

Republic of the Philippines
Supreme Court
Manila

EN BANC

POWER SECTOR ASSETS AND LIABILITIES MANAGEMENT CORPORATION, represented by MR. EMMANUEL R. LEDESMA, JR.,* in his capacity as President and Chief Executive Officer, MEMBERS OF THE PSALM BOARD OF DIRECTORS and the concerned and affected OFFICERS of PSALM,

Petitioners,

- versus -

COMMISSION ON AUDIT,
Respondent.

G.R. No. 211376

Present:

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

Promulgated:

December 7, 2021

X-----*[Signature]*-----X

D E C I S I O N

INTING, J.:

This Petition for *Certiorari* (With Urgent Application for a *Status Quo Ante* Order or Temporary Restraining Order and/or Writ of Preliminary Mandatory Injunction)¹ under Rule 64, in relation to Rule

* Mr. Emmanuel R. Ledesma, Jr. is impleaded as a nominal party, being the President and Chief Executive Officer of Power Sector Assets and Liabilities Management (PSALM), at the time of the filing of the petition. He is not named in the controverted Notice of Disallowance No. 09-0003-(08).

** On official leave.

¹ *Rollo*, pp. 11-43.

65, of the Rules of Court assails the Decision No. 2012-230² dated December 5, 2012 and the Resolution³ dated December 6, 2013 of the Commission on Audit (COA) Proper which upheld Notice of Disallowance (ND) No. 09-0003-(08)⁴ dated August 20, 2009 that covered the total amount of ₱1,110,078.89 as business development expenses (BDE) claimed by Power Sector Assets and Liabilities Management (PSALM), the members of the Board of Directors, and the concerned and affected officers (collectively, petitioners).

The Antecedents

PSALM is a government-owned and -controlled corporation (GOCC) created under Republic Act No. (RA) 9136,⁵ otherwise known as the “Electric Power Industry Reform Act of 2001” (EPIRA). It is mandated to manage the orderly sale, disposition, and privatization of National Power Corporation (NPC) assets, with the objective of liquidating all of NPC’s financial obligations.⁶

PSALM’s Corporate Operating Budget (COB)⁷ for the year 2008 was approved by the Department of Budget and Management (DBM) on October 30, 2008.⁸ The 2008 COB had an allocation for BDE as follows:

3. Disbursements for Extraordinary and Miscellaneous Expenses (200-18) shall be subject to Section 26, General Provisions of the FY 2008 Budget (RA 9498), *and/or approval of the Commission on Audit on the setting up of a separate account for business development expenses*, as follows:

- a. Representation Expenses

² *Id.* at 54-63; signed by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza as attested by Commission Secretariat and Director IV Fortunata M. Rubico.

³ *Id.* at 64-65.

⁴ *Id.* at 66-67.

⁵ Entitled, “An Act Ordaining Reforms in the Electric Power Industry, Amending for the Purpose Certain Laws and For Other Purposes,” approved on June 8, 2001.

⁶ Section 50 of Republic Act No. (RA) 9136 provides:

SEC. 50. *Purpose and Objective, Domicile and Term of Existence.* — The principal purpose of the PSALM Corp. is to manage the orderly sale, disposition, and privatization of NPC generation assets, real estate and other disposable assets, and IPP contracts with the objective of liquidating all NPC financial obligations and stranded contract costs in an optimal manner.

x x x x

⁷ *Rollo*, pp. 152-154.

⁸ *Id.* at 154.

b. *Business Development*⁹ (Italics supplied.)

Notably, the 2008 COB requires the setting up of a BDE account *separate* from the representation expenses (RE) account to ensure proper charging, monitoring, and accounting of BDE. While maintaining an RE account, PSALM, however, failed to set up a separate BDE account.¹⁰

In Board Resolution No. (BR) 2008-1124-008¹¹ dated November 24, 2008, PSALM authorized its board members, management committee, board review committee, department and division managers, and its actively participating members to incur and claim BDE in the exercise of their duties and functions. Relatedly, it issued Memorandum Order No. (MO) 2008-017¹² dated November 27, 2008, providing the guidelines for the use and disbursement of BDE, in that all claims should be supported by *receipts or certifications* issued by the concerned officials.¹³

In Audit Observation Memorandum No. 2008-014¹⁴ (AOM) dated May 5, 2009, the COA Audit Team Leader (COA Auditor) noted the following observations relating to the reimbursed amounts incurred and claimed by petitioners as BDE:

