



Republic of the Philippines  
 Supreme Court  
 Manila

SUPREME COURT OF THE PHILIPPINES  
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NATIONAL TRANSMISSION  
 CORPORATION,

TRANSMISSION

G.R. No. 244193

*Petitioner,*

**Present:**

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

- versus -

COMMISSION ON AUDIT (COA)  
 and COA CHAIRPERSON  
 MICHAEL G. AGUINALDO,

*Respondents.*

**Promulgated:**

November 10, 2020

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DECISION

**DELOS SANTOS, J.:**

A certification which does not substantiate “the paying out of an account payable,” or a disbursement is not a valid document to support the claim for reimbursement of extraordinary and miscellaneous expenses (EME) of the officials of government owned and controlled corporations (GOCCs), government financial institutions (GFIs), and their subsidiaries. The Commission on Audit (COA) can properly disallow in audit the EME

\* On official leave.

disbursement for violation of COA Circular No. 2006-001.<sup>1</sup> Consequently, the approving/certifying officers who acted in bad faith or with malice or gross negligence are solidarily liable to return the net disallowed amount. All passive recipients, including the approving/certifying officers who received the disallowed amounts that they have approved/certified, are liable to return the amounts they have respectively received on the basis of *solutio indebiti*.

This is a Petition for *Certiorari*<sup>2</sup> under Rule 64 in relation to Rule 65 of the Rules of Court assailing COA Decision No. 2017-115<sup>3</sup> dated April 26, 2017. The COA affirmed the disallowance of payments of EME of the officials of the National Transmission Corporation (TransCo) in the year 2010.

### The Facts

TransCo is a GOCC created in June 2001 by virtue of Section 8 of Republic Act No. (RA) 9136,<sup>4</sup> otherwise known as the Electric Power Industry Reform Act (EPIRA). It assumed the electrical transmission function of the National Power Corporation (NAPOCOR) and presently operates NAPOCOR's nationwide electrical transmission and subtransmission system.<sup>5</sup>

On various dates in 2010, TransCo paid its officials EME pursuant to RA 9970<sup>6</sup> or the General Appropriations Act of 2010 (GAA).<sup>7</sup>

<sup>1</sup> Guidelines on the Disbursement of Extraordinary and Miscellaneous Expenses and Other Similar Expenses in Government-Owned and Controlled Corporations/Government Financial Institutions and their Subsidiaries.

<sup>2</sup> *Rollo*, pp. 3-14.

<sup>3</sup> *Id.* at 21-28.

<sup>4</sup> An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and for other Purposes.

<sup>5</sup> Section 8 of RA 9136 provides:

SEC. 8. Creation of the National Transmission Company. — There is hereby created a National Transmission Corporation, hereinafter referred to as TRANSCO, which shall assume the electrical transmission function of the National Power Corporation (NPC), and have the powers and functions, hereinafter granted. The TRANSCO shall assume the authority and responsibility of NPC for the planning, construction and centralized operation and maintenance of its high voltage transmission facilities, including grid interconnections and ancillary services.

[T]he transmission and subtransmission facilities of NPC and all other assets related to transmission operations, including the nationwide franchise of NPC for the operation of the transmission system and the grid, shall be transferred to the TRANSCO.

<sup>6</sup> An Act Appropriating Funds for the Operation of the Government of the Republic of the Philippines from January One to December Thirty-One, Two Thousand and Ten, and for Other Purposes.

<sup>7</sup> Section 28 of RA 9970 provides:

SECTION 28. *Extraordinary and Miscellaneous Expenses.* — Appropriations authorized herein may be used for extraordinary expenses of the following officials and those of equivalent ranks as may be determined by the DBM, not exceeding:

- (a.) P220,000 for each Department Secretary;
- (b.) P90,000 for each Department Undersecretary;
- (c.) P50,000 for each Department Assistant Secretary;
- (d.) P38,000 for each head of bureau or organization of equivalent rank, and for each head of Department Regional Office;
- (e.) P22,000 for each head of a Bureau Regional Office or organization of equivalent rank; and

On June 1, 2011, Supervising Auditor Corazon V. Españó (Supervising Auditor Españó) and Audit Team Leader Minerva T. Cabigting issued Notice of Disallowance (ND) No. 11-58-(2010)<sup>8</sup> which disapproved the payments of EME in the amount of ₱1,841,165.44. The ND provides that payments of EME were made on a commutable basis and were not supported by receipts, contrary to Item III of COA Circular No. 2006-001 dated January 3, 2006.

