of additional compensation and fringe benefits to government personnel.

NOW, THEREFORE, I, FIDEL V. RAMOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby order the grant of Anniversary Bonus in accordance with the rules prescribed hereunder:

1.0 Coverage/Exemption.

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authority to Government-owned and controlled corporations (GOCCs), Government Financial Institutions (GFIs), and national government agencies to commemorate milestone anniversaries through the grant of anniversary bonus to their employees in an amount not exceeding Php 3,000.00. To amplify and clarify the implementation of the order, the DBM issued NBC No. 452-96²⁴ on May 20, 1996.

1.1 All government personnel whether employed on a full-time or regular, part-time basis or under permanent, temporary or casual status, and contractual personnel whose employment is in the nature of a regular employee, who have been appointed as such in a specific government entity by virtue of a valid appointment and continue to be employed in the same government entity as of the occasion of its milestone anniversary, shall be entitled to the anniversary bonus.

1.2 Government personnel who have been found guilty of any offense in connection with their work during the five-year interval between milestone years, as defined in 2.5 herein, shall not be entitled to the immediately succeeding anniversary bonus.

2.0 Rules and Regulations.

2.1 "Government entities" shall refer to department, bureaus, offices, commissions and similar bodies of the national government, including GOCCs and GFIs; provided that staff bureaus or entities which form part of the organization structure of departments or offices shall be deemed absorbed by the latter and shall not be treated as a separate agency.

2.2 A frontline bureau or entity created as such under a distinct enabling act or law and, thus, deemed as an institution in its own right shall be considered a distinct and separate agency for purposes of this benefit notwithstanding that fact that it had since been organizationally integrated with a department or office.

2.3 The Anniversary Bonus authorized under this Order shall be granted only during milestone years.

2.4 A milestone year refers to the 15th anniversary and to every fifth year thereafter.

2.5 Payment of the Anniversary Bonus shall be in an amount not exceeding P3,000.00 each employee provided that the employee has rendered at least one (1) year service in the same agency as of the date of the milestone year.

2.5.1 In case of insufficiency of funds, the government entity concerned may grant the benefit at a rate lower than that prescribed herein, provided that such rate shall be uniformly applied to all its officials and employee.

2.6 An employee may receive Anniversary Bonus only once every five years, regardless of transfers from one government entity to another.

2.7 Government entities which have already passed a milestone year as defined herein prior to the effectivity of this Order without previously granting an anniversary bonus or a similar incentive may grant the Anniversary Bonus therefor in 1996 subject to the same conditions specified herein.

2.8 No other bonus or allowance or whatever name it may be called of similar nature which relate to or in connection with an entity's anniversary shall be granted.

2.9 Existing administrative authorizations granting similar benefits to specific government entities are hereby revoked and superseded by this authorization.

3.0 Funding Source.

The cost of implementing the benefit under this Order shall be sourced strictly from savings from released allotment for current operating expenditures provided that all authorized mandatory expenses shall have been paid first. For government-owned and/or -controlled corporations and government financial institutions the amount shall be charged against their respective corporate funds.

4.0 Responsibility of the Agency Head.

The heads of concerned government entities shall be held responsible and personally liable for any payment of Anniversary Bonus not in accordance with the provisions of this Order, without prejudice to the refund of any excess payment by the employee concerned.

5.0 Savings Clause.

Cases not covered by the provisions of this Order shall be submitted to the Secretary of Budget and Management for appropriate evaluation and recommendation to the Office of the President.

6.0 Effectivity.

This Order shall take effect immediately.

DONE in the City of Manila, this 28th day of March in the year of Our Lord, Nineteen Hundred and Ninety-Six.

(Sgd.) FIDEL V. RAMOS
President of the Philippines

By the President:
(Sgd.) RUBEN D. TORRES
Executive Secretary

²⁴ Amplifying and Clarifying the Implementation of the Grant of Anniversary Bonus to Officials and Employees of Government Entities

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From these guidelines, the Court can infer the following rules relative to the grant of Anniversary Bonus and pertinent to the issue at hand:

1. Purpose

The Circular is issued to amplify and clarify the implementation of the grant of Anniversary Bonus to officials and employees of government entities as authorized under the Administrative Order No. 263 dated March 28, 1996.

