



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

RECEIVED
 JUN 11 2021
 BY: _____
 TIME: _____

EN BANC

**THE OFFICERS AND
 EMPLOYEES OF ILOILO
 PROVINCIAL
 GOVERNMENT HEREIN
 REPRESENTED BY ATTY.
 EDGAR CLAUDIO O.
 SUMIDO,**

Petitioners,

- versus -

**THE COMMISSION ON
 AUDIT, CHAIRPERSON MA.
 GRACIA M. PULIDO-TAN,
 COMMISSIONER HEIDI L.
 MENDOZA and
 COMMISSIONER JOSE A.
 FABIA,**

Respondents.

G.R. No. 218383

Present:

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

Promulgated:

January 5, 2021

Done by R. Peralta

X-----X

DECISION

ZALAMEDA, J.:

Officials and employees should endeavor to keep abreast of laws, rules and regulations, as well as all disallowed transactions received by their office, to avoid illegal, irregular, unnecessary, excessive, extravagant or unconscionable transactions. The grant and approval of a benefit more than five (5) times the amount given by other government offices without

ensuring compliance with budgetary rules is a clear showing of gross negligence characterized by having a want of the slightest care and a conscious indifference to the consequences of his or her acts.

The Case

This is a petition for *certiorari* under Rule 64, in relation to Rule 65, of the Rules of Court assailing Decision¹ No. 2014-188 dated 28 August 2014 and the Resolution² dated 09 March 2015 of the Commission on Audit (COA) Proper, which upheld the COA Regional Office decision affirming the payment of Productivity Enhancement Incentive (PEI) to the employees of the Province of Iloilo for calendar year (CY) 2009 in the total amount of Php102,700,000.00.

Antecedents

In December 2009, the *Sangguniang Panlalawigan* of Iloilo enacted Appropriation Ordinance No. 2009-06³ allowing the request for additional funds⁴ to cover the grant of PEI amounting to Php50,000.00 per employee, or a total disbursement of Php102.7 million.⁵

On post-audit, the Audit Team Leader and the Supervising Auditor of the Province of Iloilo disallowed the payment of the PEI through ND Nos. 2010-06-101(09) to 2010-85-101(09), for the total amount disbursed, on the ground that the payment is irregular and illegal for violating the following provisions: (1) Section 325(a) of Republic Act No. (RA) 7160 on the provision of Personal Services limitation; and (2) Department of Budget and Management (DBM) Local Budget Circular No. 2009-03 dated 17 December 2009.⁶

Based on post-audit computations, the Province of Iloilo had already exceeded its Personal Services limitation by Php38,701,198.90 even prior to

¹ *Rollo*, pp. 208-212; penned by Commission on Audit Chairperson Ma. Gracia M. Pulido Tan and concurred in by Commissioners Heidi L. Mendoza and Jose A. Fabia.

² *Id.* at 213.

³ *Id.* at 166-167.

⁴ Amounting to Php69,000,000.00.

⁵ *Rollo*, pp. 190, 208.

⁶ *Id.*



the grant of the PEI benefit to its employees. Hence, the province should not have given this additional benefit to its employees for CY 2009. The following⁷ were held liable under the NDs:

| Name and Position | Participation in the Transaction |
|---|---|
| Niel D. Tupas, Sr. – Provincial Governor | For approving payment; |
| Rolex T. Suplico – Provincial Vice Governor / Sangguniang Panlalawigan (SP) – Presiding Officer | For passing the appropriation despite excess in Personal Services limitation; |
| Oscar S. Garin, Jr. – Floor Leader | For passing the appropriation despite excess in Personal Services limitation; |
| Macario N. Napulan – SP Member | For passing the appropriation despite excess in Personal Services limitation; |
| June S. Mondejar – SP Member | For passing the appropriation despite excess in Personal Services limitation; |
| Rodolfo V. Cabado – SP Member | For passing the appropriation despite excess in Personal Services limitation; |
| Arthur R. Defensor, Jr. – SP Member | For passing the appropriation despite excess in Personal Services limitation; |
| Mariano M. Malones, Sr. – SP Member | For passing the appropriation despite excess in Personal Services limitation; |
| George P. Demaisip – SP Member | For passing the appropriation despite excess in personal services limitation; |
| Cecilia A. Colada – SP Member (FSBM President) | For passing the appropriation despite excess in Personal Services limitation; |
| Guisseppe Karl D. Gumban – SP Member (PPSK President) | For passing the appropriation despite excess in Personal Services limitation; |
| Lyd P. Tupas – Provincial Accountant | For certifying as to completeness of documents; |
| Corazon Estelita S. Beloria – Asst. Prov. Treasurer | For certifying as to availability of funds; |

⁷ *Id.* at 169-171.