Aggrieved, TransCo appealed the ND to the COA Corporate Government Sector (COA-CGS).

### Ruling of the COA-CGS

In Decision No. 2014-16<sup>9</sup> dated September 17, 2014, the Cluster Director granted the appeal and lifted the ND. The Cluster Director opined that a certification may be accepted as supporting document for reimbursements of EME by GOCCs, since a certification is allowed in National Government Agencies (NGA) under COA Circular No. 89-300.<sup>10</sup> The Cluster Director likewise stated that the uniformity of the amounts claimed does not support the allegation that the EME were paid on a commutable basis.<sup>11</sup>

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(f.) P16,000 for each Municipal Trial Court Judge, Municipal Circuit Trial Court Judge, and Shari'a Circuit Court Judge.

In addition, miscellaneous expenses not exceeding Seventy-Two Thousand Pesos (P72,000) for each of the offices under the above named officials are herein authorized.

For the purpose of this section, extraordinary and miscellaneous expenses shall include, but shall not be limited to expenses incurred for:

- (a.) Meetings, seminars and conferences;
- (b.) Official entertainment;
- (c.) Public relations;
- (d.) Educational, athletic and cultural activities;
- (e.) Contributions to civic or charitable institutions;
- (f.) Membership in government associations;
- (g.) Membership in national professional organizations duly accredited by the Professional Regulations Commission;
- (h.) Membership in the Integrated Bar of the Philippines;
- (i.) Subscription to professional technical journals and informative magazines, library books and materials;
- (j.) Office equipment and supplies; and
- (k.) Other similar expenses not supported by the regular budget allocation.

No portion of the amounts authorized herein shall be used for salaries, wages, allowances, confidential and intelligence expenses. In case of deficiency, the requirements for the foregoing purposes shall be charged against savings of the agency.

These expenditures shall be subject to pertinent accounting and auditing rules and regulations.

<sup>8</sup> *Rollo*, pp. 33-35.

<sup>9</sup> Not attached to the *rollo*.

<sup>10</sup> Audit Guidelines on Disbursement for Extraordinary and Miscellaneous Expenses in National Government Agencies pursuant to Section 19 and other related sections of RA 6688 (General Appropriations Act for 1989).

<sup>11</sup> *Rollo*, pp. 23-24.

### Ruling of COA Proper

On April 26, 2017, the COA, upon automatic review, rendered Decision No. 2017-115<sup>12</sup> with the dispositive portion as follows:

**WHEREFORE**, premises considered Commission on Audit Corporate Government Sector Cluster 3 Decision No. 2014-16 dated September 17, 2014 is hereby **DISAPPROVED**. Accordingly, Notice of Disallowance No. 11-58-(2010) dated June 1, 2011, on the payment of Extraordinary and Miscellaneous Expenses to officials of National Transmission Corporation for the year 2010 in the total amount of [P]1,841,165.44 is **SUSTAINED**.<sup>13</sup> (Emphasis in the original)

Citing *Espinias v. Commission on Audit*,<sup>14</sup> the COA held that a mere certification will not suffice to support a claim for reimbursement of EME as it is not a document evidencing disbursement under COA Circular No. 2006-001. It clarified that TransCo cannot invoke COA Circular No. 89-300, which allows the use of certifications in claiming for reimbursement, because said circular applies to NGAs. It further explained that “the substantial distinction between officials of the NGAs and GOCCs lies in the fund from which the EME is sourced. The EME of the GOCCs are allocated by their own internal governing boards while the EME paid by the NGAs are appropriated in the annual GAA duly enacted by Congress.”<sup>15</sup>

Contrary to the Cluster Director’s Decision, the COA ruled that the absence of receipts or supporting documents evidencing disbursements of the EME and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis. It dismissed TransCo’s claim of good faith because of its “disregard of the applicable law or rules.” Ultimately, it found TransCo officials who had direct participation and/or authorized the payment of the EME solidarily liable with the payees for the disallowed amount.<sup>16</sup>

TransCo moved for reconsideration but the same was denied in a Resolution dated January 23, 2018.<sup>17</sup>

On August 6, 2019, Commission Secretary Nilda B. Plaras (Commission Secretary Plaras) issued Notice of Finality of Decision (NFD) No. 2019-281,<sup>18</sup> pertinent portions of which read:

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<sup>12</sup> Id. at 21-28.