2. The exemption on the grant of Anniversary Bonus as provided under Administrative Order No. 263 is hereby expanded to include government personnel under the following circumstances:

2.1.1. Those who are on absence without leave (AWOL) as of the date of the milestone year for which the Anniversary Bonus is being paid;

2.2 Those who are no longer in service in the same government entity as of the date of the milestone year;

2.3 Those who are not hired as part of the organic manpower of government entities but as consultant or experts for a limited period to perform specific activities or services with expected outputs; student laborers; apprentices; laborers of contracted projects; mail contractors, including those paid by piecework basis; and others similarly situated.

3. The following are additional rules and regulations relative to the grant of Anniversary Bonus

3.1 Officials and employees may be granted Anniversary Bonus only if the government entity where they are employed has been in existence for at least fifteen (15) years and has not yet granted any Anniversary Bonus as of FY 1996, and have rendered at least one (1) year service in the same government entity as of the date of the milestone year (See Illustrative Example 1, Annex A)

3.2 The counting of milestone years shall start from the year the government entity was created regardless of whether it was subsequently renamed/reorganized provided that its original primary functions have not substantially changed. Otherwise, the counting shall start from the date the functions were substantially changed.

3.3 The counting of the milestone years of merged government entities shall start from the date they were merged.

3.4 The initial grant of Anniversary Bonus in 1996 shall be for the latest milestone only, regardless of whether the government entity has existed for 30, 35, 50, or 60 or more years. There shall be no retroactive payment of milestone years.

3.5 A government entity which is now, for example, on its 18th anniversary but has not granted any Anniversary Bonus may grant the same for its 15th milestone year I in FY 1996. Two years hence, or in FY 1998, Anniversary Bonus for the next milestone year - the 20th anniversary - may be granted.

3.6 An official or employee of a government entity in the example in 3.5 above, who was hired after the government entity's 15th milestone year shall not qualify to receive the Anniversary Bonus in FY 1996, but only to the Anniversary Bonus that will be granted in FY 1998. (See Illustrative Example 2, Annex A)

3.7 Officials and employees in government entities attached to or are placed directly under a department/department level government entity and whose creation is not through charter may be considered as organic personnel of the mother department for purposes of availment of the Anniversary Bonus due the officials and employees of the department.

3.8 A government entity which attained its latest milestone year in FY 1996 and has granted Anniversary Bonus that is less than P3,000 per official and employee prior to the issuance of Administrative Order No. 263 may grant the difference between the actual amount granted and P3,000. Where the amount granted is more than P3,000, the excess amount shall be refunded.

4. Funding Source

The cost to implement the Anniversary Bonus shall be solely charged from savings from released allotment for Current Operating Expenses (COE) without the need for prior authority from the Department of Budget and Management, provided that all authorized mandatory expenses shall have been paid first. Requests for augmentation of such savings shall not be allowed.

5. Responsibility of the Head of Entity

The head of entity shall be held responsible and personally liable for any payment of Anniversary Bonus not in accordance with the provisions of Administrative Order No. 263 and this Circular without prejudice, however, to refund of any excess payment by the official or employee concerned.

6. Saving Clause

Appropriate cases not covered by the provisions of this Circular shall be submitted to the Secretary of Budget and Management for appropriate resolution.

7. Effectivity

This Circular shall take effect immediately.

- a) All government personnel whether employed on a regular or part-time basis, or under permanent, temporary or casual status, and contractual personnel whose employment is in the nature of a regular employee, who have been appointed as such in a specific government entity by virtue of a valid appointment and continue to be employed in the same government entity as of the occasion of its milestone anniversary, shall be entitled to the Anniversary Bonus;
- b) The Anniversary Bonus may only be granted in celebration of milestone year or the 15th anniversary and to every fifth year thereafter; and
- c) The counting of milestone year shall start from the year the government entity was created regardless of whether it was subsequently renamed or reorganized provided that its original primary functions have not substantially changed.

Applied in this case, considering that the grant specifically covers government entities and commemorates their creation as such, the DBM and COA are correct in that for the purpose of determining entitlement to Anniversary Bonus, NPMI's milestone year should be reckoned from the date it was incorporated as a public corporation by virtue of Presidential Decree No. 37 or on November 6, 1972 instead of June 11, 1969 when it was then incorporated as a private corporation. It follows therefore, that NPMI is entitled to Anniversary Bonus in 1997 for its 25th Anniversary, 2002 for its 30th and 2007 for its 35th Anniversary. Clearly, the payment of Anniversary Bonus in 2000 and 2004 is therefore unauthorized.