| | |
|--|---|
| Elena D. Lim – Budget Officer | For certifying as to availability of appropriation; |
| Salvador P. Cabaluna, III – Provincial Legal Officer | For certifying that the officials and employees are entitled to Productivity Enhancement Incentive (PEI); |
| All other payees as stated in ND Nos. 2010-06-101(09) to 2010-85-101(09), all dated 28 September 2010 ⁸ | For being recipients of the disallowed benefits. |

Petitioners appealed the disallowance before the COA Regional Office and argued that the Provincial Government of Iloilo acted in good faith in implementing Appropriation Ordinance No. 2009-06 passed by the *Sangguniang Panlalawigan* of Iloilo. The recipients, who received the benefit in good faith, should not be compelled to refund the same. Moreover, even if the province exceeded its Personal Services limitation, the disallowance should not cover the total amount since other waived items (leave credits, terminal leaves and subsistence allowance) must be considered in computing Personal Services limitation.⁹

The COA Regional Office, through Decision No. 2012-021 dated 28 August 2012,¹⁰ denied petitioners' appeal and affirmed the subject NDs. It noted the Province of Iloilo had been made aware of the Personal Services limitation cap mandated by law through an earlier ND in 2004. Said ND was finally sustained by the Court and a Final Order of Adjudication issued by the COA on 18 March 2009. Even if the waived items are taken into account, the excess in Personal Services limitation would still be Php21,983,964.56.¹¹

Ruling of the Commission Proper

On 28 August 2014, COA Proper promulgated the assailed decision affirming the COA Regional Office's ruling, thus:

⁸ See also *rollo* pp. 18-165.

⁹ *Id.* at 191.

¹⁰ *Id.* at 190-193; penned by Commission on Audit Regional Office No. VI, Regional Director IV Salvador P. Isidero.

¹¹ *Id.* at 192-193.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED** for lack of merit. Accordingly, COA Region VI Decision No. 2012-021 dated August 28, 2012 is **AFFIRMED**.¹²

COA Proper reiterated the need for the LGU to follow the Personal Services limitation in granting PEI to its employees. Further, COA Proper brushed aside petitioners' claim of good faith since they are presumed to know the relevant provisions of the law.¹³

Petitioners moved for the reconsideration of the decision but COA Proper denied the same on 09 March 2015.¹⁴

Issues

Petitioners now come before the Court to assail COA Proper's decision, raising the following issues:

- a) The Commission on Audit gravely erred in disallowing payments made by the Iloilo Provincial Government to its officials and employees for their Productivity Enhancement Incentive for Calendar year 2009 and order the refund of the full amount without considering the amount in excess and the waived items.
- b) The COA gravely erred in its findings that the officials and employees of Iloilo Provincial Government cannot be considered in goodfaith (sic) when the[y] received the subject incentive.¹⁵

Petitioners assert the legality of the grant of PEI to the officials and employees of the Province of Iloilo by virtue of a validly passed appropriations ordinance. They also claim good faith in the receipt of the benefit to avoid liability for the refund of the disallowed amounts.¹⁶

Respondents, through the Office of the Solicitor General, argue that the present petition should be dismissed for being filed out of time. They maintain that payment of PEI to the employees of the Province of Iloilo violated the law and applicable rules and regulations. Lastly, petitioners

¹² *Id.* at 212.

¹³ *Id.* at 210-212.

¹⁴ *Id.* at 213.

¹⁵ *Id.* at 9-10.

¹⁶ *Id.* at 8.



cannot invoke good faith to avoid the refund of the disallowed amounts since an order of refund is supported by the principle of *solutio indebiti*.¹⁷

The focal issue in this case is whether the COA committed grave abuse of discretion in issuing the assailed decision and resolution.

Ruling of the Court

The petition lacks merit.

Petitioners failed to timely file the petition

At the outset, the Court agrees with respondents that the present petition was filed out of time. Rule 64 specifically 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. (Emphasis supplied)

Clearly, the thirty-day reglementary period to assail the decision of COA Proper is merely interrupted by the filing of a motion for reconsideration. After receipt of the denial of the motion, petitioners are not given a fresh period of thirty (30) days but are allowed to file the petition within the remaining period, which shall not be less than five (5) days in any event.

Petitioners received the COA Proper Decision on 26 September 2014. It took them twelve (12) days to file a motion for reconsideration on 08 October 2014 and received its denial on 21 May 2015.¹⁸ That gave them

¹⁷ *Id.* at 240-247.

¹⁸ *Id.* at 1, 6.

only eighteen (18) days, or until 08 June 2015, to file the proper petition before this Court.¹⁹ However, they filed their petition only on 18 June 2015 on the mistaken belief they had thirty (30) days from 21 May 2015 before the lapse of the reglementary period.

Procedural rules should be treated with utmost regard and respect. They are designed to facilitate the adjudication of cases and de-clog our already crowded dockets. For petitioners' disregard of the reglementary period, the petition should already be dismissed. At any rate, the Court sees no reason to overturn the assailed decision as there was no abuse of discretion on the part of the COA in affirming the assailed NDs and in holding petitioners liable, as can be seen in the subsequent discussion below.