- (1) The validity and correctness of the BDE amounting to ₱1,177,027.75 charged against the RE account could not be ascertained because of incomplete supporting documents, *i.e.*: (a) the receipts, which were mostly for meals, groceries, and gift items, failed to indicate the nature, purpose, and participants of the relevant PSALM meetings/activities; and (b) it cannot be ascertained from the receipts whether the expenses were incurred for a public purpose or pursuant to the goals stated in BR 2008-1124-008 or MO 2008-017;¹⁵ and

⁹ *Id.*

¹⁰ *Id.* at 55

¹¹ *Id.* at 155-160.

¹² *Id.* at 161-162.

¹³ *Id.* at 55.

¹⁴ *Id.* at 163-176.

¹⁵ *Id.* at 55-56.

- (2) There were deficiencies in the official receipts covering the BDE claims amounting to ₱573,704.18, as they either: (a) pre-dated the effectivity of MO 2008-017, or (b) were dated on a Saturday, Sunday, or holiday, sans any information indicating the nature of the covered expenses.¹⁶

The COA Auditor further remarked that the deficiencies were contrary to the Government Auditing and Accounting Manual¹⁷ (GAAM) requiring complete supporting documentation for claims against government funds.¹⁸

In its reply, PSALM raised the supposed ambiguity as to what constitutes “complete documentation” and “documents and other evidence” required under the GAAM to substantiate the expenses. Under this premise, PSALM invoked its MO 2008-017 which provides that BDE claims may be supported by a certification executed by the concerned official. For PSALM, the questioned BDE enjoys the presumption of having been incurred in the ordinary course of its business and in accordance with law.¹⁹

Finding no merit in PSALM's explanation, the COA Auditor issued ND No. 09-0003-(08) dated August 20, 2009 which formally disallowed the BDE claims of PSALM amounting to ₱1,110,078.89 for being *irregular, unnecessary, excessive or extravagant* (IUEE) expenditures, in violation of COA Circular No. 85-55-A dated September 8, 1985.²⁰

The ND also identified the following PSALM officials liable for the disallowance:

¹⁶ *Id.* at 56.

¹⁷ Commission on Audit (COA) Circular No. 368-91 dated December 19, 1991.

See Sections 138(f) and 168(c) of the GAAM:

SEC. 138. *Fundamental principles.* — Financial transactions and operations of any government agency shall be governed by the following fundamental principles:

x x x x

f. Claims against government funds shall be *supported with complete documentation.*

x x x x

SEC. 168. *Basic requirements applicable to all classes of disbursements.* — The following basic requirements applicable to all classes of disbursements shall be complied with:

x x x x

c. Documents to establish validity of claim. — Submission of documents and other evidences [*sic*] to establish the validity and correctness of the claim for payment.

x x x x

¹⁸ *Rollo*, p. 56.

¹⁹ *Id.* at 93.

²⁰ *Id.* at 66-67.

	Name	Position / Designation	Nature of Participation
1.	Jose C. Ibazeta	President & CEO	For issuing MO 2008-017 dated November 27, 2008 prescribing the guidelines for the granting of BDEs; and as payee.
2.		Members of the BOD	For signing/approving the Board Resolution authorizing the grant of the BDEs.
3.	Jose C. Ibazeta, Ma. Luz L. Caminero, <i>et al.</i>	Cost Center Heads/ Department Managers	For approving the payments.
4.	Marivi V. Francisco Yolanda DP Alfara	Sr. Fin. Specialist/OI C, GAD Div. Manager	For certifying the completeness of the supporting documents.
5.	All payees ²¹		

PSALM appealed the disallowance to the COA Corporate Government Sector (COA-CGS) Cluster B and characterized the ND as a patent nullity. For PSALM, the ND merely stated conclusions of law that were unsupported by evidence. It maintained that it had duly submitted receipts and/or certifications to substantiate all of its BDE claims.²²

Ruling of the COA Director

In the Decision No. 2010-008²³ dated July 6, 2010, the COA-CGS Director²⁴ denied PSALM's appeal based on the following reasons:

²¹ As culled from the Notice of Disallowance No. 09-0003-(08), *ia.* at 66.

²² *Id.* at 94-95.

²³ *Id.* at 91-98.