<sup>13</sup> Id. at 27.

<sup>14</sup> 731 Phil. 67 (2014).

<sup>15</sup> *Rollo*, p. 26.

<sup>16</sup> Id. at 27.

<sup>17</sup> Id. at 32.

<sup>18</sup> Id. at 110-111.

Please be informed that the decision of the CP denying the motion for reconsideration of COA Decision No. 2017-115 dated April 26, 2017 has become final and executory pursuant to Section 9, Rule X of the 2009 Revised Rules of Procedure of the Commission on Audit, as modified under COA Resolution No. 2011-006 dated August 17, 2011.

Accordingly, the persons liable shall pay the above amount immediately to the agency cashier. Failure to pay the same shall authorize the agency cashier to withhold payment of salary and other money due to persons liable in accordance with COA Order of Execution to be issued to the agency cashier.<sup>19</sup>

In a letter<sup>20</sup> dated September 10, 2019, TransCo requested that the NFD be lifted and the effects thereof be suspended while awaiting the Court's decision in the instant petition. In response, Commission Secretary Plasas clarified that the COA's Revised Rules of Procedure provides that the filing of a petition for *certiorari* shall not sway the execution of the subject Decision and Resolution unless the Court directs otherwise.<sup>21</sup>

TransCo filed a Motion for Issuance of a Status *Quo Ante* Order and/or Preliminary Injunction<sup>22</sup> dated January 3, 2020 to enjoin the implementation of the subject COA Decision and Resolution.

### Arguments of the Parties

TransCo argues that the COA erred in sustaining the disallowance due to the following reasons:

1. Supervising Auditor Españo failed to substantiate her claim that the payments of EME were made on a commutable basis;
2. Recipients of EME should not be held liable because they received the payments in good faith and without knowledge that they were made contrary to existing rules and regulations;
3. In the absence of malice and gross negligence, TransCo officials are not liable for the mistakes made in the performance of their official duties.

The COA, through the Office of the Solicitor General, for its part, maintains that:

1. The burden of proving that the expenses were incurred for official purposes and not on a commutable basis lies with TransCo,<sup>23</sup>

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<sup>19</sup> Id. at 111.

<sup>20</sup> Not attached to the *rollo*.

<sup>21</sup> *Rollo*, p. 112

<sup>22</sup> Id. at 95-103.

<sup>23</sup> Id. at 79.

2. The absence of receipts or supporting documents evidencing disbursements of EME and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis;<sup>24</sup>
3. The payees of the EME did not receive the payments in good faith since as high ranking officials, they are expected to be knowledgeable of the laws, rules and regulations governing the grant of allowances and benefits such as EME.<sup>25</sup>

### Issues

#### I.

Whether or not the COA acted with grave abuse of discretion in ruling that TransCo has the burden of proof to show that payments were not made on a commutable basis, as it alleged.

#### II.

Whether or not the COA acted with grave abuse of discretion in holding that the doctrine of good faith is inapplicable in this case.

### The Court's Ruling

The petition is partly meritorious.

*TransCo has the burden of proof to show that it is entitled to reimbursement of EME incurred by its officials.*

COA Circular No. 2006-001 dated January 3, 2006 prescribes the rules and regulations governing the disbursement of EME and other similar expenses to GOCCs/GFIs and their subsidiaries. It aims to regulate the incurrance of EME by the qualified officials of GOCCs/GFIs and their subsidiaries and ensure the prevention or disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds.<sup>26</sup> This breathes life to COA's constitutional mandate as guardian of public funds, to promulgate accounting and auditing rules and regulations in the exercise of its general audit power.<sup>27</sup>

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<sup>24</sup> Id. at 76.

<sup>25</sup> Id. at 80.

<sup>26</sup> Item I of COA Circular No. 2006-001.

<sup>27</sup> Section 2, Article IX (D) of the 1987 Constitution provides:

(2) The Commission shall have exclusive authority, subject to the limitations in this Article, to define the scope of its audit and examination, establish the techniques and methods required therefor, and promulgate accounting and auditing rules and regulations, including those for the prevention and disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures, or uses of government funds and properties.