The assailed NDs were appropriately issued

The Court generally sustains the decisions of administrative authorities, especially one which is constitutionally-created, not only on the basis of the doctrine of separation of powers but also for their presumed expertise in the laws they are entrusted to enforce. It is only when the COA has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, that this Court entertains a petition questioning its rulings. There is grave abuse of discretion 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.²⁰

To overturn the assailed decision, petitioners must therefore show that the COA committed grave abuse of discretion when it affirmed the NDs for the payment of PEI to the employees of the Province of Iloilo. Petitioners, however, failed in this task.

Administrative Order No. 276 dated 15 December 2009 authorized the grant of PEI to government employees, including those in the LGUs, for CY

¹⁹ *Id.* at 1.

²⁰ *Veloso v. Commission on Audit*, 672 Phil. 419 (2011); G.R. No. 193677, 06 September 2011 [Per J. (now CJ) Peralta].

2009. To clarify the guidelines in granting PEI to local government personnel, DBM Local Budget Circular No. 2009-93²¹ was issued, hence:

2.0 Grant of the PEI

2.1 The respective sanggunian may grant the PEI to local government personnel depending on the financial capability of the local government unit (LGU). The PEI shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years.

x x x x

3.0 Funding Source

The PEI for local government personnel shall be charged against LGU funds, subject to the budgetary conditions and Personal Services limitation in LGU budgets pursuant to Sections 325(a) and 331(b) of R.A. No. 7160.

Meanwhile, Sections 325(a) of RA 7160 provides:

SECTION 325. *General Limitations.* — The use of the provincial, city, and municipal funds shall be subject to the following limitations:

(a) **The total appropriations, whether annual or supplemental, for personal services of a local government unit for one (1) fiscal year shall not exceed forty-five percent (45%) in the case of first to third class provinces, cities and municipalities, and fifty-five percent (55%) in the case of fourth class or lower, of the total annual income from regular sources realized in the next preceding fiscal year.** The appropriations for salaries, wages, representation and transportation allowances of officials and employees of the public utilities and economic enterprises owned, operated, and maintained by the local government unit concerned shall not be included in the annual budget or in the computation of the maximum amount for personal services. The appropriations for the personal services of such economic enterprises shall be charged to their respective budgets;

x x x x (Emphasis supplied)

The term “next preceding fiscal year” is defined as the “fiscal year that is two (2) years before a budget year.”²²

²¹ Clarificatory Guidelines on the Grant of the Productivity Enhancement Incentive (PEI) to Local Government Personnel for FY 2009, 17 December 2009.

²² DBM Local Budget Circular No. 98, 14 October 2011:

According to the COA, the Province of Iloilo had already exceeded its Personal Services limitation based on the following computation:

| | |
|--|---------------------------|
| Total income from revenue sources realized in 2007 | Php 1,031,451,660.91 |
| Personal Services (PS) Limitation Percentage | 45% |
| Allowable PS Level/Cost | Php <u>464,153,247.41</u> |
| Actual PS Cost before PEI | Php <u>502,854,446.31</u> |
| Allowable PS Cost | <u>464,153,247.41</u> |
| Excess of Actual PS over Allowable PS Level/Cost | Php <u>38,701,198.90</u> |

Petitioners, in attacking the validity of the disallowance, points to the failure of the COA to consider other waived items which are not included in the computation of the Personal Service limitation. They, thus, present the following computation:

| | |
|-------------------------------|-----------------------------------|
| Excess over PS limitation | Php 38,701,198.90 |
| Less: Waived items | <u>16,717,234.34</u> |
| Excess over Personal Services | <u>21,983,964.56²³</u> |

A perusal of petitioners' computation shows the province still exceeded its Personal Services limitation even if the waived items are removed from the computation. In fact, this computation is already an implied admission that the province exceeded its Personal Services limitation mandated by Section 325(a) of RA 7160. The Court also notes that the COA already reviewed this particular argument and deemed it irrelevant in upholding the NDs:

It will be noted that before the payment of the PEI of ₱102,700,000.00 PGI had already incurred an excess of ₱38,701,198.90 over the allowable PS cost and this includes the PS costs for waived items amounting to ₱16,717,234.34 (i.e. leave credits, terminal leave and subsistence allowance of health workers). Even if the amount of waived items is deducted from the actual PS cost (₱502,854,446.31 - ₱16,717,234.34) the adjusted actual cost of ₱486,137,211.97 still exceeds by ₱21,983,964.56 the allowable PS of ₱464,153,247.41. Thus, PGI was already precluded from incurring additional PS costs or benefits like PEI.²⁴

²³ *Rollo*, p. 9.

²⁴ *Id.* at p. 211.