²⁴ Divinia M. Alagon, Director IV, *id.* at 98.

First, contrary to PSALM's assertion, the ND expressly stated the ground for the disallowance was the payment of BDE from November 2008 to December 2008 which violated COA Circular No. 85-55-A by prohibiting IUEE expenditures, or the use of government funds. The ND proceeded from the AOM, which stated in detail the COA Auditor's observations, to which PSALM filed a reply.²⁵ Granting *arguendo* that the ND merely stated conclusions of law, the same may be amplified on review before the COA, which may point out other deficiencies or additional grounds for the disallowance.²⁶

Second, the condition for the setting up of a separate BDE account was not complied with as PSALM failed to get the approval of the COA prior to paying the BDE transactions, which were charged against its RE account from November 2008 to December 2008.²⁷ Similarly, there was no showing that the supposed entitlement of PSALM officials to incur and claim BDE was approved by the President of the Philippines pursuant to Section 64²⁸ of the EPIRA on fiscal prudence.²⁹

Lastly, COA Circular No. 2006-001³⁰ mandates the submission of receipts and/or other documents evidencing the BDE incurred. It does not contemplate mere certifications executed by the concerned officials pertaining to BDE as alternative supporting documents.³¹ Also, there could be no legal basis for the reimbursement of the BDE incurred by PSALM prior to the issuance of MO 2008-017.³²

²⁵ *Id.* at 95.

²⁶ *Id.* at 97.

²⁷ *Id.*

²⁸ Section 64 of RA 9136 provides:

SEC. 64. *Fiscal Prudence.* — To promote the prudent management of government resources, x x x. The *compensation and all other emoluments and benefits of the officials and members of the Board of TRANSCO and PSALM Corp. shall be subject to the approval of the President of the Philippines.* (Italics supplied.)

²⁹ *Rollo*, p. 97.

³⁰ With the subject, "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," dated January 3, 2006.

See Item III(3) of COA Circular No. 2006-001:

III. AUDIT GUIDELINES

x x x x

3. The claim for reimbursement of such expenses shall be supported by *receipts and/or other documents evidencing disbursements*; x x x (Italics supplied.)

³¹ *Rollo*, p. 61.

³² *Id.* at 98.

PSALM disagreed and elevated the case to the COA Proper *via* a Petition for Review.³³

Ruling of the COA Proper

In the assailed Decision No. 2012-230³⁴ dated December 5, 2012, the COA Proper dismissed PSALM's petition and essentially echoed the ratiocination of the COA-CGS Director. In the subsequent Resolution³⁵ dated December 6, 2013, it likewise denied PSALM's Motion for Reconsideration.

Hence, the present petition ascribing grave abuse of discretion to the COA Proper in upholding the subject ND; thus:

- A. ND No. 09-003-(08) is void as it violated both the Constitution and the COA rules; and
- B. The payment of BDE has factual and legal bases, and petitioners complied with all applicable legal requirements.³⁶

Petitioners' Arguments

Invoking the constitutional guarantee of due process, petitioners maintain that the ND is a patent nullity based on the following arguments: *first*, the ND merely stated a legal conclusion that the payments of BDE for November and December 2008 violated COA Circular No. 85-55-A pertaining to IUEE expenditures of government funds;³⁷ *second*, the ND failed to characterize the BDE claims as IUEE based on the "operational definitions and standards or situational cases" under the COA Circular;³⁸ and *third*, the ND is not supported by evidence.³⁹

³³ *Id.* at 99-119.

³⁴ *Id.* at 54-63.

³⁵ *Id.* at 64-65.

³⁶ *Id.* at 19.

³⁷ *Id.* at 21.

³⁸ *Id.* at 21-22.

³⁹ *Id.* at 26-28.

Issues

- 1) Whether the subject ND violates the constitutional guarantee to due process and the COA rules; and
- 2) Whether the disallowance of PSALM's BDE claims has factual and legal bases.

The Court's Ruling

The Court dismisses the petition based on the following reasons: (1) the petition was *filed out of time*; and (2) there is no showing of grave abuse of discretion on the part of the COA in upholding the ND.