Item III of the circular reads:

### III. AUDIT GUIDELINES

1. The amount of extraordinary and miscellaneous expenses, as authorized in the corporate charters of GOCCs/GFIs, shall be the ceiling in the disbursement of these funds. Where no such authority is granted in the corporate charter and the authority to grant extraordinary and miscellaneous expenses is derived from the General Appropriations Act (GAA), the amounts fixed thereunder shall be the ceiling in the disbursements;
2. **Payment of these expenditures shall be strictly on a non-commutable or reimbursable basis;**
3. **The claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursements;** and
4. No portion of the amounts appropriated shall be used for salaries, wages, allowances, intelligence and confidential expenses which are covered by separate appropriations. (Emphasis supplied)

The above audit guidelines enumerate the conditions for a successful EME reimbursement which generally pertain to the authorized budget ceiling, method of payment, requisite proof of disbursement, and appropriation restriction. The COA rules require that the EME shall be paid strictly on a non-commutable or reimbursable basis and that the claim for reimbursement be supported by receipts and/or other documents evidencing disbursements.

In *Maritime Industry Authority v. Commission on Audit*,<sup>28</sup> We have held that the burden of proving the validity or legality of the grant of allowance or benefits is with the government agency or entity granting the allowance or benefit, or the employee claiming the same. Here, it is undisputed that the authority of TransCo to allow the payment of EME is derived from the GAA. But while TransCo is authorized to grant EME, it may do so only when the conditions set forth in COA Circular No. 2006-001 have been clearly established. In fact, the last paragraph of Section 28 of the GAA explicitly states that “these expenditures shall be subject to pertinent accounting and auditing rules and regulations.”

The claims for reimbursement of EME of GOCCs, like TransCo, rest upon the existence of sufficient proof of the expenditures incurred by the qualified officials such as receipts and/or other documents evidencing disbursement. It is only when supporting documents are presented that the GOCC can properly claim reimbursement of EME. Hence, it is incumbent upon TransCo and its officials, as claimants, to prove that all these requirements have been met before they can properly claim reimbursement of their EME. It is an elementary rule that he who alleges a fact has the burden of proving it.

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<sup>28</sup> 750 Phil. 288 (2015).

In this case, TransCo's claim for reimbursement was not supported by any receipt from its officials. The only document presented to substantiate the reimbursement claim was a "certification." Whether a certification is a sufficient document to support EME reimbursement has been squarely settled in *Espinas*<sup>29</sup> in this wise:

[T]he Court concurs with the CoA's conclusion that the "certification" submitted by petitioners cannot be properly considered as a supporting document within the purview of Item III (3) of CoA Circular No. 2006-01 which pertinently states that a "claim for reimbursement of [EME] expenses shall be supported by receipts and/or other documents evidencing disbursements." Similar to the word "receipts," the "other documents" pertained to under the above-stated provision is qualified by the phrase "evidencing disbursements." Citing its lexicographic definition, the CoA stated that the term "disbursement" means "to pay out commonly from a fund" or "to make payment in settlement of debt or account payable." That said, it then logically follows that petitioners' **"certification," so as to fall under the phrase "other documents" under Item III (3) of CoA Circular No. 2006-01, must substantiate the "paying out of an account payable," or, in simple term, a disbursement.** However, an examination of the sample "certification" attached to the petition does not, by any means, fit this description. The signatory therein merely certifies that he/she has spent, within a particular month, a certain amount for meetings, seminars, conferences, official entertainment, public relations, and the like, and that the certified amount is within the ceiling authorized under the LWUA corporate budget. Accordingly, since petitioners' reimbursement claims were solely supported by this "certification," the CoA properly disallowed said claims for failure to comply with CoA Circular No. 2006-01.<sup>30</sup> (Emphasis and underscoring supplied)