The factual findings of administrative bodies charged with their specific field of expertise, are afforded great weight by the courts. In the absence of substantial showing that such findings were made from an erroneous estimation of the evidence presented, they are conclusive, and in the interest of stability of the governmental structure, should not be disturbed.²⁵ And, the COA did not act with grave abuse of discretion in disallowing the payment of PEI to the employees of the Province of Iloilo for CY 2009.

Having finally settled the propriety of disallowing the subject PEI benefit, the Court will now determine the liability of those identified in the NDs.

The approving and certifying officers were grossly negligent in allowing the disbursement of a higher amount of PEI despite exceeding the province's Personal Services limitation

In the very recent case of *Madera v. Commission on Audit*,²⁶ the Court had the occasion to harmonize previous conflicting rulings as regards the liability to return disallowed amounts, thus:

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.

²⁵ *Lumayna v. Commission on Audit*, 616 Phil. 929 (2009); G.R. No. 185001, 25 September 2009, [Per J. Del Castillo].

²⁶ G.R. No. 244128, 08 September 2020 [Per J. Caguioa].



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.

These guidelines were formulated after careful consideration of Sections 38²⁷ and 39,²⁸ in relation to Section 43,²⁹ of the Administrative Code³⁰ whereby government officials who approved and certified the grant of disallowed benefits are held solidarily liable to return the amount thereof only when they acted in evident bad faith, with malice, or if they were grossly negligent in the performance of their official duties. Simply stated, “public officers are accorded with the presumption of regularity in the performance of their official functions – [t]hat is, when an act has been completed, it is to be supposed that the act was done in the manner prescribed and by an officer authorized by law to do it.”³¹

Verily, the Court is firmly guided by the following considerations as mentioned in *Madera*:

²⁷ 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.

xxx

(3) A head of a department or a superior officer shall not be civilly liable for the wrongful acts, omissions of duty, negligence, or misfeasance of his subordinates, unless he has actually authorized by written order the specific act or misconduct complained of.

²⁸ SECTION 39. Liability of Subordinate Officers. — No subordinate officer or employee shall be civilly liable for acts done by him in good faith in the performance of his duties. However, he shall be liable for willful or negligent acts done by him which are contrary to law, morals, public policy and good customs even if he acted under orders or instructions of his superiors.

²⁹ SECTION 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

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

³⁰ Executive Order No. 292, 25 July 1987.

³¹ *Supra* at note 26.

Furthermore, granting *arguendo* that the municipality's budget adopted the incorrect salary rates, this error or mistake was not in any way indicative of bad faith. Under prevailing jurisprudence, **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. It does not simply connote bad moral judgment or negligence.** Rather, there must be some **dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a sworn duty through some motive or intent, or ill will.** It partakes of the nature of **fraud** and contemplates a state of mind affirmatively operating with **furtive design or some motive of self-interest or ill will for ulterior purposes.** x x x³²

In this case, the Court finds no justification for the failure of the approving and certifying officials to observe the province's Personal Services limitation cap. They failed to faithfully discharge their respective duties and exercise the required diligence resulting to the illegal and excessive disbursements paid to the employees of the Province of Iloilo. Even if the grant of PEI was not for a dishonest purpose, the patent disregard of the issuance by the DBM on the Personal Services limitation constitutes gross negligence, making them liable for the refund thereof.³³

Gross negligence has been defined as 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** insofar as other persons may be affected.³⁴ As discussed by Senior Associate Justice Perlas-Bernabe, "[g]ross negligence may become evident through the non-compliance of an approving/authorizing officer of clear and straightforward requirements of an appropriation law, or budgetary rule or regulation, which because of their clarity and straightforwardness only call for one [reasonable] interpretation."³⁵

The approving and certifying officials of the Province of Iloilo in the instant petition should have been more cautious and meticulous in making sure the province had sufficient budget for the disbursement of Php102.7

³² *Id.*, citing *Lumayna v. Commission on Audit*, G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per J. Del Castillo].

³³ *Sambo v. Commission on Audit*, G.R. No. 223244, 20 June 2017, 811 Phil. 344 [Per CJ Peralta], citing *Casal v. Commission on Audit*, G.R. No. 149633, 30 November 2006, 538 Phil. 634 [Per J. Carpio-Morales].

³⁴ *Constantino v. Sandiganbayan*, G.R. Nos. 140656 & 154482, 13 September 2007, 559 Phil. 622 [Per J. Tinga].

³⁵ Separate Concurring Opinion of Senior Associate Justice Perlas-Bernabe, *Madera v. Commission on Audit*, p. 7.

million PEI considering they wanted to give out an amount five (5) times more than that granted to all other government branches and offices. To recall, the Executive, Legislative and Judicial branches, as well as the Office of the Ombudsman and other constitutional offices vested with fiscal autonomy, were only granted PEI amounting to Php10,000.00.