I

Under Section 3,⁴⁰ Rule 64 of the Rules of Court, the petition for *certiorari* must be filed within 30 days from notice of the judgment, final order, or resolution sought to be reviewed. The filing of a *motion for new trial* or *reconsideration*, if allowed under the procedural rules, shall *interrupt* the 30-day reglementary period. Should the motion be denied, the aggrieved party may file the petition *within the remaining period*, which shall not be less than five days reckoned from the notice of denial.

Here, PSALM received a copy of the assailed Decision No. 2012-230 on December 11, 2012; thus, it had 30 days therefrom within which to file a petition for *certiorari* under Rule 64. Notably, PSALM's Motion for Reconsideration,⁴¹ which was timely filed on December 19, 2012,⁴² tolled the running of the 30-day reglementary period and left it with 22 days within which to file the petition, reckoned from PSALM's receipt of

⁴⁰ Section 3, Rule 64 of the Rules of Court provides:

SEC. 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. (Italics supplied.)

⁴¹ *Rollo*, pp. 123-142.

⁴² *Id.* at 123.

the denial of the motion. Counting the 22 days from PSALM's receipt of the assailed Resolution denying the Motion for Reconsideration on January 28, 2014,⁴³ the last day for filing the petition fell on February 19, 2014. However, petitioners filed the present petition only on February 27, 2014,⁴⁴ hence, eight days late.

Petitioners admit that the petition had been filed out of time. However, they assert that the belated filing of the petition was brought about by an honest mistake in their understanding that they have a fresh 30-day period within which to file the petition, counted from their receipt of the COA Proper's denial of their Motion for Reconsideration.⁴⁵

Petitioners' thoughtlessness does not amount to a compelling reason to warrant the relaxation of the procedural rules.

In *Fortune Life Insurance Company, Inc. v. Commission on Audit*,⁴⁶ the Court held that the belated filing of the petition for *certiorari* under Rule 64 on the erroneous belief on the applicability of the *fresh period rule* under *Neypes v. Court of Appeals*⁴⁷ was fatal to the recourse. While the rules of procedure may indeed be relaxed in *exceptional cases* in order to relieve litigants of any injustice, the reason for this liberality is not meant to excuse thoughtlessness or cases of blatant misappreciation or misapplication of the rules,⁴⁸ as in the case.

Considering that the present petition was untimely filed, it is clear that the assailed COA Proper Decision and Resolution have attained *finality and immutability*, thus rendering the subject ND incontrovertible. In fact, the COA Proper had already issued a Notice of Finality⁴⁹ dated June 16, 2014 wherein it stated that its Decision No. 2012-230 dated December 5, 2012 had become final and executory and, thereafter, an Order of Execution⁵⁰ dated January 5, 2015 was issued enforcing the Decision.

⁴³ *Id.* at 64.

⁴⁴ *Id.* at 11.

⁴⁵ *Id.* at 15.

⁴⁶ 752 Phil. 97 (2015).

⁴⁷ 506 Phil. 613 (2005).

⁴⁸ *Canton v. City of Cebu*, 544 Phil.369, 378 (2007).

⁴⁹ *Rollo*, pp. 312-314.

⁵⁰ *Id.* at 295-299.

II

Even if the Court were to disregard the foregoing fatal procedural infirmity, the petition still could not prosper on the merits for failure of petitioners to show grave abuse of discretion on the part of the COA Proper in upholding the ND.

The Constitution vests the COA, as the guardian of public funds, with the broadest latitude “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.”⁵¹

Owing to this constitutional mandate, the findings of the COA are generally sustained in recognition of its expertise in the implementation of the laws entrusted to it to enforce.⁵² Only in cases where the COA acts without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, may the Court intervene in the exercise of its judicial power of review.⁵³

Grave abuse of discretion on the part of the COA refers to “an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act in contemplation of law,” such as when the decision or resolution it rendered is not based on the applicable law and the evidence on record but on mere caprice, whim, and despotism.⁵⁴

After a careful review, the Court finds that *none* of these circumstances are attendant in the case.

There is no violation of due process.

Petitioners' contention regarding violation of their right to due process is misplaced.

⁵¹ See Section 2(2), Article IX-D, CONSTITUTION.

⁵² *Felix Gochan & Sons Realty Corporation v. Commission on Audit*, G.R. No. 223228, April 10, 2019.

⁵³ *Technical Education and Skills Development Authority (TESDA) v. Commission on Audit*, 729 Phil. 60, 72-73 (2014).