That notwithstanding, as NPMI granted the Anniversary Bonus and the recipients received the same in good faith, acting on the honest belief based on NPMI's articles of incorporation that its founding anniversary is reckoned from May 7, 1969 and traditionally observed on June 11, 1969, no refund is necessary consistent with the Court's ruling in the case of *Nazareth*²⁵ that "the refund of the disallowed payment of a benefit granted by law to a covered person, agency or office of the Government may be barred by the good faith of the approving official and of the recipient." In so ruling, the Court in *Nazareth* followed the doctrine laid down in *Blaquera v. Alcalá*²⁶ and *De Jesus v. Commission on Audit*.²⁷

In *Blaquera*,²⁸ the Petition assailed the constitutionality of Administrative Order (A.O.) Nos. 29 and 268, issued on January 19, 1993 and February 21, 1992, respectively. The subject A.O.s grant officials and employees of the government Productivity Incentive Benefits (PIB) and prohibit at the same time the grant of similar benefit in the future without

²⁵ *Nazareth v. Villar*, 702 Phil. 319 (2013).

²⁶ 356 Phil. 678 (1998).

²⁷ 451 Phil. 814 (2003).

²⁸ *Supra* note 26.

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prior approval from the President. A.O. No. 29 further orders the refund of any amount granted as PIB for the year 1992 in excess of Php 1,000.00. The Court upheld the validity of the subject A.O.s as valid exercise of the President's power of control. Nonetheless, it saw no need to order the refund of the excessive PIB paid on account of good faith of the parties, *viz.*:

Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.²⁹

The ruling in *Blaquera* was reiterated and applied in the case of *De Jesus*.³⁰ In *De Jesus*, the petitioners assail the Decision of the COA which affirmed the disallowance of payment of allowances and bonuses to members of the interim Board of Directors of the Catbalogan Water District. The Court speaking through Justice Carpio, held that the members of the board of water districts cannot receive allowances and benefits in excess of that allowed by Presidential Decree No. 198, citing the then recently decided case of *Baybay Water District v. Commission on Audit*.³¹ Similar to the ruling in *Blaquera* however, the Court did not order the refund of the disallowed benefits, explaining that:

Petitioners here received the additional allowances and bonuses in good faith under the honest belief that LWUA Board Resolution No. 313 authorized such payment. At the time petitioners received the additional allowances and bonuses, the Court had not yet decided Baybay Water District. Petitioners had no knowledge that such payment was without legal basis. Thus, being in good faith, petitioners need not refund the allowances and bonuses they received but disallowed by the COA.³² (Citation omitted)

Indeed, akin to the foregoing cases, no bad faith may be attributed to NPMI. Jurisprudence defines good faith in relation to the requirement of refund of disallowed benefits or allowances, *to wit*:

Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is that state of mind denoting honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of

²⁹ Id. at 765-766.

³⁰ Supra note 27.

³¹ 425 Phil. 326 (2002).

³² *De Jesus v. COA*, supra note 27, at 824.

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facts which render transactions unconscientious.³³

In this case, the reckoning point for the counting of the milestone year insofar as agencies such as NPMI which is first brought to existence as a private corporation has not been expressly provided in A.O. No. 263 nor clearly specified under DBM NBC No. 452-96. Simply, NPMI's Board of Trustees, officials, and employees have no way of knowing that they are mistaken in following the traditional celebration of NPMI's anniversary on June 11, 1969. With this, it can be concluded that the NPMI Board of Trustees, officials, and employees are in good faith more so that the disallowed Anniversary Bonus was granted prior to the pronouncement of the OP through the DBM and the COA as to the proper counting of its milestone year. The Court is therefore of the belief that the Board of Trustees of NPMI in granting such Anniversary Bonus were impelled by the honest belief that they are due, and the employees in receiving the same acted in good faith that they are entitled to such benefit, thus barring any need for refund.³⁴

The same principle of good faith cannot however be applied insofar as the grant of NPMI in 2004 of Extra Cash Gift in favor of its officials and employees and of *honoraria* to the members of the BAC and the TWG.