The Court notes no limit on the amount of PEI that may be granted by the LGUs to their personnel as can be seen in Administrative Order No. 276 dated 15 December 2009, to wit:

SECTION 3. PEI for Employees of LGUs. Employees in the local government units (LGUs) may also be granted PEI by their respective *sanggunian*, depending on the LGU financial capability, chargeable to local government funds, subject to the Personal Services limitation in their respective local government budgets under RA No. 7160 and subject further to the conditions in Section 1 hereof. The PEI shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years.

This was echoed in DBM Local Budget Circular No. 2009-93 but with clarification that the benefit shall be in lieu of the Additional Benefit/Extra Cash Gift authorized in previous years. Evidently, the law specified for a fixed amount of Php10,000.00 for other branches and offices of the government while the LGUs were given a free hand in determining the suitable amount of PEI depending on their financial capability. Nonetheless, the rate given to other offices should have prompted the officials and officers of the province to initially review the conditions for the grant and carefully ensure compliance with the budgetary rules. Their failure to do so demonstrates a callous frame of mind without care of the financial health of the Province of Iloilo. Their indifference to the financial state of the province is made more evident by the amount in excess of the province's Personal Services limitation, which is already at Php38,701,198.90 even before the grant of PEI. With the additional disbursement of Php102.7M due to the subject benefit, the excess of the province's Personal Services limitation rose up to roughly Php141.4 million.

Respondents' argument that petitioners' "failure to observe the prescribed [Personal Services] limitations in granting the subject PEI despite previous disallowances of similar benefits also refutes their claim of good faith."³⁶ Said allegation is presumably referring to the following discussion by the COA:

³⁶ *Rollo*, p. 246.

Moreover, a similar allowance granted in 2002 and was disallowed in 2004 for being violative of the PS cap limitation under Section 325(a) of RA 7160, was sustained by the Supreme Court, thus paving way for the issuance of a Final Order of Adjudication (now the COA Order of Execution under the 2009 Revised Rules of Procedure of the COA) by the General Counsel of COA on March 18, 2009. Clearly, the Province of Iloilo was well aware at the time of payment of the PEI in December, 2009 that the same benefit may be disallowed by the Auditors of the COA for the reason that the payment thereof is in violation of Section 325(a) of RA 7160.³⁷

This argument is well-taken. A prior disallowance based on the same cause should have drawn the attention of the approving and certifying officers to be more vigilant and circumspect especially in cases pertaining to the same type of transactions. Such caveat applies even more in this case where the approving and certifying officers intended to grant a larger amount of benefit than the standard. As noted by Justice Caguioa, the approving and certifying officers should have also been guided by the Court's pronouncement in *Lumayna v. Commission on Audit*,³⁸ where We disallowed the salary increase of municipal personnel since the municipality therein had already exceeded its Personal Services limitation. The following badges of whether an authorizing or certifying officer exercised the diligence of a good father of a family are also instructive:³⁹

x x x For one to be absolved of liability the following requisites [may be considered]: (1) Certificates of Availability of Funds pursuant to Section 40 of the Administrative Code; (2) In-house or Department of Justice legal opinion, (3) that there is no precedent disallowing a similar case in jurisprudence, (4) that it is traditionally practiced within the agency and **no prior disallowance has been issued**, [or] (5) with regard the question of law, that there is a reasonable textual interpretation on its legality.⁴⁰ (Emphasis supplied)

Verily, the Court in *Silang v. Commission on Audit*,⁴¹ dismissed the claim of good faith by the approving officials and those directly involved in the release of the illegal disbursement for their failure to follow the requirements under applicable policies in relation to the valid grant of therein subject incentive. They are duty bound to have full knowledge of basic procedure as part of their shared fiscal responsibility under the law.

³⁷ *Id.* at p. 192.

³⁸ G.R. No. 185001, 25 September 2009, 616 Phil. 929 [Per J. Del Castillo].

³⁹ *Supra* at note 26.

⁴⁰ Separate Concurring Opinion of Justice Leonen, *Madera v. Commission on Audit*, p. 8.

⁴¹ G.R. No. 213189, 08 September 2015, 769 Phil. 327 [Per J. Perlas-Bernabe].

Also, in *Technical Education and Skills Development Authority v. Commission on Audit*,⁴² the Court considered the Director-General's blatant violation of clear provisions of the Constitution, the 2004-2007 GAAs and COA circulars equivalent to gross negligence amounting to bad faith.

Indeed, local government officials are accountable for the proper monitoring and maintenance of the financial affairs of their LGU and knowledge of basic procedure forms part of their shared fiscal responsibility, hence:

Section 305. *Fundamental Principles*. — The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:

x x x x

(1) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of the local government units;⁴³

We, likewise, recognize the cases cited by Justice Caguioa as examples of how the patent disregard of existing law or rules overcomes the presumption of good faith and necessitates the officers to return the disallowed amount:

Casal v. COA.⁴⁴

The failure of petitioners-approving officers to observe all [the] issuances cannot be deemed a mere lapse consistent with the presumption of good faith. Rather, even if the grant of the incentive award were not for a dishonest purpose as they claimed, the patent disregard of the issuances of the President and the directives of the COA amounts to gross negligence, making them liable for the refund thereof.