⁵⁴ *Id.*

Due process simply requires that a party be properly notified of the allegations against him or her and be accorded an opportunity to be heard and to controvert those allegations.⁵⁵ It may include seeking reconsideration of the action or ruling complained of.⁵⁶ Thus, there can be no denial of due process as long as the party was afforded the opportunity to defend his or her interests in due course.⁵⁷

Contrary to petitioners' assertion, the AOM and the ND clearly indicated that the questioned BDE was incurred by PSALM in violation of the GAAM, specifically, on the proper substantiation of government expenses and COA Circular No. 85-55-A prohibiting irregular expenditures of government funds. Notably, PSALM availed itself of the opportunity to challenge the COA Auditor's findings even *prior* to the issuance of the subject ND when it filed a reply to the AOM.

Here, the issuance of an AOM by the COA Auditor, while not mandatory in audit cases, more than satisfied the due process requirement because it operated to notify PSALM of the deficiencies noted in the audit of its account. It also accorded PSALM the opportunity to comment thereon and submit documents to support the questioned disbursements of government funds.⁵⁸ Having submitted documents in proof of its claims and fully argued against the deficiencies observed in the AOM from which the ND was issued, PSALM cannot feign ignorance of the factual and legal bases for the disallowance. What is more, PSALM likewise appealed the ND to the COA-CGS and, subsequently, before the COA Proper itself.

In *Yap v. Commission on Audit*,⁵⁹ the Court held that the COA is not limited to the grounds relied upon by a government agency's auditor as regards its review of the disallowance of certain disbursements of public funds. In consonance with its general power of audit, the COA is duty-bound to make its own assessment of the merits of the disallowed disbursements.⁶⁰ It simply cannot restrict itself to reviewing the validity of the grounds for disallowance indicated by the auditor of the

⁵⁵ *Ablong v. Commission on Audit*, G.R. 233308, August 18, 2020.

⁵⁶ *Vivo v. Philippine Amusement and Gaming Corp.*, 721 Phil. 34, 43 (2013).

⁵⁷ *Domingo v. Colina*, 713 Phil. 264, 272 (2013).

⁵⁸ See Section 4.9 of the 2009 Rules and Regulations on Settlement of Accounts, as embodied in COA Circular No. 2009-006.

⁵⁹ 633 Phil. 174 (2010).

⁶⁰ *Id.* at 191.

government agency concerned. "To hold otherwise would render COA's vital constitutional power unduly limited and thereby useless and ineffective."⁶¹

Indeed, any perceived errors committed by a government auditor, as well as the purported unclear bases in a notice of disallowance, may be rectified on appeal by the COA, which may, in turn, explain, clarify, and expound on those bases, and even point out additional grounds for the disallowance.

In the case, the COA Proper affirmed the bases relied upon by the COA Auditor in disallowing the disbursements and added that PSALM failed to get the COA's approval in relation to the setting up of a separate BDE account pursuant to its COB for the year 2008, *prior to* paying the questioned BDE transactions. With the factual and legal bases for the disallowance clearly laid out in the assailed COA Decision, petitioners' misleading assertion of violation of due process simply cannot be countenanced.

PSALM had no authority to pay the expenses claimed as BDE by its officials.

Admittedly, PSALM issued BR 2008-1124-008 dated November 24, 2008 and MO 2008-017 dated November 27, 2008 relative to its 2008 COB allocating BDE as follows:

3. Disbursements for Extraordinary and Miscellaneous Expenses (200-18) shall be subject to Section 26, General Provisions of the FY 2008 Budget (RA 9498), *and/or approval of the Commission on Audit on the setting up of a separate account for business development expenses*, as follows:
 - a. Representation Expenses
 - b. *Business Development*⁶² (Italics supplied.)

As regards disbursements for extraordinary and miscellaneous expenses (EME), the 2008 COB is clear. Pursuant to COA Circular No. 2006-001, the authority of PSALM as a GOCC to grant EME is derived

⁶¹ *Id.*

⁶² *Rollo*, p. 154.

from the General Appropriations Act (GAA),⁶³ as reflected in the COB. However, contrary to PSALM's appreciation of the 2008 COB, the *separate and additional* disbursements for BDE are *not* automatically granted. BDE incurrence is subject to a condition, that is, the approval of the COA on the setting up of a separate account for BDE, which PSALM failed to secure in this case.