NPMI based its grant of Extra Cash Gift pursuant to DBM Budget Circular 2002-4 dated November 28, 2002, which then President Gloria Macapagal-Arroyo approved. As NPMI itself stated in its Letter³⁵ dated April 28, 2005 to the OP, the said Budget circular authorizes the grant of Extra Cash Gifts only for the year 2002. In light of its explicit language, it cannot therefore be simply implied that the Circular provides sufficient authority for the grant of similar benefit for the succeeding years without the need of approval by the President.

Similarly, the Court finds no error on the part of COA in disallowing the grant of *honoraria* to the members of the BAC and TWG of NPMI.

NPMI argues that its grant of *honoraria* is supported by Section 15 Article V of R.A. No. 9184 otherwise known as the Government Procurement Reform Act, which provides:

SEC. 15. Honoraria of BAC Members. – The Procuring Entity may grant payment of honoraria to the BAC members in an amount not to exceed twenty five percent (25%) of their respective basic monthly salary subject to availability of funds. For this purpose, the Department of

³³ *Zamboanga City Water District, et al. v. COA*, G.R. No. 213472, January 26, 2016, 782 SCRA 78, 80, citing *Philippine Economic Zone Authority v. Commission on Audit*, 690 Phil. 104 (2012).

³⁴ *Zamboanga City Water District, et al. v. COA*, G.R. No. 213472, January 26, 2016, 782 SCRA 78.

³⁵ Re: Confirming approval of the grant of Anniversary Bonus and Extra Cash Gift for NFP Officials and Workers; *rollo* pp. 59-60.

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Budget and Management (DBM) shall promulgate the necessary guidelines.

In effect, NPMI claims that even in the absence of a DBM Circular at the time of payment, the law offers sufficient basis for the allowance of the *honoraria* in an amount not exceeding 25% of the basic salary. NPMI is mistaken.

The Court in *Sison, et al. v. Tablang, et al.*,³⁶ ruled that the provision of itself cannot serve as basis for the grant of honoraria to the members of the BAC without an enabling rule or guideline from the DBM; and compliance therewith is necessary for the right to accrue. We quote:

An honorarium is defined as something given not as a matter of obligation but in appreciation for services rendered, a voluntary donation in consideration of services which admit of no compensation in money. Section 15 of R.A. No. 9184 uses the word "may" which signifies that the honorarium cannot be demanded as a matter of right.

The government is not unmindful of the tasks that may be required of government employees outside of their regular functions. It agrees that they ought to be compensated; thus, honoraria are given as a recompense for their efforts and performance of substantially similar duties, with substantially similar degrees of responsibility and accountability. However, the payment of honoraria to the members of the BAC and the TWG must be circumscribed by applicable rules and guidelines prescribed by the DBM, as provided by law. Section 15 of R.A. No. 9185 is explicit as it states: "For this purpose, the DBM shall promulgate the necessary guidelines." The word "shall" has always been deemed mandatory, and not merely directory. **Thus, in this case, petitioners should have first waited for the rules and guidelines of the DBM before payment of the honoraria.** As the rules and guidelines were still forthcoming, petitioners could not just award themselves the straight amount of 25% of their monthly basic salaries as honoraria. This is not the intendment of the law.

Furthermore, albeit in hindsight, the DBM Budget Circular provides that the payment of honoraria should be made only for "successfully completed procurement projects." This phrase was clarified in DBM Budget Circular No. 2004-5A dated October 7, 2005, to wit:

5.1 The chairs and members of the Bids and Awards Committee (BAC) and the Technical Working Group (TWG) may be paid honoraria only for successfully completed procurement projects. In accordance with Section 7 of the Implementing Rules and Regulations Part A (IRR-A) of RA No. 9184, a procurement project refers to the entire project identified, described, detailed, scheduled and budgeted for in the Project Procurement Management Plan prepared by the agency.

A procurement project shall be considered successfully completed once the contract has been awarded to the winning bidder.

³⁶ 606 Phil. 740 (2009).

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No interpretation is needed for a law that is clear, plain and free from ambiguity. Now, the DBM has already set the guidelines for the payment of honoraria as required by law. Since the payment of honoraria to petitioners did not comply with the law and the applicable rules and guidelines of the DBM, the notices of disallowance are hereby upheld.³⁷ (Citations omitted, emphasis and underscoring supplied)

In light of the aforesaid ruling therefore, since the payments of the *honoraria* to the members of the BAC and TWG by NPMI were made on January 16, 2004, February 10, 2004, and March 9, 2004, prior to the issuance on March 23, 2004 of DBM Circular No. 2004-5 which sets forth the guidelines on the grant of *honoraria* to government personnel involved in procurement, and absent proof of completed procurement projects in accordance with the circular, the disallowance is proper.