Clearly, a certification may or may not constitute an adequate proof of disbursement. To be admitted as a sufficient evidence of payment, the certification presented by the GOCC must establish "the paying out of an account payable," or a disbursement. It must reflect the transaction details that are typically found in a receipt which is the best evidence of the fact of payment.<sup>31</sup> It must specify the nature and description of the expenditures, amount of the expenses, and the date and place they were incurred. This interpretation holds true even with just a plain reading of Item III of COA Circular No. 2006-001, since the phrase "other documents" is qualified by the phrase "evidencing disbursements." A sweeping and general statement that expenditures were incurred by some officials within a certain month does not, in any way, satisfy the condition contemplated in the circular. Unfortunately, in this case, the certifications submitted by TransCo officials merely provided a simple declaration from each payee that "the expenses have been incurred for any of the purposes contemplated under the law or regulation (GAA and COA Circular No. 89-300) in relation to or by reason

<sup>29</sup> Supra note 14.

<sup>30</sup> Id. at 78-79.

<sup>31</sup> See *Sugar Regulatory Administration v. Tormon*, 700 Phil. 165, 173 (2012).



of my position.”<sup>32</sup> Hence, the Court is not inclined to accept such certification as valid evidence of disbursement.

Considering the absence of receipts and/or supporting documents to substantiate TransCo’s claim of reimbursement, the COA correctly disallowed the EME of TransCo officials. The grant of EME was an irregular expenditure which COA Circular No. 85-55-A<sup>33</sup> dated September 8, 1985 defines as:

The term “irregular expenditure” signifies an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. Irregular expenditures are incurred without conforming with prescribed usages and rules of discipline. There is no observance of an established pattern, course, mode of action, behavior, or conduct in the incurrence of an irregular expenditure. A transaction conducted in a manner that deviates or departs from, or which does not comply with standards set is deemed irregular. An anomalous transaction which fails to follow or violates appropriate rules of procedure, is likewise irregular. Irregular expenditures are different from illegal expenditures since the latter would pertain to expenses incurred in violation of the law whereas, the former is incurred in violation of applicable rules and regulations other than the law.<sup>34</sup> (Underscoring supplied)

As regards the method of payment criteria, the Court is not convinced that the absence of evidence of payment and the uniformity of the amounts paid to TransCo officials are conclusive proof that the EME were paid on a commutable basis. Such a statement by the COA is at best conjectural since the ND supplied no detail whatsoever on how it arrived at its conclusion. The COA did not even mention the applicable law, regulation, jurisprudence or the accounting and auditing principle that support its conclusion that the EME of the officials were not paid in accordance with COA Circular No. 2006-001.

In view of the foregoing, no grave abuse of discretion can be attributed to the COA for upholding the ND.

*Even if the approving/certifying officers did not act in bad faith or with malice or gross negligence, all the payees are liable to return the disallowed amounts respectively received by them.*

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<sup>32</sup> Rollo, p. 47.

<sup>33</sup> Amended Rules and Regulations on the Prevention of Irregular, Unnecessary, Excessive or Extravagant Expenditures or Uses of Funds and Property.

<sup>34</sup> Item 3.1 of COA Circular No. 85-55-A.

In its petition, TransCo maintains that even if the payment of EME was contrary to the existing COA rules and regulations, the recipients thereof should not be held liable as they received the payments in good faith and without knowledge of any irregularity surrounding its disbursement.<sup>35</sup>

The recent case of *Madera v. Commission on Audit*<sup>36</sup> lays down a clear set of rules on the refund of amounts disallowed by the COA for a just and equitable outcome among persons liable for disallowances. The Court succinctly summarized the rules on the return of the disallowed amounts, to wit:

1. If a Notice of Disallowance is set aside by the Court, no return shall be required from any of the persons held liable therein.
2. If a Notice of Disallowance is upheld, the rules on return are as follows:
  - a. Approving and certifying officers who acted in good faith, in regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return consistent with Section 38 of the Administrative Code of 1987.
  - b. Approving and certifying officers who are clearly shown to have acted in bad faith, malice, or gross negligence are, pursuant to Section 43 of the Administrative Code of 1987, solidarily liable to return only the net disallowed amount which, as discussed herein, excludes amounts excused under the following sections 2c and 2d.
  - c. Recipients — whether approving or certifying officers or mere passive recipients — are liable to return the disallowed amounts respectively received by them, unless they are able to show that the amounts they received were genuinely given in consideration of services rendered.
  - d. The Court may likewise excuse the return of recipients based on undue prejudice, social justice considerations, and other *bona fide* exceptions as it may determine on a case to case basis.<sup>37</sup>

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.”<sup>38</sup> 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

<sup>35</sup> *Rollo*, p. 9.