As the COA aptly noted, BDE partakes of the nature of EME. This is evident from COA Circular No. 2006-001 covering business development expenses, along with discretionary and representation expenses, as "other expenses" *similar* to EME, whose nature or purpose pertain to any of the following:

- a) meetings, seminars and conferences;
- b) official entertainment;
- c) public relations;
- d) educational, athletic and cultural activities;
- e) contribution to civic and charitable institutions;
- f) membership in government associations;
- g) membership in national professional organizations duly accredited by the Professional Regulation Commission;
- h) membership in the Integrated Bar of the Philippines;
- i) subscription to professional technical journals and informative magazines, library books and materials;
- j) other similar expenses not supported by regular budget allocation.⁶⁴

The foregoing enumeration is not exclusive and does not prevent the inclusion of other similar disbursements, which may be categorized as EME within its contemplation.⁶⁵ This is reflected in Section 26 of the 2008 GAA *subjecting the expenditures to pertinent accounting rules and regulations*.

It bears underscoring that a disbursement for EME is subject to a ceiling amount under Section 26 of the 2008 GAA. Here, the COA Auditor, the COA Director, and the COA Proper are one in holding that the setting up of a BDE account is necessary in order to ensure the proper charging, monitoring, and accounting of BDE to separate them from EME or RE.

⁶³ See Item III(1) of COA Circular No. 2006-001.

⁶⁴ See Item II of COA Circular No. 2006-001.

⁶⁵ *Id.*

Indeed, the setting up of a separate BDE account is an auditing mechanism required by the COA pursuant to its power to prescribe accounting rules and regulations governing the disbursement of EME and other similar expenses of GOCCs. The Court sees no reason to intervene in the wisdom and technical expertise of the COA deeming such auditing mechanism as necessary in regulating the incurrence of BDE and ensuring the prevention or disallowance of irregular, unnecessary, excessive, extravagant, or unconscionable expenditures or uses of government funds.⁶⁶

There is lack of proper substantiation and documentation of the BDE claims on the part of PSALM.

Assuming *arguendo* that PSALM is authorized to incur and claim BDE, it may only do so when the conditions set forth in COA Circular No. 2006-001 are met. This is clear from the last paragraph of the 2008 GAA stating that “these expenditures shall be subject to pertinent accounting and auditing rules and regulations.” The validity and correctness of the claim for reimbursement of EME or other similar expenses of GOCCs, like PSALM, must be clearly established.⁶⁷ Simply put, PSALM's claims for reimbursement of BDE, *if* at all allowed, must rest upon the existence of *sufficient proof of the expenditures incurred* by the qualified officials such as receipts and/or other documents evidencing disbursement.⁶⁸

While petitioners presented receipts to support their claim for BDE reimbursement, they failed to establish the *nature* and *description* of these expenditures. As the COA Auditor observed, the receipts are mostly for meals, groceries, and gift items while some even covered

⁶⁶ See Item I of COA Circular No. 2006-001.

⁶⁷ Section 168(c), COA Circular No. 368-91 provides:

SECTION 168. Basic requirements applicable to all classes of disbursements — The following basic requirements applicable to all classes of disbursements shall be complied with:

x x x x

c. Documents to establish validity of claim. — Submission of documents and other evidences [*sic*] to establish the validity and correctness of the claim for payment.

x x x x

⁶⁸ See Section 4(6), Presidential Decree No. 1445; Section 28(5), COA Circular No. 002-02, with the subject, “Prescribing the Manual on the New Government Accounting System (Manual Version) For Use in All National Government Agencies,” dated June 18, 2002.

entrance fee tickets to amusement parks.⁶⁹ In any case, from the receipts *alone*, it cannot be sufficiently ascertained whether the expenses were actually incurred pursuant to PSALM's goals as stated in BR 2008-1124-008 and MO 2008-017.

Petitioners also invoked the certifications executed by the concerned PSALM officials to support their claims for BDE reimbursement. Resort to these certifications proceeded from PSALM's *opinion* that the terms "complete documentation" and "documents and other evidence" required under the GAAM are ambiguous. In fact, it issued MO 2008-017 to particularly address the purported ambiguity and authorize the use of said certifications as alternative proofs.⁷⁰

The question of whether a certification is sufficient as a supporting document for reimbursements has been settled in *Espinas v. Commission on Audit*,⁷¹ as follows:

x x x [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.*⁷² (Italics supplied.)