Manila International Airport Authority v. Commission on Audit.⁴⁵

The same is not true as far as the Board of Directors. Their authority under Section 8 of the MIAA charter is not absolute as their exercise thereof is "subject to existing laws, rules and regulations" and they cannot deny knowledge of *SSS v. COA* and the various issuances of the Executive Department prohibiting the grant of the signing bonus. In fact, they are dutybound to understand and know the law that they are tasked to implement and their unexplained failure to do so barred them from

⁴² G.R. No. 204869, 11 March 2014, 729 Phil. 60 [Per J. Carpio].

⁴³ *Silang v. Commission on Audit*, G.R. No. 213189, 08 September 2015, 769 Phil. 327 [Per J. Perlas-Bernabe].

⁴⁴ G.R. No. 149633, 30 November 2006, 538 Phil. 634 [Per J. Carpio-Morales].

⁴⁵ G.R. No. 194710, 14 February 2012, 681 Phil. 644 [Per J. Reyes].

claiming that they were acting in good faith in the performance of their duty.

Rotoras v. COA.⁴⁶

Meanwhile, officials and officers who disbursed the disallowed amounts are liable to refund: (1) when they patently disregarded existing rules in granting the benefits to be disbursed, amounting to gross negligence; x x x

Department of Public Works and Highways, Region IV-A v. Commission on Audit.⁴⁷

In this case, Cuaresma, as one of the certifying officers of DPWH IV-A, was duty-bound to ensure compliance with the conditions and limitations imposed in PSLMC Resolution No. 4, Series of 2002, in relation to DBM Budget Circular No. 2006-1, before she could issue certification on the availability of funds for the subject CNA Incentive. Unfortunately, she failed in this regard considering the non-observance with the limitation that savings from MOOE shall be the sole source of CNA Incentive. Hence, she must be held liable for the amount of the disallowance.

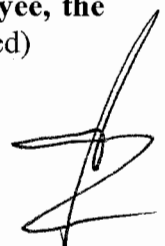
Undoubtedly, there is a clear showing of gross negligence on the part of herein approving and certifying officers for their failure to exercise the slightest care and with a conscious indifference in the discharge of their duties coupled with the lack of any badge of good faith available to their case. Therefore, the Court holds them solidarily liable for the disallowed amounts pursuant to Section 43, Chapter 5, Book IV of the Administrative Code, which reads:

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

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

⁴⁶ G.R. No. 211999, 20 August 2019 [Per J. Leonen].

⁴⁷ G.R. No. 237987, 19 March 2019 [Per J. J.C. Reyes, Jr.]



The payees are liable to return the amount they received pursuant to principle of solutio indebiti

Proceeding now to the payees of the subject PEI benefit, the Court agrees with respondents' assertion on the applicability of the principle of *solutio indebiti*.

In *Madera*, the Court reverted to the basic standpoint of applying the principles of *solutio indebiti* and unjust enrichment, regardless of good faith of passive recipients, in determining liability for disallowed amounts.⁴⁸ These concepts are based on Article 2154⁴⁹ of the Civil Code, which provides that if something is received and unduly delivered through mistake when there is no right to demand it, the obligation to return the thing arises. As aptly put by Associate Justice Inting in his Concurring Opinion to *Madera*, "payees are liable to return the amount simply because it was paid by mistake. No one should ever be unjustly enriched, especially if public funds are involved. Since their liability is a quasi-contract (*solutio indebiti*), good faith can never be an excuse. In other words, payees cannot be absolved from liability using the same reasoning to exempt approvers/certifiers, simply because the nature of their liability for the transaction is not the same."⁵⁰

Further, the extent of the payees' liability to return is reinforced by COA Circular No. 2009-006 dated September 15, 2009⁵¹ that articulates the liability of all persons identified in NDs:

SECTION 16. Determination of Persons Responsible/Liable. —

16.1 The Liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:

X X X X

⁴⁸ *Supra* at note 26.

⁴⁹ Article 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

⁵⁰ Concurring Opinion of Associate Justice Inting, *Madera v. Commission on Audit*, p. 11.

⁵¹ Prescribing the Use of the Rules and Regulations on Settlement of Accounts, COA Circular No. 006-09, 15 September 2009

16.1.5 The **payee of an expenditure shall be personally liable** for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.2 **The liability for audit charges shall be measured by the individual participation and involvement of public officers** whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

16.3 **The liability of persons determined to be liable under an ND/NC shall be solidary** and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.