<sup>36</sup> G.R. No. 244128, September 8, 2020.

<sup>37</sup> *Id.*

<sup>38</sup> *Development Bank of the Philippines v. Commission on Audit*, G.R. No. 221706, March 13, 2018, 858 SCRA 531, 550.

official duties.<sup>39</sup> Stated differently, a public official shall be presumed to have regularly performed his duties provided there is no clear *indicia* of bad faith, showing patent disregard of his responsibility.<sup>40</sup>

TransCo paid the EME of its officials in 2010. It explained that it granted their EME on the basis of mere certifications under the honest belief and understanding that they were compliant with COA Circular No. 2006-001. In its Appeal Memorandum<sup>41</sup> filed before the COA-CGS in 2011, TransCo justified its grant with these averments:

13. Based on the above, it is undeniable that by the use of the word “or”, the intention is to allow for an alternative. This is consistent with the well-entrenched principle of statutory construction that “The word *or* is a disjunctive term signifying disassociation and independence of one thing from the other things enumerated; it should, as a rule, be construed in the sense in which it ordinarily implies, as a disjunctive word.” In its elementary sense, “or” as used in a statute is a disjunctive article indicating an alternative. It often connects a series of words or propositions indicating a choice of either. When “or” is used, the various members of the enumeration are to be taken separately.

14. Accordingly, it is clear that the documentary support for the claim of EME can be receipts **OR** other documents, such as the “certification” issued by the officials concerned.

15. In fact, the sufficiency and validity of the certification is recognized by COA Audit Circular No. 89-300, the circular which generally governs the use of funds for EME by government offices other than GOCCs.

16. It is interesting to note that compared to the auditing rules on EME for GOCCs (COA Circular No. 2006-001), the presentation of receipts is dispensed with if a certification is executed by an official of a national government agency. The dispensation of presentation of receipts is clearly explained in COA Audit Circular No. 89-300, *thus*:

“I. RATIONALE: -

“x x x. Moreover, the existing reimbursement procedure on the use of the funds is viewed as cumbersome and discriminatory in that payments for the covered expenses have to be advanced first and reimbursed only after quite some time and only upon presentation of receipts, thereby allowing some officials to benefit more than others.”

17. Accordingly, the said circular mandates that:

**“1. The underlying principle behind the provision for authority to use appropriations for extraordinary**

<sup>39</sup> *Rotoras v. Commission on Audit*, G.R. No. 211999, August 20, 2019.

<sup>40</sup> See *Madera v. Commission on Audit*, supra note 36.

<sup>41</sup> *Rollo*, pp. 36-50.

and miscellaneous expenses recognizes the need to grant some form of assistance to officials occupying key positions in the National Government to enable them to meet various financial demands that otherwise would not have been made on them. Verily, by reason of their incumbency to these positions, they have to incur expenses of the sort which are not normally charged to or covered by their salaries and other emoluments. These officials should thus be accorded as much flexibility as possible in the utilization of the funds involved, subject to limitations imposed by law.

“2. The amounts fixed by the General Appropriations Act for the offices and officials indicated therein shall be the basis for the control in the disbursement of these funds.

“3. No portion of the amounts authorized and fixed by law shall be used for salaries, wages, allowances, intelligence and confidential expenses which are covered by separate appropriations.

“4. The entitlement to the benefit provided under the General Appropriations Act shall be on a strictly non-commutable or reimbursement basis. The corresponding claim for reimbursement of such expenses shall be supported by receipts and/or other documents evidencing disbursement, if these are available, or, in lieu thereof, by a certification executed by the official concerned that the expenses sought to be reimbursed have been incurred for any of the purposes contemplated under Section 19 and other related sections of RA 6688 (or similar provision in subsequent General Appropriations Act) in relation to or by reason of his position. In the case of miscellaneous expenses incurred for an office specified in the law, such certification shall be executed solely by the head of the office.

18. While some of the foregoing provisions do not appear in COA Circular No. 2006-001, TransCo does not see any reason why the same rationale and auditing rules should not be extended and applied to GOCCs. After all, TransCo does not go beyond the amounts fixed by the GAA for EME.