Clearly, to constitute as sufficient proof of payment, "the certification presented by the GOCC must establish 'the paying out of an account payable,' or a disbursement."⁷³ "It must specify the nature and description of the expenditures, amount of the expenses, and the date and

⁶⁹ *Rollo*, p. 60.

⁷⁰ *Id.* at 93.

⁷¹ 731 Phil. 67 (2014).

⁷² *Id.* at 78-79.

⁷³ *National Transmission Corp. v. Commission on Audit*, G.R. No. 244193, November 10, 2020.

place they were incurred.”⁷⁴ This is evident from a plain reading of Item III of COA Circular No. 2006-001 qualifying the term “other documents” by the term “evidencing disbursements.”⁷⁵ Here, same with the receipts adduced by petitioners, the certifications do not conform to the foregoing parameters. As the COA Auditor aptly noted, petitioners failed to establish the circumstances of the relevant official PSALM activities to which the subject expenses may be attributed.

Owing to the public purpose requirement, as well as the official nature of the incurrence of BDE or other similar expenses by GOCCs, such expenditures must be shown to be necessary or relevant to the fulfillment of the official duties and functions of the qualified government officers and employees.⁷⁶ It is thus incumbent upon petitioners to show that the incurrence of BDE was *reasonably connected* with PSALM's official business meetings, corporate planning conferences, seminars, and other business-related activities in pursuance of its corporate goals.⁷⁷ This reasonable connection cannot simply rest on petitioners' lazy accounts on the expenses incurred. Petitioners' deficient and doubtful receipts, as well as the certifications bearing sweeping and general declarations that the expenditures were incurred by PSALM officials, do *not*, in any way, satisfy the requirement of proper substantiation and documentation of the expenses.

All told, PSALM's *unsubstantiated* claims for reimbursement of BDE, which, as earlier discussed, had been incurred in *patent* violation of the 2008 COB and the pertinent COA rules and regulations, are considered as *irregular* expenditures as defined by COA Circular No. 85-55-A as follows:

x x x 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

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Yap v. Commission on Audit, supra* note 59 at 192.

⁷⁷ PSALM Board Resolution No. 2008-1124-0081 dated November 24, 2008, *rollo*, pp. 155-160, and Memorandum Order No. 2008-017 dated November 27, 2008, *id.* at 161-162.

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.⁷⁸ (Italics supplied.)

The certifying and/or approving officers and recipients of PSALM are liable for the disallowed amounts.

Petitioners, as approving and/or certifying officers, as well as the recipients of the disallowed amounts, contend that they should not be held liable to return them on account of *good faith*. Relevant to this defense are the Rules on Return laid down in *Madera v. Commission on Audit*⁷⁹ (*Madera*).

Under Rule 2a of *Madera*, “[a]pproving and certifying officers who acted in good faith, in [the] regular performance of official functions, and with the diligence of a good father of the family are not civilly liable to return [the disallowed amount] consistent with Section 38 of the Administrative Code of 1987.” Section 38, in particular, essentially provides that it is only upon a showing of *bad faith*, *malice*, or *gross negligence* in the performance of their official duties may the approving and certifying officers be held solidarily liable for the disallowance.⁸⁰

Good faith denotes “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*.”⁸¹

⁷⁸ See Item 3.1 of COA Circular No. 85-55-A.

⁷⁹ G.R. No. 244128, September 8, 2020.

⁸⁰ Executive Order No. (EO) 292, otherwise known as the “Administrative Code of 1987,” signed on July 25, 1987, Book VI, Chapter 5, Section 43 states that “every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.” EO 292, Book I, Chapter 9, Section 38 states that “[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.”

⁸¹ *Philippine Health Insurance Corporation v. Commission on Audit*, G.R. No. 222838, September 4, 2018.

In the case, the DBM's requirement that the COA's approval be obtained prior to any disbursements of BDE has been in existence even *before* 2008, as reflected in PSALM's COBs for the years 2006 and 2007. Despite this knowledge, PSALM, through its responsible officials, passed a board resolution authorizing the incurrence of BDE *without* the required prior approval of the COA. This, in turn, paved the way for the subject irregular reimbursements. Worse, these reimbursements were approved despite the utter lack of substantiation and documentation to support the expenditures.