The Court has interpreted the above rules as validation of the notion that passive recipients, such as herein payees, shall only be liable to the extent of the amount they unduly received, while, as already discussed, officers who are guilty of bad faith, malice or gross negligence in the disbursement of the disallowed amounts shall be solidarily liable therein.⁵²

Nevertheless, the Court still carved out some exceptions to the general application of *solutio indebiti* when applied to passive recipients, namely: (1) when the amount disbursed was genuinely given in consideration of services rendered; (2) when undue prejudice will result from requiring payees to return; (3) where social justice or humanitarian considerations are attendant; and (4) other *bona fide* exceptions as may be determined on a case to case basis.⁵³

The Court now focuses on the first exception since the other exceptions clearly cannot be applied to the present case. **Indeed, the sheer excessiveness of the amounts received by the employees, despite not having the budget therefor, prevents this Court from considering justifications premised on social justice considerations and equity.** We are disconcerted by the fact that the immense amount of Php102.7M only benefited a little more than 2,000 individuals. If at all, it was the Province of Iloilo, which presumably had a population of more or less 1 million people in 2009,⁵⁴ that was unduly prejudiced by the grant and it would be a great disservice if the Court would exonerate the passive recipients based on these extraordinary grounds.

⁵² *Supra* at note 26.

⁵³ *Id.*

⁵⁴ According to the 2015 Census, the Province of Iloilo had a population of 1.9 Million; <https://www.iloilo.gov.ph/quick-facts>, last accessed on 30 November 2020.

Turning back to the first exception, the Court reiterates the recent discussion in *Abellanosa v. Commission on Audit*⁵⁵ where the details of how said exception were refined, viz:

As a supplement to the *Madera* Rules on Return, the Court now finds it fitting to clarify that in order to fall under Rule 2c, *i.e.*, amounts genuinely given in consideration of services rendered, the following requisites must concur:

- (a) **the personnel incentive or benefit has proper basis in law but is only disallowed due to irregularities that are merely procedural in nature; and**
- (b) **the personnel incentive or benefit must 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.**

Verily, these refined parameters are meant to prevent the indiscriminate and loose invocation of Rule 2c of *Madera* Rules on Return which may virtually result in the practical inability of the government to recover. To stress, Rule 2c as well as Rule 2d should remain true to their nature as exceptional scenarios; they should not be haphazardly applied as an excuse for non-return, else they effectively override the general rule which, again, is to return disallowed public expenditures.

With respect to the first requisite above mentioned, Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) – the *ponente* of *Madera* – aptly points out that the exception under Rule 2c was not intended to cover compensation not authorized by law or those granted against salary standardization laws. Thus, amounts excused under the said rule should be understood **to be limited to disbursements adequately supported by factual and legal basis, but were nonetheless validly disallowed by the COA on account of procedural infirmities.** As the esteemed magistrate observes, these may include amounts, such as basic pay, fringe benefits, and other fixed or variable forms of compensation permitted under existing laws, which were granted without the due observance of procedural rules and regulations (*e.g.*, matters of form, or inadequate documentation supplied/rectified later on). x x x

x x x x

Aside from having proper basis in law, the disallowed incentive or benefit must have a clear, direct, and reasonable connection to the actual performance of the payee-recipient's official work and functions. Rule 2c after all, excuses only those benefits “genuinely given in consideration of services rendered”; in order to be considered as

⁵⁵ G.R. No. 185806, 17 November 2020 (Resolution).

“genuinely given,” not only does the benefit or incentive need to have an ostensible, statutory/legal cover, there must be actual work performed and that the benefit or incentive bears a clear, direct, and reasonable relation to the performance of such official work or functions. To hold otherwise would allow incentives or benefits to be excused based on a broad and sweeping association to work that can easily be feigned by unscrupulous public officers and in the process, would severely limit the ability of the government to recover.⁵⁶

It must, thus, be noted that in assessing whether a case falls within the said exception, the foremost consideration should be the legality of the expenditure. This presupposes all the legal conditions for the disbursement were met but for reasons not affecting the genuineness of the payout, such as lack of reportorial requirements or minor missteps in the procedure, the transaction had to be disallowed as a result of some form of irregularity. Only in these kinds of transactions may the payees be excused since the disbursements were legal and given in consideration of actual work. Put differently, the payees of the disbursement truly merited the receipt of the amount, and in the proper course of events, would have received the benefit with no issues at all.

Should the grant of PEI to herein payees for CY 2009 be considered as genuinely given in consideration of services rendered thereby excusing them from returning the amounts they received?

The Court answers in the negative.

Here, there is no evidence or proof on record to serve as foundation for a factual determination of whether the PEI benefit given to the employees of the province has a clear, direct and reasonable connection to the actual performance of the recipients' work and functions. Needless to say, petitioners have the onus to forward evidence that the benefit they received falls under the exception of being given in consideration of actual services rendered pursuant to the nature of exceptions where strict application is observed. Such notion is likewise supported by the Court's ruling in *Lazaro v. Commission on Audit*,⁵⁷ where We held that “[i]t is not this Court's duty to construe their incomplete submissions and vague narrations to determine merit in their assertions.”