19. TransCo believes that there is no substantial distinction between national government agencies and GOCCs insofar as disbursement of EME is concerned to justify the imposition of stricter auditing rules against GOCCs.<sup>42</sup>

Time and again, the Court has held that mistakes committed by a public officer are not actionable, absent a clear showing that he was motivated by malice or gross negligence amounting to bad faith.<sup>43</sup> Bad faith does not simply connote bad judgment or negligence. It purports breach of a known duty through some motive, interest or ill will that partakes of the

<sup>42</sup> Id. at 42-44. (Citations omitted)

<sup>43</sup> *Lumayna v. Commission on Audit*, 616 Phil. 929, 945 (2009).

nature of fraud, including a dishonest purpose or some moral obliquity and conscious doing of a wrong. The existence of bad faith must be shown by clear and convincing evidence since the law always presumes good faith.<sup>44</sup>

True, TransCo misread COA Circular No. 2006-001 and mistakenly relied on COA Audit Circular No. 89-300, which solely applies to NGAs. However, it is worthy to note that at that time, there was yet a judicial interpretation of the COA rules on what constitutes “or other documents evidencing disbursements.” The Court’s careful analysis of the use of certification in claims for EME reimbursement of GOCCs was only made in *Espinas* in 2014. Thus, it can hardly be concluded that the approving/certifying officers of TransCo did not act in good faith when they admitted the certifications as evidence of disbursement.

Moreover, TransCo had been granting EME to its officials since it started its operations in 2003 but the payments of EME were disallowed only in 2010. The records are lacking in proof that between the years 2003 and 2010, certifications were not recognized as valid proof of disbursements. The records did not even show that audit observation memoranda were previously issued to inform TransCo of the deficiencies reflected in the audit of accounts, operations or transactions, if any, such as the absence of supporting documents. What is clear from the records is that the approving/certifying officers of TransCo committed an honest lapse of judgment when they granted the irregular EME. Their mistake was not indicative of willful and deliberate intent to disregard the COA rules and regulations but only an error of judgment made in good faith. Accordingly, the approving and certifying officers, having acted in good faith in the regular performance of their official functions, are not civilly liable to return the disallowed amount in accordance with Section 38 (1),<sup>45</sup> Chapter 9, Book I of the Administrative Code of 1987.

In the same vein, there is no clear evidence that the approving/certifying officers acted with malice and/or gross negligence when they treated the certifications as valid supporting documents for their EME reimbursement.

In *Fernandez v. Office of the Ombudsman*,<sup>46</sup> the Court held that:

[G]ross negligence refers to negligence characterized by the want of even slight care, 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 consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men

<sup>44</sup> See *China Airlines v. Court of Appeals*, 453 Phil. 959 (2003).

<sup>45</sup> 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.

<sup>46</sup> 684 Phil. 377 (2012).

never fail to take on their own property. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable.<sup>47</sup>

The approving/certifying officers did not patently disregard the existing rules in granting EME reimbursement since in the past, TransCo has consistently allowed the use of certification as a supporting document without a notice of disallowance having been issued against it. Before the *Espinas* ruling, they sincerely believed that the submission of certifications substantially complied with the requirements of COA Circular No. 2006-001 in relation to COA Circular No. 89-300. There is not the slightest hint that they intentionally and deliberately veered away from the plain meaning of the phrase “other documents evidencing disbursements” in the auditing guidelines just to suit their own interests to the prejudice of the government. On this score, the COA committed grave abuse of discretion in ordering all approving/authorizing officers solidarily liable with the payees for the return of the disallowed amount.

This is not to say, however, that the government is left to endure the significant fiscal impact of properly disallowed transactions. The approving/certifying officers who are recipients of the disallowed amounts are liable to return the same pursuant to our pronouncement in *Madera* that “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.”<sup>48</sup> As judiciously pointed out by Associate Justice Alfredo Benjamin S. Caguioa, the Court has returned to the basic premise that the responsibility to return is a civil obligation to which fundamental civil law principles, such as unjust enrichment and *solutio indebiti* apply **regardless of the good faith** of passive recipients.<sup>49</sup> The metamorphosis of the rules governing accountability for disallowances, especially payee liability for the amount actually received, strives to create a harmonious interplay of the provisions of the Administrative Code, the principles of unjust enrichment and *solutio indebiti* under the Civil Code, and the policy of social justice in disallowance cases.