Liability in cases of refund for unlawful expenditures of government funds is governed by Section 103 of Presidential Decree No. 1445, which states:

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.

The provision is read in relation to Section 19 of the Manual of Certificate of Settlement and Balances, COA Circular No. 94-001, *to wit*:

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 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.

19.1.3. Public officers who approve or authorize transactions involving the expenditure of government funds and uses of government properties shall be liable for all losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

Interpreting the foregoing provisions, jurisprudence settled that insofar as the disallowance of benefits and allowances of government employees, recipients or payees need not refund these disallowed amounts in the absence of proof to rebut the presumption that they received the same in good faith. However, officers who participated in the approval of the disallowed allowances or benefits are required to refund the disallowed

³⁷ Id. at 750-751.

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benefits when in so granting, they acted in bad faith or are grossly negligent tantamount to bad faith, as when an explicit provision of law, rule or regulation has been violated.³⁸ The liability of the “participating” public officers in this instance stands whether or not they received the disallowed benefit.³⁹

In fine, while NPFI’s Board of Trustees and officers, as public officials, hold in their favor the presumption of regularity in the performance of their official duties, the same must fail in the presence of an explicit law, rule or regulation that have been violated.⁴⁰ On the grant of Extra Cash Gift, NPFI’s Board of Trustees are armed with the knowledge of the existence and of the particulars of DBM Budget Circular 2002-4, which by explicit language provides authority for the release of Extra Cash Gift only for the year 2002. Similarly, Section 15, Article V of R.A. No. 9184, which served as the basis for NPFI’s grant of *honoraria* to the members of its BAC and TWG is clear and unambiguous in that the same is circumscribed by the guidelines to be set by the DBM, and may therefore be granted only after the promulgation thereof.⁴¹ In view of the foregoing transgressions therefore, NPFI cannot claim good faith and the disallowed Extra Cash Gift and *honoraria* are due for refund.

Noteworthy, following the aforecited provisions which deal with the liability of public officers for unlawful expenditures, the Court cannot subscribe and limit the imposition of solidary liability to refund the disallowed benefits to the persons enumerated by the COA LAO-Corporate in Notice of Disallowance No. NPFI-2007-001⁴² and Notice of Suspension No. NPFI-05-001-(04).⁴³

In Notice of Disallowance NPFI-2007-001, the Audit Team Leader after evaluation found the following persons liable for the grant of Extra Cash Gift and *honoraria*: Atty. Charito L. Planas, Executive Director - for approving the transactions; Jonas Ma. Serrano, Administrative Officer IV - for certifying the expenses as lawful; Lucy Q. Lapinig, Accountant I - for certifying that adequate funds are available and the expenditures as proper.⁴⁴ The same persons were adjudged to be liable in Notice of Suspension No. NPFI-05-001-(04).⁴⁵ However, as explained by the Court in the recent case of *Rhodelia L. Sambo and Loryl J. Avila v. COA*,⁴⁶ pursuant to Book VI, Chapter V,

³⁸ *Rhodelia L. Sambo and Loryl J. Avila v. COA*, G.R. No. 223244, June 20, 2017; *Maritime Industry Authority (MIA) v. COA*, 750 Phil. 288 (2015).

³⁹ *Silang v. COA*, 769 Phil. 327 (2015).

⁴⁰ *Rhodelia L. Sambo and Loryl J. Avila v. COA*, supra note 38.

⁴¹ *Rollo* pp. 59-60.

⁴² *Id.* at 41-46.

⁴³ *Id.* at 66-71.

⁴⁴ *Id.* at 42-43.

⁴⁵ *Id.* at 66-71.

⁴⁶ G.R. No. 223244, June 20, 2017.

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Section 43⁴⁷ of the Administrative Code, “public officials who are directly responsible for, or participated in making the illegal expenditures as well as those who actually received the amounts therefrom shall be solidarily liable for their reimbursement.”