What is clear is that both the acts of blatantly ignoring the conditions set forth in PSALM's COBs for the *third* time and the precipitate granting of the disallowed reimbursements do *not* involve a mere honest lapse of judgment on the part of the approving and/or certifying officers. Rather, these series of actions are tantamount to wanton defiance of the categorical directives of the COA and the applicable rules and regulations pertaining to BDE disbursements. This defiance is contrary to the defense of good faith. Thus, the COA correctly held the approving and certifying officers of PSALM liable to refund the disallowed amounts, whether they were recipients thereof or not.⁸²

As regards the recipients, their defense of good faith is *immaterial* as the basis of their liability rests on the principles of *solutio indebiti* and unjust enrichment.⁸³

Following the *Madera* Rules, "[t]he 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."⁸⁴

After a careful consideration, the Court finds that *none* of these exceptional circumstances are present in the case.

⁸² *Madera v. Commission on Audit*, *supra* note 79.

⁸³ *Id.*


⁸⁴ *National Transmission Corporation v. Commission on Audit*, *supra* note 73.

Specifically, as regards Rule 2c of *Madera* on *amounts genuinely given in consideration of services rendered*, the Court sees no proof on record to conclude that the disallowed BDE reimbursements actually have “a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions for which the benefit or incentive was intended as further compensation.”⁸⁵


As earlier discussed in detail, PSALM failed to adequately provide substantiation and documentation for the claimed BDE in violation of the GAAM and COA Circular No. 2006-001. Without such evidence, the Court is constrained to uphold the liability of the recipients to return the amounts they received, in accordance with the Rules on Return in *Madera*.

WHEREFORE, the petition is **DISMISSED**. The Decision No. 2012-230 dated December 5, 2012 and the Resolution dated December 6, 2013 of the Commission on Audit are **AFFIRMED**. The officers of Power Sector Assets and Liabilities Management Corporation, who approved and certified the disbursements totaling to ₱1,110,078.89 claimed as business development expenses for 2008, are solidarily liable to refund the disallowed amounts, while all the recipients are liable to refund the amounts that they individually received.


SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

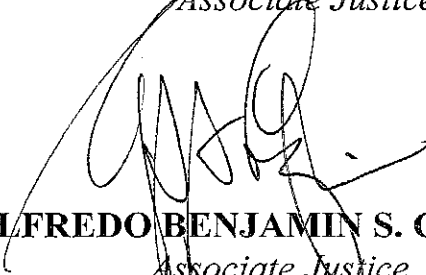
WE CONCUR:



ALEXANDER G. GESMUNDO
Chief Justice

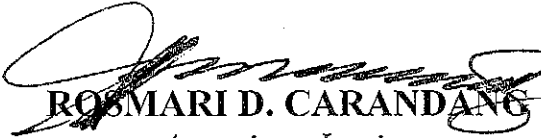
⁸⁵ See *Abellanos v. Commission on Audit*, G.R. No. 185806, November 17, 2020.



ESTELA M. PERLAS-BERNABE
Associate Justice

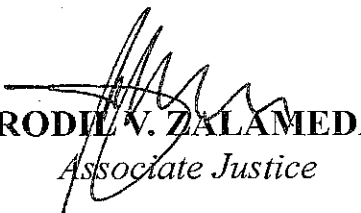

MARVIC M.V.F. LEONEN
Associate Justice

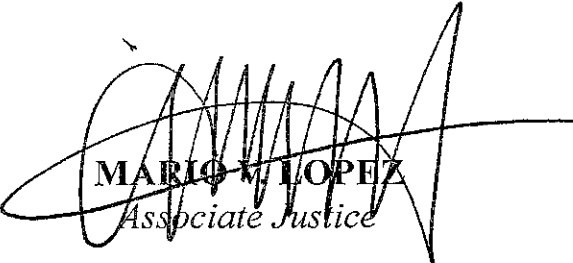

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

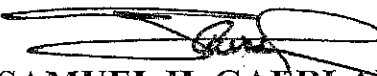

RAMON PAUL L. HERNANDO
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Associate Justice


RODIL V. ZALAMEDA
Associate Justice



MARIO M. LOPEZ
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SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice

(On official leave)
JAPAR B. DIMAAMPAO
Associate Justice


JOSE MIDAS P. MARQUEZ
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.


ALEXANDER G. GESMUNDO
Chief Justice