Finally, the rule that a payee shall be liable for the return of the amount he/she unduly received is not absolute. The Court may excuse the return of the disallowed amount received when: (1) it was genuinely given in consideration of services rendered; (2) undue prejudice will result from requiring the return; (3) social justice comes into play; or (4) the case calls for humanitarian consideration. Since none of the exceptional circumstances obtain in this case, *We* apply the general rule and hold all passive recipients, including approving/certifying officers who were not clearly shown to have

<sup>47</sup> Id. at 389, citing *Brucal v. Desierto*, 501 Phil. 453, 465-466 (2005).


<sup>48</sup> *Madera v. Commission on Audit*, supra note 36.

<sup>49</sup> Id.

acted in bad faith, with malice, or with gross negligence but had received the disallowed amounts in their capacity as payees, liable to return the amounts they received on the basis of *solutio indebiti*.

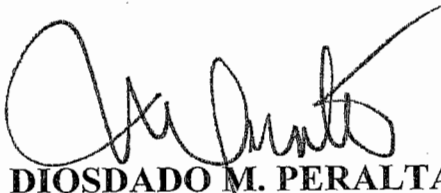
**WHEREFORE**, in view of the foregoing reasons, the Court **DISMISSES** the Petition for *Certiorari* of the National Transmission Corporation and **AFFIRMS** with **MODIFICATION** the Commission on Audit Decision No. 2017-115 dated April 26, 2017. All passive recipients of the disallowed extraordinary and miscellaneous expenses, including the approving/certifying officials who had received the disallowed amounts in their capacity as payees, are ordered to return the amounts respectively received by them.

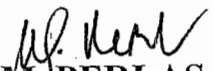
**SO ORDERED.**



**EDGARDO L. DELOS SANTOS**  
Associate Justice

**WE CONCUR:**

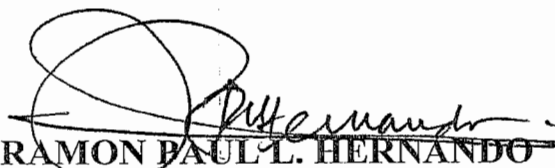
  
**DIOSDADO M. PERALTA**  
 Chief Justice

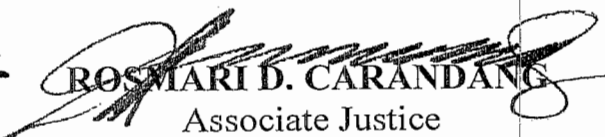
  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

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

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

  
**ALEXANDER G. GESMUNDO**  
 Associate Justice

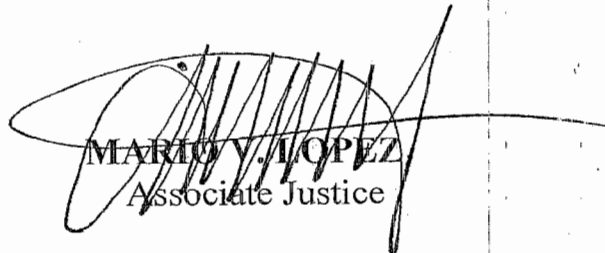
  
**RAMON PAUL L. HERNANDO**  
 Associate Justice


  
**ROSMARI D. CARANDANG**  
 Associate Justice

(On Official Leave)  
**AMY C. LAZARO-JAVIER**  
 Associate Justice

(On Official Leave)  
**HENRI JEAN PAUL B. INTING**  
 Associate Justice

(On Official Leave)  
**RODIL V. ZALAMEDA**  
 Associate Justice

  
**MARIO V. LOPEZ**  
 Associate Justice

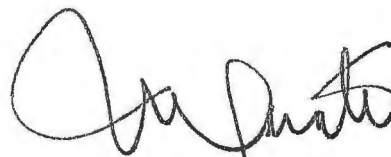
  
**SAMUEL H. GAERLAN**  
 Associate Justice

  
**RICARDO B. ROSARIO**  
 Associate Justice



**CERTIFICATION**

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.



**DIOSDADO M. PERALTA**  
Chief Justice

~~DIOSDADO M. PERALTA~~  
~~Chief Justice~~