As previously discussed, considering that the employee-recipients are in good faith, they are absolved from the liability to refund. In contrast, on account of bad faith and clear transgression of R.A. No. 9184 and DBM Budget Circular No. 2002-4, apart from the persons enumerated in the subject Notices of disallowance and suspension, NPFI’s Board of Trustees and officers who approved and authorized the release of the disallowed Extra Cash Gift and *honorarium* are likewise adjudged to be solidarily liable to refund the same.

WHEREFORE, in light of the disquisitions, the Court **AFFIRMS** the Decision of Commission on Audit proper *en banc* dated November 20, 2013, and Resolution dated April 4, 2014 subject to the **MODIFICATION** in that the trustees, officials, and personnel of Petitioner Nayong Pilipino Foundation, Inc. (NPFI) who received the Anniversary Bonus in 2004 need not refund the same.

However, with respect to the Extra Cash Gift and *honorarium* in the amount of Php 90,500.00 and Php 132,000.00, respectively, NPFI’s Board of Trustees and officers who participated in the approval and authorized the release of the same are hereby adjudged to be solidarily liable for their refund.

SO ORDERED.


ANDRES E. REYES, JR.
Associate Justice

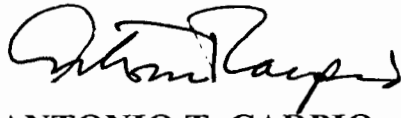
⁴⁷ Book VI, Chapter V, Section 43 of the Administrative Code, provides:
Liability for Illegal Expenditures. - Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations 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.



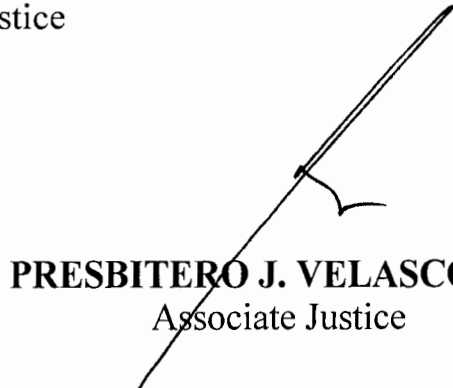
WE CONCUR:

(On leave)

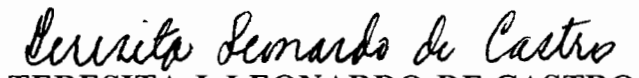
MARIA LOURDES P. A. SERENO
Chief Justice



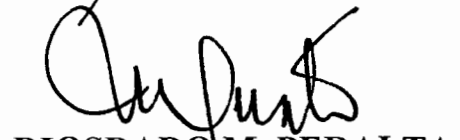
ANTONIO T. CARPIO
Acting Chief Justice



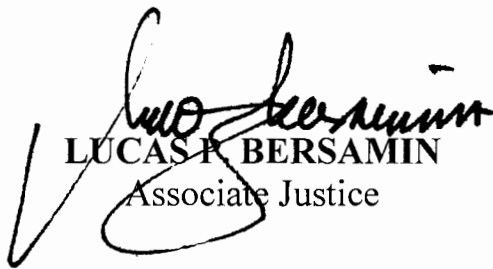
PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice

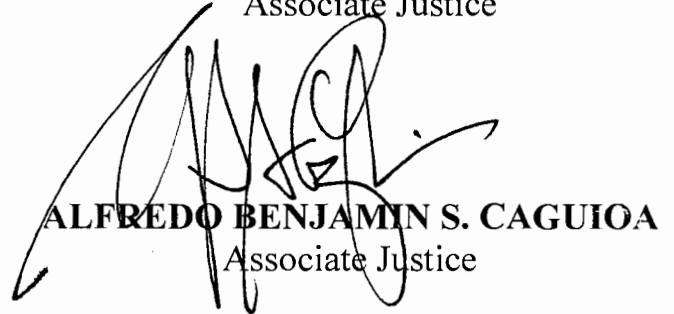
(On official leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



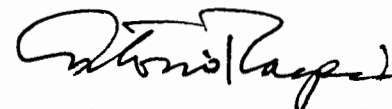
SAMUEL E. MARTIRES
Associate Justice

(On official leave)
NOEL GIMENEZ TIJAM
Associate Justice

(On official leave)
ALEXANDER G. GESMUNDO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



ANTONIO T. CARPIO
Acting Chief Justice