⁵⁶ *Id.*

⁵⁷ G.R. Nos. 213323 & 213324, 22 January 2019 [Per J. Leonen].

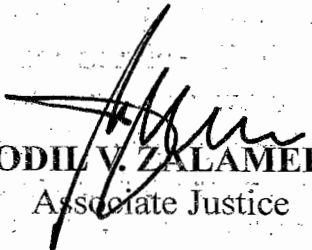
More importantly, the grant of PEI to employees of the Province of Iloilo for CY 2009 was actually unauthorized for non-compliance with a legal condition, *i.e.*, financial capability to the LGU to grant PEI to its personnel. To recall, DBM Local Budget Circular No. 2009-93 stated that the respective *sanggunian* may grant PEI to their personnel “**depending on the financial capability of the local government unit.**” Such financial capability was dependent on the amount available to the LGU before exceeding its Personal Services limit.

Needless to say, the Province of Iloilo did not have the required financial capability to grant PEI in an amount five (5) times more than the standard. The funding source of the benefit, as identified and mandated by law, had already been depleted even before granting the subject benefit. Hence, the disbursement is deemed unauthorized and illegal.

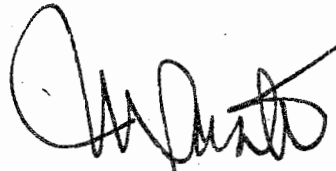
Otherwise stated, if the approving and certifying officers diligently followed the law and computed for their Personal Services limitation, they would not have granted the subject benefit and the payees would not have received the disallowed amounts. Following such premise, **the receipt of PEI by the payees herein was truly by mistake, and they are, therefore, required to return the amounts they personally received in accordance with the principle of *solutio indebiti*.**

WHEREFORE, the petition is **DENIED**. The Decision No. 2014-188 dated 28 August 2014 and Resolution dated 09 March 2015 of the Commission on Audit are hereby **AFFIRMED**, with clarification that the approving and certifying officers are solidarily liable for the disallowed amounts while the payees are liable only for the amounts they personally received.

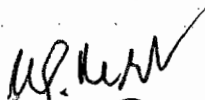
SO ORDERED.


RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:



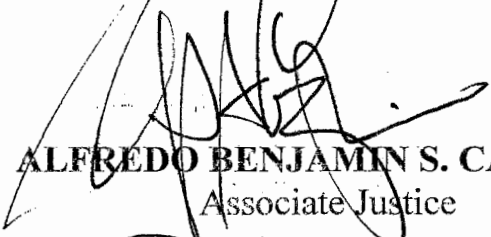
DIOSDADO M. PERALTA
Chief Justice



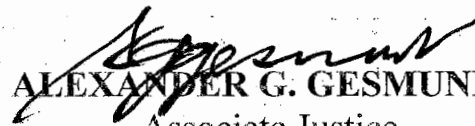
ESTELA M. PERLAS-BERNABE
Associate Justice



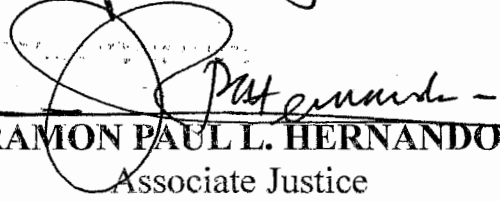
MARVIC M. V. LEONEN
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



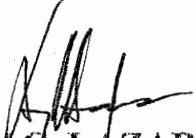
ALEXANDER G. GESMUNDO
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



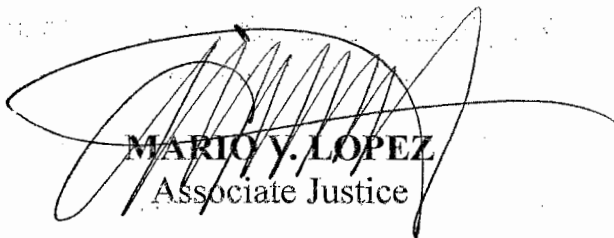
ROSMARI D. CARANDANG
Associate Justice



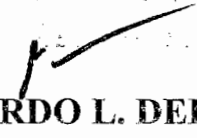
AMY C. LAZARO-JAVIER
Associate Justice



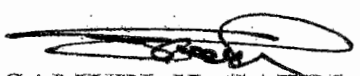
HENRI JEAN PAUL B. INTING
Associate Justice



MARIO Y. LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



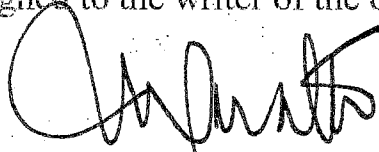
SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice

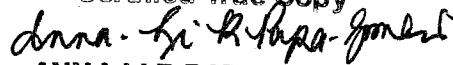
CERTIFICATION

Pursuant to the 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.



DIOSDADO M. PERALTA
Chief Justice

Certified True Copy



ANNA-LI R. PAPA-GOMBIO

Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court